



## TOWN OF POESTENKILL

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### Zoning Board of Appeals

### ZONING BOARD OF APPEALS July 14, 2020 Minutes

#### Attendees:

Paul Jamison, Chairman  
Kevin McGrath  
Tim Hoffay  
Susan Kalafut  
Nicole Heckelman (by teleconference)

Chairman Jamison opened the meeting at 7:30 pm with the Pledge of Allegiance.

#### Applicants:

<u>Louis Basle</u>	<u>Code Interpretation</u>
69 Abbott Drive	125.-11-17.11 (14 Abbott Drive)

Applicant and Board Members discussed moving forward with a Public Hearing. Motion to schedule a Public Hearing for an Interpretation regarding non-conforming uses at 14 Abbott Drive (Town Code #150-76 (1) (3)) made by Member Hoffay. Motion was seconded by Member Kalafut and passed with a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

*Resolution: Schedule a Public Hearing for August 11, 2020*

<u>Joseph Hitchcock</u>	<u>Planning Board Interpretation Request</u>
137.-1-23.12	160 Lynn Rd. – firewood/sawmill

In attendance with Applicant is his attorney, Linda Mandel-Clemente. Ms. Mandel-Clemente handed out packets to the Board members further outlining Mr. Hitchcock's activities and use of site. She described the Applicant's activity as the cutting up and sale of firewood, where he brings in logs that are not suitable for planks, logs that are harvested from other properties and brought to the location for retail sale. Ms. Mandel-Clemente stated the retail sales include the Dinosaur BBQ and local residents, where he is selling goods for profit and that no exclusion should be considered by his cutting the logs into smaller sizes for customers. Ms. Mandel-Clemente offered other examples of similar "retail break downs" i.e. slicing lunch meats at a delicatessen, the cutting of fabric off a bolt of fabric at a quilt shop or the cutting and arranging flowers at a florist. She stated that while the slicer of the meats may be a smaller size, it has the same function and scale as the logs into firewood. Further, if the Planning Board were to decide that Mr. Hitchcock's business was retail, there should be no

limits to its size, that the Code as read today has no wording of exclusion for this business and that if there are no words specifically excluding, then the intent of the Code is in favor of the property owner. Planning Board Chairman Tom Russell took exception with Ms. Mandel-Clemente's remarks and comparisons. He stated that the Planning Board currently sees the operations as "processing", not retail. Further, Mr. Russell stated that this operation is located in a RR1 zone with significant concerns of the transportation of the large logs, which are then unloading, processed and sorted into vehicles for delivery. Chairman Jamison stated that based on the description just given by Mr. Russell, the operation in question is "light industrial processing", which is not allowed anywhere in Town except the designation zones.

Member McGrath asked the Applicant if he lived at the site, could this be considered a "home occupation" and Mr. Hitchcock said no, he doesn't live there. Member McGrath stated that a building permit shouldn't have been issued for the building originally, it wasn't a permitted use. Ms. Mandel-Clemente said the business has been there for twelve (12) years and asked why it had become an issue now. Chairman Jamison stated the level of noise has continued to increase and there had been multiple noise complaints, from different residents. Ms. Mandel-Clemente argued that the Building Inspector had stated in twice to speak with Mr. Hitchcock and that the complaints filed were not accurate complaints. Chairman Jamison stated the noise complaints were not an issue in front of this Board, but that the Planning Board had requested an interpretation of retail pertaining to the processing of wood for sale as firewood. Ms. Mandel-Clemente added that "there is product sold for profit" and if the Board is concerned of opening the door to other similar applications, then amend the Code – if processing were to be excluded, it would say that. She said that the language broadly stated retail activity and if there was a limit on processing – with most retail use having at least some processing – then retail would be restricted.

