

**TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Monday, July 8, 2013**

Co-Chairman John Foley called the meeting to order at 7:04 p.m. Present were Palmer Smith, Bernie Volz, Karen Peranelli, Richard Hanson and Clerk Janet Stitt. Also attending were Atty. Doug Hill, Atty. Phil McLaughlin, John Jordan, Chuck Burns, Jackie Baker, David Reilly, Brian Bushman, Carl Johnson of Advanced Land Surveying, Randy Remick, John Dever, Tom Jordan, Erica Jordan, Kristina Jordan, Patricia Lance and one unidentified male. Jean Meloney, Chris Williams, Alan Hale and George Lamprey were absent with notice.

APPROVAL OF MINUTES:

NEW BUSINESS:

John Jordan: Application for an Appeal from an Administrative Decision

This is in regards to Center Harbor Zoning Ordinance, Section 9:4:3 as it pertains to the site plan approval and construction permit for Brian Bushman's property located at 51 Bartlett Hill Road, Tax Map 226 Lot 14.3.

Notice of this hearing was published in the Meredith News and certified mail was sent to the abutters.

Co-Chair John Foley asked the voting members to announce themselves. The voting members for the hearing were as follows:

John Foley – Co-Chair; Karen Peranelli – member; Palmer Smith – Alternate; Bernie Volz – Alternate; Richard Hanson - Alternate

John Foley explained the procedure for the hearing. The rules of the meeting will be that Board, first, adhere to the fact that the Board is governed by the statutes to hear only interpretations of the zoning ordinance by the Planning Board, town or it's agents. The Board has no jurisdiction over anything other than the interpretation of the zoning ordinances and how they were applied. Any discussion of the environmental impact of decisions made by the Planning Board will not be heard. The Board will adhere to certain rules in the by-laws i.e. no running dialog between audience members. All comments must be directed through the chair. Those speaking will identify themselves by name.

Clerk Janet Stitt read the appeal aloud.

Atty. Phil McLaughlin represented John Jordan. He explained that he had filed with Superior Court as well as the town. He did not understand the law well enough to permit himself in behalf of his client to do one thing or another. There was ambiguity in the law and in an effort to avoid the possibility of procedure problems,

he did both. He tried to be precise in identifying Mr. Jordan's complaint with respect to the appeal and direct as possible. He set forth a sequence of events based on planning records that lead to the conclusion by the Planning Board that to allow a truck repair facility was acceptable given the language of the zoning ordinance. He believes, based on the minutes of the Planning Board meeting, that an earnest effort was made in searching out the definitions of 'auto'. He referred to and produced copies of pg 78 of Merriam-Webster's Collegiate Dictionary – 10th edition – which is the version specifically referenced in the zoning ordinance - defining 'automobile'. Atty. McLaughlin stated that it defines 'auto' as 'car' not as something that is motor vehicle. Motor vehicle is generic, auto is a subset and truck would be another subset. He stated trucks are trucks, not autos. He feels the Planning Board incorrectly interpreted the ordinance and the meaning of the word 'auto'. The definition of 'automobile' per the copies he presented read: 'four wheeled automotive vehicle designed for passenger transportation'.

Chairman Foley asked for questions from the Board. There were none.

Carl Johnson, Advanced Land Surveying and agent for Mr. Bushman, explained that when presented with a site plan the first step is to establish whether or not it is a permitted use. There is a permitted use in the zone defined as 'auto service station' 9:4:3. The definition is listed in the zoning ordinance 2:2:2. He read the definition aloud. The ordinance goes beyond the word 'auto' and further defines 'auto servicing stations' as servicing 'motor vehicles'. Based on that interpretation, Mr. Bushman could service or repair any motor vehicle at this facility. During the Planning Board hearing, these definitions were reviewed and also looked at the definition of 'motor vehicle' as defined through the State of NH. Under Title 21, Motor Vehicles Chapter 259:60: 'Except where otherwise specified in this Title, any self propelled vehicle not operated exclusively on stationary tracks including ski area vehicles'. He feels that the definition of 'motor vehicle' is broader than that of 'automobile' and that was why the definition was further defined within the zoning ordinance to include more than just 'automobile' but other motor vehicles.

Mr. Bushman was advised by Mr. Johnson that the town of Center Harbor would issue a building permit for any building or structure that was to be used for non-commercial purpose. It could not be used for commercial purposes unless site plan approval was obtained from the Planning Board. Code Enforcement Officer Ken Ballance issued a building permit for a structure with notes and conditions written on the permit to read: 'The owner is aware that this a construction approval only for site, septic, buildings, etc and does not constitute approval for commercial operation'. He initialed it KB 2/21/2013. Mr. Bushman also wrote in his own handwriting: 'I understand the conditions'. 2/21/2013. Mr. Bushman understood that he could construct at his own risk and that if the Planning Board did not give permission for commercial use, the building would be for residential use.

Chairman Foley asked for questions from the Board. There were none.

Chairman Foley opened the discussion from the floor.

John Jordan stated that Mr. Bushman's business is named 'Brian's Truck and Equipment Repair'. He feels auto repair is allowed but not trucks. He is concerned with the weight load limit of 12,000 pounds on Bartlett Hill Road in the spring. College Road is posted all the time. Auto's are motor vehicles but not all motor vehicles are autos. Trucks and construction vehicles are not autos. He presented pictures for the record. The pictures were of facilities in Concord, Meredith and Belmont. None were owned by Mr. Bushman. The Board reviewed the pictures.

Randy Remick, ADSC Real Estate currently owns three lots on Bartlett Hill Road – one residential and two in commercial/light industry. The lot owned by Mr. Bushman was purchased from Mr. Remick after the initial subdivision. One of the reasons he purchased the properties was because of what the properties could be used for. There are many other commercial businesses other than auto repair that could involve trucks for delivery etc.

Chuck Burns commented on the posting of roads in the spring. There are many roads that are posted in the spring for the purpose of protecting the roads from damage. This should not have any influence in a decision of whether or not truck repair should be allowed.

At 7:33 p.m. public input was closed and the board went into deliberative session.

Chairman Foley opened the discussion with reference to an approval decision made in 2006 for a truck/equipment repair facility for J Stewart Paquette on Daniel Webster Hwy in the Commercial / Light Industry Zone. There was no debate of definition at that time. Palmer Smith feels that we need to be consistent.

Karen Peranelli addressed Code Enforcement Officer Ken Ballance's decision to issue a construction building permit to Mr. Bushman. As the details of the building permit are documented above, the Board felt that there was nothing further to discuss.

The Board continued with discussing the definition of 2:2:2 'Auto Servicing Station'. Richard Hanson feels that the language of the definition is debatable and that it could have been written to be more specific. He can definitely see two sides to the situation.

Chairman Foley noted that the size of the building and the door openings would limit the size of vehicles that could be serviced.

John Foley recommended that under the circumstances and the apparent opinions of the board that they move to continue the meeting and at that point have a draft of a written decision on which the members would vote.

Karen Peranelli moved to continue the meeting and was seconded by Richard Hanson. All were in favor.

Chairman Foley announced that the meeting was continued to August 12, 2013 at 7:00 p.m. to take place in the Cary Mead Room. There will be no public deliberation or input.

At 7:50 p.m. the deliberative session ended.

UNFINISHED BUSINESS:

None

ADJOURNMENT:

At 7:55 p.m. Richard Hanson motioned to continue the meeting. Bernie Volz seconded the motion and the vote was unanimous.

Respectfully submitted,

**Janet Stitt
Clerk**