

**TOWN OF SEABROOK
BOARD OF ADJUSTMENT
MINUTES OF APRIL 24, 2013**

Members Present: Teresa Thurlow, Robin Fales, Henry Therriault, Dr. Robert Lebold, Mike Lowry and John Kelley

Others Present: Paul Garand, Building Inspector and Jo-Anne Page, Secretary

H. Therriault explained the procedure for the meeting. He stated the meeting had been posted at the Seabrook Town and Seabrook Post Office and in the Newburyport Daily News.

OLD BUSINESS:

Minutes of March 27, 2013 Meeting

Motion: M. Lowry Accept minutes as presented
Second: H. Therriault
Yes: T. Thurlow, M. Lowry, J. Kelley and H. Therriault
Abstain: Dr. Lebold and Robin Fales

Minutes of March 27, 2013 Meeting accepted as presented.

Case #2013-002 Arc Source/Nichols Realty, LLC, 36 London Lane, Map 5, Lot 8, Sequence 30 for Variance to Section 6, Table 1 to Permit Mixed Use To Allow Small Amount of Retail Sales To Take Place in Zone 3 (CONTINUED FROM JANUARY 23, 2013, FEBRUARY 27, 2013 & MARCH 27, 2013)

Attorney Mary Ganz appeared on behalf of this application. She stated that the applicant, Stephen Nichols, was also in attendance.

Attorney Ganz stated the following:

- S. Nichols had a retail location at 609 Lafayette – that went to foreclosure
- He needed smaller space
- He wanted to move retail sales to London Lane
- Seabrook Master Plan 2011-2020 encourages growth of small business
- She presented a letter from Paul Lepere, The Hamptons Real Estate, saying property values would not be diminished

Steve Nichols, 17 Marston Road, Hampton Falls, NH, applicant, stated the following:

- This is a welding supply business
- Uses compressed gasses
- He would like a small retail area for small items
- He would like to have one location as opposed to two

Dr. Lebold asked if S. Nichols had asked for retail at this location at an earlier date

S. Nichols said he had in 2005.

Attorney Ganz stated that the criteria for a variance had changed in the courts. She also said that he was asking for a much smaller area for retail. (2005 – 4900 square feet/2013 – 1500 square feet) She further advised that this would be within the spirit of the ordinance as nothing in the neighborhood would change. She pointed out that other businesses are doing retail in this area.

J. Kelley questioned about other retail being done in this location.

Attorney Ganz said that some was there legally and some there illegally. She said granting this request would allow the owner to continue his business.

S. Nichols stated that he has 16 employees.

Attorney Ganz stated that not allowing retail on this property would be a hardship in the owner and that this is a permitted use on the property.

J. Kelley asked if they wanted the board to undermine zoning.
Attorney Ganz state that each case is on a case by case basis.

M. Lowry asked about there being 28 customers a day at the retail end and asked how many vehicles would be there.

Attorney Ganz said that there were 28 customers a day and approximately 35 vehicles per day.

M. Lowry stated that this type of traffic increase was not allowed in the industrial zone.

S. Nichols said that that the hours of sales could be limited.

T. Thurlow asked about the hours of operation at the Route 1 location.

S. Nichols stated it was 7:30 AM to 4:30 PM.

H. Therriault spoke to the hardship issue.

H. Therriault stated that if there were no more questions or comments it was time to vote on the application.

	T. Thurlow	H. Therriault	Dr. Lebold	M. Lowry	J. Kelley
1	No	No	No	No	No
2	No	No	No	No	Abstain
3	No	No	No	No	No
4	No	No	No	No	Abstain
5	No	No	No	No	No

Motion: Dr. Lebold Deny the request for retail space for the following reasons:

- 1) The courts may have changes some of the decision making process, but the residents of the Town of Seabrook have voted to set aside certain areas devoted to specific purposes (residential, commercial, industrial, etc.) so that a person or business can carry out this function in their area comfortably. For this reason retail use is not permitted in this Industrial Zone;
- 2) There are some property owners in the Industrial Zone that may not appreciate the increase public traffic that could interfere with their traffic; and
- 3) The dangerousness of your client's business is still of concern would that would increase in a retail situation.

