

MINUTES
Town of Hubbardston Board of Appeals
Meeting Held February 21, 2018
Senior Center, 7A Main Street

Members Present: Chairman Scott Janssens, Gail Orciuch, William Homans, Albert Afonso and Secretary Joyce Green.

Absent: Andy Baum

Others Present: Petitioner Rachel Boutwell, Scott Boutwell, abutters Richard and Randy Lee Crompton (Rutland), and Paul Hennessey (Rutland).

Meeting was called to order at 6:36pm by Chairman Scott Janssens.

General Business

- **Motion,** Bill Homans to continue same officers from last year. [Scott Janssens as Chair and Andy Baum as Vice Chair] Seconded by Gail Orciuch and so voted in favor 3-0-1 with Janssens abstaining.
- Discussion of members whose terms are expiring (Homans) and the fact that we still need to find a replacement for Andy who has moved to Princeton and our Alternate position is vacant.
- Signatory form was approved with Scott Janssens and Bill Homans authorized to sign all vouchers and Joyce Green authorized to sign accounts payable vouchers only.
- **Vouchers:** Scott signed voucher to The Gardner News for the legal ads for tonight's public hearing.
- **Minutes** of August 24, 2017 were approved on a motion by Bill Homans, seconded by Gail Orciuch and so voted 3-0-1 with Al Afonso abstaining as he was not present at the subject meeting.
- **Annual Report:** Reviewed by members for their information. Report has already been submitted for publication.
- **Correspondence:**
 - **Affordable Housing Committee:** Received and email from the Planning Board asking if we have a member interested in serving on the Affordable Housing Committee. Scott Janssens said he would serve. Secretary will notify the Planning Board.
 - **Citizen Planner Training Collaborative:** Received brochure for classes being given on March 17, 2018 at Holy Cross. Secretary will email to all members and anyone wishing to attend should sign up and Joyce Green know so they can get reimbursed for the cost (\$75 per person). Deadline to sign-up is March 9. Al suggested the State should videotape the meetings and make them available on YouTube.
- **QEMP:** Survey has been sent out looking for feedback about Economic Development and plans for school buildings in Quabbin District. Al & Scott attended an info session, giving opinions on school closings, regionalization of some services and what type of businesses should be encouraged to come to town. Another meeting is scheduled for 7:00pm, March 14 in the Slade Building to continue the discussion with the Planning Board and John Hume (MRPC) and review the draft Economic Development Plan.

PUBLIC HEARING: Appeal of the Ruling of the Building Commissioner at 12 Upper Intervale Rd

7:00pm Called to order by Chairman Scott Janssens on a motion by Bill Homans, seconded by Gail Orciuch and so voted 4-0 in favor. Board waited until petitioner was in attendance before discussing the appeal. (Petitioner was in Planning Board meeting by mistake. They arrived at 7:05pm.)

Introductions were made and Chairman Janssens explained the hearing process.

Petitioner Rachel Boutwell stated she wasn't sure if she did something wrong when she built the garage but that she did everything that the Building Inspector asked of her (including extra insulation, special drywall, etc.), then since June has had trouble getting in touch with the Building Inspector for final inspection. She got involved in December because there was a conflict between her brother, who was handling the permit process, and the Building Inspector. Ms. Boutwell stated she wanted to get the inspection completed because she wanted to be able to use the garage and park the truck inside the garage. The Building Inspector told her as of December 8, [2017] that she was running a business out of there. Ms. Boutwell stated that the trucks have always been parked there, that in fact her brother's ex-wife had a business there. Ms. Boutwell opened her business in 2015 in the Town of Phillipston and runs it out of her house in Phillipston but the trucks are garaged in Hubbardston and have always been in Hubbardston. Her intention was to build the garage to keep the trucks inside, to prevent further vandalism to the forms and property. Building Inspector knew size of garage 44x60 so

44' form truck could be parked inside. She had old garage torn down and built new garage. She asked that if she is doing something wrong, tell her what she needs to do. She doesn't want to do anything wrong, just wants to get the proper permit so she can get insurance on the garage.

