

**TOWN OF SEABROOK
BOARD OF ADJUSTMENT
MINUTES OF JUNE 26, 2013**

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

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

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. He further explained that this meeting is being recorded and available on DVD at the Town Hall.

OLD BUSINESS:

Minutes of May 22, 2013 Meeting

Motion: Dr. Lebold Accept minutes as presented
Second: R. Fales
Yes: Unanimous

Minutes of May 22, 2013 Meeting accepted as presented.

Case #2012-003 Smart Fuel America, LLC, 15 Batchelder Road, Map 5, Lot 14, Sequence 3 for Variance to Section 15, Subsection 15.300 & 15.301 to Permit The Storage and Use of Hazardous Materials in Zone 3 and Aquifer Protection Zone (REHEARING) CONTINUED FROM MAY 22, 2013

Attorney Walter Mitchell stated that tonight was for the board members to deliberate and focus on the issues from the court decision. He stated there were two main issues here.

1. The judge's decision stated that DES has no problem with methanol – ZBA would have to consider if there was concrete evidence that this would create a risk
2. Even if there was a hazardous risk, is it prohibited by zoning regulation

H. Therriault stated that this was for ZBA members only and there would be no input from the public.

Motion: Dr. Lebold Motion to concur with the judge's ruling that discusses methanol that is hazardous but not at time of application prohibited by our zoning laws.
Second: H. Therriault The chemical metholaid will need to be evaluated by the Planning Board to minimize the risk hazards of the whole operation
Yes: Dr. Lebold, H. Therriault and M. Lowry
No: R. Fales

NEW BUSINESS:

REQUEST FOR REHEARING: 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)

Mike Lowry recused himself from this case and stepped away from the table.

Motion:	Dr. Lebold	Based on our zoning ordinance and its intended interpretation, and
Second:	H. Therriault	the reasons listed in our original decision affirming the Planning
Yes:	Unanimous	Board's decision and lack of any relevant new information regarding this specific case: Move to deny the request of 11 New Zealand Road, LLC for a rehearing.

Request for rehearing is denied.

At 7:05 PM H. Therriault suspended the meeting to allow J. Kelley to get to the meeting.

At 7:30 PM H. Therriault reopened the meeting as J. Kelley was now in attendance.

Case #2013-008 Shawn and Laurel McKenna, 27 Foggs Corner Road, Map 7, Lot 4 for Variance to Section 7, Sub-section Dimensional Requirements to permit Two Dwelling Units on less than 30,000 square foot lot in Zone 2R

Shawn McKenna, 40 Baker Avenue, Rye, NH, owner of 27 Foggs Corner Road appeared on behalf of this application. He stated the following:

- He has owned the property since 1985
- There is approximately 40,000 square feet there
- 1986 apartment in barn was attached to the house
- Apartment is approximately 750 square feet with shared water and sewer
- The unit has separate electricity
- 1991 he moved to Hampton Falls and converted house
- This property is in Zone 2R
- He is looking at possibly subdividing into two lots
- There are two possible ways to split the property
- He could forfeit the apartment but you have to get rid of tenant who was a model tenant

S. McKenna then gave his answers to the five criteria that needed to be met for this variance to be granted. He gave the following in support of the variance:

1. Interest – Apartment has been there since 1985 and it won't alter the neighborhood
2. Spirit – This variance will not change the neighborhood
3. Justice – Already there – no change
Not granting this would displace the tenant
4. Property Values – Already there – no change
5. Hardship – People already living there
Reasonable use – this has been here since 1986

S. McKenna stated that if this property was owner occupied he would need a Special Exception. He said that the hardship is also the uniqueness of this property. He said that in 1,000 feet in either direction of this property is the only lot with a size larger than 35,000 square feet and less than 40,000 square feet. He said he meets all setback requirements. He also pointed out that he meets all the five criteria with the existing use and structure. Road and side setbacks are all met. He said this request would not set any precedents.

Garfield Tuttle, 23 Foggs Corner Road, stated that this was an old established neighborhood. He said that he moved there seven years ago but his wife's family had been there for generations. He stated he was opposed to the request and that this would not displace the tenant. He said this would change the look of the area.

