



BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
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Minutes of July 26, 2018

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:00 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT: Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Member – Cindy Robbins-Tsao; Alternate Members –Drew Mason, Kat McGhee, Bill Moseley and Meredith West.

Belanger recused himself from case ZBA2018-009 and read a letter explaining his reasons for his recusal, within the letter he suggested that Moseley consider recusing himself as well since there is a potential Planning Board (PB) action and Moseley is the chair of the PB (see file for full letter).

Major appointed voting members for this evenings cases as follows:

Case ZBA 2018-009 Major, Tsao, Mason, McGhee and Moseley.

Case ZBA 2018-010 Belanger, Tsao, Mason, McGhee and West. Major would be participating in the discussion only.

Major explained policies and procedures.

Case ZBA 2018-009

The application of James Bristol, property owner, for an Appeal of an Administrative Decision, in order to allow the continued operation of two additional businesses which are not permitted under Section X.G. Residential Agriculture, 1. Permitted Uses or 2. Special Exception Uses as part of a grandfathered junkyard operation. The property owner is Bristol Farm, LLC, located at 80 Witches Spring (Map 046, Lot 015) in the Residential/Agricultural Zone.

Bristol explained why he disagrees with the administrative decision dated June 18, 2018, sent by William Condra. The use the Building Inspector alleges is not permitted by zoning actually predates zoning. His grandparents bought the farm located at 80 Witches Spring in 1946. They cut and removed timber, and they sold sand, gravel and loam starting in the early 1950's. Bristol's father sold materials for the 101A job when the road was moved over to where PC Connection is currently. His father also sold dirt for the Nashua Airport extension. Logging has been done by John Taylor, Mario Pelletier and others periodically since his father began logging in the 1950's. Bristol's father brought in dirt and wood from jobs, which he stockpiled and sold at the time. There is a compost pile for neighbors and tenants to bring leaves and clippings which become loam and then are sold. There is a wood chip pile for the same. Asplundh brings chips when they trim beside Hollis Town roads. Bristol Farm continues to operate in the same manner as set up by Bristol's grandparents and his father.

Bristol claimed that, since the current use of the property pre-dates zoning and has been ongoing for many years, the recommendation made to him to apply for a site plan, variance or other remedies, would certainly be an indication that the allegations of misuse have merit. Former Building Inspector Dave Gagnon and Reggie Ouellette, third party inspector for the town, have conducted site inspections annually and have not had any issues with the site.

The submitted application included signatures of support given by the neighbors and letters from past and previous tenants showing the same type of operations have been onsite starting as far back as 1962. For example, Leo Barlow bought logs from Dorothy Bristol in 1962, Country Connection Landscaping has been renting space since 2002, Robert Markowitz's wood yard/cordwood operation has been conducted on-site since 2005, and Willis Maloon, Jr. bought materials from Jim Bristol first in 1965 to gravel Eastern Boulevard in Amherst and then Continental Boulevard in 1980.

Major asked if a logging operation was presently being conducted on the site and if the logs were being taken from the property. Bristol replied that some logs come from the property and others are brought to the property to be processed and sold. Major asked if cordwood has been sold on the property for at least ten years or more. Bristol

replied that it had. Major asked how much wood is currently sold on the property. Bristol replied that currently 100-yard trailer loads are sold every once in a while. Prior to the current tenant, Markowitz sold roughly 1,000 cords a year. Major asked how the logging operation has changed in the last ten years. Bristol said it has grown some, but he is not directly involved with the business; it is his tenant who conducts the business. Major asked how many tenants have been conducting the logging business in the last ten years. Bristol replied that Barlow bought logs in 1962 and Markowitz starting his cordwood business in 1980. Major asked if it was Bristol's testimony that the log, cordwood, and wood chips operations have been conducted on site for 20 years or more. Bristol replied that they had.

Major asked what year the landscape material yard started. Bristol replied that Steve Allen was present in 2004 and PK Landscaping was there four to five years prior. Major asked what the landscaping business does on the property. Bristol responded that he lets the tenants and the neighbors bring in clippings and leaves to create a compost pile which turns to loam. The loam is screened and used for projects. Major asked how long people have been bringing yard waste to the property. Bristol replied since the mid-1970's. Major asked if the material is being sold by Bristol or the tenant. Bristol said it was the tenant. Major asked who the tenant was currently. Bristol replied RWC. Major asked if the intensity of the landscape yard has changed in the last 20 years. Bristol responded that it has decreased in size.

