

MINUTES OF THE ZBA PUBLIC HEARING
TOWN OF CHARLEMONT

August 30, 2004

Members present:

Eric Dean
Joe Wagner

Members Absent:

Tom Shields

Others present:

Earl Bowen and counsel, Phillip Lombardo,
Town Counsel, Attorney Joel Bard
Charlotte Dewey, Planning Board Co-Chair
Dan Miller, Planning Board member
Gisela Walker, Planning Board member
Trevor Mackie, Planning Board Associate member
Ruth Cannavo, Board of Health Chair
Perry Schwarzer
Emily Schwarzer, of Shelburne Falls Independent newspaper
Bill and Norma Coli
Phil Banks and son, and counsel, Attorney Michael Pill

The meeting was called to order at 7:28 by Eric Dean.

1. Joe Wagner began by reading the hearing notice, as it appeared in the West County News and The Recorder. Joe explained that, as the Planning Board has approved the Special Permit for their part of the addition to the building, that now the ZBA needed to approve a variance for the part of the building the ZBA deals with. Joe asked if anyone had any objections to the proposed deck addition to Mohawk Park Corporation. There were no objections. Eric and Joe saw no problem with the deck addition and they know the lighting regulations have been met.
Eric made a motion to grant the variance, the motion is moved and seconded and decision is unanimous.
Joe asked if Paul had started work yet and Paul said no. The Secretary explained that there was a 20 day appeal period, after which time he would receive paperwork from the clerk and would then be able to register it with the registry of deeds, and then begin the work.

2. Next on the Agenda came the continuation of the Earl Bowen hearing, from August 30, 2004. Joe Wagner began by explaining that he has just received word that Tom Shields was unable to attend tonight's meeting due to the death of his mother, after a long bout with cancer. Joe further explained that he and Eric would be doing some reading tonight, but would not be reaching a decision. Out of courtesy for Tom, and his present circumstance, Joe felt it best that the Board reconvene this hearing at another time. The

hearing date was set for Monday September 13, 2004, at 7:00 p.m. Joe stated that if there was any new information, that could be taken tonight.

Norm Coli asked if, since one of the members, who has been sitting on this since the beginning, is not present, if there is further information...[what can be done?]. Attorney Lombardo addresses this question by stating that he and Joel feel that given the fact that the Board does not have everyone there who would be rendering a decision on this, that it would not be prudent to entertain information tonight, because any new information has to be heard by the third member. If the Board wants to look things over, they are free to do that, within the bounds of the public meeting law, but in terms of taking new information or asking questions, they may not be able to do that, in order to keep this process on an even keel. Joel Bard agreed and further stated that the courts have said that boards like the Zoning Board sit in a quasi judicial capacity , and are basically acting like judges and if judges doesn't hear part of the evidence, then he can't rule on it. Joe agreed and also felt it was important and that they all should take part in this.

Earl Bowen stated that his counsel was unsure of his schedule and would like to get back to the Secretary about the next hearing date.

Joe stated that in order to reconvene this meeting at a later date, they needed to decide upon the time and date at this meeting. Phillip Lombardo said that he would do his best, but that procedurally, the Board could meet on the 13th for a minute, and then set another date. Phil reiterated that he didn't have his calendar with him and would like the courtesy of being able to consult his calendar, and will let everyone know immediately. Joe asked if that was ok with everyone. There were no objections and Dan suggested that the Secretary write down everyone at the meeting's names and phone numbers so that they could be notified of the hearing.

Joe thanked everyone for being so understanding.

Bill Coli told the ZBA that he felt it was a good idea that they had Town Counsel present, that he understood that the ZBA did not request that, and he hopes that tonight gives them reason to ask T.C. to be here to assist with deliberation in the future.

Joe asked Joel if he was requested to be here by the Select Board or the Planning Board.

Joel was unsure, but felt it was probably a joint request.

Eric was wondering if the ZBA could ask questions or if they would have to be asked in open meeting. Joel stated that if they were procedural questions that had to do specifically with this case, it would have to be in open meeting. Procedural questions that don't have to do with the substance of this meeting, would not have to be done in open meeting.

There was some discussion as to whether or not a vote was made to continue the hearing.

3. The Board reviews and approves the minutes of the last hearing .
4. The Board read their mail.
5. The Board signed the decision for Winsor Mitchell.
6. The Board adjourns the meeting at 8:07 p.m.

Respectfully Submitted,

Carlene Millett
Secretary to the Boards.

Signed by:
ZBA

