

Town of Hebron

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Hebron Zoning Board of Adjustment

Minutes of Meeting – March 6, 2007

Members present: Peter Carey (Chair), Ed Gempka (Vice Chair), Tom Gump, Maynard Young, and Roger LaFontaine.

Others present: Dan Merritt, (Compliance Officer), John Matthews, Dick Cowern, Brenda and Patrick DeFilippo, Gordon Karlberg, Carl R. Karly, W. Pawson, Pete Waldron, Travis Austin, Bruce Barnard, and Jane Ramsay, Secretary.

Time Convened: 7:08 p.m. **Time Adjourned:** 9:30 p.m. **Next Meeting:** TBA

Agenda Items

1. To consider the application of Janice Chase and Bruce A Barnard appealing the administrative decision of the Town of Hebron Board of Selectmen to issue a September 13, 2006 building permit to Patrick and Brenda DeFilippo concerning construction of a one-bedroom in-law apartment at 7 Duckworth Road, Tax Map 17, Lot DW.001.
2. Approval of February 6, 2007 meeting minutes and any other administrative business.

The public hearing was called to order by Chair Pete Carey at 7:08 p.m. Notices of the hearing had been posted on Hebron's public bulletin boards and in the *Laconia Citizen* newspaper, and all abutters to the Duckworth Road property (Tax Map 17 DW.001) had been notified of the hearing by certified mail. The Chase/Barnard application was complete, the correct fees had been collected, and written permission for Bruce Barnard to represent Janice Chase's interests in the matter was properly submitted.

Pete Carey described the NH RSA 674:33 power of the ZBA to hear and decide appeals alleging error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted under RSA 674:16. He highlighted the corresponding Hebron Zoning Ordinance Article VIII, paragraph B and then summarized the appeals process under RSA 676:5 and 676:7. He concluded his opening remarks with a description of the hearing process.

Mr. DeFilippo asked at the outset that Ed Gempka recuse himself from the hearing on the basis of remarks Ed had made concerning this matter at Town Meeting in March 2006. Ed Gempka then asked the Chair that he be allowed to recuse himself to avoid any perception of bias. The Chair granted Ed's request and announced that, with Ed stepping down and only four members remaining to hear the case, any action taken by the Board

would still require three concurring votes.

Bruce Barnard, acting as a concerned citizen, applicant, and agent for Janice Chase, an abutter to the DeFilippo property, said the DeFilippos were originally given a building permit to construct a three-bedroom house with attached two-car garage in July 2002. About two years later, the DeFilippos built a one-bedroom apartment in one of the garage bays and the attic space directly above the bay. Bruce found out about the apartment when the DeFelippos in 2005 listed their property for sale and the advertisement specifically alluded to an in-law apartment. At a September 7, 2006 Selectmen's meeting, the Selectmen discussed with the DeFilippos their concerns about the conversion of the garage space into living space and that it had been done without a building permit. On September 13, 2006, a building permit for the conversion (as built) was issued with the stipulation that the space could not be rented and the building would remain a single family dwelling. Bruce, informed of the Selectmen's decision just days after the September 7, 2006 meeting and after seeing the meeting minutes posted on the Town web site, appeared before the Selectmen at their October 19, 2006 meeting to express his disapproval of their decision to issue a building permit to the DeFilippos. Specifically, he conveyed to the Selectmen his concerns that the DeFilippos' in-law apartment had turned the home into a multifamily dwelling and, therefore, violated Hebron Zoning Ordinance. He also questioned whether the septic system met the building permit approval requirements. He asked the Selectmen to review their earlier decision and send him a letter as to their final conclusions in the matter. He never received such a letter from the Selectmen.

In response to questions posed by the Chair, Bruce said he was aware of the apartment at least two winters ago when he plowed Duckworth Road. He was also aware of a police matter in December 2005 concerning a renter in the apartment. Bruce said he talked with the Chases about the building permit sometime after he had discovered it had been issued in mid-September 2006 and before he appeared at the October 19, 2006 Selectmen's meeting.

