



# TOWN OF WARE

Planning & Community Development

126 Main Street

Ware, Massachusetts 01082

t. 413.967.9648 ext. 118 f. 413.967.9627

Meeting Minutes from Wednesday, October 26, 2016

## Zoning Board of Appeals

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

- Board Members Present:** Phil Hamel, Lew Iadarola (Chairman), David Skoczylas (Alternate), George Staiti (Alternate)
- Present as guest (non-voting):** Greg Eaton
- Staff:** Anna Marques, Assistant to the Building Commissioner
- Public:** (as taken from the sign-in sheet) Bob Hutchinson, Anne Krasnecky, Robert Krasnecky, Robert Grigas, Wayne Henrichon, Atty. Mark J. Beglane, Atty. Rich Maynard, Sue Bradley, Faye Bradley, Trevor Bleu, Randy Letourneau, Kara Dempster, J. Zolendziew (sp?), Kenneth Letourneau, Shawn Phillips, David Day (sp?)

Chairman opened the meeting at 7:00 p.m.

1. Administrative
  - a. Approval of Minutes from September 28, 2016 – A review of the minutes took place. Motion by G. Staiti to accept the minutes as presented. Seconded by L. Iadarola. So voted 4/0/0.
  - b. Participating board members - L. Iadarola acknowledged board member George Eaton, seated as guest for the meeting.
2. A-2016-01, Robert and Anne Krasnecky, of 6 River Road, Appeal Building Inspector decision re 17 River Road –

### Background

This hearing was continued from September 28, 2016 for an appeal to 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 continued

the hearing at 7:07 p.m. The legal ad was read into the minutes and it was noted that all abutters were notified of the hearing. The Chairman also established ground rules for the hearing.

Comments from Attorney Beglane representing Robert and Anne Krasnecky

- Picture from 1990 shows no operations at 17 River Road
- Any preexisting encroachment needs to be lawful to be considered
- Daughter of owner said the property was leased to another individual and not W. Henrichon
- With regards to M.G.L. Ch. 40A Sec.6, there were no permits granted to allow that use; per additional evidence in letter from Board of Assessors dated 10/25/16 that in 1986-1987, 17 River Road was not a licensed business
- Request for Cease and Desist Order due to illegal expansion

Comments from Attorney Maynard, representing Wayne Henrichon

- Requested Mr. Henrichon to describe the timeline of 17 River Road
- Mr. Henrichon stated that in 1981, he had a car license. In 1982, he was scheduled to purchase the land but the owner deceased the day before. In 1984, the wife purchased the land and he wanted to acquire a junkyard license but was told that the town was all out of junkyard licenses. Greenwich Road was a licensed junkyard so he purchased that license and transferred it to 734 Belchertown Road. At some point, Mr. Cady asked Mr. Henrichon to move cars from the Rt. 9 view. The following year, the Town told Mr. Henrichon he needed to apply for a junkyard permit. In 1987, Mr. Henrichon was issued the junkyard license for 17 River Road.
- When asked by Attorney if that was his first operated business, Mr. Henrichon replied it was just the one.
- The second license was requested by Building Inspector at the time. There was a Class III license for 734 Belchertown Road in 1987. With regards to 17 River Road, the Selectmen requested a second license be required. The second license was for 150 cars, including the berm on River Road, as written in the license. In 2007, there were 150 cars at the River Road property.
- Mr. Henrichon stated he was using (i.e. had cars on) the property (734 Belchertown Road and a portion of 17 River Road) in 1985. When asked by L. Iadarola how many cars were on the property, W. Henrichon stated there were 40, although sometimes up to a total of 100. A small, undated picture was used for reference with a dented car in the forefront and cars in the background – Attorney Beglane stated that Route 9 or River Road could not be seen in the picture.
- L. Iadarola referred to a 1993 map/photo for reference to frontage for discussion.
- With regards to a 2001 photo/map, Mr. Henrichon stated that was when they had the license and were using the area. When asked by Attorney Maynard if permits were taken out, Mr. Henrichon stated yes.
- Mr. Henrichon was asked what the arrangement with Mr. Cady was for the use of the land. He replied a payment of \$105, twice a year for taxes.

