

**TOWN OF HENNIKER
ZONING BOARD OF ADJUSTMENT**

December 10, 2008
Approved Minutes

Members Present: Kris Blomback; Bob Stamps; Jeff Connor; Gigi Laberge

Members Excused: Doreen Connor; Joan Oliveira; Rick Patenaude, John Partridge

Others Present: Laura Scott, Planning Consultant; Jennifer Astholz, Recording Secretary; Skip Sagris; Leon Parker; Scott Osgood

Call to Order/Attendance

Kris Blomback called the meeting to order at 6:04 pm.

Review and Approve 11/19/08 Meeting Minutes

The Board reviewed and corrected the minutes of the 11/19/08 meeting. Bob Stamps **MOVED** to approve the minutes as amended. Jeff Connor **SECONDED** the motion. Motion **PASSED, 4-0.**

Public Hearing

Case 2008-111: A request has been made for an Equitable Waiver of dimensional Requirements. The applicant, Skip Sagris, is making this request because the location of the structure is in violation of 133-28 D of the Zoning Ordinance and the ZBA Special Exception for Case #2008-002. The property is located at 1805 Old Concord Road (Map 1 Lot 619-A) in the Heavy Commercial (CH) Zoning District.

Mr. Blomback read the public hearing notice requesting the Equitable Waiver of Dimensional Requirements. He asked the applicant if he wanted to proceed with a 4-member Board, and the applicant agreed. It was noted that all fees have been paid and abutters' notices were properly filed. Laura Scott, Planning Consultant, reviewed the materials in the packet.

Mr. Sagris explained what had happened when the site for the two retaining walls was staked out. He stated that the Planning Board had asked that the retaining walls be moved away from the wetlands as much as possible. He then showed on the plans where the walls should have been placed, per the approved plan. Mr. Sagris stated that the retaining walls were to be moved five feet back from the wetlands and offset stakes were set up. He stated that there was some confusion on the site as the State was also widening the road at the same time. Mr. Sagris stated that the work was done while he was out of town, and instead of pulling out the offset stakes, the property line stakes were pulled. When Brown Engineering was called for the as-built inspection, the error was determined. Mr. Sagris described that the black line on the plan shows the approved plan and location, and the red line is what was actually built.

Ms. Scott stated that zoning requires a 10 foot setback. The ZBA had granted a special exception to allow a five-foot setback. She stated that there are two ways to correct the problem: 1) ZBA grant the Equitable Waiver or 2) the applicant must tear the pavement out.

Jeff Connor clarified that the original setback requirement was 10 feet. The ZBA granted a five-foot setback by special exception, and the area is now paved within that.

Scott Osgood asked if any lighting or septic vents are in the setback. Mr. Sagris stated that the lighting is on State property. Ms. Scott stated that the setback requirement governs structures and paving. Lights are on State property even though that was not part of the plan approved by the Planning Board. Mr. Sagris stated that he got an “encroachment agreement” from the State. He stated that he also got permission to landscape on State property.

Mr. Blomback asked why the stakes were moved in the first place. Mr. Sagris stated that the Planning Board was concerned about impacts to the wetlands. He stated that he made the decision trying to help move it further away from the water. He stated that the intention of the zoning setback is for when you have neighbors. He stated that there is 65 feet between the road and before paving starts. He showed three spots where there will be 40’x10’ areas of landscaping.

Mr. Blomback opened the public hearing at 6:20 pm. Mr. Osgood stated that he is very disappointed in the engineering practices on this project. He hoped that granting the Equitable Waiver does not create a precedent for others to excuse sloppy engineering work, and he hopes that there is a way to keep this from happening again.

Mr. Sagris stated that there were many mornings during construction when they arrived at the site and the stakes had been moved by vandals. He stated that there were other episodes of vandalism during the construction process, which made the process very frustrating.

Ms. Laberge questioned if granting the waiver will matter in future years.

Leon Parker stated that another Equitable Waiver was granted, which had to do with a house being built in the wrong place and pavement went right up to a next-door neighbor’s property. He stated that he is not really concerned about setting a precedent with this case as there is room around them.

Bob Stamps asked that in the event that the Equitable Waiver is granted, could a statement be made that it was granted because the site abuts State property and no other abutters were affected in this case.

Hearing no other comments, Mr. Blomback closed the public hearing at 6:25 pm. He then called for Board deliberation.

Jeff Connor stated that he would be more concerned if the abutting property was privately owned. However, since the State owns the property, and there are no representatives present from NH DOT District V, he does not see any problem. He stated that nothing else will ever be built on the land, and he does not foresee any real difficulty with granting the waiver.

Mr. Stamps asked that if the State has given the right for lights to be put on their property, who is responsible for them. Mr. Sagris stated the lights are the responsibility of Dunkin' Donuts. Mr. Stamps agreed with the comments that were made about sloppy work, but stated that he does not believe that anyone is really harmed by this.

Ms. Laberge stated that she concurred with comments made by Mr. Stamps and Mr. Connor.

Bob Stamps **MOVED** to approve the Equitable Waiver for Dimensional Requirements for Case 2008-111. The primary reason for the decision is because the affected abutter is the State Highway right-of-way, and there does not appear to be any negative impact to any private property owners. Jeff Connor **SECONDED** the motion.

Vote: Mr. Stamps: **Yes**

Ms. Laberge: **Yes**

Mr. Blomback: He stated that he is not impressed with the survey work, but votes **Yes** on the motion

Mr. Connor: **Yes**

The Motion passes 4-0.

Mr. Stamps **MOVED** to adjourn at 6:35 pm; Mr. Connor **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Submitted
Jennifer Astholz
Recording Secretary