Bruce said that he was concerned about the Selectmen granting a building permit for the DeFelippos' apartment since it violates Article IV, paragraph K of the Hebron Zoning Ordinance. He cited the language of RSA 674:17, paragraph I, subparagraphs (a) (e) and (f) regarding congestion in streets, overcrowding of land, and concentration of population. He maintained that the house, together with the new in-law apartment, constitutes a multiple family dwelling on a single family sized lot (one acre which was the minimum lot size in 2003, before the two-acre minimum lot size requirement took effect in 2006) and the Selectmen erred by granting the permit to Mr. DeFilippo. He also argued that while the DeFelippos have a total of three bedrooms and a three-bedroom septic system, the new configuration of the house requires a septic system with 75 gallons more capacity. In response to the Board's questions, Bruce indicated that he had originally designed and secured State of New Hampshire approval for the septic system. Mr. DeFilippo actually built the system. Bruce conceded that if Mr. DeFilippo were to submit a modified plan to the State, the State would more than likely ratify its earlier approval since the bedroom numbers had not changed. Nevertheless, the Selectmen, prior to authorizing the issuance of the building permit, should have ensured that the existing

septic system was adequate and met State requirements for the newly reconfigured house.

Compliance Officer Dan Merritt reported that he had first become aware of the DeFelippos' conversion of garage space to in-law apartment when he read a newspaper real estate advertisement describing the home and its new in-law apartment. Dan's initial concern was that the DeFilippos had added a fourth bedroom, but when he inspected the house, he found two bedrooms in the main house and the third bedroom in the garage attic space. Dan described the new living space as very small and just enough to accommodate one person comfortably. He said one garage bay had been turned into a small (10' x 10') sitting room with a galley style kitchen area. The kitchen area included a couple cupboards, small sink, and portable microwave oven. There is no stove and no refrigerator. In the upstairs area above this former garage bay, there is a 10' x 12' bedroom with a very small bathroom. The main entrance to the apartment was through the garage by way of the breezeway which connects the main house to the garage. There are two other doors, one in the front and one in the rear of the downstairs area of the new apartment. Dan said he remained convinced the building was a single family home with three bedrooms. He added that had Mr. DeFilippo come to him for a building permit approval, he would have asked him about the septic system and its capacity given the proposed reconfiguration of the house. He reiterated that there are three bedrooms in the house and that if ever the upstairs of the main house were finished to include more bedrooms, the septic system requirements would obviously have to be addressed. He concluded by saying that the essential character of the house was unchanged: It is a three-bedroom single family dwelling. He reminded the Board that the building permit issued on September 13, 2006 reflected this and included the condition that the space could not be rented.

Mr. DeFilippo detailed the construction of his house and said he thought that adding the third bedroom in the garage instead of in the main part of his home did not require an additional building permit. He said he converted the garage space to living space for his daughter who was going through a divorce and needed a place to live. He said he later rented the apartment to a friend for three months before he ran into problems with the friend's German Shepherd and had to evict both. He said he thought the Town allowed the renting of rooms and he had done nothing wrong. He added that the space has been empty for over a year. He said the Chases have known about the garage conversion since he started working on it between July 2004. The project was completed in August 2005. One of the Chases' grandchildren had actually helped him with the construction. He said the Chases did not object to the conversion until after he had raised the issue of the Chases' outdoor shooting range with Town officials. The Chair allowed this testimony over the objection of Bruce Barnard who argued that it was irrelevant. Pete Carey, noting that there are no formal rules of evidence in the hearing, said that the evidence offered by Mr. DeFilippo went to the Chases' knowledge of the apartment conversion and the timeliness of their appeal leading to this hearing. To Mr. DeFilippo's comment that the Chases' absences from the hearing were telling, the Chair replied that the Board would draw no adverse inferences from the Chases' absences. Mr. DeFelippo, in response to Board questions, said there is a single water and electric source for the whole house, as well as a single septic system. He added that the apartment sitting area is heated by a kerosene monitor heater, and there is no heat upstairs in the bedroom area.

