

ZBA MINUTES
MEETING OF OCTOBER 21, 2013
APPROVED AT MEETING OF NOVEMBER 18, 2013

Present: S. Perley, Mike Foote (arrived after start of meeting), O. Gibbs, D. Greski, K. Geraci, R. Smith, D. Robitaille

Absent: S. Bogert

Staff: S. Saunders, Planning Director; K. Snow, Zoning Technician

S. Perley called the meeting to order. She let the public know that she is the vice chair and is filling in this evening in the absence of S. Bogert, the chairman.

S. Perley seated R. Smith and D. Robitaille for the first hearing.

HEARINGS: S. Perley let the ZBA know that the first hearing is a continuation. Language was added since the last meeting regarding the keeping of chickens in a cluster development.

PUBLIC HEARING on a change to the City Zoning Ordinance, specifically, Ordinance 235-41-D, is proposed to be added to allow for the keeping of chickens by Special Exception, with conditions.

S. Perley opened the floor to the public for comments.

Public: Karen Barker said at the last meeting a few things came up that she wanted clarification on. One is the concept of screening people on their financial ability to keep chickens. She said that the \$125.00 fee was mentioned of being a way of screening. She said dogs aren't done that way, and are more expensive. That comment was attributed to S. Saunders in the paper but it was not her who said it. She asked why not license the chicken owner like you do a dog. This is not the highest and best use of the board's time.

She asked for clarification on the role of abutters - what role do they play here? S. Perley said someone would apply for the Special Exception, come to the board, and meet the standards. All of the abutters have to be noticed. An abutter could come to the hearing and have the right to speak for or against the application.

K. Barker said she thought that was the process so again, why are chickens so different from other animals? She has had obnoxious dogs and there was nothing she could do. If you don't have a rooster, you won't have the noises with the chickens. She asked why there is more of a concern with chickens than with other animals.

S. Saunders said she isn't saying we don't have an issue with dogs but are dealing with chickens right now. We did put conditions on the dogs but it never went to City Council for finalization. She said she feels dogs will be addressed in the future. S. Perley said cats and dogs are considered household pets, and chickens are farm animals. We are talking about moving farm animals into the downtown area, on smaller lots, which are denser.

K. Barker said that is semantics. A chicken is a bird; it is an animal. She said she feels the process that is being proposed puts up a barrier. She said the board can deal with locations of coops, but that other cities don't do this.

O. Gibbs said there are many people here who don't get their dogs licensed and she feels people will do the same thing if we go that route with chickens. She said if we only require a license, she will vote no. This way we can keep a handle on the situation. She said that K. Barker complained about licensed dogs, so feels a license will not work. She said she feels the Special Exception is the way to handle this but she understands K. Barker's concerns.

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S. Perley said K. Barker helped draft the language and we appreciate all of her help. K. Barker said she wants to go on records as being against the \$125.00 fee.

Valerie Kimball, Addison Street: She said that she agrees with K. Barker on the fee. She thinks this is too high but does appreciate the ZBA allowing the residents to have chickens.

George Matthews, Overland Street, said that feral cats come into his yard all the time and go to the bathroom. Chickens would be penned up and he doesn't feel, if the chickens are penned up, a fee should be charged.

Tom Barker, Lane Road, said when he heard the \$125.00 fee mentioned as a financial way of screening people, to see if they can afford to have chickens or not, he didn't agree with it. He feels the board is putting up financial barriers to people who are interested in eating healthy, and educating their children, and feels this makes very little sense. He said that he understands the \$125.00 is related to the Special Exception, but that can be changed. If there is a will to make that change it can be done.

He said he thinks Mr. Foote brought up the fee relating to whether you have the means to keep chickens. He did say if you have \$900.00 to buy a coop from Agway, you have the money to pay this fee. T. Barker said that some people might go and buy a pre-made coop, which would help a local business. Some people are making coops as a sideline in this economy. He said he doesn't feel Agway's cost that much. A lot of people make their own coops and buy the lumber from local businesses, which contributes to the local economy. Some people recycle using material from the local landfill. He said there are a lot of benefits to chicken keeping. \$125.00 would be a hindrance to a lot of people and he feels the fee can be overcome.

He thanked the board for bringing chickens this far. He said this is good for Laconia, even better to make an opportunity for people to keep chickens. He mentioned that Laconia has a history of people keeping chickens.

D. Greski said he understands his point, but doesn't feel we need to hear about where people have kept them in the past. He said we do understand Mr. Barker's points.

T. Barker said he wants to mention that there is a history of keeping chickens in Laconia and in other cities across the country.

Valerie Kimball, Addison Street, asked if a temporary type of approval is something that could be considered. She remembers the 4H approval a few years back, which was a short term project. She asked if there would be a way that something like that could be done, if someone has a 4H project, which is temporary.

