

TOWN OF BENNINGTON  
ZONING BOARD OF ADJUSTMENT  
Minutes of the Meeting- May 21, 2009

Present: Judy Heddy, Chairperson  
John Tyler, Vice Chairperson  
Barbara Moorehead  
Steve Osienski  
Chris Clough, Alternate  
Peter Martel, Alternate

Guests: Peter Hopkins, Code Enforcement Officer  
Robert Best, Stephen Stockwell's Attorney  
Stephen Stockwell  
Rick Edmunds  
Dick Edmunds  
Sharon Hubbard  
James Crooker  
Paul Day  
Bob Gladding  
Nancy Gladding  
Christopher Gladding  
John Cronin III  
Brent Paradis  
Ryan Kulbacki

Chairperson Heddy called the meeting to order at 6:40 p.m. Peter Martel recused himself from tonight's hearing. Chris Clough was appointed as a voting member of the Zoning Board of Adjustment.

The minutes of the March 16, 2009 meeting were reviewed and accepted as written.

It was noted that the Rex Gray Hearing will be held on June 4, 2009 at 6:45 p.m.

The Stockwell Public Hearing was called to order at 7:02 p.m.

Chairperson Heddy opened the hearing noting to the Board the two issues that they were to be hearing; non-conforming empty trailers, and the replacement of one of the existing trailers and where it should be located. Feedback from John Hatfield regarding the taxing of the property was shared. The feature values on the property are only to attribute value to having multiple dwellings on one home site. Having the feature does not mean that this property is a mobile home park; it is strictly a way to capture value. Local laws and zoning determine if this property is a mobile home park, not an assessment card.

Chairperson Heddy read a letter received by the Board from The Landowners of Mountain Road noting concerns they have regarding Mr. Stockwell's "dishonesty about the lack of occupancy of these three units. The Landowners have requested that Mr. Stockwell be given one week to prove that tenants have lived in these trailers within the last year.

Attorney Robert Best has spoken with Matt Serge, Town Attorney, regarding moving a unit or replacing it with a slightly different size footprint is a change in use. Attorney Best explained to the Board that there are two types of grandfathering. Grandfathered structure refers to the dimensions and locations; where as grandfathered use refers to the use of a building.

Attorney Best presented to the Board information regarding the use of the units.

Unit 101- located on the hill is a one bedroom unit believed to be constructed around 1963. Modifications were made around 1996 reducing the original unit size and a frame-construction addition was added. A permit (#16-08) was issued in September 2008 for renovations. Renovations have been started. An agreement between Ed Holt III and Stephen Stockwell was provided showing that he would maintain residency at either 101 or 107 Mountain Rd. The unit of residency would be determined and may change.

Unit 102- - a two bedroom unit believed to have been constructed around 1980. The unit is currently rented and occupied.

Unit 103- a two bedroom unit believed to have been constructed around 1975. The unit is rented occasionally. An agreement dated 7/29/2006 by Mary Edigo and Ronald Edigo was provided at this address.

Unit 105- a three bedroom unit constructed in 1968. It is rented seasonally, but noted to be in poor condition. Building permit #02-07 was obtained to reconfigure the porch/deck in 2002-2003. A rental lease agreement for Dale Memmelaar with a date of 8/18/2003 located at the bottom of the page was provided with a note at the top of the page noting which unit. Also provided to the Board was a partial photocopy of a PSNH bill in the name of Dale Memmelaar dated April 17, 2009 in the amount of \$8.93. Mr. Stockwell anticipated in the future to apply to replace this unit with a unit approximately the same size, however the footprint would be different as the original unit size is no longer on the market.

Unit 107- a 1972 unit undergoing extensive repairs. The unit was to be replaced via permit 26-07 issued on 9/12/2007. However, due to costs, instead of replacing the unit, Mr. Stockwell has been working to repair the one located there. It was noted that this unit has never been abandoned.

The Board asked a few questions regarding the different units. Steve Osienski asked Attorney Best if all of the units have been occupied within the last year. Units 105 and 107 have been rented, but it is felt that it is the renters' choice of how to use the unit in which they rent. John Tyler asked if water, sewer, and electricity are connected to all of the units. It was noted by Attorney Best that there was an electric bill provided for unit 105 and that other units seasonally had these services turned on. Chairperson Heddy noted that when the Board did a site walk, unit 107 appeared to have been boarded up. Attorney Best explained that extensive repairs have been underway on this unit and that the siding has been stripped off and this is what the Board had seen. It was also noted to the Board that Unit 107 has received a new roof, windows have been removed, a door has been purchased and new sheathing has been put on the unit.

