

ZONING BOARD OF REVIEW MEETING MINUTES –November 15, 2018

State of Rhode Island

County of Washington

In Hopkinton on the fifteenth day of November, 2018 A.D. the said meeting was called to order by Zoning Board of Review Chairman Jonathan Ure at 7:00 P.M. in the Town Hall Meeting Room with a moment of silent meditation and a salute to the Flag.

PRESENT: Jonathan Ure, Joe York, Michael Geary, Dan Harrington; Alternate: Dan Baruti; Solicitor: Veronica Assalone, Town Council Member: Barbara Capalbo.

Zoning Board Clerk: Elizabeth Monty

Absent: Deputy Zoning Official: Sherri Desjardins, Ronnie Sposato

Absent: Philip Scalise

Sitting as Board: Ure, York, Geary, Harrington, Baruti

Applicant/s: Representative Steven Surdut for Edward + Julieta Sherman

Looking at the crowd present, Jonathan Ure suggested the Board move Petition I + II to the back half of the meeting.

Sitting as Board for this motion: Ure, Harrington, York, Geary, Baruti

A MOTION WAS MADE BY DAN HARRINGTON AND SECONDED BY JOE YORK TO MOVE PETITIONS I + II TO THE BACK HALF OF THE MEETING. ALL WERE IN FAVOR.

SO VOTED

Ure moved forward to present Petitions III + IV combining them together. (Representative, Attorney Steven Surdut of Comolli Law Offices was present on behalf of the Applicants.)

Petition III – Determine completeness of application/consider waivers.

A Petition for a Dimensional Variance filed by Edward & Julieta Sherman, with mailing address of 163 Canal St, Westerly, RI 02891, on behalf of themselves for property owned and located at 165 Ashaway Rd., Bradford, RI 02808, identified as AP 23, Lot 4 an RFR-80 Zone and filed in accordance with Sections 8C and 10 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Petition IV – Determine completeness of application/consider waivers. A Petition for a Dimensional Variance filed by Edward & Julieta Sherman, with mailing address of 163 Canal St, Westerly, RI 02891, on behalf of themselves for property owned and located at 165 Ashaway Rd, Bradford, RI 02808 identified as AP 23, Lot 4 an RFR-80 Zone and filed in accordance with Sections 8C and 10 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Mr. Ure states that as the Board is all aware this is Patceez. The Town and Mr. Sherman went to Superior Court and there was a Court Order handed down with a list of requirements for Mr. Sherman. Mr. Ure outlined the items. He proceeded to read the Court Order filed as of September 28, 2018. This Order will be Exhibit A and will be attached to the record per Solicitor Assalone (C.A. No. WC 2018-0442)) of the Town of Hopkinton V. Edward Sherman, Julieta Sherman d/b/a Patceez Garden Center.

Mr. Ure proceeded to read the entire Court Order.

(Concentration of the discussion was on Items #1 and #2, since timing was relevant for these items – each had to be completed within 45 days of the Order, dated September 28, 2018.)

“Order #1: Within forty-five (45) days of this order, the Defendants shall dismantle and remove from the Premises the five (5) unauthorized storage bins highlighted on Exhibit I attached hereto and highlighted in area “A” and no other bins will be located on the premises unless or until leave to do so may be granted by the Zoning Board of Review, without prejudice, following further application by the Defendants (handwritten) after the 5 bins are dismantled within this 45 day period, Defendants may temporarily store the blocks from the dismantled bins on the Premises at a location to be determined by the Town’s Deputy Zoning Official for an additional period of time not to exceed 45 days.

Order # 2: Within forty-five (45) days of this order, the Defendants shall remove from the Premises all materials that had been located within said bins, as well as all other raw materials that have been imported, maintained, stored and/or stockpiled into or upon the Premises for commercial purposes, for processing purposes, and/or for other unauthorized purposes and, subject to the approval of the Zoning Board of Review without prejudice upon further application by the Defendants, defendants thereafter may be authorized to import and maintain upon the Premises and only to be utilized by the Defendants’ pre-existing nonconforming garden center operation under such terms and conditions as might be specified by the Zoning Board of Review, a limited amount of mulch materials and/or other materials as may be allowed in the discretion of said Zoning Board of

Review;”

Mr. Ure proceeded to read the remaining requirements of the Consent Order.
(Please see attachment.)