- A discussion over the photos continued. L. Iadarola asked why the cars were lined up in a line, Mr. Henrichon replied to get rid of the junk and place them under the trees. Questioned why soil was scraped, reply was to rid the weeds and grass, on his own with a John Deere Dozer.
- Attorney Beglane asked Mr. Henrichon what were the future intentions of the property. Mr. Henrichon stated that his livelihood is being voted on; his plans are to close in 5 years or so, upon retirement. At that time, loam will be placed on top and grass will grow back.
- G. Staiti inquired about the Big Boys Toys name on license. Mr. Henrichon replied that the new owner wanted the Ware River Autos name. Both licenses are under Big Boys Toys.
- P. Hamel inquired about the Class III license; the expansion to the back of the property to River Road – in the letter it stated to remove all but said number of cars, was it ever done? Mr. Henrichon replied that it was not.
- Attorney Maynard explained the 2007 happenings with 4 letters:
  - March 21, 2007 – Michael Agnew (Building Official) to Steven Boudreau (Town Administrator)
  - March 30, 2007 – Christopher DiMarzio, Ware Planning Board to Town of Ware, Board of Selectmen
  - May 11, 2007 – Attorney Douglas C. Walker to Michael Agnew (Building Official and Zoning Enforcement Officer)
  - June 6, 2007 – Attorney David A. Wojcik to Philip Hamel (Chairperson Ware ZBA), Michael Agnew (Building Official) and Steven Boudreau (Town Manager)

Town Counsel requested Building Department to decide if property was grandfathered or not grandfathered prior to zoning. Meeting minutes were unsuccessfully acquired. L. Iadarola said that the Board of Selectmen at the time determined it was grandfathered. Attorney Maynard stated that this property had a success of grandfathered use.

#### Comments from Public

- David Day stated that in 1983 he knew Bob Blakesley (sp?) and was associated with all the people there at that time. He remembers seeing the tractors, two 1972 Chevilles and where the trucks and cars were placed.

#### Close of Hearing

L. Iadarola asked residents to remain for questions and discussion. A four-person vote will be required to overturn the decision. Motion to close hearing by D. Skoczylas, seconded by P. Hamel. So voted 4/0/0.

#### Discussions

- A discussion ensued regarding the information on the photos keeping in mind that the zoning on April 13, 1987 was different from current modern zoning by-laws which delineated different districts/zones. The 1985 photo is a guess. The accuracy of the

line is a question. Mr. Henrichon was basing his point of reference on the second telephone pole and 200' estimation from the marker that is now in the road. L. Iadarola pointed out that the GIS map shows the line to be beyond the trees, not as drawn in on the photo.

- A count of the cars on the larger photo was conducted. Mr. Henrichon presented a photo. L. Iadarola will take Mr. Henrichon's word for the date of the photo to be 1985 and the 200' measurement from the road. The 1993 photo is similar to the 1985 photo, showing the pocket of cars still there. Mr. Henrichon stated that in 1987, there was probably the same amount of cars because in the fall, they would remove some of the cars because the area tended to fill in with water – as shown in 1992.
- L. Iadarola stated they may accept some cars were over the line or were not – given that there is not a photo/map from April 13, 1987.
- G. Staiti determined the premise of 16 cars in the 1985 photo, 16 cars in the 1993 photo and no info from 1987. He would contend it was in use prior to zoning by-laws, though non-conforming.
- A discussion regarding space allotment per car;  $8 \times 20 = 160$  SF per vehicle. P. Hamel inquired on definition of vehicle. G. Staiti clarified size and type not a factor. Keeping in mind it was a non-conforming use, perhaps allowing 16 and nothing else would be determined grandfathered. Additional expansions were without permissions.
- Board of Selectmen made decisions without zoning considerations. Zoning Board of Appeals can make determination without Board of Selectmen. D. Skoczylas commented that the logic made sense.
- L. Iadarola stated that there is no proof; cannot guess what happened at adoption of the bylaws. They can only base it on what information they have from before and after.
- G. Staiti commented on the validity of the point from Attorney Beglane that Mr. Henrichon may have used that area over the line – therefore trespassing. L. Iadarola replied that he sees the other side as well, over so many years – actions/uses are accepted. Attorney Maynard stated that trespassing is not a zoning issue and G. Staiti agreed. Attorney Beglane added that the land was not legally used. P. Hamel added that there is no jurisdiction and G. Staiti agreed. The problem faced is the non-conformance in use before the current members of the Board.
- Attorney Maynard offered his client Mr. Henrichon would not be opposed to a restriction on number of cars. L. Iadarola added that there should be a restriction regarding the northerly portion of the property adjacent to 730-732 Belchertown Road.
- David Day wished to state that there is a problem with enforcing a limit. He knows of 50 classic Mustangs currently on the property that are very important to the restoration business. Raised the question of eliminating cars after 20 years. G. Staiti replied that they are not eliminating cars but addressing the zoning question. L. Iadarola stated that he understood and appreciated the concern raised. D. Day added that there were more cars in the past.
- L. Iadarola asked about the distance restriction. G. Staiti considered 30 cars, maybe with a 20' distance but that would only be one car length. G. Staiti preferred a number of vehicles restriction as opposed to a distance boundary. L. Iadarola thought the