Second: M. Lowry
Yes: Unanimous

Case #2013-02, 36 London Lane is denied.

Case #2013-003 11 New Zealand Road, LLC by Attorney Chris Aslin, 663 Lafayette Road, Map 7, Lot 87 for Appeal From Administrative Decision by Planning Board on October 16, 2012 in Relation to Section 6 +14, Sub-section 14.200 – See request to Amend & re-notice submitted 1/23/13 (CONTINUED FROM FEBRUARY 27, 2013 & MARCH 27, 2013)

M. Lowry stepped down from this case.

Attorney Chris Aslin appeared on behalf of this application. He stated the following:

This is an Administrative Appeal from a Planning Board Decision dated 10/16/2012

This gas station was existing at that time and not under this rule

Section 6 of zoning states gas stations are allowed – no new ones within 1000 feet of an existing one

Station has been in place – ceased to operate for one year

Section 14.200 is for new uses

Station closed Summer 2010, opened October 2010 for a bit

February 2012 – question of 14.200 heard by Planning Board

This was an abandoned lot – no license to operate the pumps since 2010

10/2010 to 2/2012 – No use of station

Planning Board stated this was an existing station since 1974 and could always be a station

P. Garand stated that this lot has continually been taxed as a gas station as the infrastructure is in place. He said there has been extension discussion on this.

Attorney Aslin stated that Section 14.200 of zoning does not apply to gas stations.

P. Garand stated that in March 2013 there was a zoning change at the Town Meeting and it is stated that this lot is still a gas station. This was one of the locations called out as a gas station in the zoning of the town.

Attorney Aslin stated they were appealing the Planning Board Decision from October 2012.

T. Thurlow asked if the gas station was last used in October 2010.

Attorney Aslin said it was.

J. Kelley pointed out that the tanks were removed during May 1 & 3, 2012. He said that no new applications had been sought and he considered the property abandoned.

P. Garand stated that the issue before the ZBA was to agree or disagree with the Planning Board Decision from October 2012.

H. Therriault asked if the case from the October meeting was 2012-18.

Attorney Aslin said it was.

Attorney Aslin stated the following:

The ordinance is Article 6 and the gas station existed in 1974

Section 14.200 should apply to this property

The gas station ceased to operate and should lose its grandfathered status

Is this existing gas station or a new one?

Dr. Lebold stated this was an existing gas station in 1974.

Attorney Aslin said it closed and ceased to operate.

H. Therriault stated that it was there since 1974 and that Section 6 had nothing to do with this legal gas station. He said the gas station is legal to be in that zone.

T. Thurlow stated that the Planning Board had a list in 2012 of gas stations and this property was one of the 12 on the list.

J. Kelley asked who put this list together.

P. Garand stated that the Planning Board had worked with the Assessing Department.

J. Kelley stated that the pumps were out and there were no tanks there.

P. Garand said the property had not been without tanks for a year yet and the Planning Board decided it was still a gas station.

Attorney Aslin asked if Section 14.200 applied. He also wanted to know if they had lost their grandfathered status because the gas station had not operated for more than a year.

Charles Mabardy, 11 New Zealand Road, Seabrook, stated that he used to run the gas station at that location. He said he had a lease for 3 years there. He said that he closed in March 2010. He said there was a two year period before anyone came forward on this property. He said he was the last person to have tanks and utilities at this location. He believes the 1000 foot rule is in place for a reason.

Attorney Aslin said Section 14.200 should apply to this grandfathered use.