S. Saunders said she is not sure how we would categorize that. D. Robitaille said a waiver could be requested for the fee in a case like that. V. Kimball said she thinks it would be fun for kids to be able to do this.

Mary Ball said she had picked up paperwork for 19 Overland. She obtained all of the information to do a variance but didn't apply because she was told someone else had been turned down. If you raise your own food you know what is going into your body. Animal waste is everywhere. The chickens would be contained in your own yards. She said she doesn't think the attitude regarding cats and dogs here is appropriate. In Massachusetts you can have chickens pretty much everywhere and even horses on small lots. This is NH, Live Free or Die.

Ralph Langevin, Winnisquam Avenue: He said he is here for something else but had a few questions on this. He asked if the \$125.00 is a one-time fee or would there be a fee every year after this. He was told it is a

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one-time fee. He asked who would monitor this and was told the Zoning Department. He wondered where the waste goes or chickens that would die from diseases. He asked what if he has the chickens for 5 years and then stops for 2 years, would he have to apply again; he was told that if someone waited for a 12 month period, their use would lapse and they would have to return and reapply. K. Snow handed him a copy of the proposal to read.

There was no one else who spoke for or against the proposed ordinance so S. Perley closed the hearing to the public. She asked for follow up from the board.

Board: D. Robitaille clarified that there is a fee charged for every zoning application. He asked what the process would be in presenting this to the City Council. He asked if the fee structure could be broken down in some manner.

S. Saunders said it could be, but that process gets very complicated, and is multi-tiered. It usually ends up costing more in the long run. She said she feels this is an appropriate fee. People must meet the criteria in order to have this use.

D. Robitaille asked how many people apply for waivers for fees and was told we get possibly two a year. S. Perley reminded the board that we had denied the last request. D. Robitaille said if we are going to get less than a dozen applications for this use, the waiver is a real possibility. O. Gibbs said each case is handled differently. D. Greski said he doesn't think it is fair to the applicant to create a false expectation that the fee will be waived as we do look at each request individually.

S. Perley said that it is evident that everyone here is for chickens. The issue is with the process and the fee but the board seems to agree that the fee is the only reasonable way to handle this.

R. Smith said he had missed last meeting and wants to address two points. His parents were farmers so he familiar with chickens. He said that with chickens you generally require a cat to keep mice away, and a dog to keep away foxes.

He asked about the language regarding "chickens kept as pets" and S. Perley said that many people do consider them as pets.

R. Smith said he agrees that chickens can teach responsibility. They do provide eggs and meat and he asked about on site slaughtering being prohibited; does that mean the applicant cannot produce meat from their chickens? O. Gibbs said they have to take it off site for slaughtering. He asked how he would handle disposing of chickens if he is tired of them and S. Perley said that had been discussed previously. S. Saunders said we did not add specific language on that.

S. Perley asked if he is recommending any changes and R. Smith said no, he just needed clarification on some points.

S. Perley asked if there is a motion to recommend this to go on to Planning Board for further approvals, then on to City Council for final approval.

Motion: O. Gibbs moved to approve the new section for chickens as proposed in the draft dated 10-21-13 which is before us this evening. D. Robitaille seconded, and the vote was 4 for, with R. Smith voting against the proposal. The motion was approved, 4-1, and this will move to the Planning Board for their approval.

PUBLIC HEARING on a change to the City Zoning Ordinance, specifically, any property that was granted approval under the PUD ordinance shall continue to comply with that ordinance. Should an owner seek to

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change the property in such a way that it would no longer comply with the PUD ordinance, a variance must be obtained from the Zoning Board of Adjustments.

R. Smith recused himself. M. Foote was seated, along with K. Geraci. O. Gibbs asked the board if she should recuse herself as well but it was determined that there was no issue with her sitting for this hearing.

S. Saunders said that the board has a copy of the old repealed ordinance. She is unsure of when it was put into effect but it was later repealed. She used Southdown as an example of a PUD. If Southdown wanted to come in and do something outside of the PUD ordinance, it was unclear if they were held to this or to the underlying zone. The City has held that they were designed under the PUD. It was recommended by legal counsel, due to recent lawsuits, that we should have specific language on this. This added language makes anything that had been designed and approved under the PUD subject to this language.

D. Greski asked why the PUD had been repealed and was told it was replaced by the cluster ordinance.

S. Perley opened the floor to the public for comments.

Public: Robert Smith spoke. He said he lives at Southdown. He is here to speak in favor of this addition to the ordinance. He had asked for this in 1996 when he was president of Southdown but it was denied at that time. Southdown wasn't very popular then and no one wanted to grant them a favor. The then Planning Board chairman, and later Mayor, told them they could continue to build under the original PUD. A verbal agreement has been in effect since this. There is now no legal basis, but this ordinance will fix that.

