

TOWN OF HENNIKER
Zoning Board of Adjustment
Wednesday April 15, 2009

Approved Minutes

Call to Order / Attendance

Members Present: Doreen Connor, Chairwoman; Jeff Connor; Bob Stamps; Gigi Laberge, Alternate

Members Absent: Joan Oliveira, Vice-Chairwoman

Others Present: Jennifer McCourt; Leon Parker; Jennifer Astholz, Recording Secretary

Chairwoman Connor called the meeting to order at 7:00 pm.

Public Hearings

Case 2009-105. A request has been made for a Special Exception from Article VIII Section 133-33 of the Zoning Ordinance, which requires a Special Exception for Sport Arenas and Buildings. The applicant, Sebago Technics & McCourt Engineering, on behalf of New England College, is proposing to construct a 76,000sqft (footprint) multi-purpose artificial turf sports field with night lighting and portable bleachers. The property is located at Grove Street/Map 2 Lot 391-A in the Educational Zoning District (ED).

Jennifer McCourt, representing the applicant, stated that new information has been discovered which impacts their application. She stated that they would like to present all applicable information in a clean, concise presentation; therefore, in light of this development, the applicant is requesting a continuance of this case to the May 20, 2009 meeting.

Bob Stamps **MOVED** to grant the applicant's request for continuing this case to the May 20, 2009 meeting. Jeff Connor **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Case 2009-104. A request has been made for a Special Exception from Article XXII Section 133-113 of the Zoning Ordinance, which requires a Special Exception for wetlands impacts. The applicant, Sebago Technics, on behalf of New England College, is proposing to construct a 76,000sqft (footprint) multi-purpose artificial turf sports field that will require the filling of approximately 5,000sqft of wetlands. The property is located at Grove Street/Map 2 Lot 391-A in the Educational Zoning District (ED).

In light of the decision to continue Case 2009-105 to the May 20, 2009 meeting, Case 2009-104 is also continued until then.

March 18, 2009 & March 26, 2009 Meeting Minutes - Review and Approve

Minutes of the March 18, 2009 ZBA meeting were reviewed and corrected.

Mr. Stamps **MOVED** to accept the minutes of the 3/18/09 meeting. Mr. Connor **SECONDED** the motion. Motion **PASSED, 4-0.**

Ms. Connor stated that if an application is going to be rejected, clear reasons explaining the motion's failure must be stated. Also, Gigi Laberge stated that she had read that conditions of approval must also be very specific.

Minutes of the March 26, 2009 meeting were reviewed and corrected. Ms. Laberge **MOVED** to accept the minutes as written. Mr. Connor **SECONDED** the motion. Motion **PASSED, 3-0-1.**

Mr. Stamps abstained as he was not present at that meeting.

Miscellaneous

There was discussion about procedures used in determining when a denied case may be re-heard by the Zoning Board. Chairwoman Connor shared case law findings that state an application may be reheard if: 1) material change of circumstances affecting merits of the application has occurred; or the second application is materially different in nature and degree from the use previously denied.

Mr. Stamps asked about proper procedures for hearing a case that had previously been withdrawn by the applicant. Chairwoman Connor said she would research that and bring information to the next meeting.

Board members discussed a case where the Supreme Court affirmed a Superior Court's decision to reverse a zoning board decision because the board lacked expertise to reject undisputed expertise in favor of the applicant. Board members can still reject expert opinion on credibility grounds, but they cannot substitute their lay opinion for undisputed expert opinion testimony. Chairwoman Connor stated that this case could call in to question the ZBA's right to call on an independent expert to review an application. She stated that the option to request an independent study at the applicant's expense is clearly stated on Henniker applications. There was discussion about the Conservation Commission acting in the capacity of "expert" in appropriate circumstances. Chairwoman Connor stated that the Board members will have to be more descriptive when stating the basis for their expertise.

The Board discussed the hardship criteria used in evaluating applications. Chairwoman Connor stated that she will check to see if there have been any changes in case law regarding hardship.

Member Binder Material

- ❖ Member List (Tab #1)
- ❖ Budget Update (Tab #3)
- ❖ Zoning Ordinance (Tab #4)
- ❖ Fees (Tab #6)

❖ Cases of Municipal Significance (Tab #14)

Adjourn

Mr. Stamps **MOVED** to adjourn at 7:35 pm. Ms. Laberge **SECONDED** the motion, and the motion **PASSED UNANIMOUSLY**.

Respectfully submitted,

Jennifer Astholz
Recording Secretary