

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
June 18, 2014

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

Bill Hallahan, the Chairman of the Zoning Board of Adjustment was present. He asked member Derek Lick to Chair the meeting as he had very recently had eye surgery.

The meeting was called to order at 7:05 PM, by Derek Lick, Acting Chair.

Public Hearing, ZBA Case 2014-06:

Lick, the Chair, opened with information on the process. The Chair asked the LUC to read the notice for the, Case 2014-06. The LUC read the notice.

“You are hereby notified of a Public Hearing to be held on **Wednesday, June 18, 2014** at or around 7:00 p.m. at the Pillsbury Memorial Town Hall, 93 Main Street, Sutton Mills, NH, concerning a request, **Zoning Board of Adjustment Case 2014-06:**

By Peter Moulton, applicant, 38 Shaker Heights, Sutton, Tax Map # 09-718,376 for the following Special Exception under Articles V.B.6 and VI.A.: To permit a change in use of the property to include a landscaping business in a Rural-agricultural District.

Documents are available for your review at the Town Office.”

The Chair asked Peter Moulton to step forward. Moulton explained that he built a structure to house his business before he even built a house on the property. In 2002 he came to town hall for a building permit for the structure to house his business. In 2004 he got a building permit for his house which was built in 2005. Since he first started, his business has grown substantially. It began with him and his brother, two other employees, and two trucks. Currently, there are twelve employees, Moulton and his brother and 10 seasonal employees. Moulton further explained that the issues are noise and parking related.

Lick asked for an explanation about photos that Moulton had provided that showed parking and a number of vehicles. Moulton explained that when employees arrived in the morning, they park their vehicles and then drive off the property in the company’s trucks. Then, at the end of the day, employees return the company equipment and get back into their personal vehicles and drive away from the site. It was noted that employees park on common land, part of the cul-de-sac at the end of the road. Lick asked whether the employees could park on Moulton’s property near the garage. Moulton explained that there was not enough room for employees to do that. Board members reviewed the photos provided. Moulton explained what the photos showed, including that the property narrows near the shop and that limits the vehicles that can be in that area.

Lick asked about how the business has changed over time, Moulton explained that there were only a few employees at first. He now has 10 employees as well as his brother and himself. In the winter, the number of employees drops to 4-5. They have gone from 2 trucks to 9 trucks. Sweet asked about storage of materials; whether they did repairs; and whether they keep fuel on site. Moulton said that for the most part they store bark mulch on site and sometimes other items for specific customer projects. They keep limited amounts of fuel on site for use in their equipment.

Hallahan spoke asking Moulton about what happened when he first started the business. Moulton explained he got a building permit and the only thing he was asked was whether he did any retail business which he said he did not and does not do now.

Lick asked about possibilities of change so parking is on the property owned. Moulton showed the map and stated that the lot is narrow and there are wetlands; so, it might be difficult. There was a brief discussion about the common land and who owns it.

Canane showed the members a photo of the parking area taken this day. Moulton explained how the cul-de-sac and driveway were configured and that there are some wetlands near the drive on his property. Moulton noted that he understands the issues. There are times when they start early – spring, snow storms and that becomes a noise issue as vehicles are coming and going and being started. Hallahan asked how many trucks the business owns. Moulton stated that there are 10 trucks and 6 trailers. And they can just get their trucks on the property with employees parked on the cul-de-sac. Hallahan asked about expansion plans. Moulton said he can't say that they won't expand. Headley asked if the brother has a house nearby. Moulton said, yes, on Shaker Street; but, not near enough to provide additional parking for the business.

Hallahan asked if all of the residents currently living on Shaker Heights properties were there when he acquired his property. Moulton said, no that only one property has the same ownership and that is the Rosenthal property. The Corleys and the Faers moved after he started his business and the Hayes have not yet built on their property. The LUC added that Bruce and Cindy Dougherty own land behind the applicant and they were there before Moulton purchased his property. Hallahan asked if there was any land around the property that Moulton could purchase for the business. Moulton indicated that he did not believe so. Headley asked the LUC about other information in the town property file. The LUC replied that there were only the two building permits, the 2002 application for the garage and the 2004 application for the house, and a septic system design approval from DES. It was noted that the town tax card did not show a business at the location. There was some surprise expressed by the Board that the tax assessors had not caught that, especially as the business is not small. Lick asked if Board members had any additional questions before public input. Board members indicated that they did not.

