

# **TOWN OF EAST KINGSTON ZONING BOARD OF ADJUSTMENT**

## **MEETING MINUTES**

March 23, 2023

Pound School  
41 Depot Road  
East Kingston, New Hampshire

Tim Allen, Chair  
Ed Robbins, Vice Chair  
7:00PM

### **AGENDA**

#### **Election of Officers**

Motion for Rehearing (Second Request) on the Appeal from Administrative Decision – Brad Poole – 116 North Road  
(Case #2023-01)

Board Members present: Tim Allen – Chair, Dave Ciardelli, Frank Collamore, Nate Maher, and Ed Robbins – Vice Chair.  
Absent: Alternate Paul Falman.

Others present: none

Mr. Allen opened the meeting at 7:01pm followed by the roll call.

#### **ELECTION OF OFFICERS**

Mrs. Belcher announced the process for nominating a chairman: any voting member can nominate – no second is required. Upon final nominations, board members will cast their vote.

Chairmanship – Mr. Ciardelli nominated Tim Allen as Chairman. Mr. Allen accepted the nomination and his willingness to serve as chair provided no one else was interested. A call for additional nominations was made. With no other nominations from the floor, members voted for the single candidate by show of hand 5-0-0 in favor of Mr. Allen as chairman. Mrs. Belcher declared Mr. Allen the Chairman of the Zoning Board for the current year's appointment and then turned the meeting over to Chairman Allen to facilitate the election of vice chair.

Vice Chairmanship – Chairman Allen opened the floor for nominations of Vice Chair. Mr. Collamore nominated Ed Robbins as Vice Chair (Mr. Robbins accepted the nomination). With no other nominations from the floor, members voted for the single candidate by show of hand 5-0-0 in favor of Mr. Robbins. Chairman Allen declared Mr. Robbins the Vice Chairman of the Zoning Board for the current year's appointment.

#### **MOTION FOR REHEARING (SECOND REQUEST) FOR THE APPEAL FROM ADMINISTRATIVE DECISION – BRADLEY POOLE – 116 NORTH ROAD**

Chairman Allen opened board discussion on the second motion for rehearing dated February 27, 2023 submitted by Bradley Poole through his attorney, Jonathan Flagg, regarding the ZBA's December 29, 2022 decision to deny Mr. Poole's application for an Appeal from Administrative Decision with respect to a cease and desist Notice of Violation Use of 116 North Road, MBL# 15-03-14, as issued by the Board of Selectmen Chairperson Cacciatore on October 17, 2022 in relation to the Town of East Kingston Zoning Ordinance Article III-B – Residential/Agricultural District and Article XVI – Home Occupations.

Like the first motion for rehearing, he stated the rehearing process is designed to afford local zoning boards of adjustment the opportunity to correct their own mistakes before appeals are file with the court. Attorney Flagg's new motion for rehearing cites new information that the board will need to review and determine if a rehearing is warranted.

Board members confirmed they were in receipt of, and have read through, the new motion for rehearing with its attachment of an excerpt from the 2002 Home Occupation Ordinance. Chairman Allen then read aloud the motion for rehearing, starting with the second paragraph:

*I had explained to the Board that we had requested the ordinances IN EFFECT over the years since the Pooles started their business in 1999. The town had not given us those ordinances until after the Board issued its decision on rehearing on February 6, 2023. This is important because, as we repeatedly said to the board, we should be grandfathered. The Board dismissed our grandfathered argument because:*

*c. The business is not grandfathered as prescribed in Zoning Ordinance Article XVI – Home Occupations as it was not in existence prior to January 6, 1989 and not on record as such.*

*d. By his own testimony and that of his attorney, Mr. Poole has been storing commercial vehicles greater than 14,000 GVW at his residence of 116 North Road.*

*This is NOT true.*

*As the Board found, the Pooles started their business in 1999. The ordinance in 2002 had **NO GVW at all** AND the Pooles can have as many commercial vehicles on their property as they want as long as they are shielded from sight by fence, garage”, etc. As the board knows, they are shielded by woods and a garage. Please see attached photocopies of ordinances in effect in 2002 which we just received from the town after 3 months of requests. If the ordinance changed after that date, the changes are irrelevant to the Pooles as they are grandfathered as a matter of law.*

*Apparently the ZBA did not look at their ordinances in effect at the time the Pooles started their business as we had requested they do. We give them this opportunity to do so and amend their decision.*

Chairman Allen stated it is Attorney Flagg’s position that because the ZBA did not have the 2002 Home Occupation Ordinance on hand at the time of the first motion for rehearing, the board erred in its original decision to deny the motion for rehearing.