Major asked if annual inspections of the junkyard operation were completed on the site. Bristol replied yes. Major asked Setaro to confirm that there were inspections completed yearly since 2007. Setaro replied yes. McGhee asked if the issue was with the two additional businesses located on the property which were not approved. Major replied yes. Major asked Condra to explain the situation on the property. Condra reported that the annual inspection for the junkyard was completed, and during the evaluation it was discovered that there were two others businesses running on the property. He said that he completed an investigation and found no approvals granted either by the PB or ZBA. Bristol drove Condra around the property and showed him the additional businesses on the property. Condra determined the businesses were not ratified by the Town and requested that Bristol apply to the ZBA for approval. Bristol decided to apply the way he did because he believes the operations are grandfathered. Condra stated that he has no objection to the application; however, he feels the operations should have some type of approval in case there are problems in the future. Major stated that the information he requested from Setaro does show the operations were, in fact, on site at least since 2007. Condra agreed. Major asked if, within the provided records, there was anything which would determine if the intensity of the logging and landscape operations have changed in the past 10 to 20 years. Condra said he could not determine the scope of the business from the reports. Major asked if, within the submitted reports, additional operations were noted. Condra responded that the additional operations have been mentioned for the last nine or ten years. Major asked Condra if it was his position that the Town records were insufficient in determining if the additional businesses may be considered grandfathered or if they pre-date zoning, as Bristol states. Major asked if there were any state regulations in regards to how many trees could be housed on the property, and he also asked about the size of the piles of logs. Condra said the piles of wood were higher than the community room, half the width and a few hundred feet long. If the logs were taken from the site, an intent to cut would be needed. However, these logs are being brought from other areas and Condra said he is unaware if there are regulations for that. Major asked if there was any Town historical data indicating how long the landscape materials have been on site. Condra replied since 2007, officially, and Bristol provided statements from individuals dating back to 1965.

Spoke in favor of the application.

Spencer Stickney, 17 Proctor Hill Rd.

Stickney explained he has been personnel friends with the Bristol his whole life. His father started Pioneer Tree Service in 1964 and has done business with the Bristol family since he was a child. Stickney stated as far back as he could remember the sale of cordwood has been conducted on the property. Pioneer Tree Service also housed grapple loads of wood and brought chips to the site for composting. Stickney said that when he became owner of Pioneer Tree Service in 2007, the tenant would purchase grapple loads of logs, and he used the site to dump wood chips and such for composting. Major asked if the logging operation had been conducted on a continuous basis since 1970. Stickney replied that they had. He added that the quantities may vary but the same types of operations have been present since he was a child. Major asked if Stickney had any information concerning the amount of time the landscaping operation has been present on the site. Stickney responded that Bristol's father had been conducting many types of businesses on the site with landscaping people and other contractors. Deny Caron, landscaper, has been on site as long as he can remember. Major asked if Stickney had been on the site himself over the past 20 years on a weekly or monthly basis. Stickney replied on a weekly basis. Major asked if Stickney

observed the landscaping operation personally. Stickney said he had, most recently Country Connections. Materials have been on site and sold as far back as he can recall. Stickney was in favor of the application.

Bristol approached the ZBA. Major stated it is his understanding that the landscape and logging operations are not visible from the public road. Major asked if that was a correct statement. Bristol replied yes. Major asked if the operations could be observed by any neighbors. Bristol replied no. Major asked if the operations would continue to be kept out of view from the public road and the neighbors. If the ZBA proposed a finding as such, would the applicant comply? Bristol replied yes. McGhee asked if the landscape business and logging business were operated by separate tenants. Bristol replied yes.

Spoke in favor of the application.

Doug Nye, 77 Federal Hill Rd.

Nye stated he has driven by the property since 1975, and other than the vehicles changing hands and some trees being planted along the road, he sees no change in the use of the property. Nye met Bristol in the 1980's and has visited the site. He stated that the operations are kept under control. The Bristols have sold sand and gravel to the State for Route 101A and the sale of such products have been going on for many years. Nye was in favor of the application.