The Chair asked if interested parties wished to speak. Dan Corley and his wife, Eileen, stepped forward. Mr. Corley spoke. He explained that they have a good relationship with the Moultons. He expressed that they are just concerned about going forward and wanted some agreement. He said the cul-de-sac has become a parking lot and that was not a problem when there were fewer employees. Corley explained that he is very concerned that the property could at some point be sold as commercial. He wants the property to be residential first and commercial is only secondary. They have and want to maintain a good relationship with Moulton. He said they do not want to oppose what the Moultons are doing and they want a long term plan in place. They just want to have certain conditions placed on the operation. Asked what they want, Corley said that they want the early in the day noise stopped and all vehicles moved onto the Moultons property not parked on the cul-de-sac. His long term concern is that he does not want to see the property someday sold as commercial. He also asked that start

up noise not begin before 6:30 AM. Hallahan asked if the Corleys felt that Moulton was responsive to their complaints. Corley said that he did not feel they were responsive to the parking complaints.

Mrs. Corley then spoke reiterating that she really likes the Moultons. She is concerned about the loss of peace. She expressed that the nice quiet place that they purchased ten years ago was no longer that and noise early in the morning and even on Sundays was a problem as well as "18-wheelers" being driven on the small road. She stated that their house looks upon 5-7 parked cars on the cul-de-sac and "everyday" a car comes with radio blaring and leaves the same way; their driveway is used for drop-offs and turnarounds. She stated that they have expressed concerns over the parking; but, nothing has changed. She pointed out that Moulton has asked her to notify him when there were issues; but, she does not want to do that anymore. She said that she really would like to see the noise decrease, the parking problems resolved so that she could get along with neighbors that she really likes.

Lick thanked the Corleys for their input. Lick asked for any additional comments from abutters. There being no answer from those present, Lick asked if there was correspondence. The LUC answered that the only input that she had was from Mr. Corley and he is present. Lick asked for any additional input. Sweet asked about the May 2, 2014 Select Board "cease and desist" letter which calls out "variance" where it should have been "special exception". It was also mentioned that the application should have had the Article and Section noted – the Article and Section was correctly noted on all notices.

Ed Canane addressed Moulton, asking whether he is aware of a case that they had with similar business and it was denied. He pointed out that they denied that appeal for a landscaping business in a residential district. Moulton stated that he was aware of that. Canane asked if Moulton has considered that his business is growing too fast for the location and he may need to move to a commercial location. Moulton said that they have considered it. Hallahan explained that he sees the business as only growing. Lick asked if there was any possibility that they could move the business to the back portion of the 7 acre lot. Moulton said that was not feasible due to the limitations of the land which is ledge and rock outcroppings on rugged, hilly land and not buildable. Lick called for any additional questions or comments before leaving the information gathering portion of the meeting and going into the deliberation portion of the meeting. **Hallahan moved that the Board close public input portion of the meeting and go into deliberation; Lick seconded and it was voted unanimously to close the public input portion or the hearing and begin deliberation.**

Canane referred again to photos he took today. Canane in particular was pointing out that there were pieces of significant equipment and that there would need to be noise abatement for equipment of the number, size, and type of equipment. Canane explained he understands the business issue; but he considers that the business has significantly outgrown the location. Canane proposed that the Board consider giving Moulton the ability to continue his business for this busy season; but, give a deadline at which time he must move the business. Hallahan expressed that he felt the same and saw the applicant finding another location for his expanding business that is more appropriate. Canane showed Board members more of the photos that he took earlier in the day.

Lick asked Sweet for his thoughts. Sweet said that he saw the issue of parking on the road as a big issue and it is a safety issue. Hallahan agreed that is a key point and that fire trucks might find moving on that road difficult. Sweet noted that someone cannot park on property not their own unless they have an easement to that land. He noted that, even if everything is parked on the Moulton lot, it may not be easy to resolve the sound issue. Headley said that he agreed with the comments so far. Headley pointed out that even if no expansion occurred; at this point the level of business seems excessive for the property. He noted that if someone came to the board in advance with a request for special exception on this property that he didn't think the Board would have any question about denying the request. Lick agreed with member comments. Lick questioned whether the Zoning Board of Adjustment could make a binding decision with respect to setting a time frame. He noted that

