

**TOWN OF NEW HAMPTON
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
TOWN OFFICES
NEW HAMPTON, NH 03256**

June 26, 2013

MEMBERS PRESENT Mr. Hofling, Mrs. Erler, Mr. Frazier, Mr. Orvis, Mr. Tierney, Mr. Smith, and Ms. Karnis.

OTHERS PRESENT Secretary Mrs. Vose, Jeremy Hiltz, and Michael Sharp

CALL TO ORDER Mr. Hofling called the meeting to order at 7:00 PM.

Mr. Hofling advised that as Mr. Smith had been appointed to vote in place of Mrs. Erler, for the hearing on June 5, 2013, and as she was now present, it would be up to her if she chose to be a voting member tonight. Mrs. Erler recommended that Mr. Smith should continue as a voting member for tonight's proceedings as he had been part of the discussion since the beginning of this hearing process.

Mr. Hofling appointed Mr. Smith to vote in place of Mrs. Erler.

Mr. Orvis thanked Mrs. Erler for her years serving as the Chairman, for her leadership and dedication, and was glad she was willing to continue as a member.

**Cont. of PUBLIC
HEARING**

*Hilshar Associates, Inc.,
NH Route 104, Tax Map
R-4, Lot 92A for a
Variance from Article IV,
Section C.4.vii of the New
Hampton Zoning
Ordinance*

Mr. Hofling advised that this was a continuation of the hearing held on June 5, 2013, for Hilshar Associates, Inc. for a Variance from Article IV, Section C.4.vii of the New Hampton Zoning Ordinance.

He reminded everyone present that the board was in Deliberative session now and no more input would be taken from the public.

Mr. Hofling advised he has been on the Zoning Board of Adjustment since its inception in 1986. Over the years there have been many changes in law, including the courts and their interpretations of those laws. There have many changes in New Hampton's regulations over time, as evidenced by the revisions, and there will continue to be changes. After much thought he would like to make a motion that the board deny the variance being presented; that the board remand the application with all the minutes taken relative to discussion on the request, sending it back to the

Selectmen for their consideration, their thought process, their applications to the direction they'd like to see the town go and to work with the Planning Board to come to a conclusion that will be beneficial to all of New Hampton. He wants the application to be rejected, denied, and remanded back to the Selectmen for whatever considerations they may have.

Mr. Tierney seconded the motion.

Mr. Orvis asked where this leaves Mr. Hiltz as he has a deadline of July 7, 2013 on his business operation. Mr. Hofling advised that as this issue is being remanded to the Selectmen, Mr. Hiltz will have an opportunity to speak with them. Mr. Tierney reminded the board that any enforcement issue would need to be handled by the Selectmen.

Mrs. Vose asked the board if they were going to make findings on the criteria and Mr. Hofling said they were not. Mr. Frazier asked if this might cause the issue to come back before the ZBA and Mr. Hofling advised that it could happen. Mrs. Vose stated she had never heard findings not made and Mr. Tierney advised the board that they had to make findings to state why it's being denied. Mr. Hofling said the variance application is not the appropriate direction for this specific application. Mr. Tierney asked Mr. Hofling if what he was saying that, in this particular case, this application is not appropriate and proper, and should go back to the Selectmen. Mr. Hofling agreed. Mr. Orvis asked Mr. Hofling if there was another direction that the applicant should take and Mr. Frazier expressed concern that this issue could go back and forth between the Selectmen and the ZBA. Mr. Hofling stated he could not advise Mr. Hiltz but feels that the Selectmen will consider the ZBA's thoughts about the application.

As Mrs. Erler was not present for the hearing when the original Hilshar application came to the ZBA three years ago, she asked if it had been for a variance. The board advised it was. Mrs. Erler said that this business could be looked at as agricultural or as retail. Mr. Frazier said his opinion was that this was not an agricultural use, but a retail use. Mr. Orvis advised that counsel had previously advised the board not to grant temporary variances – they should either be granted or denied.

As this is a procedural issue Mr. Tierney advised that instead of denying this application the board should consider, for the reason Mr. Hofling stated previously, that the application be rejected, not denied. Mr. Hofling agreed.

Mr. Tierney made a motion, seconded by Mr. Smith, to amend the original motion changing the word “deny” - to “reject”. The vote was unanimous.

Mr. Orvis asked if Mr. Hiltz could meet with the Selectmen by his deadline date of July 7th and Mr. Tierney advised that the deadline is tonight with this hearing, but enforcement is with the Selectmen at whatever date that might be.

Mrs. Erler stated that this use is difficult as differing opinions could consider it agricultural, or retail, which are permitted uses in this district. Mr. Tierney pointed out the 10% rule is the issue here. Mr. Orvis agreed that this application should be rejected and sent back to the Selectmen. Mrs. Erler advised that the Planning Board should take a close look at the ordinance relative to the 10% rule. Mr. Frazier said that the nursery was approved and now all these uses are being discussed again and Mr. Hofling said this is all the more reason to review the ordinance.

Mrs. Vose advised everyone present that the Planning Board will be spending time over the next several months discussing the regulations, including the 10% rule, and welcomed anyone interested to attend and give their input, especially on issues that they have had several appeals for. She told them the Planning Board was also reviewing the recent Master Plan survey results and possible changes to that plan. Mr. Smith advised that the last few hearings have brought up the need for better definitions and clarifications.

Mr. Hofling asked for a vote of the board, for which a previous motion and second had been made, on the amended motion to “reject” the application and remand it back to the Selectmen. Vote passed unanimously.

Mr. Hofling advised Mr. Hiltz to meet with the Selectmen.

OTHER BUSINESS

Mr. Frazier said he wished more people would get involved in town affairs and attend these hearings when they get notice. He said it would be helpful to hear from them.

Mrs. Vose pointed out that it's very hard to get feedback from residents, businesses, etc. as evidenced by the small percentage of respondents to the Master Plan survey, low turnout at Deliberative Session and elections. She said the town tries as best it can to get the information out to people but there are not many that get

involved in the process.

Mrs. Erler said she remembered when the ZBA approved the nursery they had thought it was temporary and the board recalled that the nursery had a limitation on their lease and it was also understood that if KGI Properties was able to develop their property that the nursery would have to vacate the site. Mr. Tierney pointed out the biggest difference between the nursery and the other proposed uses using more than 10% for outside display is that it is more agricultural in nature.

MINUTES

Mr. Tierney made a motion, seconded by Mr. Frazier, to approve the minutes of 2/13/13 as written. Vote passed.

Mr. Orvis made a motion, seconded by Mr. Frazier, to approve the minutes of 5/1/13, as written. Vote passed.

Mr. Tierney made a motion, seconded by Mr. Smith, to approve the minutes of 5/14/13, as written. Vote passed.

Mr. Smith said that the minutes don't reflect the fact that he was an alternate member in some the minutes and thought that should be listed. Mrs. Vose advised that there is a list for each board and commission which lists who is a regular member and who is an alternate and if an alternate member is appointed as a voting member it is reflected in the minutes of that hearing.

The board began review of the minutes of 6/5/13 and determined that there were two statements that needed further review of the recording to be sure of what was said and Mrs. Vose said she would advise them at the next meeting what was stated.

ADJOURNMENT

Mr. Tierney made a motion, seconded by Mr. Frazier, to adjourn at 7.58 pm. Vote was unanimous.

Respectfully Submitted,

Pam Vose
Secretary