John Matthews, Chairman of the Board of Selectmen, said the Selectmen had not known about the apartment until late spring 2006. He said the Selectmen sent a letter to the DeFilippos stating their concerns about the in-law apartment—especially that it had been built without a building permit. On the strength of Dan Merritt’s inspection of both house and new garage apartment and a detailed review of the matter, the Selectmen issued an “as built” building permit to allow the new construction with the indicated conditions. He said that Bruce Barnard came to the October 19, 2006 meeting and the Selectmen reviewed with him in detail their reasons for granting the permit. He said that the Selectmen made it clear to Bruce that their decision was final. Bruce indicated that he would appeal their administrative decision to the ZBA. The Selectmen told him that he should appeal their decision if he felt it was wrong. John confirmed that Bruce asked the Selectmen to reconsider their actions and write him a letter outlining their reasons, but he said the Selectmen never agreed to send a letter, since the Board had sufficiently explained its actions to Bruce at the meeting.

Selectmen Dick Cowern corroborated the essential details of John Matthews’ testimony and reiterated that the Selectmen made it clear to Bruce that he could pursue a ZBA appeal if he felt their decision was in error.

Pete Carey asked Bruce Barnard what took him and the Chases so long to appeal the Selectmen’s decision. He pointed out that Bruce had known about the building permit for five months and the Chases knew about it for at least four months before they filed this appeal on February 9, 2007. Bruce explained that he was waiting for a letter from the Selectmen and he did not press them for the letter after the October 19, 2006 meeting because he knew they were tied up with budget planning and other town business.

Bruce Barnard presented the Board a copy of the deed to the DeFilippos’ property and directed the Board members’ attention to a covenant provision requiring the owners to build a cape style single family dwelling. The Chair pointed out that while it is not the ZBA’s responsibility to enforce deed covenants, the covenant relating to the single family dwelling nature of the building is entirely consistent with Hebron Zoning Ordinance and is the central issue in the case before the Board.

There being no further public comment, Pete Carey closed the hearing to further public comment and advised the Board and everybody in attendance that it was now time for the Board to deliberate and reach a decision in the matter. He began the discussion by raising the statutory requirement that appeals of administrative decisions be raised within a “reasonable time.” In the absence of any more specific town ordinance defining what a “reasonable time” is, the Board must apply the state law and its own judgment to the case at hand. Town counsel, Tim Bates, advises that generally delays in excess of a month are considered unreasonable. But the Chair added that the Board must apply its own judgment of what is a “reasonable time” in light of the particular facts and circumstances of this case. Pete Carey noted that Bruce Barnard and the Chases had been aware of the apartment conversion for some two years and, more importantly on the issue of timeliness of their appeal, had been aware of the Selectmen’s decision to issue a building permit for four to five months before they brought this action on February 9, 2007. He polled the other Board members on the issue: Tom Gump, Maynard Young, and Roger

LaFontaine all felt the appeal was timely under the circumstances.

The discussion then turned to the merits of the case. All members agreed that the case comes down to whether the DeFilippos' home, as reconfigured, remains a single family dwelling within the meaning of the Hebron Zoning Ordinance. Following extensive discussion of the size, layout, and facilities in the new apartment and the purposes for which the apartment had been used and would likely be used in the future, the Board felt it was ready for a vote on the matter. Roger LaFontaine made and Peter Carey seconded a **motion to affirm the Selectmen's decision to issue a building permit to Brenda and Patrick DeFilippo on September 13, 2006 to allow the third bedroom/in-law apartment in the garage area of their house on 7 Duckworth Road. The vote was three in favor and one opposed. The motion, therefore, passed.**

Roger LaFontaine made and Maynard Yound seconded a **motion to send a letter to the Selectmen reinforcing the importance of the conditions attached to the building permit, specifically keeping the DeFilippos' home a single family dwelling and prohibiting rental of the in-law apartment. The motion passed.**

Roger LaFontaine made and Maynard Yound seconded a **motion to approve the minutes of the February 6, 2006 meeting. The motion passed.**

Pete Carey reminded the Board members of the April 28, 2007 Spring Conference for Planning and Zoning Board Members sponsored by the New Hampshire Office of Energy and Planning.

Maynard Young moved and Tom Gump seconded a **motion to adjourn the meeting. The motion carried and the meeting was adjourned at 9:30 p.m.**

Jane Ramsay, Secretary