



TOWN OF WARE

Planning & Community Development
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Ware, Massachusetts 01082
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Meeting Minutes from **September 28, 2016**

Zoning Board of Appeals

Board of Selectmen's Meeting Room, 126 Main Street, Ware, MA 01082

- Present:** Phil Hamel, Lew Iadarola (Chairman), David Skoczylas (Alternate), George Staiti (Alternate)
- Staff:** Judi Mosso, Assistant to the Director
- Public:** (as taken from the sign in sheet and observation) Wayne Henrichon, Don Reynolds, Atty. Rich Maynard, David Day (sp?), Chris Rice, Anne Krasnecky, Paul Krasnecky, Bob Hutchinson, Robert A. Krasnecky, Atty. Mark J. Beglane, Melina Bourdeau (*Ware River News*)

Chairman opened the meeting at 7:00 pm.

1. Administrative

- a. Approval of Minutes from June 22, 2016 – **Motion** by D. Skoczylas to accept the minutes as presented. Seconded by P. Hamel. So voted 4/0/0.
- b. Other – no further applications are before the Board; members are encouraged to attend the CPTC fall workshops.

2. A-2016-01, Robert & Anne Krasnecky, of 6 River Road, Appeal Building Inspector decision re 17 River Road

This is an appeal for the July 16, 2016 decision by the Building Commissioner to not issue a cease and desist to Wayne Henrichon, owner of 17 River Road, to operate a junk yard; the Krasneckys argue that the junk yard is not a pre-existing non-conforming use. Chairman L. Iadarola opened the hearing at 7:05 p.m. and appointed alternate David Skoczylas and alternate George Staiti to the panel for this hearing. The Chairman also established ground rules for the hearing. The legal ad was read into the minutes and it was noted that all abutters were notified of this hearing. The Chairman also read a 9/1/2016 statement from Town Counsel, David Wojcik stating that the ZBA is the proper board to hear this appeal.

Comments from Building Commissioner/Zoning Enforcement Officer, Chris Rice

- He was asked to provide a finding; was provided a lot of information but had very little on the Henrichon property at the time
- The 7/10/2007 letter from then-Building Inspector Michael Agnew, stating that 17 River Road was “grandfathered”, was a major factor in Mr. Rice’s July 16, 2016 finding
- Was given an undated photo that disputed a property line and determined that a small portion of 17 River Road had been used in the past
- Ultimately, he made his determination based upon the information available to him
- W. Henrichon later stated the photo was from 9/4/1985
- C. Rice stated that issuing licenses was not in his purview
- G. Staiti questioned why the Board of Selectmen (BOS) would make a zoning determination

Comments from Attorney Mark Beglane representing Robert and Anne Krasnecky

- The Krasneckys reside at 6 River Road, across the street from both Henrichon properties (734 Belchertown Road [original junk yard] and 17 River Road)
- The photo that C. Rice used in his determination could not be from 1985 because other buildings in the photograph were built in 1989/1990
- The BOS are not the determining agency for zoning; do not have the authority to make such a determination
- R. Krasnecky purchased his property in 1982
- W. Henrichon bought 17 River Road in December 1998; submitted deeds of ownership (bought 732 Belchertown Road in 1984)
- Auto salvage not allowed on that property since 1987 (when zoning took place); in 1987 the zone was Rural Residential (RR)
- Property was not rented since 1982 (as W. Henrichon claims); affidavits from abutters regarding use were part of appeal application: not rented for auto and no evidence of rental agreement or payments
- Shared town images from 1983 showing open field/no auto use; if W. Henrichon went beyond the property line at that time, he would be trespassing
- You cannot increase a non-conforming use; he expanded but did not have the legal right to
- Building Inspector’s decision was based upon poor data
- Was supposed to be a ZBA hearing in 2007 regarding unregistered motor vehicles at the 2 Henrichon properties. Hearing was cancelled by the Town Administrator because it is a town bylaw, not a zoning bylaw
- Map from 1992 shows no auto operation
- License hearings by the BOS do not require abutter notifications so abutters are not aware of the right to object
- In addition to appeal application, submitted the following evidence to the Board:

- 1992 picture showing non-continuous use
- 2001 picture
- 2014 picture
- 1980 picture (open field)
- Timeline
- Krasnecky photos (2 pictures/page)
 - 1982 No Garage A; 1982 No Garage B
 - December 1996 w deer; 1983 No Garage @730 Belchertown Rd
 - No Cars; 1997 No Cars (snow covered trees)
 - Polaroid picture of River Road; 1987 bulldozer construction
 - 1987 No Garage; 1984 brush burning
 - No cars (winter picture w dog); No cars (sand construction)
 - 1987 bulldozer construction and enlarged images (4 pages)
- Krasnecky building permit 6/23/1983 (4 pages); attached plan shows 17 River Road lot
- Ware River News article, 4/29/1981 Ware Board Rejects Class II License Bid (at Quabbin Dairy Bar / 734 Belchertown Road)
- Ware River News article, 3/6/1986 Ware River Auto Source For Clean Used Cars, Top Service used cars, no junk yard; “Henrichon has operated the car sales and repair business on Route 9 in West Ware...for the past two years”, “Prior to opening the West Ware operation, he operated a garage on Aspen Street...”
- Ware River News article, 8/21/1986 Ware River Auto Can Provide Good Used Cars, Quality Repairs used cars, no junk yard
- Ware River News article, 4/2/1987 Ware River Auto Place For Clean, Economical Autos used cars, no junk yard
- Ware River News article, 8/13/1987 Ware River Auto Adding More Pickup Trucks 4-Wheel Drives used cars, no junk yard; “...Wayne reports, he is planning to put up a new 40’ x 70’ building on the site to accommodate a new body shop facility, complete with spray paint booth and frame machine repair area”; “...still doing business at the same old stand selling cars and trucks to area residents”; “gets involved in Ford restorations”; “opened his West Ware facility in June 1984 when he bought the property”; “performs all general repairs and also does body work”.
- Ware River News article, 7/7/1988 Ware River Auto In New Quarters “Now operating out of a new 70’ x 40’ facility”; “business, particularly in the auto body shop, is booming”; “been in business at the West Ware location...since 1984”
- 5/13/2015 Statement from Board of Assessors indicating assessments form FY1980 to FY1990 for 734 Belchertown Road: no junk yard
- Current Field Card from Board of Assessors

