

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
November 20, 2013

Present: Zoning Board of Adjustment Members: Bill Hallahan, Chair, Derek Lick, Dane Headley, Doug Sweet, and Ed Canane; alternate, Sue Reel (alternate Carla Krajewski was absent); Laurie Hayward, Land Use Coordinator and interested members of the public.

The meeting was called to order at 7:02 PM, by Bill Hallahan.

Administrative:

Chairman Hallahan opened the first hearing. The Chair asked the LUC to read the notice for the first hearing, Case 2013-08. The notice was read.

“You are hereby notified of a Public Hearing to be held on November 20, 2013 at or around 7:30 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request:

By Deborah Lang, 98 Camp Kemah Road, South Sutton, Tax Map # 02-479,224 for a Variance to Article IV:C.4 for single story 7 X 7 foot storage shed within the road frontage setback; in a residential district.”

The Chair asked the applicant to step forward. Deborah Lang stepped forward. Hallahan described the process. He read the Ordinance in question.

“No building or structure or any portion thereof, except steps and uncovered porches less than 10 feet in width, and fences, except solid fences more than 4 feet high, shall be erected within 46.5 feet of the center line of the traveled way of any 2 rod street or private right-of-way ...”

Hallahan went on to explain this is a 2 rod road and the applicant proposes to place the shed within 34 feet rather than the required 46.5 feet. Hallahan asked Lang to describe what she is hoping to do. She said that she has a small lot and wants to use a small shed to house trash cans and some equipment. She further explained that she could only find one place that maximized the distance from the lake and side setbacks. Hallahan explained that he had visited the site and it is a very small lot and does not offer many options for placement of a shed. The Chair noted that this is a very unique property and gave a bit of information about its history including the limitations on its use and the difficulties with the site.

There was a discussion about the fact that the application was done for the road setback only. The Chair noted that after reviewing the map and the site, it seems that the location will be within the 75' from the lake front by just 2 feet. The Chair asked the applicant whether Lang thought that she could place the shed 2 feet closer to the road than planned in order not to

encroach on the lake. The applicant said that she could; but wondered why she needed to if DES has given their approval and noted the structure needed only 50 feet for DES approval. The Chair explained that the DES Shoreland requirement was less restrictive, at 50 feet, than the Sutton Zoning Ordinance requirement, at 75 feet. He further explained that the Board could either hear the case and approve a Variance 2 feet closer to the road centerline or they could re-notice and hear the case in the future for both a road setback and a shoreland setback variance. Sweet noted that, if they encroached on the shoreland setback a Special Exception would be required. Lick supported and clarified the options for the applicant. The applicant agreed that the option she preferred was to simply move the shed 2 feet closer to the road.

The Chair called for input from abutters and there was none. The Chair asked the LUC whether there was any correspondence. The LUC stated that there was none. The Chair called for worksheets.

The Chair moved to close the public hearing and go to deliberations on Case 2013-08. The motion was seconded and voted unanimously. The meeting was closed and deliberation begun. The worksheets were reviewed and discussed briefly. Lick stated that he felt that he agreed with the applicant's assessment and would use her application form as his worksheet. There was discussion about how the applicant's proposal met all of the requirements for a variance. Lick noted that the variance as amended was the only way that they could possibly add a shed to this property and that there was no objection from abutters. Hallahan added that this is a very unique property and this variance would not become precedence for anything out into the future.

The chair moved to reopen the hearing it was seconded and voted unanimously to reopen.

Lick moved that the Board approve the application for a shed to be located 29 feet from the road centerline and 75 feet from the lake frontage. Headley seconded the motion and it was voted unanimously.

The applicant asked when she could pick up a building permit. The LUC explained that she would notify the Town administrator that the shed was approved and she could contact them for the permit. It was also explained that there is a thirty day period in which an appeal could be filed on a Board decision – but that that was very rare.

This ended the first Public Hearing.

The Chair then opened the second hearing, asked the LUC to read the notice and the notice was read.

“You are hereby notified of a Public Hearing to be held on November 20, 2013 at or around 7:30 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request:

By Daniel Bruzga of DB Landscaping, applicant, and Lawrence Smith, owner, NH Route 114, Sutton, Tax Map # 09-840,471 for the following Special Exception under Articles V.B.6 and VI.A.: To permit a change in commercial use of the property from the current sign business to a landscaping business.”

The Chair read the Zoning Ordinances.