Mr. Ure stated that his issue is that the Shermans have to comply with these pre-existing items before the Board goes any further. The Board needs verification that the Applicants are going to dismantle the mulch bins, remove the heavy equipment and the materials before the Board goes any further. Mr. Geary analyzed the time line to see if the Shermans would be in compliance as to the date.

They are at day 48 as of this meeting – He either has to get rid of the greenhouses and the sheds or he has to come in to apply to keep them. We need verification that this is happening. Maybe a site visit should be called because Mr. Ure is not comfortable that these things are happening. Mr. Ure recommends a site visit.

Mr. Surdut suggests some picture evidence within 48 hours that these items have been done.

Attorney Assalone stated that this would be to the Board’s discretion.

The Board discussed what exactly is required. The structures have to be dismantled or he can apply to keep them, but this is not are not really the issue since that is a 60 day window. The issue is coming in for the Pre-App to get the structures cleared when he hasn’t been shown to comply with the Order.

The Board discussed possibly looking at the Pre-App or making it subject to compliance. Ms. Assalone questioned how the materials being moved would be proven in photographs. Mr. Surdut discussed this question. Mr. Ure did not believe photographs would show this. Mr. Surdut told the Board they are certainly welcome to make a site visit.

Mr. Baruti inquired of the Applicant’s Representative, Attorney Steven Surdut if the bins had been removed. Attorney Surdut suggested that they have been. It was told to him by the Applicant that they had been removed by the Applicant. He had not been to the site personally.

The Board and Attorney Assalone discussed the type of site visit to be completed. Any site visit of three or more members needed to be publicly announced and that didn’t appear to be a problem. It would need to be posted publicly.

Dan H asked if the Shermans could just fill out an affidavit swearing and having it notarized that they have done both of the items (#1 + #2). We have a Court Order so that if they are lying to us and someone is notarizing that, there is a Court Order.

Ms. Assalone recommends it is at the Board discretion. Let the record reflect that there has been inaccurate testimony before the Court sworn under oath in the past. The affidavit is at the Board's discretion and is a decision that all of the Board can vote on.

Mr. Surdut stated that the Board is welcome to come to the site in whatever capacity the Board feels is appropriate. They will do their best to support this as is appropriate.

Discussion continued of the affidavit with photos and a site visit. Mr. Ure felt that a site visit is necessary and is willing to go out. He prefers to go out and look at the site.

Ms. Assalone stated that a casual site visit could be done anytime and would suffice as long as Mr. Sherman is present and allows access to the site and no more than two members go to the site. An Affidavit is a good idea. Mr. Ure inquired of Mr. Surdut if these items are easy to see at the site. Discussion followed.

For the record, Mr. Harrington drew attention to the Survey dated October 23rd by Mike Fontaine. He has done all the work out there so far. He doesn't show any bins on the survey. He is a certified Surveyor and he notes the sheds and greenhouses, but not the bins on the survey. The topography and dimensions of the structures are shown on the survey, as well as the berm. He doesn't show proposed bins even though they are part of the application.

Mr. Baruti questioned if Mr. Surdut suggests the Applicants will be in full compliance.

Mr. Surdut suggested they are in compliance with paragraph 1 and 2.

Mr. Ure stated that they need to do some type of site visit. Materials are still the issue since the survey doesn't show the bins and the materials.

Mr. Surdut asked Ms. Assalone if there are less than two members of the Board making the site visit is it not considered a public meeting? Ms. Assalone confirmed. It is at your leisure and convenience before the next meeting that an informal site visit take place and the applicant brings in an affidavit – will that suffice for the Board?

Mr. Baruti raises a point – is it his plan to bring this in full compliance with the Court Order to satisfy all the conditions before bringing the site visit, even the conditions that are not due for the 60 and 90 day deadlines? Or does the Board want to wait until all the other things are complete?

Mr. Ure stated that all items do not have to be complied with unless he applies to keep the structures, etc. Number 7 on the Order is what they are meeting for

tonight. The other things that were brought up have to be complied with before going forward.

Mr. Harrington noticed on the survey the addition of the proposed berm so as it raises the elevation one foot higher. This will divert the water to where it has always gone.

Mr. Geary wants to get some of the items cleared up to avoid carrying the list forward.

Mr. Surdut noted that Mr. Comolli will be away from Dec 11 – 17th. Suggests we continue this matter for compliance to December with a hearing to be set for January. Mr. Comolli will conduct the hearing. The board will have two months to ensure if Mr. Sherman is in compliance.

