

Board of Adjustment
November 13, 2012
Meeting Minutes

Board Members: Paul Jackman, Brenda Tilberg, Bob Stetson, Kevin Brown, Carol Clauss, Peter Grant, Ted Desmond

Public: Gail & Richard Butz, Jodi & Jason Lathrop, Jim Lathrop, John & Rita Elder, Bruce Duncan, Susan & David Folino, John Collins, David Brynn, John Moyers

Kevin called the meeting to order at 7:30.

Appeal of zoning permit #12-81, Richard & Gail Butz (Parcel #235127), requesting a variance to attach a shed to the rear of the garage, which does not meet side yard setback requirements.

Kevin swore in Richard Butz and had him explain his property and the location that he was hoping to build his shed. Richard explained that it would be off the rear of the barn and would be simply a roof with a gravel floor and poles. The side yard setback for the HDR district is 10 feet. The neighbor to the east, the Beck's, have a garage about 4 feet from their property line, and neighbor to the north, the Skeffington's, have a garage 10 feet or more from their property line.

Bob asked if they could put the shed to the west of the barn, but Richard said that there isn't enough room between the barn and the house. Brenda suggested that they put the shed as a separate building within the lot, Richard felt that this would take away from their yard. Paul suggested that they rotate the dimensions having the length be 19 feet and 12 feet wide. Richard explained that not only would this complicate construction, but there is also a hill there that would prevent them from being able to build that.

He thought that his house was built in the 1850's and the barn was used for an old horse barn. Ted asked about the roofline of where the shed would be and Richard assured him that it would be just on the top of the proposed shed.

Kevin moved to approve application #12-81 under section 1009 in HDR district for relaxation of the side yard setback in this district is allowed due to development of the former village prior to zoning regulations. Bob seconded, all were in favor (7-0).

The appeal of Jason and Jodi Lathrop, abutting property owners, of zoning permit #10-84, David & Susan Folino (Parcel #060232) for a home occupation.

Bob recused himself for the hearing, but stayed at the table to be used as a resource.

Kevin swore in Jodi and Jason Lathrop. Kevin reminded the board that the first issue was whether this was a timely appeal or not. Jason told the board that the Folino's didn't post

the permit poster correctly. Kevin made note that the Lathrop's did know what was going on because Jodi had been in correspondence with Zoning Administrator, Bill Bryant. Jodi explained she didn't appeal the permit in 2010 because she had made the Town aware of what they were doing and thought that they had taken care of it. The main problem the Lathrop's have with the home occupation is the location of the barn and what they are doing in relation to the Lathrop's well. The Lathrop's wellhead is 150 feet from the Folino's septic which is uphill from the wellhead.

Jodi explained that they also have a problem with a humming noise coming from the barn any time in the morning or the afternoon, as well as the traffic going up and down the driveway.

Kevin referred the board to section 810 regarding noise. Ted asked the distance between the Lathrop's house and the barn. Jason guessed the house was somewhere between 500 and 600 feet.

Jodi inquired about the definition of a home occupation and the difference between that and retail business. Based on the information Jodi had gathered from the Folino's website it appeared that this was a retail business.

Kevin swore in the Folino's, John Collins was here as an attorney to represent the Folino's. John spoke about the argument of the posting. Dave did post the permit on the barn, but if you went to the end of the Folino's driveway this permit poster could be seen. He referred to court case 184-0-09 an accessory use permit. John then read excerpts from court case 4-1-10, 5-1-10, from the Supreme Court regarding posting which conveyed that even though there may be some defect in the posting of the approved permit an appeal shouldn't be granted because they did know what was going on.

John addressed the issue of the traffic on the common drive. Dave spoke to the board about how they previously had had tractor-trailer trucks using the driveway to get to their property to pick up their product. When this was happening it was about two trucks per year. In 2011, Jim had asked him to not have the tractor-trailer trucks driving up and down the driveway. After that Dave bought a trailer that hitched on this truck so he could haul the containers to an off sight delivery, since they have done this there has been no tractor trailer sights.

John addressed the issue of retail sale. Sue stated there weren't more than five customers per year coming to their house. Most of the retail takes place in stores that they deliver to.

John addressed the issue of the noise. Dave stated that the noise the Lathrop's were hearing could be the air compressor in the barn. The air compressor is used for a nail gun, and used for tools to pump syrup into containers. Kevin asked about the size of the air compressor, Dave thought it had about a 30 gallon tank, and this was never run after 11 pm.

John addressed the issue of the drainage. Dave stated that not just anything could go down the drain in the garage and there is no bathroom in the barn at all. Basically there are sinks where they rinse syrup off of things and out of containers. There is a floor drain in the barn, and there are no other exterior connections to the drain. Inside the barn there is a concrete floor with epoxy paint on it. The septic system is the exact same system that came with the property, which doesn't include a leach field.

2003 was when they started packing in their barn, and there are no solids that are going into the drain. Dave had checked their sewer again in 2006 and found that it was still empty from a previous pumping done in 2003.

Dave and Sue Folino have owned this house since 1998 and have run this business as their livelihood since about 2000. In 2003 they updated their packaging process. Dave also thought that this home occupation was about as invisible as a home occupation could be.

John stated that home occupations were in encouraged especially Maple Syrup production in Vermont. John read Section 503 and it was shown in the testimony that they have not created any nuisance for noise or traffic regarding this home occupation.

Kevin swore in Jim Lathrop. Jim stated Section 512 regarding non-conformities. This says you cant change the use of the building unless it is to a more conforming nature in a non-conforming lot. Kevin made the point that this is not a non-conforming use, but a non-conforming structure. Jim then stated his concern about the pollution of Jason and Jodi's well as well as expansion of the Folino's business and the traffic on the road.

Kevin moved that the board go into deliberative session at 8:46 regarding the appeal of Jodi & Jason Lathrop, Paul, seconded, all were in favor (6-0, Stetson recused himself).

Kevin motioned to deny the appeal as un-timely, Paul seconded, all were in favor (6-0).

Kevin moved that application #10-84 does meet the requirements of at home occupation as stated in 503, Peter seconded, all were in favor (6-0).

Kevin adjourned the meeting at 9:30, Paul seconded, all were in favor (6-0).