

ZONING BOARD OF APPEALS SOUTHAMPTON, MA 01073

MAY 23, 2012 MINUTES

ZBA Members Present: Ryan Gleeleher, Chairman
Michael Sacco
Linda Hiesiger
Nilda Cohen

Members Absent: Tom Sears

Others Present: Attorney Michael Pill, and Claire Leduc,
Rodney and Gail Strader, Abutters
Richard Oleksak, Building Inspector

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

7:02 p.m. Hearing -

**Applicant: Claire Leduc
39 Gunn Rd**

- Ryan Gleeleher, Chair, opened new public hearing 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. (Continuance date was not specified at last hearing).
- Chair read Public Hearing Notice and Checklist; all certified mailings to abutters were received
- Reviewed 5/23/12 letter from Atty Pill
- Michael reiterated the need of 4 out of 5 votes to overturn Building Inspector's Decision
- Nilda was brought up to speed as to what has transpired
 - Town Attorney's opinion stated that there are two things the Board has to do: 1) Decide whether table of uses was exhaustive or meant to address every use; 2) Decide whether use of permitting chickens and asked to talk about accessory/incidental uses
- **Board decided at last meeting that the table could not have addressed every use, but did not agree as to what was incidental use.**
- Michael stated there are 2 questions:
 - Can you have chickens? If yes, can you have livestock in an area zoned residential, and what is the limitation?
 - Town needs to update By-Laws regarding the keeping of chickens
- Town Counsel agreed with Richard's denial, but for a different reason, which was ultimately incorporated into final decision, which is subject to appeal. Opinion was saying it's up to this Board on how to view "use".
- Richard stated this all started with Town By-Laws allowing chickens in RR zoned neighborhoods, but not in RN zones
- Board of Health claims there are no longer any issues at this location

- Atty Pill was asked to give a brief statement. He stated that a specific number across the board is a legislative decision, which should be done at Town Meeting. He hoped the Board would vote to overturn Richard's decision in this instance and address the concerns by getting a By-Law through at Town Meeting
- Mr Strader disagreed with Atty Pill, and stated the smell was making him ill, and her animals were devaluing his property. He stated that it's the Board's obligation to limit chickens, etc to a reasonable number.
- Atty Pill stated, as pointed out in his memo, that neighbor claims there is a private nuisance and her use is interfering with his use and enjoyment of his land, while neighbor on other side has different perspective. He didn't think the Town should act as a private enforcer for one neighbor.
- Topographic location of neighbors
- Nilda stated the need for other boards to work in unison to make sure all components are upheld
- Michael stated that this Board cannot put conditions on an appeal of a decision issued by the Building Inspector, just whether it was consistent with Town By-Laws or not.
- Richard restated that chickens and livestock are permitted in RR, but not in RN
- Michael stated that the denial was based on Kopelman & Paige's interpretation, and it's up to this Board to act as an appellate board. "Next Steps for the Board" listed on page 4 of their 3/21/12 letter was reviewed. **The Board already decided that Section 5-A refers to principle use.**
- Michael apologized for not having a full board at this meeting as planned, because one member had a family emergency
- There was some discussion over other boards needing to take action in a timely manner according to statutory time limits
- With no other discussion, Michael Sacco made a motion to overturn the Building Inspector's decision; Ryan Geeleher seconded; Michael and Ryan voted in favor; Nilda and Linda opposed
- **Decision of Building Inspector stands**
- Attorney Pill requested copy of Decision after it is filed with Town Clerk

8:00 p.m. Ryan moved to adjourn hearing; Seconded by Michael; Motion carried

8:04 p.m. Hearing -
Applicant: Jim Laskowski of Endless Mountains Solar Services, LLC
Owner: Mark Vaclavicek
Address: 9 Donna Marie Way

Others Present: Abutter, Donald Backstrom, of 7 Donna Marie Way

- Ryan Geeleher, Chair, opened hearing regarding the appeal of an April 2, 2012 decision and order of the Building Inspector/Zoning Enforcement Officer concerning the installation of ground mounted solar array panels at 9 Donna Marie Way and building permit was denied

- Chair read Public Hearing Notice, which was posted in the Daily Hampshire Gazette on 5/9/12 & 5/16/12, and reviewed Checklist; all certified mailings to abutters were received
- Chair collected balance due of \$234.75 – ck #1521
- Reviewed 3/20/12 memo from Kopelman & Paige, P.C. regarding Regulating Solar Access Under the Zoning Act, G.L. c40A & 9B
- Applicant presented cut sheets and illustrations with detailed engineering drawings
- Michael stated that current zoning bylaws do not address solar panels, and that the purpose for denial was to allow abutters the opportunity to voice concerns
- Building Inspector, Richard Oleksak, stated he does not have issue with footing, etc 70'
- Abutter, Donald Backstrom, of 7 Donna Marie Way concerned with esthetics
- Michael stated for the record that people have invested time and money in doing what the Selectboard wanted them to do, and to deny something to give others a voice, with all due respect, when there is nothing in the bylaws preventing someone from doing this is offensive to him. This is another example as to the need for amendments to the bylaws. There is no basis to deny this request.
- With no other comments/suggestions, Michael moved to overturn the decision and order of the Building Inspector/Zoning Enforcement Officer, and to allow the installation of ground mounted solar array panels at 9 Donna Marie Way; Ryan seconded; Unanimous

8:15 p.m. Chair, Ryan Gleeher moved to close hearing; Michael Sacco seconded; Motion carried

8:18 p.m. Hearing -

Applicant: Bintula Patel, Owner of Smitty's Package Store
Address: 16 College Highway

Others Present: Mark Reed of Heritage Surveys, Inc

- Ryan Gleeher, Chair, opened hearing. Applicant is seeking a Special Permit for a proposed package store to replace the existing package store, and a Variance to allow a reduction in the rear yard setback from 50' to 31' in order to keep business in operation during construction. A Variance is also being sought to allow existing number of parking spaces to remain at nine, one of which is handicap parking.
- Chair read Public Hearing Notice, which was posted in the Daily Hampshire Gazette on 5/9/12 & 5/16/12, and reviewed Checklist; all certified mailings to abutters were received
- Chair collected balance due of \$214.50 cash
- Mark Reed from Heritage Surveys, Inc represented the Patels, who own and operate Smitty's Package Store (small family business)
- Big Y owns Rite Aid parcel to the right and behind property
- Will also regrade site to eliminate some ponding of water
- Parking space requirements were addressed
- Michael clarified the need for the Variance so there's no interruption in service, and it will tie in better with other buildings which are set back further
- Mark Reed stated that this will provide more safety for vehicles entering and exiting
- There was no opposition from abutters
- Michael Sacco made a motion to approve Variances as requested by the Patels; Nilda Cohen seconded; Motion carried

8:35 p.m. Chair, Ryan Geeleher moved to close hearing; Nilda seconded; Unanimous

8:40 p.m. General Business

- Signed payroll and warrants
- Regi to post position for ZBA clerk
- Finance approved \$400 transfer from revolving fund for clerical wages
- Leduc hearing required additional work (date/time not confirmed at previous hearing)
- Board voted to **not** have meetings recorded live
- Michael Sacco voted to approve minutes of 4/18/12 with corrections; Ryan Geeleher seconded; Nilda abstained; Motion carried

8:45 p.m. Nilda Cohen moved to adjourn meeting; Seconded by Ryan Geeleher; Unanimous

Minutes reviewed and approved as written my majority vote on _____

*Minutes reviewed and approved as written by majority vote
on _____.*

Ryan Geeleher, Chair

Michael Sacco

Tom Sears

Nilda Cohen

Linda Hiesiger