H. Therriault stated he understood that S. McKenna had a model tenant. He pointed out that this property was no owner occupied.

S. McKenna stated that the apartment was in the barn.

R. Fales asked who was living in the other unit.

S. McKenna stated that the other tenant had left.

H. Therriault asked if there was public water and sewer at this location.

S. McKenna said there was.

H. Therriault asked if this was a legal two family unit. He asked if the units were grandfathered or legal. P. Garand said the lot size supports a two family dwelling. It is conforming property as it is. He stated if the property was cut down in size it would become non-conforming. He said as it sits now it is a legal duplex. He also stated that this lot is conforming to every aspect of zoning as it is now.

Dr. Lebold pointed out that if the property was divided it would no longer be legal. Smaller lots with family apartments would have to come before the ZBA for special exceptions. He stated that this could set precedent for properties with family apartments for the same issue.

P. Garand stated the applicant had two different proposals he could use on this property.

R. Fales questioned the in-law status.

P. Garand said this was a legal duplex and the lot is large enough for two units. He said the 1986 building permit was for a barn apartment.

S. McKenna said this property had a legal two family unit on it.

M. Lowry pointed out that they could tear down the house and makes one large duplex.

S. McKenna said he wanted to split the lot. He said that he could build and get a special exception. He said that this request is not setting precedents. He said that since 2009 the ZBA has granted six similar cases for dimensional and frontage requirements.

H. Therriault said he didn't see the hardship. He asked what was unique and where was the hardship on this property in this zone.

S. McKenna said there was already a two family home there.

Dr. Lebold said there was no hardship. He said the hardship is financial.

S. McKenna said this was reasonable use of the property. He said that 27 Foggs Corner would remain the same if he subdivided.

H. Therriault said that if he subdivided the property it would be non-conforming. He pointed out that the ZBA is supposed to bring properties into conformance. He said that is a nice lot in zone 2R. He stated the hardship is financial.

S. McKenna stated that he did not say the hardship is financial.

Dr. Lebold said that he could either keep the property the same or subdivide and put one single family house on each lot. He said both options are legal.

S. McKenna that Boccia standard was no longer used in variances.

Dr. Lebold pointed out that the underlying reason for this request is financial.

S. McKenna said it was unfortunate that he made that assumption.

H. Therriault said the property to someone who is looking for what is there on the property now.

P. Garand said it could be sold as a legal two family or go for a special exception for family apartment.

Dr. Lebold again pointed out the two options for this property:

1. Keep it the same
2. Get rid of the apartment and then have two single family homes

S. McKenna stated that his request meets all the five criteria for granting the variance request.

J. Kelley asked S. McKenna why he pointed out the other similar ZBA cases if this wouldn't be setting precedents. He said the ZBA needed to look at what was before them tonight and not what happened in the past.

S. McKenna said that he was saying this would not be the first property this has happened to. He said his property is unique because of the frontage available that the other lots do not have.

Dr. Lebold stated that was not a hardship.

S. McKenna stated it was.

J. Kelley said it was a desire not a hardship.

S. McKenna said that he was making the case for his variance the best he could.

Dr. Lebold stated that he commended S. McKenna's diligence and research. He spoke to the denial of financial reasons for coming to the board.

S. McKenna stated that he didn't sell the house and didn't want to displace his tenant. He said he was looking to maintain the apartment and didn't want to build a duplex.

Dr. Lebold said that they could do away with the apartment, move the tenant to the house and put another single family house on the lot.

H. Therriault stated that this lot is not unique.

M. Lowry and J. Kelley stated that they agreed.

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

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

Motion: Dr. Lebold Deny request based on the following: Would set a precedent that
Second: M. Lowry would have multiple requests to seek a variance to allow their house
Yes: Unanimous with family apartment changed to a "double or duplex" on an undersized
lot; and You can keep the status quo with one lot and a duplex or have
two lots with a single family house on each lot. No hardship.

Request for Variance at 27 Foggs Corner Road is denied.

Motion: M. Lowry Adjourn meeting
Second: J. Kelley
Yes: Unanimous

Meeting adjourned 8:05 PM



Henry Therriault, Chairman

7/2/13

Date