

ZBA Minutes 09/17/12

NEWMARKET ZONING BOARD OF ADJUSTMENT MEETING SEPTEMBER 17, 2012 MINUTES

Present: Chris Hawkins (Chairman), Wayne Rosa (Vice Chairman), Gerry O'Connell, Bob Daigle

Absent: Bill Barr (excused)

Called to order: 7:02 p.m.

Adjourned: 7:21 p.m.

Agenda Item #1 – Pledge of Allegiance

Agenda Item #2 – Review & approval of minutes: August 6, 2012

Action

Motion: Bob Daigle made a motion to approve the minutes with Chairman Hawkins's edit notes

Second: Gerry O'Connell

Vote: Wayne Rose abstained due to absence

All others in favor

Agenda Item #3 – Regular Business

Motion for rehearing from Walter W. Cheney regarding a Zoning Board of Adjustment decision on the following application:

Walter W. Cheney - Appeal from Administrative Decision.

The applicant requests an Appeal from Administrative Decision to allow for the issuance of a building permit, the application for which was denied due to the lot being determined as "unbuildable open space". The lot is located off Cushing Road, Tax Map R2, Lot 36-13, Zone R1. This application was originally heard on May 18, 2009 and a motion was made and unanimously passed to "postpone any discussion on this issue until the lawsuits have been properly adjudicated and the Board has legal answers in front of them by which the Board can then render a decision". The applicant has requested a continuance of

this meeting be held stating the "resolution came on March 3, 2011, where the court ruled in the favor that Lot 13 was owned by Walter W. Cheney and that Lot 13 is an independent lot of record..."

This application was dismissed for lack of jurisdiction by a vote of the Zoning Board of Adjustment on 08/06/12.

Chairman Hawkins stated Bill Barr, who was present at the August 6, 2012 meeting, is unavailable due to his work schedule. He stated Wayne Rosa was not present that evening. He asked Wayne Rosa if he had a chance to look at the video of the meeting and if he had viewed all of the documents submitted by the various parties. Wayne Rosa answered he had done those things and felt comfortable sitting on the Board for this rehearing.

A representative from Walter Cheney's office stated Mr. Cheney was not available to attend the meeting. The representative stated they had received the Zoning Office secretary's follow up call that morning (office note: an agenda had been sent to Mr. Cheney on September 7, but he had not received it), but up until the phone call they had not realized the meeting was this evening.

There was some discussion on how to proceed without the applicant. Bob Daigle stated the Board considers the application. There is no formal public notice other than posting an agenda. Gerry O'Connell expressed that perhaps the board should postpone the hearing. Chairman Hawkins noted the Town's attorney was absent as well, but that there were several Moody Point residents in attendance. Gerry O'Connell read the Zoning secretary's email to an abutter explaining the rehearing process and notice requirements.

Prior to the meeting, Mr. Cheney had presented documents stating the reasons why the Board should reconsider his application. Chairman Hawkins confirmed with the board members that they had all read Mr. Cheney's submission and felt comfortable proceeding. The Board decided to go forward with the rehearing.

Bob Daigle stated he did not find anything in the material submitted by Mr. Cheney pointing to either an error on the Zoning Board's part or any zoning matter that they could act upon.

Bob Daigle stated there was no public hearing required for this meeting.

Chairman Hawkins stated he would allow public comment, as he was unsure of the requirements for a public hearing at this type of meeting and wanted to err on the side of caution. He stated it would be limited to the issue of jurisdiction rehearing understanding that the applicant is not present. If it turns out the public hearing was unnecessary then so be it.

Chairman Hawkins opened a public hearing. He asked to keep the comments focused on the question of jurisdiction. He explained how the ZBA had come to the decision of August 6, 2012.

Russ Simon, 510 Cushing Road, stated the ZBA was correct with their decision of August 6, 2012. He read the material and he felt there were no new merits to rehear the application.

John Badger, Cushing Road, stated he believed the application should be denied.

Heather Brigham, an employee of Walter Cheney's, stated he was not notified. She did not know if it could be rescheduled.

Chairman Hawkins closed the public hearing.

There was discussion of whether to continue the hearing until Mr. Cheney could be present. Chairman Hawkins stated that notice is not required. He had no reason to believe the agenda was not posted in the appropriate places at the appropriate times. Bob Daigle stated they are here for the purpose of appealing the ZBA decision of August 6, so Mr. Cheney can take this to Superior Court. If the Board affirms their decision, Mr. Cheney is one week closer to getting to Superior Court. He felt continuing the meeting was not going to change his opinion. Chairman Hawkins stated they should go ahead and act on this motion. If Mr. Cheney comes in and can demonstrate he should have been given specific notice they may have overlooked, they can take that up and they are no worse off than they are now. The ZBA is

here and prepared and people were aware and informed of the agenda of the meeting, as they are in attendance. He stated they should go ahead and consider the merits of the motion. Wayne Rosa asked the people in the audience how they were informed of the meeting. They stated they looked and saw the agenda was posted at the Town Hall and online. Russ Simon stated they had also checked with the Zoning Office. Trish Simon stated since Mr. Cheney had provided the motion, he would have known it was coming up.

Action

Motion: Bob Daigle made a motion that they deny the motion to reconsider

Second: Gerry O'Connell

Chairman Hawkins stated Bob Daigle had already made the point that there was nothing new in the motion that relates to the issue of jurisdiction. It is a restatement of the merits of his case.

Gerry O'Connell stated he is basically saying he wants to be heard. If the ZBA does not have the jurisdiction, there is not much point in going forward.

Vote: All in favor

Agenda Item #4 – Old/New Business

None

Agenda Item #5 – Adjourn

Action

Motion: Gerry O'Connell made a motion to adjourn

Second: Bob Daigle

Vote: All in favor