Code Enforcement Officer Hopkins noted to the Board that Unit 101 has had engineering work to reestablish the foundation. Unit 107 that he has never been in, to his knowledge the work has been done outside of a permit as he has done no inspections.

Chairperson Heddy asked for an explanation regarding Ed Holt III rental /lease agreement as it is listed as Unit 101 or Unit107. Stephen Stockwell explained that this agreement is now null and void as Holt is living at neither residence. Holt had been living in Unit 101 prior to Holt starting to work on the unit. Holt stopped working on the unit when a cease and desist order was received.

Chairperson Heddy also asked for an explanation of the PSNH bill for Unit 105 as it shows 0 kWh usage for both April 2008 and April 2009. As the whole bill was not photocopied the Board was unable to see whether the usage in the months in-between indicated electric usage. Mr. Stockwell replied it was the renter's choice what they do with the unit.

At 7:53 Chairperson Heddy opened the Hearing to hear from the public. As there was no-one in attendance in favor of the appeal, the Board heard from those not in favor.

Rick Edmunds stated his concerns regarding the occupancy of the units. He asked that the Board require from Mr. Stockwell proof such as rent receipts showing occupancy of all of the units.

Ryan Kulbacki asked the Board about the time period a building permit was good for. A building permit is good for one year. As of right now, Unit 101 had a building permit issued on August 11, 2008 which means that he still has a few months before this permit expires. Permit #26-07 for building size 14'X 66' (it is not clear which unit this is) was issued on September 7, 2007 and has expired.

Bob Gladding asked the Board and Attorney Best the status of the property as a manufactured Housing Park. RSA 205-A defines "Manufactured Housing Park" as *any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate 2 or more manufactured houses. Nothing herein shall be construed to apply to premises used solely for storage or display of manufactured housing.* RSA 205-A:1,II further defines *manufactured housing as including, but not limited to, manufactured housing as defined by RSA 674:31, and also includes any prefabricated dwelling unit which: (a) Is designed for long term and continuous residential occupancy; (b) Is designed to be moved on wheels, as a whole or in sections; and (c) On arrival on the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connection with utilities, and placing on support or permanent structure.*

Rick Edmunds recalls the property from 37 years ago as a place for recreational/seasonal use as a camping ground. At that time there was only one well and one septic system. Attorney Best and Mr. Stockwell stated that at this time there are four pumping holes for the septic. One of the septic systems satisfies the needs of two of the homes as it is a 3,000 gallon tank. There are also three wells on the property. Sharon Hubbard voiced her concerns of possible sewage getting into the nearby brook that runs into Whittemore Lake. While this concern was noted, it is outside of the jurisdiction of the Zoning Board of Adjustments.

Peter Martel voiced that unit 103 has been tied up for quite awhile and he can understand Mr. Stockwell's frustration. Martel feels that unless new units have been placed on this property since the Town Ordinance went into effect, the Board has not needed to give permits for the repairs Mr. Stockwell is doing on the property. Sharon Hubbard stated that Mr. Stockwell has caused himself the frustration as he could have removed the tree that is located near the unit that the Board is hearing instead of moving the unit out of the trees way. Attorney Best reminded the Board that Mr. Stockwell

has the right to ask to move the unit instead of cutting down the tree and that the concept of moving the unit a little is not a change of use.

Attorney Best feels that as long as the Board has this property under hearings, the occupancy issue should not be counted against Mr. Stockwell as he can have no-one living in these units. Ryan Kulbacki stated that Mr. Stockwell has had ample opportunities to fix the units that he has applied for building permits on, however Mr. Stockwell has let these permits expire prior to the work being completed and a new permit was never applied for.

Steve Osienski asked if there might be a possibility of Mr. Stockwell working with the neighbors on a compromise. At this time the abutters presented the Board with a letter outlining an agreement that they would be happy with. Their concerns consisted of the viability of his drinking water and septic system and the possibility of contamination of the ground water. Assuming that all the local building codes were met, the abutters feel that Mr. Stockwell should be granted a variance to replace one of his permitted mobile homes with another of the same footprint as long as the following conditions are met within 6 months:

1. He needs to have the 3 unoccupied mobile homes removed, including decks, porches and stray materials.
2. He needs to have an engineer certify the location and function of the current septic system.
3. He needs to have an engineer certify the location and test the quality of the drinking water.
4. He needs to have an engineer do an environmental site assessment to certify that there is no ground contamination and that he is in compliance with all applicable state and local laws.
5. He needs to fill all open ditches and test pits.