Mr. Ure was concerned that this would move the deadline farther down the road, and possibly put the Shermans out of compliance with the Order.

Ms. Assalone brought up the Affidavit. Plus no more than two at a time you (the Board) can see for your selves via an informal site visit. He didn't have to remove the structures because he applied for Pre-App in time. With respect to Paragraph #8 Mr. Sherman presented a plan shown by Exhibit I as attached to these minutes. After discussing with Mr. Surdut Ms. Assalone asked for clarification that Mr. Surdut was asking for Pre-Application in December and Hearing in January. He was.

Following discussion the Board decided to continue Petition III + IV until the December meeting, agreeing to an informal site visit by one or two Board Members to determine whether necessary items were completed as required by the Consent Order prior to filing of the new applications.

Sitting as Board for this motion: Ure, Harrington, York, Geary, Baruti

A MOTION WAS MADE BY DAN HARRINGTON AND SECONDED BY
JOE YORK TO REQUIRE APPLICANTS TO PROVIDE A SWORN
AFFIDAVIT WITH PICTURES THAT ITEMS #1 & #2 ON THE COURT
ORDER HAVE BEEN MET AND THAT THE BOARD WILL SCHEDULE AN
INFORMAL SITE VISIT OF TWO OR LESS BY CONTACTING THE BOARD
VIA THE CLERK TO GIVE PROPOSED DATES FOR A BOARD MEMBER
OR TWO TO VISIT THE SITE AND TO MOVE THESE PRE-
APPLICATIONS TO THE DECEMBER MEETING AND THAT THE

APPLICANT FILED HIS APPLICATIONS ON NOVEMBER 5TH, 2018

MEETING HIS 60 DAY REQUIREMENT PER THE COURT ORDER.

IN FAVOR: URE, HARRINGTON, YORK, GEARY AND BARUTI

OPPOSED: NONE

SO VOTED

Petition I – Determine completeness of application/consider waivers.

A Petition for a Dimensional Variance filed by Anthony Apice, with mailing address of PO Box 354, Hope Valley, RI 02832, on behalf of The Hope Valley Grange of 1116 Main Street, Hope Valley, RI 02832 for property owned and located at 1166 Main Street, Hope Valley, RI 02832, identified as AP 28, Lot 145 an RFR-80 Zone and filed in accordance with Sections 8C and 10 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Petition II – Determine completeness of application/consider waivers.

A Petition for a Dimensional Variance filed by Anthony Apice, with mailing address of PO Box 354, Hope Valley, RI 02832, on behalf of The Hope Valley Grange of 1116 Main Street, Hope Valley, RI 02832 for property owned and located at 1116 Main Street, Hope Valley, RI 02832 identified as AP 28, Lot 145 an RFR-80 Zone and filed in accordance with Sections 8C and 10 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Applicant is not present.

Sitting as Board for this motion: Ure, Harrington, York, Geary, Baruti

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY DAN HARRINGTON TO MOVE PETITION I + II TO THE DECEMBER MEETING DUE TO INCLEMENT WEATHER.

IN FAVOR: URE, HARRINGTON, YORK, GEARY AND BARUTI

OPPOSED: NONE

SO VOTED

Sitting as Board for this motion: Ure, Harrington, York, Geary, Baruti

A MOTION WAS MADE BY JOE YORK AND SECONDED BY MIKE GEARY TO APPROVE THE MINUTES OF THE JUNE 28, 2018 ZONING

ZONING BOARD OF REVIEW MEETING MINUTES –November 15, 2018 - continued

BOARD MEETING.

IN FAVOR: URE, HARRINGTON, YORK, GEARY AND BARUTI

OPPOSED: NONE

SO VOTED

Sitting as Board for this motion: Ure, Harrington, York, Geary, Baruti

A MOTION WAS MADE BY DAN BARUTI AND SECONDED BY JOE

YORK TO ADJOURN THE MEETING AT 7:50 PM

IN FAVOR: URE, BARUTI, HARRINGTON, YORK, AND GEARY

OPPOSED: NONE

SO VOTED

Respectfully Submitted,

Elizabeth Monty

Zoning Board Clerk

Next meeting December 20, 2018

(Discussion took place of meeting to be December 13, 2018, but it was discovered 11/16/2018 that the Calendar was booked per Town Clerk due to a prior change.)