

Board of Adjustment Meeting – March 6, 2006

**BOARD OF ADJUSTMENT
Special Meeting
March 6, 2006**

PRESENT: Philip Stenersen, Vice Chair, Jeanne Carguilo, Kathy Isakson, Joe Hill, Paula Sumner and George Carmichael.

Stenersen Vice Chair opened this Special Meeting at 6:03 p.m. in reference to whether or not the Board will re-hear Case #937 Home Depot.

Sitting: Stenersen, Isakson, Hill, Carguilo, Carmichael

Carmichael asked did the Petitioners demonstrate that there was a technical error in our decision?

Stenersen mentioned that it was not clear as to what or what not was done by the Board. He also stated we should have gone through all the items and feels we need to rehear the case because it was not clear.

Carmichael asked are we working #937 & #944 together and #945 separately and he was told yes. He said he still stands that there is no new evidence – it is just not there. If you really want to stand by the Letter of the Law, we should be looking at the Letter of the Law that says “Is there new evidence that was not available at the time of the first hearing”. Carmichael said when we overturned this it was clear we covered our bases very well.

Carguilo said let say we hear #937 over again and we go over everything that was talked about and then we hear #944 but we have already done #937 so then there would be no reason to do #944.

Carmichael mentioned that Bradley said in his opinion there is no difference between #937 & #944.

Stenersen said we have #937 sitting before us and in his opinion was not a proper decision. He said he is not saying he was against the decision itself.

Carmichael stated in his opinion #937 came in to cover their bases. He thinks they saw at the last minute that they should have asked for a rehearing and let's call it what it is. So a motion for rehearing appeared on the table when we sat down, it was not properly filed so we couldn't hear it so now we are looking at this thing fresh again and asking, is there any new evidence to justify rehearing this.

Carguilo asked Stenersen are you looking to rehear #937 and Stenersen replied that is what is before us right now. As far as Stenersen is concerned #944 has nothing to do with what we are talking about.

Hill read a regulation from the NH Board of Adjustment for 2005 page 44. "If the motion for a rehearing sites as a reason for the request of the Board to accurately explain the decision, I need ~~not~~ address all five issues for a Variance, not a Special Exception." The rehearing process is designed to afford local Board of Adjustment an opportunity to correct their own mistakes before appeals are filed. I think it is good for the other case we will be hearing it has nothing to do with tonight, however it specifically says Variance not Special Exception.

Hill could not find anything to clarify Special Exception.

Stenersen agreed with Hill that it does not say anything about Special Exception.

Carmichael said he is quoting what Attorney Hanna who was representing Jed Brummer at our last meeting he was talking about what you must consider whether or hear or rehear a case, and he said in his letter to us, did the petitioner demonstrate that the Board committed a technical error or that there was new evidence that was not available at the time of the first hearing. He does not see that in any part of this application or any technical errors we might have made to rehear the case and overturn it.

Hill said the only new information that he knew did not come from the applicant. We have three new letters that came in. One from Kevin McCuster, President of the Monomonac Lake Owners Association, one from Robert A. Weinberg and one from the Halliday's. Those letters were not available to us when the decision was made. This is new evidence when you are considering any applicant.

Sumner said that is not new evidence for Case #937, but could be new evidence for #944, but she does not see any relation to #937. Hill agreed with her but the above was the only new evidence he saw that has come in.

Carmichael said we are looking specifically for one thing; it is a motion for rehearing. Is there any new evidence or did we clearly make a technical error in our last decision.

Stenersen mentioned that he clearly feels we made a technical error. He also mentioned he knows what the decision tree says but not clear on what it means.

Hill mentioned that Carmichael made a motion seconded by White to approve a Special Exception limited to permeable or unpaved site access only and NOT to waive the required variance to build on current or former wetlands, in accordance with Section 5a of the Wetland Ordinance. The motion passed 3-2 with Isakson & Stenersen opposing.

Stenersen asked how much can they fill? He was told just the access. Carmichael said they cannot put a paved or building on the wetlands, it is clearly in our Zoning Ordinance.

Carmichael said the Attorney said by limiting the Special Exception to a permeable or unpaved site access only the ZBA effectively denied the Special Exception.

