

Minutes of Meeting ~ January 23, 2007

Attendance: Ken Marcheselli, Mary Jane Dower, Elizabeth Morris, Elwood Findholt, Sam Sewall, Attorney for the Town Mark Schachner, and Secretary Pat Smith.

Purpose of the Meeting: An application was received from Dennis Halliwell and Ann Marie Kalajian regarding their property located on 88 Indian Springs Road, tax map parcel #120.6-2-25. The application will be reviewed by the Board to determine whether it is sufficiently different than the original application to allow its review as a new application, or whether a vote of the membership present will be taken in order to hold a re-hearing of the original application #362-V, (See ZBA Minutes January 24, 2006).

Chairman Marcheselli asked Attorney Schachner to explain the differences and the ramifications of both possibilities. Attorney Schachner explained that he could point out the ramifications, but there really was no "bright line" in the law as to what constitutes a new application, versus a request for a rehearing. "The applicant, by correspondence of December 29th, has taken the position that they have submitted a second area variance application, and I think they're urging you to consider it, if you will, as a new area variance application, but in the alternative, they're arguing that if you feel it does not warrant treatment as a new area variance application, then you should consider it to be a rehearing of the application that you previously heard and granted with conditions. Their position is that there has been a change in circumstances...and having reviewed the submission, I think that the contention is that the circumstance that's changed is actually the issue that you all included as one of your previous conditions of approval, namely the notification requirement, or requirement of notification of one of the neighbors..." "I believe that the applicant's position is that this should be treated as a new application because there's a change in circumstance, and the change in circumstance is that there is no longer a need for that condition, because that the neighbor has now been notified of the request for the variance." He explained that the neighbor has been notified in any number of ways, not the least of which, and there was no independent verification of this, is that applicant's counsel indicated that he had been sent a copy of the December 29th application, such as the Board now had in front of them.

Attorney Schachner continued that this was an unusual situation; that anyone can submit a new application for a new matter. Mr. Schachner, as the Town's legal counsel, did not see a fundamental difference in what was being applied for, and what was previously applied for, but that is one thing that should be considered, as a Board. Also to consider, whether the extent of the relief sought in this application is or is not different from the relief sought in the original application. If the application was fundamentally or materially different than what was originally applied for, then the Board would have an obligation to treat it as a new application. If it is not fundamentally different, then the Board would have an opportunity, but not an obligation to allow it to be reheard. He continued: "I say the opportunity and not the obligation, because the law is pretty clear that the

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Board is not obligated to rehear an application that has already been previously heard." He reminded the Board that if they decided to hold a rehearing, then all of the members present must vote to rehear it. Under New York State Law, if even one person felt that it should not be reheard, then it cannot be reheard. The vote must be unanimous.

If it were to be considered a new application, and was deemed complete enough for the Board to review it, then a public hearing would need to be scheduled. In the event of a rehearing, the same process would need to take place. Should just one person decide not to vote for a rehearing, then the matter is closed, and it cannot be reheard.

Chairman Marcheselli read the first couple of paragraphs of the December 29th correspondence from applicant's Attorney with regard to the application:

"Enclosed please find the original and 9 copies of a second application for an area variance for the above-referenced property." (Reference to enclosed check). "We are also asking, in the alternative, for the application to be reheard."

"Mr. Halliwell seeks a second area variance that would grant variances from the front and rear setback requirements. We also request that the new variance omit the condition requiring Mr. Halliwell to notify Mr. Pfeffer, the owner of the rear lot adjacent to the Halliwell-Kalajian property. The original area variance, granted by the ZBA in January 2006, required the notification and approval of Mr. Pfeffer. The ZBA has since suggested that the condition was truly a notification requirement and not an approval requirement. Mr. Pfeffer is now clearly on notice of the renovation plans, and his attorney is being sent a copy of this application for an area variance. Therefore, the circumstances have changed and a second area variance should be granted without the notification requirement. Mr. Halliwell does not object to the second condition on the original area variance, which required a vegetative buffer on the rear property line to screen the renovated home from the Pfeffer property."

"In the alternative, if the Zoning Board of Appeals ("ZBA") does not believe that a new application is needed, then we request that the ZBA consider this to be an application to rehear the original application for an area variance, dated January 2, 2006."

At this time, Attorney for applicant, Ilona Coyle of Caffry & Flower spoke, explaining the change in circumstances, basically that Mr. Pfeffer has now received notification of Mr. Halliwell's proposed building plans, and she feels that due to this fact, the application for an area variance should be heard as a new application. (Tape was very muffled and exact wording is not available). However, most was reiteration of former hearing, and that which was written in the December 29, 2006 correspondence, reviewed by the Board, and on file in the Zoning Office.

Chairman Marcheselli then asked whether there was any physical change in the application, as opposed to the changes in the conditions that had been set with the original request, to which Ms. Coyle replied there were not. Ms. Coyle then asked that the board would vote to rehear the application in the alternative, in the event that they did not feel that it was a new application, and to vote unanimously to do so.

Chairman Marcheselli stated that his problem was that he had not been present when the

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project was heard the first time, and had not heard any of the discussions that took place at that time. In reviewing the correspondence of December 29th, he feels that this is the same application as the first one and not a new application, but that a different result is sought, namely, without the

conditions that had been imposed. He went on to say that he felt that the applicant needed another "bite of the apple", no matter how it was done, whether by rehearing, or by a new application, and added that this was his own personal opinion.

Following brief discussion, Mr. Sewall made a motion to consider the application as a rehearing of application #362-V. Motion seconded by Mr. Findholt, with no discussion following. Motion carried 5-0 in favor of a rehearing which will be advertised for and held on February 27th, 2007 at 7:00 p.m.

BOARD PRIVILEGE: Brief discussion regarding the required 4 hour class that Board members are responsible for taking on an annual basis, and the possibility that Mr. Schachner could teach such a class in the event that we could consolidate a couple of Towns together.

MINUTES: On a motion by Mrs. Dower, seconded by Mrs. Morris, the Minutes of the October 24th meeting were accepted, as presented. Motion carried 5-0.

ADJOURNMENT: On a motion by Mr. Sewall, seconded by Mrs. Dower, the meeting was adjourned at 7:15 p.m. Motion carried 5-0.

Respectfully submitted,

Patricia M. Smith ~ Secretary

