

Zoning Board of Adjustment

July 11, 2019

Meeting Minutes

1. Introductions

Board members present at the meeting were Willis Wood, Todd Hindinger, and James Cahill. Sven Fedorow, land use administrator, was also in attendance.

Nancy Lewis, David Lewis, Ashley Rittershaus, Barry Polidor, Anne Marie Hestnes-Harris, and H. Vern Harris were in the audience.

Prior to the meeting, there was a site visit at 6:30 PM at 4215 Route 106. All of the above listed Board members attended. Also, Nancy Lewis, David Lewis, Ashley Rittershaus, and Barry Polidor were at the site visit.

2. Call to order

Willis Wood called the meeting to order at 7:12 PM.

3. Appeal of Zoning Administrator decision regarding whether “junkyard” exists at 157 Moore Drive (Parcel ID 040229.7), Conservation (C-10) zoning district

Willis Wood opened the hearing at 7:14 PM by reading the Warning. Willis Wood knows Danny Barbour, but has not seen him for a few years. He feels that he can be fair for this hearing. Nancy Lewis, David Lewis, and Ashley Rittershaus affirmed. Nancy Lewis, David Lewis, and Ashley Rittershaus have interested party status.

Sven Fedorow stated that the Town manager has been up to 157 Moore Drive twice. Vincent Chiorgno, the State junkyard specialist, has been to this location too. Sven Fedorow and Vincent Chiorgno both made a determination that 157 Moore Drive did not reach the junkyard status according to the Town’s Bylaws.

Exhibit #1 was the packet which included a letter from Barry Polidor to Vincent Chiorgno dated June 26, 2018, a letter from Land Use Administrator to Nancy Lewis dated November 8, 2018, a letter from Barry Polidor appealing Land Use Administrator decision dated November 19, 2018, a letter from Barry Polidor to Vincent Chiorgno dated November 20, 2018, an email from Vincent Chiorgno to Land Use Administrator dated May 23, 2019, a letter from Daniel Barbour to the Town of Weathersfield dated July 3, 2019, and the file history (letters/emailed from April 10, 2013 to January 24, 2018).

Sven Fedorow stated that our Bylaws are ambiguous. The definition of junk in our Bylaws is similar to the State's. The State did not want to pursue this as a junkyard. James Cahill stated that in the documentation Vincent Chiorgno mentioned three unregistered vehicles. He wanted to know if there were any other criteria mentioned. Sven Fedorow stated that there was not. The State Salvage yard Rules is a 27 pages document that is fairly lengthy. The Town's Bylaws are based on the State's Statues. The Town should match the State's interpretation. He stated that he defers to a higher authority who is Vincent Chiorgno, the State's specialist.

Barry Polidor disagreed that the Town's Bylaws are based on the State's. He referenced 7.15, definition of junkyard. The State has a Statue that talks about "junk" and describes it. He proceeded to read it. The State letters/emails stated that they were done with this. They only looked at the vehicles at this site. There are more than three vehicles there that are dismantled. There is a drum up there and safety and welfare concerns. The State Statue (22.46) cannot be in derogations of the Town's Bylaws. The local ordinance prevails if it is the stronger one. The pictures that he presented were taken in the fall of 2017. The difference between then and now is that a camper and boat are gone. The wood pile and the blue truck are new. When the State first visited it, Vincent Chiorgno stated that he would work with Daniel Barbour to bring him into compliance. Barry Polidor wanted to know how Daniel Barbour is currently in compliance. On May 30, 2018, the State wrote to Barry Polidor and Daniel Barbour that it will do what is needed to come into compliance with the State.

Sven Fedorow stated that he is not sure where the boat and camper were when the State visited this location. He went up there later in the summer. The Town can be stricter than the State. There is nothing in the Bylaws where it has to be stricter than the State. There is the State regulations and the Bylaws have some definitions. It could be said that it affects the neighborhood if the Board finds that it meets the junkyard criteria.

Nancy Lewis stated that the previous zoning administrator said it would if things were bought or sold. There have been some things removed and some added. Sven Fedorow stated that sales does not determine if it is a junkyard. If there were regular sales, then it would be different. Sven Fedorow stated that the Town's attorney would look to see how the State would handle it and their definition of "junk".

Barry Polidor stated that in his first letter (November 2011) to Hal Wilkins, the previous zoning administrator, he included photos. In Hal Wilkin's letter (December 2011) back to him, he stated that it was clearly a junkyard and the Town's attorney, Chris Callahan, was in agreement. Sven Fedorow stated that he does not know what happened in 2017. These items are not in the file, or been recorded. The Board needs to make the decision now. Willis Wood read the letter dated July 3, 2019 from Daniel Barbour.

Exhibit #2 will be eleven photos presented by Barry Polidor taken in June 2018. Exhibit #3 will be twenty-three photos taken by Nancy Lewis in 2016 & November 2017. Exhibit #4 will be eight photos taken by Nancy Lewis in 2015.