McGhee asked would the landscape materials yard and the logging operation be dealt with separately. The attached ordinances do not include a logging business. Major replied the determination would be made during the deliberations of the case.

No further questions from the Board and none from the floor – hearing portion of the case closed.

Case ZBA 2018-010

The application of Tiffany Rhodes, property owner, for a Special Exception to Section XXII, Home Based Business, Paragraph 3, Home Occupation of the Zoning Ordinance to permit the operation of an Aesthetic Business located at 26 Deacon Lane (Map 023, Lot 003) in the Residential/Agricultural Zone.

Tiffany Rhodes explained she is a certified nurse practitioner working full time in Massachusetts. Rhodes would like approval to operate an aesthetic business from her home. The business will include Botox injections and applying fillers. Botox is a neurotoxin which relaxes muscles, thus decreasing wrinkles. The days and hours of operation would be Monday, Wednesday and Friday between 11:00 am and 2:00 pm, with three clients per day. Major asked how much Botox would be stored on site. Rhodes replied that it would be two vials containing 2.5 milliliters each. Major asked if the Botox would be delivered to the home. Rhodes replied that it would not. Major asked if there would be any items for sale in the home. Rhodes said that there would not be any items for sale. Major asked if there would be signage. Rhodes responded that there would be no signage. Major asked if there is adequate off- street parking. Rhodes replied that the driveway is approximately 400 feet.

Tsao asked if syringes would be used, and if so, how would they be disposed of. Rhodes said a sharps container would be onsite and then properly disposed of. Moseley asked if there would be any type of serious reactions which would require emergency services. Rhodes replied that there could be an allergic reaction, which is rare, but nothing requiring an ambulance. McGhee asked if there would be any employees. Rhodes replied no. Belanger asked Rhodes if she anticipated any expansion outside of the requested days and/or hours. Rhodes said there would not at this time; however, eventually she hopes to expand. Major asked if Rhodes would like to modify her application to increase the hours and/or days of operation. Rhodes said no, but she does realize if the days or hours increase another approval would be required. Belanger stated his concern that the business would turn it into a full-time business operating within a residential neighborhood, especially with her comments about possible expansion. Rhodes replied that if the business takes off and goes outside of the home-based business requirements, she would seek another location.

Mason asked about the licensing requirements to administer Botox. Rhodes responded that a certification from the American Nurse Practitioners and a State license were required, which she has. Mason asked if Botox was a hazardous material. Rhodes replied no. Botox comes crystalized and is reconstituted with saline and injected. The syringe and Botox container, when empty, are discarded into a sharps container. Belanger asked if Rhodes contacted her abutters about her proposed business. Rhodes replied that she had and they had no objections.

Major stated if the ZBA imposed a condition of approval; stating all medical waste be disposed of in accordance with the applicable standards and regulations would it acceptable. Rhodes replied yes.

No further questions from the Board and none from the floor – hearing portion of the case closed.

DELIBERATION AND DECISION

Case ZBA 2018-009

Discussion of the application of James Bristol, property owner, for an Appeal of an Administrative Decision to allow the continuance of two additional businesses which are not permitted under Section X.G. Residential Agriculture, 1. Permitted Uses or 2. Special Exception Uses as part of a grandfathered junkyard operation, property owner Bristol Farm, LLC, located at 80 Witches Spring (Map 046, Lot 015) in the Residential/Agricultural Zone.

Moseley asked what date should be used to decide if the application is indeed grandfathered. Major stated the ZBA was provided a lot of information which is not crystal clear. Evidence or testimony was presented that the two operations were at least going back to 1970 with a few letters dated in the 1960's. Gravel and sand were used to create route 101A and the Nashua Airport. Stickney testified that landscape materials, dumping clippings and leaves were present since he was a child. Major agrees with Condra's determination, due to the fact that the Town has no formal record of the additional businesses. Major stated the ZBA should consider the historical evidence and estoppel may be considered, since the Town knew about the operations since the 1970's and did not act in any way.