Questions from Board:

- 1) Gail Orciuch: the issue is the use of the garage, not the garage itself, correct?
Petitioner: Yes, but he [Building Inspector] saw the truck there and the garage was built to put the form truck into.
- 2) Scott Janssens: Who pulled the building permit?
Petitioner: She [Rachel Boutwell] pulled the permit originally, and then her brother [Mark Johnson, owner of the land] was asked to show prints of the land. Building Inspector asked for the land to be surveyed because he [Johnson] owns an adjoining lot in Rutland and the Building Inspector wanted to make sure the building met the setbacks off the property lines. Then he signed off on the permit and everyone signed off on the permit. When she met with the Building Inspector on December 8, he took the building permit without giving her a copy and said he would be sending her a letter.
- 3) Scott Janssens: When you pulled the permit was there any conversation with Building Inspector that you intended to use the property for your business? did you tell him that this was for the use of your business when did your brother purchase the property?
Petitioner: April 2008
Scott Janssens: And he ran a business out of there in 2008?
Petitioner: There was a business certificate that his ex-wife had for that time period for that property. She [Rachel] opened her business in 2015 as a sole proprietor and changed to an S-Corporation in 2017.
- 4) Bill Homans: So this business was run out of that property previously by your brother's ex-wife?
Petitioner: Yes.
Homans: Out of the old garage?
Petitioner: No, she did not use the old garage because the truck was too big to fit in it. Vehicle was parked on the side of the yard.
- 5) Janssens: How many vehicles do you have?
Petitioner: There was 3 but one was totaled in December, so there are 2.
Orciuch: Is that all the vehicles you have?
Petitioner: Yes, I only have 2. One is a boom truck, CDL required, and one is a pick-up truck that is also used for personal use.
- 6) Al Afonso: How does the boom truck fit into the old garage versus the new garage?
Petitioner: The boom truck was never inside the garage, it was always parked outside.
Afonso: So the boom truck wouldn't fit in the old garage.
Petitioner: No!
- 7) Afonso: So those 2 trucks since 2008 have always been on the property overnight?
Petitioner: Yes, except for sometimes, if the job location warrants it, the truck is left on-site for the duration of the job. The truck doesn't move on a daily basis, but it moves twice a week.
- 8) Janssens: Was address for ex-sister-in-law's business the same, 12 Upper Intervale?
Petitioner: Yes.

Abutter Richard Crompton spoke up to help clarify some issues. He stated that Mr. Craig, who long ago lived at that address, kept his stone engraving supplies for his business in the old garage. So he had a business out of that garage. He stated that what Rachel Boutwell said is true. Before the new garage construction began, the trucks were parked outside. He was a little afraid when he saw them because it's a quiet neighborhood. Mr. Crompton inspected the application package and stated that the problem is because the property is in a residential neighborhood. Mr. Crompton has no problem with the trucks, it is the dirt bikes that are a problem for him.

- 9) Al Afonso: Asked Mr. Crompton if the trucks being there negatively impact his life.
Crompton: Only sometimes in the morning when they are loading trucks.
Mrs. Randy Lee Crompton: She thinks the garage is a beautiful garage and she has no concern with that. She is concerned because the forms are being stored on the Rutland property that is under Recreation Land and she would rather have them inside the garage.
Petitioner: They will actually be stored on the backside of the garage, out of sight.

Mrs. Crompton: The concern I have is because he [Mark Johnson] went to the Rutland assessors and had the lot changed to Recreational Use that means it should be used for camping, hiking, etc and it is not being used that way. The lot has been clear-cut and there is no forest there, only mud. From Friday through Sunday all you hear is the dirt bikes; but she stated she realizes this issue has nothing to do with tonight's hearing.

Al Afonso asked the other abutter present [Paul Hennessey] if he would like to offer an opinion and Mr. Hennessey said there is noise there on the weekend. He also asked about 2 police visits to the property. Ms. Boutwell stated that has nothing to do with her business and she cannot discuss it.

10) Scott Janssens: The garage across the street...

Petitioner: That is in Rutland. Ms. Boutwell plans to put road millings behind the garage and put the forms behind there out of sight because there has been a lot of vandalism out there recently. She understands there is an issue with the dirt bikes but that is nothing to do with the business.

Janssens: So the garage across the street, is that a business?

Abutter Mrs. Crompton: The land in Rutland is zoned industrial, not residential.

11) Afonso: do you have plans to expand?

Petitioner: Hoping to add one more pick-up truck.

