

**Ashland Zoning Board of Adjustment Meeting
Draft Minutes
March 20, 2014**

ZBA Members Present: Eli Badger Elaine Allard
Michelle Fistek Don Latulippe
Sue MacLeod, Planning Board representative, voting
Patsy Tucker, Alternate, non-voting

Others Present: Tony Guyotte, Dr. Donald Lester, Frank McBournie

Members of the Public Present: Tony Randall, Jeanette Stewart, Norm DeWolfe, Kathleen DeWolfe

The meeting was called to order at 7:00 pm, in the Elementary School Library, by Chairperson Eli Badger. Roll call confirmed that all members were present.

Chairperson Badger opened the hearing for **ZBA Case #2014-002: Administrative Appeal by Dr. Donald Lester of ZBA's January 15, 2014, Acceptance of Application Case #2014-001 Made by Mr. Bell and Mr. McBournie for Administrative Appeal and Motion of Re-Hearing of Planning Board Case #2013-03, December 18, 2013 Meeting.** Mr. Guyotte was confirmed as the agent for Dr. Lester in this matter; all parties and abutters were properly noticed.

Mr. Guyotte based his appeal on RSA 676:5-III. He stated that, according to his reading of the RSA, the application should never have been accepted and should have been sent to the court system, because their site plan had a special condition placed on it (i.e., noise abatement requirement).

Sue MacLeod explained that this RSA is not applicable to this situation because the Ashland zoning ordinance does not have any officially adopted "innovative land use control." This is different from a special exception or a condition placed on a site plan.

Chairperson Badger stated that the ZBA has merely accepted the Bell/McBournie appeal to be able to discuss the application. No decision has been made either way in this case by this Board. As with any application, the ZBA accepts an application to be able to talk about it in a public forum. Guyotte/Lester are only appealing the fact that we accepted an application. We have made no decision in the Bell-McBournie case.

Mr. Guyotte said that the RSA states that, because there is a special exception or condition, it does not allow the ZBA to accept or discuss it here.

Sue MacLeod also clarified that (a) one can go directly to court if challenging a procedural decision of the Planning Board rather than one based on zoning; (b) one cannot appeal a ZBA decision to a ZBA, but must go to court; and (c) one cannot appeal an application from someone asking to get a decision.

Elaine Allard stated that there is a difference between a special exception and a special land use.

Motion by Eli Badger, second by Elaine Allard, to accept the application. The vote was Yes – 4, No - 0, with 1 abstention (Don Latulippe). The motion carried in the affirmative.

[Note that discussion was conducted prior to the motion.]

Chairperson Badger stated that we have not made a decision that is appealable.

Don Latulippe expressed frustration that this case has gone through appeal after appeal after appeal, regarding a business that has been in operation for 20 years and abutters that have resided next door for seven years.

Motion by Michelle Fistek, second by Elaine Allard, to not grant the appeal. The vote (by roll call) was Yes – 5, No – 0. The vote was in the affirmative to not grant the appeal.

Chairman Badger re-opened the hearing for ZBA Case #2014-001 (McBournie-Bell Administrative Appeal and Motion for Re-Hearing), continued from February 12, 2014.

Mr. McBournie requested a further continuance, due to inability of Attorney Douglas Hill to attend tonight's meeting because of surgery. Chairman Badger reminded Mr. McBournie that the continuance would place a lot of stress on a lot of people who have showed up.

Pat Tucker questioned if all the attorneys had gotten together prior to today. It was stated that Mr. Hill reached out to Mr. Puffer; Mr. Hill had given his contact information to Dr. Lester to forward to Dr. Lester's attorney. There was no confirmation whether any contact had been made between any of the attorneys.

According to Attorney Puffer's communication, the ZBA does not handle appeals on procedural issues of the Planning Board. Michelle Fistek suggested reserving a decision on granting the continuance, until after discussing Attorney's Puffer's point regarding procedural issues. If the ZBA were to decide to go ahead with the appeal on the procedural issues, then she thought the ZBA could consider granting a continuance so Attorney Hill can be here.

[The ZBA recessed the hearing for 3 minutes while members reviewed ZBA Attorney Puffer's documents.]

Pat Tucker noted that ZBA Attorney Puffer advises that McBournie and Bell need to appeal to the Superior Court on the procedural issue.

Chairperson Badger reviewed that if the matter is to be discussed further, then the ZBA should vote no on the continuance. The Board would then discuss whether it can deal with the procedural matter. Any of the zoning issues are past 30 days and not appealable to this Board.