northern portion must be limited; offered a restriction based on a number of cars so many feet from the northerly border.

- Focus on number of cars; Mr. Henrichon stated the license was for 150 cars. G. Staiti replied that the license is through the Board of Selectmen, not the Zoning Board of Appeals. L. Iadarola was comfortable with the number of 30. P. Hamel added maybe 40, Mr. Henrichon added he needed space for parts. G. Staiti stated 40-feet with 30 cars. Attorney Beglane inquired the time frame for this action. L. Iadarola will ask Zoning Enforcement Officer (aka Building Commissioner) to oversee. L. Iadarola asked W. Henrichon if he would give up the junk yard upon his passing, Mr. Henrichon replied he'd rather have the 40 cars now. P. Hamel stated that the Zoning Enforcement Officer will work out the timing with Mr. Henrichon.

**Motion by G. Staiti to reverse the decision of the Building Commissioner to not issue a Cease and Desist Order to 17 River Road in Ware, for the portion of the property not considered to be a pre-existing non-conformity. The pre-existing, non-conforming portion is the most northerly portion of the property abutting 730, 732 and 734 Belchertown Road, represented by an area covered by 40 vehicles stacked one vehicle high within 40 feet from the northerly boundary of said property based upon the following findings:**

1. The lack of evidence of a Class III license being produced for 17 River Road for the time prior to the adoption of our current Zoning Bylaws dated 4/13/1987.
2. The testimony and photo provided by Mr. Henrichon claiming that in his best estimate that forty vehicles were stored on the neighbor's property prior to 4/13/1987.
3. Based upon GIS photos taken of 17 River Road in 2001 and 2009 and a site visit conducted this past month, a significant number of vehicles were added to the property after Mr. Henrichon purchased the property in 1998 and no Special Permits or Variances were applied for or issued to allow an increase of the non-conformity (i.e. expansion).
4. It is the opinion of the Zoning Board of Appeals that Robert and Ann Krasnecky have a basis for complaint due to their proximity to 17 River Road, and the expansion of the salvage operation and that the above remedy will minimize the impact of the non-conforming use.

Seconded by P. Hamel

**Roll call vote to reverse the decision as described in the Motion above:**

Lew Iadarola	AYE
Phil Hamel	AYE
Dave Skoczylas	AYE
George Staiti	AYE

**Motion by P. Hamel to adjourn the meeting at 8:15. Seconded by D. Skoczylas.**

Documents received at meeting:


5/11/2007 letter to Mr. Michael Agnew from Attorney Douglas C. Walker

6/6/2007 letter to Philip Hamel, Michael T. Agnew, and Steven Boudreau, from Attorney David A. Wojcik

10/25/2016 letter to Robert Krasnecky from Board of Assessors

Respectfully submitted by Anna S. Marques  
Assistant to the Building Commissioner, and  
Judi Mosso, Assistant to the Director,  
Planning & Community Development

Minutes approved on 12-15-16

Lew Iadarola 

Phil Hamel 

Chuck Dowd 

Greg Eaton 

George Staiti \_\_\_\_\_

David Skoczylas 