Afonso: How many trucks do you think the property could support?

Petitioner: 7, 8, 9, there's a lot of area. Inside I can have 2 pick-ups and 1 boom truck at most.

Scott read into the record a letter received from the Planning Board. The letter asked that the appeal be denied and the Building Inspector's decision be upheld.

Chairman Janssens asked the Board if there were any more questions and there were none.

Abutter Mrs. Crompton asked "What constitutes a business; is it that they may get mail? Is it the fact that they have a company sign? What is saying that there is a business at 12 Upper Intervale Rd? Is it the fact that there's a garage? Because I don't know."

Janssens: Not sure I can adequately answer that because that was one of his questions as well. He thinks it has to do with the vehicles that are business vehicles housed in a location.

Discussion about other businesses in the area, Hub Equipment and Wain-Roy Corporation, being located around the corner and the fact that those businesses are (or were) in a residential district.

Petitioner: Why didn't Building Inspector say anything a year and a half ago that this was a problem? We did extra work that was asked for because of changes made to the design, namely heating the space.

Homans: Did you tell the Building Inspector that you were using the garage for a business?

Petitioner: No, but the forms truck was there; I guess I shouldn't have assumed.

Homan: That could be the problem.

Afonso: Sounds like Larry was very involved in the process.

Homans: Did Larry do on-site inspections?

Petitioner: Oh yes, several.

Homans: Were they with you or your brother?

Petitioner: My brother. He relayed the information to me that the Building Inspector said we needed extra insulation, etc. I didn't question it, I just did what I was told.

Afonso: We don't know if the extra insulation was requested based on the residential building code or commercial code.

Petitioner: Building Inspector was in the hospital for a short time and we had to wait for the foundation inspection from a substitute inspector. I just followed what he said to do, following the rules.

7:41pm Motion to close public hearing made by Bill Homans, seconded by Albert Afonso and so voted 4-0 in favor.

Board will review the information given and deliberate further before making a decision.

Abutter Mrs. Crompton voiced concern that the petitioner would be liable for violation fines if the board doesn't make a decision quickly. Asked if there is some recourse to avoid those fines. Petitioner said that trucks have been moved to Rutland land. Mr. Crompton said he hasn't noticed the form truck in a couple weeks.

Petitioner stated she cannot get insurance on the building without the permit.

Petitioner and abutters left the hearing.

Further discussion:

- Per the Town Clerk, the ex-wife did have a business certificate and all certificate holders are told that the certificate is not permission to do business, but that any other permits required would be up to the owner to get.
- Per Homans, Larry says he was adamant that he told the brother more than once that he could not run the business out of the garage.
- Gail Orciuch: She has the forms and other supplies there. The trucks are her business.
- The registered business address is Phillipston according to the paperwork submitted.
- It appears the brother may not have conveyed to the petitioner that Larry said you couldn't run a business out of the garage. Homans says that Larry told him that every time he spoke to the brother, he repeated that he couldn't run the business out of there. That isn't the town's fault.
- Nothing is in writing on the permit about not to be used as a business. When you pull a permit, Larry reviews the rules and tells you what you need to do, it's not all written down, you just conform to the rules and then you get your permit. If things aren't done correctly, then you don't get your permit and that is what has happened here.
- Purportedly the use has been there since 2009 and there hasn't been a problem with it as far as we know. Because a garage is now being built, it has brought the issue to light.
- If an employee of the business is pulling the permit, talking to the Building Inspector, and not relaying that information to the owner of the business, it is the fault of the employee, not the Building Inspector.
- Question about whether Larry was using the commercial or residential building code with regard to the extra insulation, etc. that was requested.
- Looking at it from the petitioner's view; a garage is allowed under Zoning Bylaws, Section 4.1.h Accessory Uses and she has gone through the proper channels to build a garage and gone through the process in Phillipston to register her business. So she probably feels that she has done everything correctly.
- Reading Zoning Bylaws Section 4.1, Uses Permitted by Right in Residential Districts, the first sentence reads *"Residential Districts are intended to be used primarily for personal residence, agriculture conservation, recreation and open space maintenance."*
- We are not ruling on a variance, we are being asked whether or not we overturn Larry's decision.
- Homans concerned about setting a precedent. How many people with home-based businesses could be hurt by our decision? We must be consistent.
- Janssens: If I am a self-employed long-haul trucker and I back my truck onto my property when I'm home, is that illegal?
- Afonso: Is the petitioner being penalized because she is trying to do the right thing by getting the proper permits to build a garage to store her trucks inside, out of sight, as opposed to these other truck drivers? Many people park their commercial trucks on their property.
- What was the intent when permit was filed? Did it say a commercial garage to store equipment? Was it discussed that these were business vehicles? The petitioner may not have thought it was an issue because the ex-wife had the same business on the same property.
- Is it a problem because they are parking the vehicle inside the building as opposed to leaving it outside?
- Orciuch: Petitioner says there was always a business on the property but then she says she's not running a business on the property. That bothers me.
- Business address is registered in Phillipston and that is where she "operates" her business. All she is doing is parking a truck at her brother's house because there is more room or whatever the reason is. Afonso: using it for storage. Homans: is that an extension of her business and does that make it a commercial use?
- We need a definition of what constitutes a business. Larry's letter states in his opinion it is a business. What specifically causes him to view this property as a business?