he did not think that stating a time frame by which the business must cease at that location was for the Zoning Board of Adjustment; but, rather, it would be for the Board of Selectmen to determine. Canane spoke saying that he agrees that the decision and feels that they should make a recommendation to the Selectmen. Hallahan confirmed that he was in agreement and felt they should deny the Special Exception and make a strong recommendation to the Select Board. There ensued a brief discussion about time to allow the business to relocate. Lick spoke, explaining that he feels they have no option to do anything but deny Moulton's Application for Special Exception. He feels they have no power or option to do anything else. Canane spoke up, stating that he feels that they can make a recommendation to the Select Board, not about a specific time limit but supporting that some consideration be given to allowing an equitable and reasonable approach to permitting the business to continue as they seek another location, keeping in mind that an expedited move is important for the benefit of the abutters.

Lick offered a motion that the special exception application be denied because it does not meet the five criteria required for a special exception and that the Board further recommends to the Selectmen that, given the unique situation, the Selectmen give the applicant until October 1, 2014 to abide by the Selectmen's cease and desist order. Hallahan suggested that they add the requirement they can continue as long as equipment does not operate between 7 am and 7 pm and that he should do everything that he can to park vehicles further up on his land. Lick revised his motion that the special exception be denied because it does not meet the five criteria required for a special exception and that the Board further recommends to the Selectmen that, given the unique situation, the Selectmen give the applicant until October 1, 2014 to abide by the cease and desist order, provided that the applicant take reasonable measure to limit parking on the road of his equipment and employees and to avoid operating his equipment before 7:30 AM and after 9:30 PM.

Board members discussed the motion. There was a discussion about the history, including that the original building permit should have been denied until a special exception was given for the business. The discussion included some question as to whether there might have been little concern because this was originally only a two-man business. Canane asked if this would happen today and Hallahan stated "no" this would not as likely happen today. It was pointed out that Members did not feel that Moulton was at fault in this at the point his business was a two-man operation; rather it was a mistake made by town employees back in 2002. Hallahan stated that was why it is important the Board give as much support as possible for time to relocate. He did add that he feels it was important that the Board recommend limitations to the way the business operates as discussed. Board members agreed to revise the time of operation to 7:00 AM to 7:00 PM. There was a brief discussion about what could be done by the applicant and it was agreed that the applicant could appeal the decision. Lick again revised his motion to: **that the special exception application be denied because it does not meet the five criteria required for a special exception and that denial is given with recommendation to the Board of Selectmen that the cease and desist order not be enforced until on or after October 1, 2014 provided that the applicant a) precludes parking on the roadway and b) does not operate the loud equipment from 7:00 PM to 7:00 AM.**

Hallahan questioned whether they should recommend more time. Canane suggested that there are alternatives for parking, including have employees park at a park & ride and then bring them to the site in a single vehicle. Canane stated that his point is that the vehicles should not be allowed to park on site. Canane added that the most important thing for him is keeping the applicant to the October 1 date. It was agreed that recommendation include that employees not park on the cul-de-sac and the applicant take into consideration the needs of the abutters. **Headley seconded and it was voted unanimously.** Headley questioned whether that would work as there are issues with acquiring land and moving the business. It was pointed out that the applicant did what he felt was right and the town did not seem to have an issue for more than 10 years. It was agreed that there should be a clear request that the Select Board take all these mitigating factors into consideration in permitting time. Lick noted they could recommend; but, it is completely the Select Board's decision whether to take the recommendation or to handle in any way that they determine is best, including setting a different time frame and different requirements.

Board members completed their worksheets.

Lick explained that Moulton has 30 days to appeal the decision. Lick explained that the statutes provide a process to appeal and that is through the state Superior Court. [LUC Note: The applicant was informed in correspondence sent to him along with the Board's Notice of Decision that he must file a motion for reconsideration with the Board within 30 days of the decision before proceeding to the state Superior Court if he wished to appeal the decision.] He further noted that the LUC has taken down notes that will be the minutes of the meeting and decision. Lick noted that everyone on the Board is happy that Moulton's business is expanding; but, the expansion is part of the reason the Board must deny the appeal as the business has outgrown the location and the Ordinances specify that the use not have an adverse impact on the abutters. Lick further told the applicant that if he has questions he should contact the LUC.