Mr. Robbins questioned if the board could consider the Pooles grandfathered from the date the business was set up back in 1999 with a state business license.

Chairman Allen responded the board made, on numerous occasions, a determination that the business was not grandfathered as the business would have had to have been in operation in 1989 *and* would have had to register with the town as a grandfathered business, also back in 1989. This process is prescribed by the Home Occupation Ordinance. Businesses who registered with the town prior to the adoption of the home occupation ordinance were deemed grandfathered.

Mr. Maher added that if a business owner remains silent and does not register with the town, the business is not grandfathered. Not only did the Pooles not register with the town back in 1999, they were not even in business prior to 1989 when the town adopted a home occupation ordinance, thus they cannot be grandfathered – opening a business in town that started ten years after the deadline to register as a grandfathered business does not grant grandfathered status.

Chairman Allen spoke to the gross vehicle weight portion of the Home Occupation Ordinance stating it did not go into effect until the 2020’s. The Pooles are, once again, applying a dated home occupation ordinance (2002 excerpt stating: *Not more than one commercial vehicle may be kept overnight at the premises unless shielded from sight by garage, fencing, etc.*) The board cannot grant grandfathered status to an illegal business with respect to the storage of equipment and commercial vehicles. The Pooles claim their business was in operation since 1999; however, they never registered, or attempted to register the business with the town until 2022.

Mr. Ciardelli provided an analogy of a person speeding down the road on a daily basis but never getting caught. This doesn't mean the speed limit he is driving is legal; he is just lucky he did not get caught. The same applies to a business operating in a non-permitted fashion – just because the business was operating under the radar for years, does not give the business grandfathered status.

Mr. Robbins inquired if the board could consider applying the provisions from 2002 with respect to the overnight shielding of vehicles to the case given the business may have been on file with the state.

Chairman Allen responded the town requires its own approval; approval which was not sought by the Pooles until 2022. The ordinance referencing "shielding vehicles from view" is part of the town's home occupation ordinance from 2002, however, the Poole's did not have a legal approved Home Occupation when this ordinance was active.

Mr. Maher stated the matter before the board is specific to the cease and desist order – did the Board of Selectmen err in their interpretation of the ordinance when issuing the cease and desist? Any other argument is moot at this point. The board needs to determine if the board (ZBA) made a valid decision to deny the appeal from administrative decision. These new arguments, with new information, has no validity to the grandfather status. With respect to the Poole's claim the ordinance as written back in 1999 should apply to them, they would have needed to have been registered with the town back in 1999 for it to apply. Based on the claims the commercial vehicles should be allowed as they are shielded by sight as allowed back in 1999, they (the vehicles) were not shielded by sight in 1999 as the garage structure was not even built back then.

Chairman Allen reiterated the board's review this evening is of the new information provided by the Pooles – excerpts from the 2002 home occupation ordinance.

Board members agreed the excerpt from the 2002 Home Occupation Ordinance had no bearing on the board's previous decision to deny the appeal from administrative decision.

**MOTION: Chairman Allen motioned to DENY the second request for motion for rehearing for Bradley Poole with respect to the ZBA's December 29, 2022 denial of an appeal from administrative decision regarding a cease and desist Notice of Violation Use of 116 North Road, MBL# 15-03-14, based on the Board's determination no errors were made with respect to their December 29, 2022 or February 1, 2023 decisions, nor did this new information change the Board's position that the business is not grandfathered for operation or commercial vehicle storage; seconded by Mr. Robbins. With no further discussion the motion passed 5-0-0.**

#### **APPROVAL OF MINUTES**

Board members reviewed the minutes from February 1, 2023.

**MOTION: Chairman Allen motioned to approved the February 1, 2023 minutes with changes; seconded by Mr. Ciardelli. With no further discussion the motion passed 5-0-0.**

#### **OTHER BUSINESS**

With no other business before the board,

**MOTION: Chairman Allen motioned to adjourn; seconded by Mr. Maher. With no further discussion the motion passed 5-0-0 and the meeting adjourned at 7:20pm.**

Respectfully submitted,

Catherine Belcher

Land Board Secretary

Minutes approved on August 24, 2023.