Hill said we gave them a Special Exception for the permeable but denied the impermeable. He said you cannot with a Special Exception put a paved driveway or part of a building on wetlands.

Carmichael said we know what the intent is to build a building and pave it. What we are saying unpaved surface and no building.

Stenersen said can they come in a fill all the 16,000 square feet for a graveled driveway.

Carmichael said they are looking for a holder for the CC easement and to his understanding they do not have one yet so they do not have all their permits to do the dredge and fill.

Stenersen said the reality of this is that no way are they going to have that until they know what is being approved.

Carmichael said our laws are very clear on that one issue and that is they must have them before they can dredge and fill.

Carguilo & Isakson said they need to have all the permits before they can dredge and fill. They said why you would do all this if you were not going to get permission to do it.

Carguilo understands what is said but we need to make things crystal clear.

Stenersen says we have Jason's case coming up and the judge said go back and find out what they were saying. Stenersen can see this happening again and he does not want it to happen again. Carguilo agreed.

Carmichael does not believe we did any errors in this case.

Hill said the question that leads to the next level if we say we need to clarify; therefore we will allow a rehearing. We have the already scheduled for a Special Exception and a Variance hearing at the end of the month. When are you going to do the rehearing? Stenersen mentioned that the rehearing will be done first. Hill said the rehearing will go first and the immediately after that go to the second Special Exception application.

Stenersen did not have an answer to that. Carmichael says he thinks Bradley answered that by saying we treat both as once. Carmichael said they made a mistake in that they should have applied for a hearing not a rehearing. He said if you look at the two and put them side by side they are essentially the same thing that is what our attorney said.

Carguilo agreed and she feels #944 is going to go away if we rehear it and we need to advertise everything.

Stenersen does not know the legality of it but he feels it does not make sense to rehear it and then 20 seconds later start all over again. Bradley mentioned treat them as the same.

Hill read another paragraph on page 44: if the Board reverses a decision at a rehearing a new aggrieved party results and that party then has 30 days to appeal for a rehearing of the new decision. This triggered the need for Plaintiff to apply for a rehearing as pre-condition to appeal. This does not mean as dependents suggest that BOA be forced to consider an endless series of rehearing applications, for it is only when the Board reverses itself at a rehearing and thus creates new aggrieved parties that actually will come into play.

Hill mentioned if we stay with the same decision but go down the check list granting the wholly, the pervious surface, then we have not reversed things, we have only clarified things.

Hill made a motion seconded by Carguilo to rehear Case #937 Home Depot. Motion was unanimous.

Helen Mae asked the Members of the Board if the Agenda she has prepared is ok with them to be put in the paper. After a short discussion all agreed. She also stated that Richard Mellor has a copy of the original application of Rindge Convenience Store. As of tonight neither Mellor nor Helen Mae have received any maps etc. pertaining to this application. Helen Mae mentioned that she had spoken to Mark Wolterbeek and he said he would have everything within 10 days at which time she will give to the ConCom for their decision. If information is not received, the case will not be heard.

Hill read from Rules of Procedure "Applications must be received at the Selectmen's office no later than 2 weeks before the next scheduled meeting." Appeals from an administrative decision taken under RSA 676-5 shall be filed within 21 days of the decision. If Hill interrupts this correctly, he has to have everything in at the Selectmen's office no later than 2 weeks before our next meeting.

Carguilo mention she feels we need to change it to 3 weeks in order to get in the paper in time. But the Board members needs to get all applications, maps etc. two weeks before meetings.

Hill asked if we could hear the 3 Home Depot cases first since they come from out of town, but Stenersen said he feels we need to go in numerical order.

Robert VanDyke's appeal was discussed and decided that Secretary write to the attorney and mention that the application was not filed in a timely manner. Motion made by Carmichael and seconded by Carguilo to send the letter to VanDyke's attorney. All in favor.

Motion made by Isakson seconded by Carguilo to change the Appeal period from 21 days to 30 days and the application period to 3 weeks. Motion was unanimous.

D&D Septic will be called to ask him if he would mind if we put him on the April agenda due to the fact that we have 6 cases already for March.

Voted to adjourn at 7:00 p.m.

Respectfully submitted,

Helen Mae Olson
Secretary