John Arnold, Hinkley/Allen, Concord, NH, appeared on behalf of Tropic Star who has intent to purchase this property. He stated the following:

- The use is conforming

- These rules would apply to new gas stations

- This particular site was there before the ordinance

- Planning said Section 14.200 does not apply to this lot

- Non-Conforming ceases after one year and must comply with ordinances

- Section 6 shows use conforming and it does not matter when it stopped

T. Thurlow asked if this was still conforming without tanks.

J. Arnold said it is an allowed conforming use and closure is not an issue here.

Attorney Robert Shaines appeared as representative of Latium Manager, owner of 663 Lafayette Road. He stated the following:

- Latium had a lease with Getty that ended in 2012

- The tanks were removed in 2012

- DES report/survey as dated November 2012

- Latium had lawsuit with Getty for holdover because they were unable to have full use of the property

- Latium intends to use property

- 11 New Zealand Road had first right of refusal on property

- He handed the board a copy of Injunctive Release paperwork

- Getty had to remove the tanks

- Latium always intended to use the property as a gas station

Bill Peskosolito, Bonita Springs, Florida, owner of Latium Management spoke. He stated the following:

- He was the owner of the property

- He had the property since 1972

- Getty had ended their lease with them

- 11 New Zealand Road did not want to buy the property and it has been sold

- January 2012 Tropic Star bought the property

- Getty had been told to remove the tanks

- Site had full equipment there for 40 years

- Scott Mitchell has new idea for site and wants to see it continue as a gas station

Attorney Aslin stated the following:

The one year provision under 14.200 does apply
The station sat there for some time unused
The use is a grandfathered use
Intent of ordinance is that the town does not want stations too close

J. Arnold stated the following:

Grandfathered use does not matter
This has always been allowed
14.200 deals with non-conforming uses and this is allowed

Scott Mitchell, Tropic Star, stated the following:

Planning Board had said two times that this was an existing gas station
There was a lease with Getty
The use never changed

H. Therriault that the Planning Board and counsel had spent a lot of time on making this decision. He said that if there were no more questions or comments it was time to decide on this application.

Motion:	Dr. Lebold	Move to affirm the decision of the Planning Board that this is and
Second:	H. Therriault	always has been an existing gas station since before the 1000
Yes:	Unanimous	foot separation cause was enacted in 1974. The consensus of opinion by property owner and others is that a gas station existed on this property since 1972. Getty Petroleum had a 25 year lease starting in 1987 that expired February 2012 and paid rent through the expiration date. Getty then removed the tanks and found some contamination. NH DES would evaluate and approve a cleanup. This is ongoing and they have been paying taxes as a gas station. This has been an existing gas station since before the ordinance was changes in 1974, therefore an allowed use on the property.

Case #2013-03 Appeal from Administrative Decision of the Planning Board is denied.

There was some discussion about the lawyers for the parties involved in this matter contacting Attorney Walter Mitchell who handles some cases for the ZBA. In this matter Attorney Mitchell was not involved. There is some question as to whether or not Attorney Mitchell may bill the ZBA due to this.

Motion:	Dr. Lebold	If the town receives a bill for the attorneys contacting him on this
Second:	H. Therriault	case the bill will be forwarded to the attorney involved due to the
Yes:	Unanimous	fact that the ZBA did not use legal counsel for this matter.

If there is a legal bill from Attorney Mitchell in this matter it will be submitted to the attorney involved.

NEW BUSINESS:

Case #2013-005 Lars E Bjork, 4 Forest Drive, Map 9, Lot 143, for Special Exception to Section 8, Sub-section 8.2 to Allow a Family Apartment in Zone 2R

Lars Bjork stated that he had bought this property in May 2009. He said that the family apartment was in it when he purchased the property. He also said that he had been living in the apartment because it was more livable in the house.

P. Garand stated that L. Bjork was before the board to reaffirm the family apartment. He said that it was 593 square feet in size and meets all the requirements. He said L. Bjork wanted to have this legal and on the records.

H. Therriault said that if it was in compliance the board must grant a special exception. He pointed out that it could not be sold as a two family home or a house with a family apartment.

L. Bjork stated that he understood this.

H. Therriault stated that if there were no more questions or comments on this application it was time to vote on the application.