Peter Martel asked for clarification as from his understanding an appeal from administrative decision means that the focus of the Board is only in regards to the scope of the question before the Board. The Board responded that the appeal does open up the Boards ability to look at the whole property that is in question.

Code Enforcement Officer Hopkins suggested to Mr. Stockwell that he should take the conditions laid out before him and go to the Planning Board to come up with a working plan. Peter Martel stated that he felt that the suggestion to go to the Planning Board would be overstepping the Zoning Board of Adjustments allowance as the Zoning Board of Adjustment must make a decision of the question laid out before them, the only way for the Board to not make a decision at this time would be if Mr. Stockwell asked for a continuance at a later date.

Chairperson Heddy asked how far Unit 103 would need to move. Mr. Stockwell's insurance company is requiring him to move the unit out of the fall line of the nearby tree; however, he did not have an exact number with him as he is not sure just how tall the tree is.

At 8:52 a motion was made and granted to recess the hearing in order for Mr. Stockwell and his Attorney to speak privately.

At 9:15 the hearing was opened again. Attorney Best stated that after going over the letter of conditions presented by the abutters, Mr. Stockwell would be willing to agree to all of the conditions except number one which asked that he remove the three unoccupied mobile homes. Mr. Stockwell intends to

keep all five and will not agree to a change in number of units. He does ask that if he were to agree to the other conditions that it would be with the opportunity to look at the price of these steps and if he finds that it is too expensive that he have the opportunity to back out. He also asked that his agreement would be with the condition that the moving of unit 103 would not be a change of use. The abutters expressed their wishes to stick with the original conditions listed as they feel that Mr. Stockwell has not held up his end of proving residency of all of the units.

Chairperson Heddy asked for any ending comments from all in attendance, as there was none, the hearing was closed to public discussion at 9:20 p.m.

The Finding of Facts was discussed and consisted of:

1. Replace Unit 103
2. Move unit 103 to a new location
3. Do we consider moving the trailer to be a change of use?
4. Are unoccupied units abandoned?
5. Is this a mobile home park?

The Board discussed the fact that the property is non-conforming because there are five units on one lot. It was agreed that Unit 103 has been occupied within the last twelve months and therefore meets the requirements for a grandfathered non-conforming status. However, would moving the unit cause a problem where new regulations require a foundation? The Board noted that Mr. Stockwell is being required to move the trailer by his insurance company. If the Board were to allow Mr. Stockwell to move the trailer, the Board would be saying that moving the unit is not considered a change of use. Steve Osienski made a motion that moving Unit 103 is not considered a change of use. The motion was seconded and a vote of 4 to 1 was made. (Yes- Chris Clough, Steve Osienski, Barbara Moorehead, and Judy Heddy. No- John Tyler.)

The Board then looked at the units where there were questions regarding occupancy. It was agreed that Unit 101 currently has a building permit for work to be done. Units 105 and 107 the proof of occupancy has not been proved to adequate satisfaction of the Board. The Board feels that the rental/ occupancy status of the units is vital due to the time sensitivity of the non-conforming grandfathering.

The Board feels that they would like to have input from Town Counsel before moving forward in this hearing. The Board moved to setting up a meeting with Counsel on either Monday June 1, 2009 or Tuesday June 2, 2009. The following questions were drafted for Town Counsel:

1. Given the fact that the Board has deemed the moving of Unit 103 to be not a change of use, what should we do regarding units 105 and 107?
2. What can we include as stipulations?
3. How can we include the Planning Board in plans for this site?

A motion was made by Steve Osienski to close the hearing and schedule a continuance for June 11, 2009 at 7:15 p.m. All were in favor. The Board requested that Mr. Stockwell be prepared to present the Board with documentation regarding the use of Units 105 and 107.

There being no other business, Barbara Moorehead made a motion to adjourn the meeting. All were in favor and the meeting was adjourned at 9:54 p.m.

Respectfully Submitted by

Karen Bartlett  
Zoning Board of Adjustment Recording Secretary

UNOFFICIAL UNTIL APPROVED