

# **Zoning Board of Appeals**

## **Meeting Minutes**

### **Wednesday, December 15<sup>th</sup>, 2021**

Those present: Chairman Thomas Heidgerd, Vice Chairman Donald Thurston, Member Robert Clewell, Member Donna Thibodeau, Assoc. Member Joseph Anderson and Member Kevin Reilley. Assoc. Member Karla Chaffee is not in attendance.

#### **I. Call to Order**

7:03 pm Chairman Heidgerd reads the agenda for the record.

#### **II. Old Business**

#22.02 & #22.04 – 600 Newburyport Tpke

Chairman Heidgerd gives a point of summary for both ZBA cases. Says to the Board ... There were essentially 2 cases. #22.02 is an appeal case presented by the applicant surrounding some misunderstandings regarding the presence of an existing cease and desist. Once it was clarified that the appeal was over the presence of 'fines' issued by the Inspector of Buildings, and upon further discussion, the Board's conclusion is those fines are something which the Inspector of Buildings can levy at his discretion on behalf of the Town. Not on the order of the Zoning Board. Therefore, it is certainly not in the discretion of the Zoning Board to repeal those 'fines. Once the Inspector of Buildings lifted the cease and desist which he had done during the summer months, the presence of his desire to issue those was his call entirely. So effectively there is no optional appeal for the applicant to give the Board on the action of issuing the fines. Chairman speaks to the Board and says his feeling regarding the appeal of the fines, is something the ZBA simply should choose to deny. Says there isn't any action the Board can take.

Reilley says one last point for reiterating on the fines themselves, is, it very clearly states the procedure for appealing the fines right on the 'ticket' and that is not the Zoning Board. It (ticket) clearly shows the path of where to appeal those fines.

Board and Applicant Attorney – much discussion on the two submitted applications. Clewell says the Board can determine whether the stop work order was appropriate. Then the Board can't deal with fines unless the Board decides the stop work order was inappropriate. Says the Board has decided that the stop work order is upheld and the applicant can't appeal the fines at the Zoning Board.

Attorney Ross stands and shows the Board a 2004 picture of the paving company and the trucks. Says the parking 'area' has not increased. Says the 'asphalt' on the parking area has increased. The parking has been the same for forever and a day. Says the business has been there for over 40 years and it's using the minimal amount of equipment that is needed to run the business. Only has one paver.

Clewell says, you have an existing use, then the bylaw comes in to effect. Once the bylaw comes in to affect, the bylaw has always said you can't expand a nonconforming use without permission. A later part of the bylaw limited it to 25%. Had they expanded their use before the bylaw was amended to include the 25%, they still had to come before the ZBA. The problem is they never came before the Board. We don't have the evidence on what was the parking like at the time the bylaw came in to existence.

Reilley says he's just reading the bylaw now and says he's not necessarily sure based on what they're saying if that's true and it was just a dirt parking area and now it's paved, I'm not sure based on how the bylaw is written if it's even considered an expansion. Because it says parking or loading capacity. It doesn't say 'paved' parking or loading capacity. It doesn't say paved parking area. Clewell says he agrees.

Thurston says they applied in 1989 for a business use and they were turned down. Because in 1985 businesses were not allowed in the Outlying district. Therefore he is not a grandfathered use. Applicant says he's been there since 1977 and parked there in 1981.

Andersen mentions the imagery from 2001 and how it shows the business. Reilley says he's struggling with the Town issuing a cease and desist order without any hard evidence or when the change happened and now the ZBA is asking the applicant for the hard evidence we weren't able to provide in issuing the cease and desist. And now to overturn the citation, we're asking for the same evidence that we weren't able to provide up front.

Clewell says he assumes the Inspector of Buildings was referring to the identified plan of what the truck parking was limited to. Says the Board has to decide if they have sufficient evidence that the plan was in fact NOT the limit of truck parking.

Reilley says if the bylaw was written in a way that says the 'paved' area expanded can only expand 25% then I think the Board has an issue but I think it's reasonable to believe that there were more things parked in an area that wasn't paved and the actual paved parking hasn't expanded. Says Ken didn't really know when it happened, doesn't know if it expanded, doesn't know if it didn't expand. Says he doesn't think there's enough to hold the Inspector of Buildings accountable to a rule that was in fact really violated.

Board member Thibodeau and Chair say they agree. Chairman Heidgerd says to take at face value the information the Board has been provided. Says paving was done at some point in time. Everyone seems to be speculatively saying and agreeing it was somewhere in 2001, 2, 3 or 4 window. Regardless the parking was present and existing. It wasn't really an expansion.

Clewell says as evidence shows, it's already in existence. No permit is needed.

Thurston says the ZBA at this point the thing to do is to grant conditions not to expand any further than it is and maybe remove one or two vehicles from the property due to being very crowded with everything there. And put this to bed.

Clewell says he agrees with putting to bed but it's either prior existing nonconforming or it's not. If prior existing nonconforming he doesn't need a special permit. All the ZBA can say is you're (applicant) on record as of 2021, we've got the evidence and can't expand past what you have today. If he's not prior existing then he can't be there at all. If he was there prior to 1985 then he is prior existing nonconforming.

Chairman Heidgerd says he's convinced the applicant is a prior existing nonconforming.

Attorney Ross asks the Board for a determination for a preexisting nonconforming use and that Mr. Stanley does not need a special permit recognizing the fact that if he increases his vehicles and gets a big state contract, then the ZBA will see him and his attorney again.

Anderson says all the evidence he's seen points to the fact that there was parking there and seems existing. Says doesn't think the ZBA can do much about it. Says there's a base line as of today.

Clewell says if the ZBA concludes it's a prior existing nonconforming then it can't require a special permit and all we have to say about Mr. Wards conclusion is that he was going on 'paved' parking which is not synonymous with 'parking.' It was unpaved parking. The ZBA doesn't even have to overrule it because we got additional evidence that shows the 'paved' area was not the limited parking. In the Decision, say it is clear that the evidence produced in the 11.17.21 hearing and what the limit of the business is. (the photos shown, testimony) Now there is a base line. So we put it in writing so it spells out what the base line is.

Chairman Heidgerd says the ZBA will grant the Appeal and state the circumstances surrounding the findings for the appeal. All members agree.

Clewell says Mr. Stanley's evidence is un rebutted. Mr. Wards plan doesn't really rebut it because it's apples and oranges. Ken was talking about a paved area. Says when we write the Decision it must say the un-abutted evidence is as follows.

Mr. Stanley says the paved area now is what is being accepted as the parking area.

Thurston mentions the parking and vehicles onto route one. It is determined the ZBA has no jurisdiction. Route one is a state road and therefore the ZBA expects the applicant to abide by the state laws.

**Chairman Heidgerd asks for a motion to accept application for an appeal as submitted and to write a decision which essentially recognizes the site as a preexisting nonconforming site subject to today's conditions, documents and data. Clewell so moves. Thibodeau seconds. All in favor.**

**Chairman Heidgerd asks for a motion to reject case #22.04. Thibodeau motions to reject ZBA case #22.04. Thurston seconds. All in favor.**

### **III. Decision – Accept/Sign**

#22.03 – 57 Central Street

Board Members accept and sign the document.

### **IV. Misc**

Vote to accept Minutes of 11.17.21.

**Thibodeau motions to accept. Thurston seconds. All in favor.**

### **V. Adjourn**

**Chairman Heidgerd asks for a motion to adjourn. Reilley so moves. Clewell seconds. All in favor. Meeting adjourns at 8:45pm.**

### Attachments

Agenda

22.03 Decision

11.17.21 Minutes

Respectfully submitted, Lisa Lozzi