“Uses permitted as a special exception subject to the approval of the Board of Adjustment after a public hearing: the establishment of any industrial, commercial or agricultural use, subject to the Board of Adjustment approval after a public hearing.”

Daniel Bruzga stepped forward. Bruzga displayed a map of the site and explained that he is a landscape architect. Currently he runs the business from his home in a Warner and an office in Sunapee. In Warner, the house is in a residential district and there has never been a complaint from neighbors. He has two full time employees and a part time employee who work at the office. Employees for the landscape build portion of the business work at the job sites. He explained that they are a design and build, not a landscape maintenance business, which means that they do not do plowing or lawn care. He expects to have from at any one time 2 – 7 employees in a somewhat seasonal business. He said that they would not do much to significantly change the look of the property. He would need to add more parking and do some grading. He thinks they can make the driveway longer and less steep and push it back a bit on the lot. The Chair read the applicants October 8, 2013 letter which was included with the application.

“The property is a 4.13 ac. parcel with 2 buildings -a barn and a shed. The zoning district is Rural Agricultural. The barn is currently functioning as a wooden sign manufacturing business.

Applicant (Daniel Bruzga) wishes to apply for a special exception from the Town of Sutton, NH to conduct commercial business operations at 1940 NH Route 114 Sutton, NH 03257. The existing building will serve as professional office space and a base of operations for employees and commercially registered vehicles and equipment. Additionally, future projected use of the space would be for residential or professional/commercial rental space and storage.

Hours of operation would be from 7:00 am to 5:00 pm Monday through Friday. Plan for parking is to use the existing parking lot for daily employee parking. Number of employees is expected to be 5 full time people.

Proposed signage is expected to be a wooden sign (not internally lit) not to exceed 25 square feet and located on along the frontage of Route 114 complying with the Town of Sutton Sign Ordinance.

Exterior lighting will consist of building facade safety/security lighting at doorways and the parking area.

Increase in traffic coming in and out of the property is expected to be minimal. Typically, employee traffic will occur at the beginning and end of each day.

Plans for future development of the existing building and property include expansion of the existing parking.

Waste products from landscape construction will neither be stored nor disposed of on this property.”

The chair asked about the mention of future use as residential or office space. The applicant explained that if something happened and there was a serious drop in business, he might rent to a professional or even use the building as residence for himself. He also might set up a corporation to own the barn and then have his business lease it. Hallahan noted that the current owner of the property had used it as a residence at some point in the past. Hallahan made a distinction between the owner making that use and someone unconnected to the ownership renting residential space. The chair further noted that would be a change in use and would likely need an additional review by the Planning and/or Zoning Board of Adjustment. The Chair also noted that there might be conditions to the approval that would require Bruzga come back if he were to make future changes. The Chair asked Sweet if there was anything that he felt should be asked of the applicant. Sweet stated that the applicant would need to get a new driveway permit from the NH DOT.

The chair asked for Board member questions. Canane asked about retail sales from the property. The applicant said that they are not selling materials from the property. Bruzga explained that typically materials, trees etc. come directly on a truck or trailer from the nursery to a job site and this is the most cost effective way to manage projects. The applicant explained that maybe 20% of the hours are spent on site at projects. Those hours do, however, represent most of the revenue. Canane questioned the statement in the letter about lighting. Bruzga stated that lighting is primarily for security and that there is currently a spot light and they might add post lighting along the driveway. Sweet asked about equipment and location. Bruzga stated that they do have trucks and trailers and small excavators and that they are currently stored at the Warner house and they would likely stay there until some point in the future when they could afford to set up storage at the proposed site. Sweet asked if they are proposing lighting in the parking area. Bruzga said that he hadn't thoroughly considered that at this point; but, they might add some lighting on motion control beyond the current lighting. Sweet referred to the letter and asked about waste. The applicant stated that waste is usually dealt with by transporting it directly from the work site to the closest disposal location. The Chair asked if members had any additional questions. There were none.

The Chair opened the hearing to public input. The Chair asked the LUC if there was any correspondence. The LUC answered that she had not received any written communication regarding the application. She did note that there had been some visits to the Land Use Office to view the file.

Nancy McFadden, an abutter, came forward to speak against the application. She asked about the vehicles that employees would pick up. She asked what kind of vehicles will be coming from and going to the property. She is concerned that her enjoyment will be disrupted by vehicles moving on and off the site. She asked what the implications are of the "future expansion". Specifically, McFadden is concerned that once there is an approval for this the business can grow and expand and change into something even more disruptive of her enjoyment of her property. She further stated that she has a peace and quiet, a view and she encourages wildlife and concerns that all of that may be spoiled.