- 3/21/2007 letter to Town Administrator from Building Inspector Michael Agnew: 17 River Road was purchased by Mr. Henrichon in 1998; license for 734 Belchertown Road does not cover business at 17 River Road; use is prohibited; recommended removing all but one unregistered vehicle from 17 River Road
- 3/30/2007 letter to BOS from Planning Board stating that auto salvage at 17 River Road is not a pre-existing non-conformity and that auto salvage is not allowed in the RR1 zone
- 10/22/2009 letter to BOS from Planning Board stating that auto service, auto salvage and auto sales at 17 River Road is not a pre-existing non-conformity and not allowed in the RR1 zone
- Town Street Lists
 - 1982 lists W. Henrichon at 42 Aspen Street
 - 1983 lists W. Henrichon at 42 Aspen Street
 - 1984 lists W. Henrichon at 42 Aspen Street
 - 1997 lists W. Henrichon at 732 Belchertown Road
- Recommends that the Building Commissioner's decision should be overturned and any future class licenses should be corroborated before the BOS
- Stated that since the Krasneckys have complained, the work and noise at both sites have increased
- Paul Krasnecky spoke about the DEP and EPA regulations regarding junk yards and that if the junk yard is allowed to continue, it will encourage pollution. Attorney Rich Maynard, representing Wayne Henrichon, stated that DEP has approved activity.

Comments from Attorney Rich Maynard, representing Wayne Henrichon

- Submitted 7/10/2007 letter from then-Building Inspector, Michael Agnew, that 17 River Road is a pre-existing non-conforming use
- Stated that licenses issued by the BOS were for both parcels and that the Selectmen made a single determination
- The fact that licenses were issued by the BOS makes it a grandfathered use
- The 6/6/2007 letter to the ZBA, Building Inspector, and Town Manager from Town Counsel states that the ZBA is not the authority to review the lack of a cease and desist order; cited case law *Elio v ZBA (Barnstable)* which dealt with whether the ZBA is the appropriate appellate board
- Submitted copy of 11/12/1998 recorded plans showing lots owned by Henrichon, Pierce and Krasnecky
- W. Henrichon paid \$105 twice a year in 1985 to use 17 River Road and allowed encroachment less than 150'
- W. Henrichon was unable to obtain copies of licenses

ZBA Discussion

- 17 River Road now co-owned by W. Henrichon and Jesse A. Sorel
- No copies of licenses prior to 1987 have been submitted
- No copies proving renting the property have been submitted
- Reviewed copy of recorded plans showing lots owned by Henrichon, Pierce and Krasnecky; property line between 732 Belchertown Road and 17 River Road clearly marked back 200'
- How to determine BOS's intention whether licenses covered both parcels; Chairman Iadarola was in attendance at the 2007 BOS meeting and advised the BOS about the zoning restrictions. The BOS ignored his requests to not issue the license(s) for 17 River Road
- This will likely go to the courts but it is proper that the ZBA hears it first and makes a decision
- Hand drawn boundary lines are insufficient to make a determination
- Cars may have encroach onto 17 River Road property but that does not mean it was authorized or permitted
- If expansion is after 1987, use is subject to zoning

Motion by G. Staiti to continue the hearing to October 26, 2016 at 7:05 p.m., with the applicant's permission. Seconded by D. Skoczylas. So voted unanimously.

There was brief discussion about the proper appellate board.

3. Adjournment - **Motion** by G. Staiti to adjourn at 9:05 p.m. Seconded by D. Skoczylas.

Documents reviewed:

A-2016-01 application and supporting documents

Documents received:

town images from 1983

Map from 1992

1992 picture

2001 picture

2014 picture

1980 picture (open field)

Timeline

Krasnecky photos (2 pictures/page)

- 1982 No Garage A; 1982 No Garage B
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- No Cars; 1997 No Cars (snow covered trees)
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- No cars (winter picture w dog); No cars (sand construction)
- 1987 bulldozer construction and enlarged images (4 pages)

Krasnecky building permit 6/23/1983 (4 pages)

Ware River News articles:

- 4/29/1981
- 3/6/1986
- 8/21/1986
- 4/2/1987
- 8/13/1987
- 7/7/1988

5/13/2015 Statement from Board of Assessors

Current Field Card from Board of Assessors

3/21/2007 letter to Town Administrator from Building Inspector Michael Agnew

3/30/2007 letter to BOS from Planning Board

10/22/2009 letter to BOS from Planning Board

Town Street Lists

- 1982
- 1983
- 1984
- 1997

7/10/2007 letter from then-Building Inspector, Michael Agnew

11/12/1998 recorded plans

*Respectfully submitted by Judith P. B. Mosso
Assistant to the Director*

Minutes approved on:	_____
Lew Iadarola	_____
Phil Hamel	_____
Chuck Dowd	_____
Greg Eaton	_____
George Staiti	_____
David Skoczylas	_____