



TOWN OF WARE

Planning & Community Development

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Zoning Board of Appeals

Meeting Minutes from Wednesday, February 28, 2018

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

Board members present: Phil Hamel (Vice Chairman), Greg Eaton, Betsy Calvert, George Staiti (Alternate), Dave Skoczylas (Alternate)

Board members absent: Lew Iadarola (Chairman), Chuck Dowd

Staff present: Rubén Flores-Marzán, Director
Judi Mosso, Assistant to the Director

Public in attendance: Robert Krasnecky, Anne Krasnecky, Wayne L. Henrichon, David Day, Gary Moulton (surveyor), Anna Marques (Building Dept.), Mark Beglane, Nancy Talbot (Town Clerk/Selectman), Melina Bourdeau (Press), Stuart Beckley (Town Manager), Randy Letourneau, Kara Dempster, Kevin [illegible] (Palmer resident), Mike Grange, Chris Rice (Building Inspector)

Vice Chairman called the meeting to order at 7:01 p.m. and appointed G. Staiti as Chairman for this meeting and hearing, and appointed D. Skoczylas as alternate for the hearing. Pledge of Allegiance was said.

1. Administrative

- a. Approve minutes from January 24, 2018 – Motion by B. Calvert to accept the minutes as presented. Seconded by G. Eaton. So voted 3/0/0.
 - b. CPTC conference – Conference for citizen planners will be held on Saturday, March 17. J. Mosso will follow up with details as the date draws closer.
2. Appeal A-2018-01, Robert & Anne Krasnecky – G. Staiti opened the public hearing at 7:06 and announced housekeeping items, explained order of procedures and the hearing process, and expectations for conduct for everyone present. The legal ad was read into the minutes.

The Chairman provided background and history of the parcel in question to the newer members of the ZBA and as a refresher to other members. Tonight's hearing is about the December 5, 2017 decision (letter) by Ware Building Commissioner (BC), Christopher Rice stating the Mr. Henrichon is in compliance with the ZBA's 2016 Decision.

Attorney Mark Beglane, representing Mr. and Mrs. Krasnecky:

- 2016 decision allowed 40' from northerly boundary with one car high as pre-existing non-conforming use in the Rural Residential (RR) zone.
- In January 2017, the Belchertown Road parcel was sold to third party
- The Krasneckys took pictures before and after 12/5/2017 and believe that the owner is in violation of the 2016 decision
- Mr. Henrichon (owner) has been given one year and an extension to clear the property
- Surveyor says that the non-conformity extends beyond the allowed 40'
- Applicant is asking the ZBA to: overturn the BC's decision, impose daily fines, revoke the 2016 decision, and notify the Board of Selectmen that Mr. Henrichon is not in compliance and to recommend revoking the Class III (junk yard) license
- ZBA reviewed pictures taken of the parcel by the Krasneckys; stated that some items have been moved since the photos were taken
- The ZBA reversed [with conditions], the BC's decision in 2016 so anything beyond the 40' should have a cease and desist
- Submitted letter from Chris DiMarzio of the Planning Board to then-Planning and Building assistant Maggie Sorel dated June 28, 2010
- Requests sanctions/fines if they do not comply with any orders or extensions; looking for some kind of established consequences in the ZBA's decision
- At the very least, the Krasneckys want a definitive date with set penalties as incentives to remove the junk from the residential portion of the property; the cease and desist was overturned by the ZBA in 2016
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Discussion

- Some ZBA members conducted a site visit on Monday, February 26, viewed the fence; vehicles were stacked 1 high; also saw loader; observed a lot of scrap metal, campers, bottles, trucks and auto parts beyond the 40'
- Per G. Staiti, Mr. Henrichon said the box trucks were full of parts to sell
- Pictures were poor quality with dates filled in manually and G. Staiti does not support them as submissions for evidence
- Distance from fence to actual property boundary and while discussion is focusing on the fence, the actual 40' measurement is to be taken from the boundary line, not the fence
- P. Hamel stated that the 2016 decision was for the 40' only, not the remainder of the parcel

- G. Moulton, surveyor, stated that the Krasnecky's hired him to layout the 40" line. He observed the property marker (tape) and checked that against compass bearings, he did not enter the property and confirmed that vehicles were beyond the 40' allowance. Submitted surveyor page of aerial view with superimposed lines (pencil line is the 40' mark)
- There was discussion about types of junk
- There was discussion about the 2016 ZBA decision
- Mr. Krasnecky stated that Mr. Henrichon was supposed to remove white storage trailers in 2016
- C. Rice stated that he was surprised at the appeal and the scope of the discussion. The ZBA's scope tonight is deciding on his 12/5/2017 decision which is one point in time. His 12/5/2017 decision was based solely upon motor vehicles. ZBA Decision should have been clearer; he interpreted the ZBA Decision as best he could
- G. Staiti clarified the 2016 ZBA appeal decision stating that anything beyond the 40' was to be an immediate cease and desist.
- Discussion that junk license never mentions the 40'; C. Rice's decision was based upon motor vehicles and not general types of junk
- Mr. Henrichon stated that other properties in town have trailers and piles of scrap metal as well as unregistered vehicles; he feels bullied
- J. Mosso confirmed that the 17 River Road parcel was first issued a junk license in 2007
- D. Day stated that they have reduced the number of cars on the parcel and have followed what was in the 2016 ZBA decision
- C. Rice observed that in about one year, Mr. Henrichon reduced cars from approximately 164 down to 40 when scrap metal was not valuable; he is trying to work within his means. RR zone allows for 2 unregistered motor vehicles and trailers are not regulated – including trailer boxes and storage areas. He examined motor vehicles only in relation to the 2016 ZBA decision.
- S. Beckley stated that 2016 was well-written and clear: the non-conforming use was limited to the 40'; there are more options than just a yes or no, can give extensions, no need to jump to fines. Clarified that zoning is not licensing and that the Board of Selectmen is the governing body that issues licenses.
- There was lengthy discussion about accessory structures and storage; white box trailers could be used as storage and would be considered accessory structures, secondary to the primary use (single family residence)

The public portion of the hearing closed at 8:27 p.m.