Harry McGee, the abutter on the other side from McFadden, also spoke about his concerns about noise, traffic, equipment and parking. McGee said that he has the same concerns as McFadden and he doesn't feel the applicant is specific enough about the plans for the site. McGee stated that what he really hopes is that any business would have no different impact than the current business. He explained that he has concerns about noise and the issue of traffic and the dangers for vehicles parking on that stretch of road. He further stated that the road is not in good condition and there have been problems for fed-ex or UPS trucks trying to park on the roadside there. McGee expressed that he would hope that whatever happens, the property would be no different than it has been under Larry Smith's ownership.

Robert Bryant, an abutter, spoke. He explained that he lives very close to the property in question. Bryant reiterated neighbors' concerns about noise and additional vehicles and traffic. He also stated that he has a great view from his house which stands just across the street. He did state that he knows Mr. Bruzga and his business and that Mr. Bruzga is well thought of and his business as well. Despite this, Bryant did say that he is not supporting the proposed change in business.

Steve Shepard stated that he also lives across the street from the site in question. He expressed similar concerns as other neighbors regarding noise and traffic. He noted that he specifically moved to his current home because it was in a rural-agricultural district. He stated that he was concerned with statements about possible future expansion and/or use as residential.

The Chair asked for input supporting the proposed change of business. There was none.

Hallahan gave a bit of history. He noted that the town does not have a commercial zone. The lack of a commercial zone means that the town makes provisions for business on a case by case basis. He stated that the town has been fortunate in that businesses that have been do not seem to present much of an issue. The town does want to permit well run businesses to locate here. Hallahan stated that the Board does want to represent the townspeople and also be supportive of bringing businesses to the town.

The Chair asked what level of noise Bruzga would anticipate. Bruzga stated that on a typical day, there might be vehicles coming and going at the start of the day and then again at the end of the day. Hallahan asked about what sort of trucks. Bruzga stated that he has pickup trucks and three small one-ton dump trucks. Trucks would be parked overnight and if someone needed a truck for pickup or to take to a jobsite, then they would come and take the truck and then return it when their work was done at the jobsite. Bruzga noted that it is most cost effective for him to have employees drive themselves and meet at the jobsite – so they do not pay for drive time.

The Chair pointed out this is not a nursery; it is a design build landscape business. Danielle Huntley, Nancy Fadden's daughter who lives with her mother, spoke expressing concern that she was not hearing hard and fast plans for how the business will be run. Headley stated that it is important that those with concerns understand that as far as concerns for what if and the future possible changes of use and/or expansion that the applicant would have to come back

for new approvals. The scope of the Board's work is not to prevent possible expansion and/or changes at a later date

Bruzga reiterated that he is a landscape architect, and the business is a design and build firm. He said that means that he does the "up-front work". He provides services, for example doing the designs and permitting. He also does build the projects. He stated that he is not Scott's Landscaping. He does not keep loam or bark mulch or other nursery materials on site. He does have trucks so if he needs to move something from one site to another or pick up something he has an employee take a truck to do that. Hallahan stated that this really is not the business that people are thinking it is. It is not comparable to Scott's.

Hallahan asked about noise. Bruzga said that there will be some noise when trucks come and go, typically in the morning and afternoon. Bruzga further stated that he could not get more specific about exactly how many employees or contractors and what times they might drive in and out. Huntley spoke up stating that she was concerned about what the business might do in the future and felt that once this application was allowed the applicant could do what he wished. She also stated that they were concerned about a drop in property value. She further stated that the town record showed that the original Special Exception given Larry Smith for his sign business was "for Larry Smith only". The LUC addressed this explaining that the Special Exception was given in the late 1990's and current state statute says that Variances or Special Exceptions are given for the property not to an individual. The LUC further stated that it isn't an issue anyway because this is a new Special Exception for a change in business. Hallahan addressed this further reading from the Zoning Ordinance.

McGee asked about what conditions would require that the applicant come back for approval. Hallahan explained that there are changes that he could make that would not require a new approval. There are changes that might require Zoning Board approval. There are some that require Planning Board approval. Hallahan addressed the issue of property values. He explained that the only way that decreasing property value could be used is if an expert were to appraise the property and argue that effectively which is quite difficult. Bryant addressed this explaining that in his working career he had opportunity to see situations where neighbors were concerned about decreasing values and those concerns were unfounded.

