

# ZONING BOARD OF APPEALS SOUTHAMPTON, MA 01073

## APRIL 18, 2012 MINUTES

ZBA Members Present: Ryan Geeleher, Chairman  
Michael Sacco  
Linda Hiesiger  
Tom Sears

Others Present: Attorney Michael Pill, representing Claire Leduc  
Rodney and Gail Strader, Abutters

7:00 p.m. Meeting Called to Order by Ryan Geeleher, Chair

7:05 p.m. Hearing -

**Applicant: Claire Leduc  
39 Gunn Rd**

- Ryan Geeleher, Chair, opened public hearing, which was continued from March 5, 2012 regarding the appeal from a December 16, 2011 decision and order by the Building Inspector regarding chickens being on the property at 39 Gunn Rd.
- **\*\*\*This is where the tape started\*\*\***
- Michael stated that there are cases even with the restrictive language, the courts have said it would be absurd to conclude the identified uses would be the only uses. The first issue is to decide whether or not it's restrictive and any other accessory use is not permissible, and that the Board needs to be unanimous.
- Tom Sears stated that it comes down to interpretation, and questioned how it could be enforced if the by-laws are not specific and listed.
- Linda referred to table in town by-laws (pg 5-1) defining use and primary use and accessory use, and questioned what use they are talking about. "Any use not listed is to be prohibited..." and questioned if Table being used just as an example?
- Michael stated that another issue is that the table is overly restrictive and is in favor of moving to have it changed/updated. He felt people are using their property other than the 14 uses in the table, and Ms Leduc is being singled out.
- Table 1 was reviewed regarding swine and fur animals and what's specifically allowed in various zones. It was again questioned if the by-laws should be revised.
- Hearing was then opened up to the public
  - Mr Strader expressed frustration over the fact of the number of chickens in a zone where they're not allowed, and the town allowed it to happen. There were complaints about the smell and the chickens going on his property, and the waste not being dealt with properly.
  - Building Inspector Richard Oleksak had a complaint and had to deal with it
  - Attorney Pill advised of not assuming that use includes accessory uses. He stated that our definition of accessory uses doesn't say those uses listed as allowed accessory uses. He thought the town attorney was referring to the case of Harvard

v. Maxant and advised that faced with a contradiction in by-laws, you should fall back on what the Supreme Judicial Court has said, and until the by-law is clarified, it leaves the potential of a case by case resolution.

- Attorney Pill agreed to further the extension if necessary.
- Michael agreed with Attorney Pill that Land Court gives guidance on how to act in various situations. Table 5-A language was not intended to be translated into accessory use and only those 14 accessory uses are accepted.
- The issue was brought up if the board was to over-rule the Zoning Enforcement Officer's decision and by-laws were changed two weeks from now, if that would apply to Ms Leduc or if she would be grandfathered.
- Michael requested the Chair to poll the board and if 3 individual members indicate they're in favor of overturning Richard's decision, he would make a motion to table. If there were not 3, he would make a motion to override his decision and get voted down. He said they could table meeting until May with the other 2 variances coming up, which is still before the June deadline. Ryan and Tom agreed. Linda did not agree. In order to overturn Richard's decision, all 4 have to agree.
- Linda agreed that prohibited use language does not mean that there are only 14 restricted accessory uses. Her objection was determining what is a reasonable incidental use, and a line has to be drawn.
- Michael made a motion to table until the May meeting so that the full board can vote. Seconded by Tom; Motion carried

Other Business:

- Ryan updated board of the meeting with PPP Board about the clerical position and will contact Regi about posting it.
- Tabled minutes of February 13<sup>th</sup> and March 5, 2012 to allow more time for review.

Michael moved to adjourn meeting; Seconded by Tom; Motion carried.

Meeting adjourned 8:10 p.m.

*Minutes reviewed and approved as written by majority vote on May 23, 2012.*

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Ryan Geeleher, Chair

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Michael Sacco

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Tom Sears

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Nilda Cohen

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Linda Hiesiger