Motion by Michelle Fistek, second by Don Latulippe, to deny the continuance. The vote was Yes – 5, No – 0. The vote was in the affirmative to deny the continuance.

Motion by Elaine Allard, second by Michelle Fistek, to deny the appeal based on the fact that the ZBA does not handle procedural issues of the Planning Board. The vote was Yes – 5, No – 0. The vote was in the affirmative to deny the appeal.

Tony Randall asked to clarify some points in a letter that Mr. Hill sent the Planning Board in reference to this case. The letter talked about ‘received something purporting to be a noise abatement, but the plan on the assistance of Tony Raymond LLS . . .’ Mr. Randall stated “My name is Anthony L. Randall LLS and I am not, never have been listed as agent for anything in regarding this matter. I have only been the surveyor involved with producing the site plan for Mr. Lester.” [Chairperson Badger directed the secretary to note Mr. Randall’s correction in the minutes.]

Dr. Lester directed a question through the Chairperson: *Do you feel that Tony was fulfilling his job as police chief in this town or giving favoritism to myself as stated in that?*

Mr. Randall said that is not in the letter he was reading from; it may be from a different email. *“I wear many hats in this town; I know how to separate my jobs. I told Dr. Lester that if you violate the noise ordinance in our opinion, you will be summoned to court. We will do the police job that we are supposed to do. I do not play favoritism.”*

[Tony Randall left the meeting.]

Jeanette Stewart: *“I am an abutter and I would just like to say that I have lived across from the veterinarian place for seventeen years. We have no problem with noise from the animals. [unintelligible] Wait a minute. I have a right to speak. I am an abutter. We have no problem with the animals. The other thing is I think this has gone on long enough, appeals continuing, appeals continuing. I think this case needs to be closed. I don’t think the town should be handling it anymore and I think it should be handled in the court system.”*

Chairperson Badger stated that is just where the ZBA has put it [into the court system].

Dr. Lester commented that they came back with a solution and it was not allowed to be tried. Sue MacLeod indicated that the solution would be tried now, as they are obligated to.

Dr. Lester: *“You’ve taken people on a board that aren’t going to be here anymore that were really positive in this town and you came up with some kind of a statement that said the Town of Ashland is business friendly. What did you pay for that? I’ve never been in a town less business friendly.”*

[Tony Guyotte, Dr. Lester and Jeanette Stewart left the meeting.]

Disposition of Minutes

The 9/26/13 minutes were previously approved on 10/23/13. The 10/9/13 minutes were previously approved on 10/23/13.

Motion by Elaine Allard, second by Michelle Fistek, to approve the minutes of 10/23/13 as written. The vote was Yes – 4, No – 0, with 1 abstention (Sue MacLeod). It was noted that the new ordinance passed regarding cemetery setbacks grants the ZBA the ability to decide the issue.

Motion by Elaine Allard, second by Michelle Fistek, to approve the minutes of 11/4/13 as corrected. The date on page 2 will be corrected to 11/4/13. The vote was Yes – 4, No – 0, with 1 abstention (Sue MacLeod).

Motion by Elaine Allard, second by Michelle Fistek, to approve the minutes of 11/20/13 as written. The vote was Yes – 3, No – 0, with 2 abstentions (Don Latulippe, Sue MacLeod).

Motion by Elaine Allard, second by Michelle Fistek, to approve the ZBA portion of the minutes of the 12/4/13 joint meeting as written. The vote was Yes – 5, No – 0.

Motion by Elaine Allard, second by Michelle Fistek, to approve the minutes of 12/19/13 as written. The vote was Yes – 4, No – 0, with 1 abstention (Don Latulippe).

Motion by Sue MacLeod, second by Elaine Allard, to approve the minutes of 2/12/14 as written. The vote was Yes – 5, No – 0.

Old Business

A draft of the Rules of Procedure was distributed. Chairperson Badger asked the members to review and send any possible changes to the Chair prior to the next meeting. Mr. Badger expressed his thanks to Patsy Tucker for gathering the information.

[Patsy Tucker left the meeting.]

New Business

Mr. Latulippe has submitted his resignation from the ZBA. The members of the ZBA thanked him for the years he has been on the Planning Board and the ZBA.

Other Business

The ZBA briefly reviewed the changes that have occurred in the veterinary hospital over the years and the manner in which various groups (including Building Inspector, BOS, attorneys, Planning Board and Zoning Board) have handled the situation.

The meeting was adjourned at 7:58 pm by the Chairperson.

Minutes submitted by Mardean S. Badger