The Chair moved to close the public hearing and go to deliberations on Case 2013-09. The motion was seconded and voted unanimously.

Hallahan explained for benefit of those interested parties in attendance that the Board would now proceed to discuss the various aspects of the case and the input from the public. He suggested that they could stay or go as they wished but he could not tell how long it would take. The question was posed as to how they would know the results. The LUC explained that the minutes are posted on the town website within a week or a telephone call could be placed to the Land Use Office at Town Hall and she would reply with the results.

Lick spoke up and addressed the interested parties in attendance. Lick explained that there was a next step in which the details are worked out. He further explained that the purpose of this Zoning Board hearing is to address the change of use and whether the use is appropriate

and that some of their questions relate to Planning Board issues that are part of the Site Plan Review process and are not dealt with by the Zoning Board of Adjustment. He gave the example of commercial vehicles on the site; the Planning Board could put conditions on such as screening with trees, proper grading of the parking lot, and other site considerations. The LUC added that the same abutters who received notices for the Zoning Public Hearing would also receive notices if the applicant applied to the Planning Board for a Site Plan Review and that both steps were necessary if he was to be able to use the property in question for his landscape design and build business. Hallahan thanked the abutters for their input.

Hallahan moved to close the hearing to further input and begin deliberations; it was seconded and voted unanimously.

The Chair asked for comments from Board members. Headley said that he did not see that this usage would be much more intensive than what is there currently. He understands some of the abutters concerns; but feels that on balance this is a reasonable use. Canane addressed the abutter concern that the applicant could rent to any sort of business. He said that the application was for this landscape architect business and requires a Special Exception because it is a change of business from the former sign business. If the applicant, after being approved for his landscape design business, wanted to rent the building out to still another totally different type of business, he would have to apply for a Zoning new Special Exception for that type of business before doing so. There was a discussion about whether to simply approve for "office space" as a generic approval for any type of office use.

Lick initiated a discussion about whether approval should include mention of and/or limitation of commercial vehicles on site. Lick said this was his most significant concern relative to approval and he sensed that was true for abutters. The discussion then moved to noise levels and how different the noise would be from current noise level with the barn right on route 114. Canane said he understood why the abutters were looking for more specifics. He gave the example of how different makes and models of truck have very different levels of noise. Hallahan did note how much traffic has expanded on Route 114 in recent years and how much noise they contribute and he did not feel that they could limit based on truck noise. Lick confirmed that he could not see how to limit on this basis as, in a rural-agricultural district, there is nothing to keep a property owner from taking out large and noisy equipment to do work in their fields, nor can a business or property owner do anything about someone who has a vehicle with a loud muffler.

Lick then asked the LUC about Planning Board procedures and whether they would or ever have taken up issues in connection to parking. The LUC replied that she was very familiar with a recent case where the Planning board both addressed parking and specifically the conditions placed on the business in connection with the numbers of staff and hours of operation and that those conditions were, in part to address traffic and parking issues. She said that the Site Plan Review is to determine the appropriateness of the Site for the proposed use and that review includes parking and driveway and traffic and in detail.

There was further discussion about approving this and of how to phrase the motion to approve. Lick suggested that they be careful to make the decision generic enough so that the applicant can use the building in a reasonable way for his business; but make it specific enough so that substantive change comes back to the Board. Sweet suggested that the approval be for just what the applicant is requesting. Canane agreed saying that it does seem the Board is in favor of approval and, if so, just approving what was requested makes sense. Headley cautioned that just saying it was approved for “a landscape business” could result in a different use than the Board was approving, that is for the type of landscape business that stores materials and has more of a retail exposure. There was some suggestion that the applicant’s letter describing his business be incorporated in the decision.

Lick reiterated that he was still in favor of going with something more general. Sweet suggested that if there was a future question about something similar being a change of use or not, the people involved could simply ask the Zoning Board whether it represented a change of use or not. Sweet explained that he did not see how a motion to approve “office space” would cover the possible storage of equipment on the site. Hallahan said he does not see how they cannot address the change from sign business to landscape design business. Canane reiterated that he really likes the fact that a change of use prompts additional consideration and/or action on the part of the Board and to that extent he is not in favor of a more generic approval.

The Chair called for worksheets on Case 2013-09, Bruzga. Members completed their worksheets. There was agreement that the proposal met the requirements for a Special Exception. The discussion of appropriate conditions included the requirement for NH DOT approval of a driveway permit and possible screening of the parking area.