This is a relief to their committee. Surveyors have been having issues trying to design here. Clients come in with cluster building plans, which were done by the surveyors, and they get rejected by the building committee. They want to protect the community, with no major changes. He said they have been able to preserve Southdown according to the original concept. This change in the ordinance will change the information which is given out, and make a better environment for the Southdown residents and the building committee. He recommends acceptance of this.

No one else from the public spoke for or against the proposal so S. Perley closed the hearing to the public.

Board discussion: O. Gibbs said she agrees with R. Smith, this addition to the ordinance makes things very clear.

Motion: S. Perley moved to approve this addition to the ordinance. O. Gibbs seconded, with all in favor 5-0.

Application # 2013-0025

MSL # 451-245-1

DRD Zone

M. Monteiro/Lamont Clark

48 Winnisquam Ave

Variance

The applicant is requesting a variance from Table 1, Table of Permitted Uses, in order to have a landfill/resource recovery facility at the 48 Winnisquam Avenue location. The business has been in this location for 10 years and has been operating with no issues or complaints.

D. Robitaille was seated for the hearing.

Applicant: Lamont Clark appeared for the application. He said he has been doing this for 10 years in this location. He takes in light metal, scrap metal. He had been approved for automotive, and thought the

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approval covered this as well. He recently found out it wasn't so he is here to ask for that use to be added. He showed the location of the business on the city map.

D. Greski said he tried to find the property today and could not locate it. He asked if when this was approved 10 years ago for automotive, was that automotive salvage and was told no. L. Clark said he might take 2 or 3 cars and make one. The category in 2004 was for automotive repair. S. Saunders said that, in the table of uses, it was considered vehicle major service.

D. Greski asked if that is a permitted use and was told no, but he did receive a variance in September of 2004. He asked L. Clark what is the difference between the auto repair and what he does today is and L. Clark said he is still doing the auto repair but he has also been taking unwanted scrap metals and appliances. He scraps it out and ships it out the door. He wants the approval to do the scrap. He said this did get out of control a while back, as the Boys Club brought in 600 pounds of cans, all in bags. That has been taken away.

D. Greski clarified that someone brings in the product and then Clark takes it and processes it. L. Clark said yes, he takes the copper, separates it all out, and this goes out the door. S. Perley asked if this is contained within the building and L. Clark said no, it is both inside and outside. He said that he can contain the outside to that small square area shown on the map. There are roofs on both sides, and this is located right at the building door so all of the "precious" metals go inside.

S. Saunders said this came to our attention from the Bay Street property that had recently been approved. D. Greski asked if there is a fence and L. Clark said there is a partial fence and showed where it is located. He will add additional fencing and showed where that would be. The area on Bay Street was always a through way but it is now blocked off.

D. Greski asked if his area will be contained and was told yes. Now people can come by and drop items off at any time. L. Clark said if he installs the fence, running it from the other fence, that would help stop people from just dropping things off. He would fence and gate it. The product would be located behind the fence. After items are stripped, he keeps it inside until ready to be shipped out.

D. Greski clarified that when he received the variance in 2004 he thought that he could do this as well and L. Clark said he was doing this when he moved in and thought the variance covered it all. D. Greski asked how we were alerted to this, and was told by S. Saunders that the Bay Street property owner came in.

She said that Mr. Clark has cleaned up, and gotten rid of some of the overflow, and that Code has checked it out. S. Perley asked if it was possible to contain everything inside, and was told no. L. Clark said that 80-90% could be contained but this is usually loaded onto his truck when it comes in. D. Greski asked if he empties his truck and more comes in and was told yes. L. Clark said he took a load out today, and his truck is now filled with another load. The number of loads going out varies; some weeks he does 2 but there are some weeks when he does more. The business name is Clarks Auto.

D. Greski asked if Code Enforcement can be happy on this property. S. Saunders said Code would be happy if we define where he can keep things outside and if we can get screening. She said Code would be very happy if that were done. M. Foote clarified that the use isn't permitted and was told that is right. The original use isn't either but he received a variance for that.

M. Foote clarified that in giving the variance the business can remain there permanently? He said this is close to the water but he added that this is an industrial area. He was told that a variance goes with the property.

O. Gibbs said we can add conditions to any approval. Mr. Clark has said he doesn't use any chemicals. D. Greski asked L. Clark if people drop off air conditioners or refrigerators. He said yes, but he has a pump, the

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material goes into a tank, and that goes to a farm in Chichester for disposal. He used to have a company pump this but then he got his own pump. There are valves to charge and discharge.

S. Saunders was asked if the state has to sign off on the automotive every year and she said yes. She asked L. Clark if the state inspects the facilities, and was told yes; they were there last week. She said she thinks the state looks at the disposal process, too.