Ashley Rittershaus stated based on the number of vehicles and other things there, she feels that it is a junkyard. David Lewis stated that it is a mess up there and the Town should want to keep it appealing. He feels it is a junkyard too. The Town might need to change ordinances or Bylaws. It has been an eyesore for ten years. Their neighbor built his house and then Daniel Barbour put his junk up there after. The neighbor had to sell his house for a lower price.

Anne Marie Hestnes-Harris stated that she has lived in other towns where they had ordinances as to how many unregistered vehicles could be at a location. Barry Polidor stated that the State says four or more. At one visit, there were only three. From 2017 to June 2018, the vehicles are still all there, but the camper and boat are gone. There is an addition of a truck. We are asking to issue a notice of violation so Daniel Barbour has to apply for a permit. Sven Fedorow stated that based on our local zoning, a State permit would be needed. Todd Hinderling stated that it is not an allowed use there, so no permit may be issued. Barry Polidor stated that it could be a contractor storage. Sven Fedorow stated that it would have to be looked at to be a contractor storage. Our Bylaws stated that if it is a junkyard, it needs a State permit. The State cleared it. There could be a permit for a salvage yard from the State because the State does not look at the Town's Bylaws. He was told by Vincent Chiorgno that he had been up there with Daniel Barbour and some of the vehicles did start. Nancy Lewis stated that Vincent Chiorgno informed her that Daniel Barbour could get three vehicles to start. He also told her that Daniel Barbour could take vehicles off to get in compliance and then put them back on.

Sven Fedorow stated that the State should have counted all the vehicles there and could issue an enforcement action if there were more than four unregistered vehicles there. David Lewis stated that there are also two tractors behind the sugar house. H. Vern Harris has seen them there. Barry Polidor stated that the State seemed not to have addressed other issues there, such as the 55 gallon drum, refrigerator, only concentrated on the vehicles. Sven Fedorow stated that there has to be a threshold to go beyond "junk". One rusty vehicle does not qualify for junk. The State stated that the construction equipment started.

Exhibit #5 was the Title 24: Municipal and County Government definitions from V.S.A.
Exhibit #6 was the Title 23 Motor Vehicles, Chapter 021: Title to Motor Vehicles.

The Board listed the items that they saw upon their site visit. They saw a skidder (down low), two crawlers (one by the skidder and one in the woods), large 18 wheeler box trailer, a sugarhouse, a one ton blue dump truck, vintage ambulance, vintage tow truck, dozer (up high), abundance of metal materials in various piles, various piles of wood, various piles of dimensional lumber, smashed pick up with bicycle in front, old box truck (Springfield Terminal Railroad), dozer (down low), back of 18 wheeler cab (down low near skidder),

refrigerator, 55 gallon drum (partially full), forklift grader, and some useful equipment. Willis Wood stated that in order to be an automobile graveyard it needs to have four or more junk vehicles. Todd Hinderger asked David Lewis to show him the boundary posts on the survey. Todd Hinderger could not find them when they were at the site visit. David Lewis showed them to Todd Hinderger on the map. Todd Hinderger wanted to know who had the right of way. David Lewis stated that they all do. He stated that he has owned the property since 1986. In the past, his family did some camping on the property. The Board made a suggestion that David Lewis might want to have someone mark out his property's corner posts. Barry Polidor will get in contact with someone to do that for them. Nancy Lewis asked if the hearing is closed could she still present current pictures. The Board told her that she could not. Once the hearing is closed, the Board cannot accept anymore testimony or evidence.

Jim Cahill asked Barry Polidor if there were anything specific with health hazards. Barry Polidor stated on the drum, rotting metal, engines could be leaking fuel, and the swamp in the back area.

Todd Hinderger asked Barry Polidor if the argument is to look at the Town's and State's rules. Barry Polidor stated that the Board should only look at the Town's rules. It is not whether or not the State was correct. The State should not be concerned with this decision. The State did not say it was a salvage yard, but the Board could. Then there would be a violation. If you get a State salvage yard, does not mean that you can get the Town's.

Ashley Rittershaus stated that a Board member asked about property lines. If the items were on David Lewis's property, then he could get them off. Todd Hinderger stated that it would be called abandoned property and it would be easier. He pointed out to David Lewis that the extension of his comes down through the meadow and it is 100 feet wide there till the right of way. David Lewis stated that he has nothing to go on, but his memory. The two posts were at the end of his property. They have seen them in the past. Sven Fedorow stated that the condition on this particular property has changed. Some things are not there and some things have been there for a long time. David Lewis stated that everything is in Daniel Barbour's words. Todd Hinderger stated that the hearing is an appeal of the Zoning Board Administrator's decision. The evidence is the exhibits, testimony, and Bylaws.

Todd Hinderger made a motion to continue this hearing on August 8, 2019 at 7:00 PM at Martin Memorial Hall. James Cahill seconded it. All were unanimous to continue this hearing.

4. Approval of Minutes – 27 June 2019

Willis Wood made a motion to approve the minutes of June 27, 2019 as corrected. James Cahill seconded it. All were in favor of approving the minutes.

5. Adjournment

James Cahill made a motion to adjourn at 8:58 PM. Todd Hindinger seconded it. All were unanimous to adjourn the meeting.

Respectfully submitted,
Diana Stillson