Asked for Lick’s suggestion on wording, he stated that he would suggest approval including limitations and requirements set forth in the applicant’s October 15th letter. The LUC asked whether she should simply scan the letter and incorporate it into the approval. There was some discussion about this and it was agreed that they would not incorporate the entire letter.

Lick moved to approve the applicant’s request and allow a change of use such that the building can serve as professional office space. There was further discussion about how to address parking and storage and leave it open for the Planning Board to handle the details. Sweet suggested that some language that makes clear that the business is architectural landscaping design and build firm is important. The LUC agreed with Sweet that there needs to be something other than just office space for the Planning Board to take up specific considerations relative to the “landscape design and build” nature of the business. There was also discussion about whether to specify hours for the business to be in operation. It was agreed not to specify hours in the

LUC was asked to read back what was being suggested as language. She read: **a motion “to approve the applicant’s request for a Special Exception to permit a change of use such that the applicant can use the property as professional office space for use in a landscape architect**

design-build business with allowance for business related accessory parking of registered related commercial vehicles; however, there is to be no onsite storage of materials and waste products from landscape construction will neither be stored nor disposed of on this property.” Lick moved and Canane seconded and it was approved unanimously.

Canane asked if the fees have been paid and the LUC stated that the fees were paid.

Hallahan asked the applicant to send the LUC photos of his current business.

This ended the public hearing on Case 2013-09, Special Exception.

Hallahan noted that in the members’ packets, there was an article that appeared in Town & Country regarding how to structure conditions which he suggested that they read.

Minutes from the last meeting: Hallahan moved to approve the minutes of September 18, 2013. Headley seconded the request and it was voted unanimously to approve.

Other Business: Sign Ordinance- The LUC explained that there had been a discussion at the last Planning Board meeting about issues and a lack of clarity that exist with the Zoning Ordinance for signs. The issue came up in connection with the Dr. Kuhlman sign. The LUC further explained that the Planning Board felt it should be clear that the measurement was for both sides if the sign was two sided and that the Planning Board asked that the LUC suggest that the Zoning Board of Adjustment members take up a revision of the sign ordinance to expand and clarify the requirement for signs. Canane said he did not think the intent was to use both sides in the determination of size. Members agreed to look at it the sign ordinance. The LUC said that she would find other examples and forward them to members for their consideration.

ZBA Fee Structure- There was also a discussion about the fee structure that had been recommended. The LUC provided an analysis of the impact of the proposed changes. The recommendation for fees proposed was as follows:

<u>\$50 fee</u>
Temporary trailer requests
Construction of accessory building
Construction of addition to existing building
<u>\$100 fee</u>
Construction of new residence
Construction of wind turbine (primarily for on-site personal use of the applicant)
Requests for approval of home occupation
Requests for approval of application of sewage sludge
<u>\$200 fee</u>
Construction related to business or industry

<u>\$500 fee</u>
Construction of PWSF
Construction of wind turbine (those not primarily for on-site personal use of the applicant)
<u>Applicant pays at actual cost</u>
Newspaper Notices
Mailings of Other Notices
Any additional copies
Registry fees

The effect of these changes would be to slightly reduce the cost for simple types of appeals such as setbacks for sheds, garages, additions and the temporary use of construction trailers; and to increase the cost of the more complex business construction and at the high end of the scale, the very complex cell tower and wind turbine appeals. The LUC noted that she had completed an analysis of the past two years' worth of revenues from fees, \$2,916.00 for the ZBA cases, and what the revenue would have been had the new structure been in force, \$3,660.26. The overall fees were slightly reduced with the exception of the ITW Cell tower appeal fee. The place where the positive impact is felt is in moving from a flat \$30 fee for newspaper notices to billing at cost. Frequently applicants were asked to pay \$30 when the actual cost to the Town was \$56 or more for the notice. Individual amounts are relatively small; but it adds up. For the ZBA, changing newspaper notices to "cost" adds about \$290 and being consistent in collecting all MCRD costs adds more than \$100 over the period of a couple of years.

The members approved having the proposal passed on to the Select Board for their approval and asked the LUC to do that.

Next meeting is to be held Wednesday January 22th, 2014 at 7pm.

There being no further business, the meeting was adjourned at 10:34 PM.

Respectfully submitted,

Laurie Hayward

Land Use Coordinator