D. Robitaille asked what are we classifying this as and S. Saunders said this falls under landfill and resource recovery facility but she thinks we can limit this to cover just resource recovery, and not the landfill. S. Perley read the definition, which mentions state approved facility. We can make it a condition that Clark gets licensed for that, if any are required. D. Robitaille asked if the police get involved with these types of operations; what if someone brings in a load of brand new copper pipe. S. Saunders said they have no control.

D. Greski said we have 2 conditions so far. First is to get code enforcement to define the perimeter of the area and enclose it. S. Saunders said we need to define that perimeter. Can we limit it to that small area and screen that? D. Robitaille asked if Clark owns the property and was told no, but the owner signed the application. D. Greski asked if the owner is aware of the fence and L. Clark said that the owner actually purchased a section of fencing for him already.

D. Greski asked about the definition and asked if we can cancel out the landfill portion and just do the resource recovery. S. Saunders said yes, we can do that as a condition of approval. L. Clark asked if we condition this to just him, so if he leaves in the future the use could not continue, and was told we cannot do that, as a variance goes with the property.

O. Gibbs said the use is not permitted and D. Greski said this is the same as his original request, as it was not permitted. S. Saunders said think on the old criteria, this is for the use. We normally see a request for something like a setback.

L. Clark said the area outlined in the application is surrounded in concrete with a base, as it was a building, so if there would be any spillage it would be contained. S. Saunders said that is good as it helps define the area for the fencing, too.

Public: Ralph Langevin stated he is an abutter across the street, and has no problems with what L. Clark is doing. His issue is with how the board is interpreting the law. He doesn't think he is an approved state facility. They only fall under the states purview in certain cases. He asked if there is a permit which L. Clark will need to acquire from the state.

S. Perley said he needs to find that out and if one is required, get it. There is another facility approved on this same property, which is approved through the state for auto repair. R. Langevin said he has no problem with L. Clark doing what he is doing. He said he doesn't think he needs automotive approval from the state and again asked if there is a specific permit he needs to get and D. Greski said Mr. Clark will need to get any state approvals that is required by the state in order to do resource recovery.

No one else from the public spoke for or against the application so S. Perley closed the hearing to the public.

Board discussion: There was no further board discussion.

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Motion: D. Greski moved to approve application 2013-0025, in order to permit a scrap metal recycling facility at the address. The business has been there 10 years with no issues or complaints. The board has determined the application will be approved but with three conditions, which are as follows:

Conditions: The applicant shall enclose the open area where the concrete floor currently exists. The area is approximately 80' X 80'. The area must be screened and the operation will be kept behind the fencing and indoors.

The applicant shall get any state approvals or licenses that are required to operate a facility of this type.

The permitted use will be only as a resource recovery facility. This is not approved as a landfill, now or in the future.

This approval won't be contrary to the public interest as the applicant has operated in this location for 10 years with no issues or complaints. The applicant has been there operating as an auto repair business, and was granted a variance to operate that in 2004. Having this facility won't alter the essential character of the locality or threaten the public health, safety, or welfare.

The spirit of the ordinance is observed as there is no substantial change in use. This business has been here for 10 years, and the applicant thought when he received the other variance that he could do scrap metal as well, and has been in operation for 10 years.

Substantial justice is done as there is no harm to any abutters, and one neighbor commented on his behalf this evening.

Property values are not diminished, and this has no effect on the neighbors.

This is a reasonable use; although it is not a permitted use, it is reasonable for the property. The property has been used for this purpose for the past 10 years, so that is reasonable.

O. Gibbs seconded, all in favor, 5-0.

Minutes: The motion to approve the minutes from September 16, 2013 was made by D. Greski and seconded by O. Gibbs. All voted in favor of approval, 5-0.

Other Business: ZTF Report: S. Perley said that the ZTF is still working on signs, and there is not much else to report at this time.

D. Robitaille asked if yard sales are covered by the zoning ordinances. He said that on Endicott Street N, at the water slide, there is one every weekend. S. Saunders said that a perpetual yard sale needs to be permitted, as that is more like a flea market. She said that we will look into that specific event.

Gables Update: S. Saunders gave the board the Gables update on the appeal of the ZBA's variance approval. The Southdown Recreation Association appealed. Gables came in as intervener, so this is the City and the Gables versus them. The Southdown Recreation Association gave areas where they said didn't meet the criteria, and the City gave examples of how they felt they did. S. Saunders said the Judge asked a few questions on this, and that she understands the decision will take 3-4 weeks. It took about 1 – 1.5 hours and we will know shortly.

Adjournment: The motion to adjourn was made by S. Perley and seconded by D. Greski with all voting in favor. The meeting adjourned at 8:15 pm.

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Respectfully Submitted,

Kristine Y. Snow, Zoning Technician