ZBA discussion

- Discussion about accuracy of BC's interpretation of ZBA 2016 decision
- Reasonableness of applying fines to Mr. Henrichon
- G. Staiti apologized for an ambiguous decision in 2016

- G. Staiti stated that the 40' portion of the 17 River Road parcel has the junk license; beyond the 40' is not permitted or held as a pre-existing non-conforming use (junk yard). Beyond the 40' must be cleared out; the white box trailers are viewed as accessory structures. Scrap metal piles need to be removed especially if they relate to a business use because it is a RR zone. It is not the intention of the ZBA to put Mr. Henrichon out of business. It IS their intention to make a decision in order to instruct and guide the Zoning Enforcement Officer (aka Building Commissioner) and provide a deadline for completion.
- If Mr. Henrichon wanted to use his garage and work area for business, the BC would review criteria for a home business with him; a home-based business would allow more straightforward enforcement for the BC
- Atty. Beglane interjected that Mr. Henrichon's business is NOT confined to the home because parts and materials are in the exterior of the home. The Chairman reminded Mr. Beglane that the public hearing portion had closed.

The Chairman called a 5-minute recess (8:40 – 8:45 p.m.)

- Chairman G. Staiti again recognized the ambiguity of the 2016 ZBA decision, it should have addressed the entire parcel and not just the 40' allowance. If the yard is cleaned up, Mr. Henrichon would have to follow all current bylaws; the 40' cannot be changed at this hearing. A contractor business with external storage, etc. as a home-based business is NOT allowed in the RR zone.
- A Class III license issued which included the 40' language was submitted into record; license issued in a district where it's not allowed.
- Cannot have an accessory building in RR zone to store commercial parts; must fit nonconformity into the allowed 40'; the 40' is allowed and licensed but beyond that, it is not allowed by zoning OR by a Class III license.
- Discussion of clear, thoughtful motion

Motion by B. Calvert to put forth the following findings:

1. The ZBA conducted a site visit to the subject property on Monday, February 26, 2018, with the owner's permission;
2. At said site visit, members of the ZBA observed:
 - a. 40 vehicles within 40 feet of the northerly boundary, stacked one vehicle high
 - b. piles of scrap metal, car parts, and storage trailers on the remainder of the property (i.e. beyond the 40 foot approved area)
3. During the February 28, 2018 public hearing, the ZBA acknowledged the Zoning Enforcement Officer's statement that the wording of the 2016 ZBA Decision may have been misunderstood by the Zoning Enforcement Officer, who interpreted said decision to mean that the only restriction required and to be enforced was the 40 vehicles within 40 feet of the northerly boundary; and, based on that, he issued his decision of being in compliance

and to reverse the Building Commissioner's December 2017 decision with the following conditions:

1. Within the 40' feet from the northerly boundary (not fence line) of 17 River Road (Map 25, Lot 20), the owner is allowed to operate the junk yard business as a pre-existing, nonconforming use as determined by the ZBA in 2016, and by the fact that the Select Board has issued a Class III license for said property
2. Beyond the 40' feet from the northerly boundary (not fence line) of 17 River Road (Map 25, Lot 20), i.e. the remainder of the property, must be cleaned up including: removal of scrap metal, junk, vehicles beyond what is allowed by the town, car and vehicle parts
3. Recognizing the potential use of box trailers as storage, any accessory structures beyond the 40' feet from the northerly boundary (not fence line) of 17 River Road (Map 25, Lot 20), in the remainder of the parcel, shall follow current zoning
4. This Decision shall be in full compliance nine (9) months from the date of Certificate of No Appeal Being Filed issued by the Ware Town Clerk
5. Within the 40' feet from the northerly boundary (not fence line) of 17 River Road (Map 25, Lot 20), nothing shall be higher than 13'6" and any vehicles may be stacked a maximum of 1 car high.

Roll call vote:

Phil Hamel	No
Greg Eaton	No
Betsy Calvert	Yes
George Staiti	Yes
Dave Skoczylas	No

Motion failed.

Motion by D. Skoczylas to put forth the same findings and conditions except change Condition 5 to allow any vehicles to be stacked a maximum of 2 cars high. Seconded by P. Hamel.

Roll call vote:

Phil Hamel	Yes
Greg Eaton	Yes
Betsy Calvert	Yes
George Staiti	Yes
Dave Skoczylas	Yes

So voted 5/0/0

3. Other – none.
4. Adjourn – Motion by P. Hamel to adjourn the meeting at 9:35. Seconded by D. Skoczylas.

Documents reviewed at meeting:




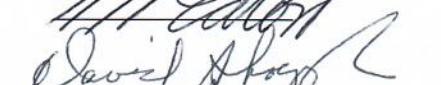

Minutes from January 24, 2018

Documents received at meeting:

- Surveyor's page of aerial view of 17 River Road with superimposed boundary lines
- Letter from Chris DiMarzio (Planning Board) to Maggie Sorel (then-Planning and Building assistant) dated June 28, 2010
- A Class III license issued which included the 40' language

Respectfully submitted by
Judi Mosso, MPA, Assistant to the Director

Minutes Approved on: June 27, 2018

Iadarola	
Hamel	
Dowd	
Eaton	
AH.	
AH.	