Chairman Jamison said the current use is CLI (Commercial Light Industry) and that if a particular use falls into two (2) categories then the definitions of each category is reviewed. He read "Town Code Section 150-4, Industry, Light – A use involving the manufacture and/or processing of a product, but not producing noisy or otherwise objectionable disturbances such as a vibration, dust, odors or heavy truck traffic, and not involving the use of heavy machinery." Chairman Jamison said that noise is an issue and will be even if Mr. Hitchcock gets a Special Use Permit. Ms. Mandel-Clemente states that noise will be addressed at the Planning Board. Chairman Jamison further stated that the obnoxious noise, use of gas, fumes are not permitted and are not part of the process of sale, that these facts can not be separated. Ms. Mandel-Clemente reiterates that the cutting up of firewood to size per customer request is no different than the fabric being cut up per the customer request, processing is a part of selling. Chairman Jamison asked what percentage of the property is used for processing and what percentage is used for sales? Ms. Mandel-Clemente stated that the business uses 0.3 acre of the six (6) acre lot, that Mr. Hitchcock could control the timing of loading for deliveries to the Dinosaur BBQ and possibly arrange for customer to pick up on the weekend. Chairman Jamison asked if anyone was on-site with regular hours, Mr. Hitchcock answered no. Steve Valenti spoke in favor of the activities at 160 Lynn Road and he feels it is not operated unreasonably, that the noises from the business are typical of a rural community. Ms. Mandel-Clemente stated that if her client was operating a "sawmill", he would have applied for a Use Variance, not a Special Use Permit.

Planning Board Chairman Tom Russel stated that the processing at 160 Lynn Road is the reason for we're here, that there is a real problem with the heavy duty trucks, the unloading of the large logs, the noise with processing the logs down to customer specifications and the reloading of delivery trucks. He stated it is very important that the needs of all – the residents' needs, the Town's needs and the Applicant's needs – are all considered. Motion is made by member Hoffay to hold a Public Hearing on the Interpretation of Retail vs. Light Industry. Motion is seconded by Member McGrath and is passes by a vote of five (5) ayes, zero (0) nays and zero (0) abstentions. Chairman Jamison states that the Board's attorney, Jack Casey, will attend the Public Hearing.

*Resolution: Schedule a Public Hearing on August 11, 2020.*

Ernest Molina

125.-11-11

Area Variance (Alpacas)

1 Clement Drive

Applicant was referred by the Planning Board to obtain an Area Variance to have 2 alpacas on 0.75 acres where two (2) acres would be required. Mr. Molina discussed with Board Members his desire to have two (2) pet alpacas at his home. He recounted his discussions with Code Enforcement Officer regarding lean-to structure and the fencing around the perimeter of the lot. When asked why he wants the alpacas, Mr. Molina said he and husband have volunteered Tivioli Farms (alpaca sanctuary), they would have two females with no breeding and find alpacas to be very sweet, loving pets. He also mentioned that the alpacas are very tidy (defecate in same spot routinely) and are herd animals. Chairman Jamison asked Applicant of the neighbors' thoughts on this proposal. Mr. Molina stated he had spoken to few, with positive results and would reach out to rest. It was suggested Mr. Molina document the support of neighbors if possible. Motion was made by Member Kalafut to schedule a Public Hearing for an Area Variance to allow two alpacas on a lot of 0.75 acres where two (2) acres required, conditioned on the Planning Board issuing a Special Use Permit for non-farm animals in residential area. Motion was seconded by Member Hoffay and passed with a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

*Resolution: Schedule a Public Hearing for July 21, 2020.*

### **Public Comments:**

Chairman Jamison asked if there was anyone who wished to speak on any topic that had not been brought up during the meeting. There being no comments, Chairman Jamison closed the Public Comment period.

### **Minutes:**

The Meeting Minutes of December 10, 2019 were reviewed. Motion to accept as written by Member McGrath. Motion was seconded by Member Kalafut and passed with a vote of five (5) ayes, zero (0) nays and zero (0) abstentions.

There being no further business, a motion to adjourn the meeting was made by Member Kalafut, seconded by Member Heckelman and approved by five (5) ayes, zero (0) nays and zero (0) abstentions. The meeting was adjourned at 9:15 pm.

Respectfully submitted,

Lynn E. Kane, Secretary