Major stated the applicant may have to submit a site plan for approval, but he is unsure about that. The site plan determination would need to come from the Building Inspector. West asked if a site plan would be required if the ZBA decides the operations were, in fact, grandfathered. Mason stated he feels the ZBA has authority to approve the application as is without any additional approvals. West, Moseley and Tsao agreed. Major stated he agrees that the owner has some vested right to continue the use of the property. However, the property is only grandfathered to a certain extent. The businesses should not be able to expand into a major sawmill operation or a large scale landscape materials yard. Mason asked if it would be a reasonable suggestion to have the Building Inspector complete periodical inspections of the site to alleviate the concern.

Major moved for the following findings of fact:

- 1. There is creditable evidence that the sale of landscape products and the logging business have been conducted on site since the 1950's.*
- 2. The Town had actual knowledge of the sale of landscape materials and the log staging operation since 2007.*
- 3. The applicant has a vested right to continue the logging and landscaping material operations. The logging and landscaping operations are consistent with the historical use of the property.*

Seconded by McGhee.

Motion unanimously approved.

No further discussion.

The ZBA voted to grant the appeal of an administrative decision and overturn the Code Enforcement Officer's decision and the results are as follows;

Board Member		
Brian Major	Yes	No
Cindy Robbins-Tsao	Yes	No
Drew Mason	Yes	No
Kat McGhee	Yes	No
Bill Moseley	Yes	No

THEREFORE THE APPEAL OF AN ADMISTRATIVE DECISION WAS APPROVED WITH THE FOLLOWING FINDINGS OF FACT:

1. There is creditable evidence that the sale of landscape products and the logging business have been conducted on site since the 1950's.
2. The Town had actual knowledge of the sale of landscape materials and the log staging operation since 2007.
3. The applicant has a vested right to continue the logging and landscaping material operations. The logging and landscaping operations are consistent with the historical use of the property.
- 4.

Case ZBA 2018-010

The discussion of the application of Tiffany Rhodes, property owner, for a Special Exception to Section XXII, Home Based Business, Paragraph 3, Home Occupation of the Zoning Ordinance to permit the operation of an Aesthetic Business located at 26 Deacon Lane (Map 023, Lot 003) in the Residential/Agricultural Zone.

Belanger stated the application is consistent with all of the past approved home occupations. The limited hours and days of the week are reasonable. The abutters have expressed support, not to the ZBA, but to the applicant. The applicant has been informed that a larger expansion of the operation may require additional ZBA approval. The lot is 2.3 acres and no signage would be installed. Belanger stated he would support the granting of the home occupation. McGhee and West agreed. Major asked if Mason still had concerns about hazardous waste. Mason replied yes; however, after doing research on the state administrative rules, he could not find a meaningful definition supporting that you could not have Botox on the premises. Belanger stated that a five-gallon container of gas is more hazardous than what the applicant is proposing. Mason agreed, stating the only regulations found were dealing with five gallon containers. The ZBA members all agreed the application meets the home-based business requirements.

Major moved for the following condition;

1. All medical waste shall be disposed of in accordance with applicable standards and regulations.

Seconded by West.

Motion unanimously approved.

No further discussion.

Questions/Special Exception

Question 1. Is the Exception specified in the Ordinance?

Question 2. Are the specified conditions under which the Exception may be granted present?

Question 3. Should the Exception be granted?

Board Member	Question #1	Question #2	Question #3	Total-Yes	Total-No
Jim Belanger	Yes	Yes	Yes	3	0
Cindy Robbins-Tsao	Yes	Yes	Yes	3	0
Drew Mason	Yes	Yes	Yes	3	0
Kat McGhee	Yes	Yes	Yes	3	0
Meredith West	Yes	Yes	Yes	3	0

THEREFORE THE SPECIAL EXCEPTION WAS APPROVED WITH THE FOLLOWING CONDITION;

1. All medical waste shall be disposed of in accordance with applicable standards and regulations.

Review of Minutes

Belanger moved to approve the minutes of June 28, 2018.

Seconded by Mason.

Motion unanimously approved.

Meeting Adjourned

The ZBA meeting adjourned at 8:25 pm.

Respectfully submitted, Donna L. Setaro, Building & Land Use Coordinator