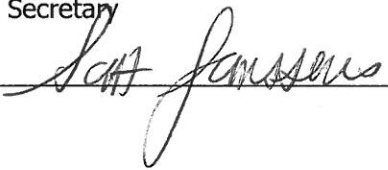
- Discussed some procedural items including the fact that a unanimous vote is needed of all four members. By the sound of things, Scott determined that there would not be 4 votes to overturn so the decision would be upheld. The petitioner would have the option to appeal to Superior Court.
- Discussed definition of Home Occupation in Zoning Bylaws Article 2. Among other things, a home occupation does not include shipments by heavy trucks and is carried out by members of the family residing on the premises.
- The Board considered the abutters comments that the trucks were not a problem. It was decided to get Larry Brandt's perspective as to what he feels constitutes a business in this case.
- The definition of allowable uses in Residential/Agricultural District does not list this use and therefore is prohibited under the Zoning Bylaws.
- Is the insurance that the petitioner trying to acquire going to be a commercial policy? That would have been a good question to ask. Is she trying to insure the trucks as commercial vehicles?
- The business (All Saints Construction) paid for the construction of the garage.
- Scott will talk to Larry and get his perspective on what constitutes a business.
- Discussed possible solutions for the petitioner; the trucks could be parked on the Rutland lot that is zoned commercial and let the brother use the garage for his personal use. The petitioner could bring it to Superior Court.

Next meeting will be Thursday, March 1, 6:30pm in the Library Basement Meeting Room.

9:00p.m. Motion to Adjourn made by Bill Homans, seconded by Albert Afonso and so voted 4-0 in favor.

Respectfully Submitted,

Joyce Green, Secretary

Approved by: 

Date: 7/8/19

Board of Appeals Sign-In Sheet

Public Hearing

February 21, 2018

NAME (please print)

ADDRESS or TITLE

Richard Crompton
Randy Lee Crompton
Scott Boutwell
Rachel Boutwell
PAUL HENNESSEY

111 River Rd
111 River Rd; Portland, Me.
Phillipston
#12 Upper Interlake Rd
107 RIVER RD PORTLAND

Board of Appeals

Wednesday, February 21, 2018 at 6:30 PM
Senior Center, 7A Main St

AGENDA

General Business

- Elect officers for 2018
- Authorize board members to sign vouchers
- Approve any vouchers for payment
- Review 2017 Annual Report
- Approve minutes from August 24, 2017
- PB request for Affordable Housing member from ZBA
- **7:00pm PUBLIC HEARING** on an application to appeal the ruling of the Building Commissioner filed by Rachel Boutwell, Phillipston, MA. The Building Commissioner has ruled that the operation of a concrete forms business at **12 Upper Intervale Road, Assessors Map 11C, Parcel 53** is in violation of Hubbardston Zoning Bylaws Article 4, Section 4.1 Uses Permitted by Right in Residential Districts and Section 4.2 Uses Permitted by Special Permit in Residential Districts.
- Any other business not reasonably anticipated by the chair 48 hours prior to the meeting

Chair: Scott Janssens

Posted January 30, 2018 9:00am

Amended Feb 21, 2018 9:30am