	T. Thurlow	H. Therriault	Dr. Lebold	M. Lowry	J. Kelley
A	Yes	Yes	Yes	Yes	Yes
B	Yes	Yes	Yes	Yes	Yes
C	Yes	Yes	Yes	Yes	Yes
D	Yes	Yes	Yes	Yes	Yes

Motion: Dr. Lebold Grant Special Exception for family apartment in accordance with current
Second: M. Lowry regulations be abided by.
Yes: Unanimous

Request for Special Exception at 4 Forest Court is granted.

Case #2013-06 Raymond & Patricia Peabody, 464 New Zealand Road, Map 1, Lot 4, for Variance to Section 7 to Permit Reduced Frontage Lot in Zone 1

Henry Boyd, Millennium Engineering, appeared on behalf of this application. He stated the following:

This property has approximately 40 acres

Some of the area could be developed

The owner would like to carve off one lot with reduced frontage and keep approximately 39 acres

The request was for a variance for lot 2 frontage which would be just shy of 100 feet

At some point this property could be subdivided

The rest of the property would be in compliance- just needed reduced frontage

H. Therriault pointed out that #5 of the criteria said it would eliminate the ability to develop the rest of the lot.

Edith Regan, Old New Boston Road, asked about the new roadway and the out fall area that the town has is that area.

H. Boyd said this could be reconfigured and that the applicant did not have the financial means to put a road in

P. Garand asked if lot 1 would be a single family home.

H. Boyd said it could be limited to that.

Louis O'Brien, 14 Old New Boston Road, stated that she was confused with the numbers she was hearing. She was concerned with the out fall area and the frontage. She stated that she understood 30,000 square feet was needed for a duplex but she was concerned with the frontage. She wanted to know where the houses would go. She said this would close in their lots depending on the location. She doesn't want the area overloaded with small driveways.

H. Boyd said the applicant had the ability for a duplex. He also pointed out that the applicant had sold some of his property to help the duplexes that were there be built. He said this lot would have one driveway and the duplexes in the area all had two on their lots.

M. Lowry asked where the house would go.
H. Boyd stated it would probably be set back from the road and that drainage would be worked on.

E. Regan asked why they didn't access the property from Route 107.
P. Garand stated that was a controlled access highway and it could not be used for access to this property.

Lillian Knowles, New Boston Road, asked about the hardship. She said that 50 feet for a right of way could be a road for a subdivision. She pointed out that this could lead to future development for a subdivision. She wanted to know how many homes would be here and questioned selling the property to a developer.

H. Boyd said that there would be costs to the property owner before a developer would purchase a property. He also stated that a lot of this property could not be developed.

P. Garand asked if some of this property was in current use.
H. Boyd stated he was unsure. He also said that he was unsure of the property value but the owner might like to sell it to a developer at some time.

H. Therriault said that he saw very little hardship for this case. He also stated that if there were no more questions or comments it was time to vote on the application.

	R. Fales	H. Therriault	Dr. Lebold	M. Lowry	J. Kelley
1	No	No	No	No	Yes
2	No	No	No	No	No
3	No	No	No	No	No
4	No	No	No	Yes	No
5	No	No	No	No	No

Motion: Dr. Lebold Deny request as other alternatives exist for the property to be
Second: H. Therriault developed therefore no hardship exists at present.
Yes: Unanimous

Request for Variance at 464 New Zealand Road is denied.

Case #2012-07 30 River Street for Variance granted on April 30, 2012 – Letter for extension of Variance.

Furmer Souther, property owner, sent letter to the board request an extension of the variance granted on April 20, 2012.

Motion: Dr. Lebold Grant request for extension to April 2014
Second: M. Lowry
Yes: Unanimous

Case #2012-7 variance extended to April 2014.

Motion: H. Therriault Adjourn meeting
Second: R. Fales
Yes: Unanimous

Meeting adjourned at 8:50 PM.


Henry Therriault, Chairman


Date