Moulton asked whether the fact that it is not a public road had any impact on the decision. Lick replied that for this case there was no impact. Lick explained that he thought it unfortunate that this did not come before the ZBA way back in 2002 and that presumably if it had, the questions today would have been answered back then.

Headley asked whether the applicant and the abutters could make an agreement about how to proceed.

Lick disagreed noting that he thinks everything is in the Selectmen's hands on how to proceed once the Zoning Board of Adjustment denies the appeal. Canane asked when the Select Board would act on the cease and desist letter. The LUC stated that she thought the Select Board would not act until the 30 day appeal period is exhausted. She explained that she would notify the Select Board of the decision. She explained to the applicant that he would receive a letter from him with the Notice of Decision and would include a copy of the minutes which would give him a run down on the decision this evening. Lick suggested that the applicant contact the Select Board.

Hallahan moved and Canane seconded and it was voted unanimously to close the Public Hearing.

Administrative:

Minutes from the last meeting: May 21, 2014 meeting minutes were tabled for the moment. Hallahan asked first to run down the Open Issues Report.

Reports: The Open Conditions Report- Hallahan explained that he met with the LUC and they went over the report, including the most recent statuses provided by the Code Enforcement Officer. The LUC explained that some issues had been resolved and would no longer appear on the report. She noted that the conditions on the Bourcier house as far as height confirmation and Fire Dept. approval were now complete and the Palmer original house has now been demolished as agreed. She asked about removing the Roger Wells/Heather Wells condition about the snow plow turnaround. She explained that the condition has not been met; but, the applicant has not changed the house configuration in the manner conditionally approved. Hallahan asked about the current town Road Agent and whether he wants the agreement for a turn around. The LUC did not know. Hallahan asked that the LUC follow up with the new Road Agent. Canane pointed out that he feels that where a Condition Approval is given; conditions should be met or the Conditional Approval shall be formally withdrawn.

Hallahan asked the LUC whether she had followed up on a question about time that came up at the last meeting. The LUC replied that she did have an answer and that variances that used to have one year, now have two years. The LUC told Board members that she would email them the RSA that states this. She further stated that she heard a recommendation that towns consider simply changing everything to two years that currently states one year as there has been some consideration at the state level of expanding this to include more than variances and special exceptions so that perhaps something like the time for significant completion might require at least two years. Hallahan questioned whether that would have an impact on conditions given by the Board. There ensued a discussion and

many questions. Lick asked to see the statute and Hallahan agreed. It was left that the LUC would send electronic copies of the RSA voted in 2013 to members.

Returning to the Conditional approval of the Wells design change, Lick said that he would like to see the Notice of Decision and read exactly how the condition was worded. The LUC agreed to send all members a copy of the decision. Lick stated further that he would like to, as Canane suggested, "close the circle" by registering something that revokes the approval if the condition will not be met. The LUC told members that she had seen a couple of rescissions that the Planning Board did and will check to see if that process would be useful in this case. The process is to place an agenda item; then take up rescission in the meeting; if approved, then give notices of approval with 30 days to appeal. The LUC noted that in cases she knows of, it is the applicant or owner that has requested the rescission. She is not sure if the Board follows the same process if it asks for the rescission because the Conditions have not been met. The LUC agreed to do some research on this one.

Hallahan then asked the Board to return to the approval of the minutes. **Hallahan moved that the Minutes from the meeting of May 21, 2014 be approved as written; Canane seconded and it was voted unanimously.** Hallahan added the caveat that the LUC must find out what is "timely" in terms of the most recent statutes.

Hallahan asked members whether they wished to discuss other possible changes to the Ordinance than the one regarding time for variance and special exceptions. Members agreed to no further discussion on changes to the ordinances at this time.

Other Business: Canane asked about the Walker appeal applications that the LUC had provided that were in the folders. Canane wanted to know what the applicant was seeking as the application states that there are no changes to the exterior. It was agreed that the application was about changing the structure to a two-family dwelling. It was agreed that Hallahan and the LUC will complete the review for the next meeting.

Canane expressed that he was very happy that there was now regular follow up on Open Conditions and there was general agreement amongst members that this was a useful and positive change.

Next meeting is to be held Wednesday July 16, 2014 at 7pm.

There being no further business, Hallahan moved and Headley seconded, and it was voted unanimously that the meeting be adjourned at 8:54 PM.

Respectfully submitted,

Laurie Hayward
Land Use Coordinator