

Danville Zoning Board of Adjustment
April 19, 2016
7:30 pm

Members present: Chris Stafford-chairman, Tara Burkhart, Jason Holder, Joe Luna, Curt Springer

Excused members: Roger Denison

Other's present: Charles Cote, Roger Whitehouse

Minutes:

Joe made and Curt seconded a **motion to accept the March 22, 2016 minutes as amended**. Tara abstained. The motion **passed**.

Request for Rehearing for 2015-6

The Board recently received a request for rehearing from John Cronin, attorney for Charles and Wanda Cote, case #2015-6.

Chris explained the process and procedure for considering a rehearing. He said a letter was received from the applicant's attorney and each point would be discussed, analyzing the merits for a rehearing. The rehearing request was received within the allotted timeframe. This meeting is to discuss the request and not to take new testimony. Charles Cote was asked if he had any questions; he did not.

The request included a timeline of events for this case. Chris said that if new information has been found that was not known during the earlier proceedings and would affect the decision or if a technical error occurred, then a case can be reopened.

The Board reviewed the points from the letter dated March 30, 2016 from John Cronin to Chairman Stafford. The points of discussion were from paragraph 14.

- a. *The Board did not consider state law:* Curt mentioned that the Board has not taken an opinion on whether or not the property is a farm. He said a farm implies that the overwhelming use of the property is the farm component and this particular property is also a residence. Chris said the Board spent a great deal of time discussing the RSAs and did their due diligence to consider state law. The Board discussed at length the type of operation at the property, especially regarding importing and selling compared to breeding and selling.
- b. *State law provides for operations of farms....Dogs at issue are domesticated strains of fur-bearing animals:* Curt mentioned the applicants proposed a compromise to phase out the import of animals which seems to acknowledge they don't have a strong case here. Chris said the Selectmen did not consider this so this Board did not consider it. The paragraph references a second footnote but none was found on the document. It was mentioned that this Board has had a lot of discussion about fur-bearing animals.
- c. *The question before the Board is whether the use was a permitted use:* It was noted that the applicant has never established that the family has been selling animals on their property for fifty years. This Board had discussed the concept of a continual use, which the applicant was not able to verify.
- d. *Classification of importing of dogs is an administrative fabrication that lacks support:* Joe explained that the examples provided are ancillary uses and not the primary use of the property.

Chris said the reason the applicant came to the Board was due to the question from the state vet regarding local zoning approval. This is not an administrative fabrication.

- e. *The ZBA decision treats similar situations differently:* The Board questioned how this is true as this is the first administrative appeal received of this type. The Board stated that each application is reviewed individually and on its own merits.
- f. *The ZBA decision violates the NH and US Constitutions:* Curt said it is this Board's role to interpret the Zoning Ordinance and not evaluate its constitutionality. Chris said that a zoning ordinance provides some level of restriction, but it is voted on by the town and is not punitive or arbitrary.
- g. *The practice of importing reduces the impact to the community:* Curt said the ordinance was evaluated as written for a specific situation not just for its aspirational goals. Joe mentioned this was not a hearing for a variance or special exception which would evaluate the general purpose of zoning.
- h. *The decision violates the Declaration of Purpose for planning and zoning:* Curt said this is outside the scope of the ZBA. Joe said the applicant asked for an appeal of an administrative decision. The Board reviewed the Selectmen decision and sought to determine if it was consistent with the Board's interpretation of zoning. Chris noted that this Board thinks agriculture is beneficial and worthwhile and breeding on site may be considered agricultural and an allowed use.
- i. *If the decision stands, the applicant will suffer inverse condemnation:* It was noted that this Board never indicated that the Zoning Ordinance prohibits the import of products. The letter to the Selectmen caused a decision to be made and the applicant appealed that decision. This Board took the information provided and applied it to current zoning. The letter from the state stated a prerequisite for licensing is local zoning approval which the applicant did not have. The applicant did not provide evidence to prompt this Board to make a decision that was different than the Selectmen.

Chuck Cote stated they've had horses at his property forever. He said he had offered to the Board a letter from the state indicating that he is not required to have a license. Chris stated that the appeal was to determine if the Selectmen interpreted the Zoning Ordinance correctly.

Regarding inverse condemnation, it was pointed out that there have been multiple uses at this location and this decision does not prevent the applicant from pursuing an alternative use on his property.

- j. *The decision violates state law:* This Board had discussed what's allowed and has determined that breeding and raising is allowed.
- k. *The applicant questions what law supports the decision that prohibits the sale of puppies that were born elsewhere:* Curt said the point is that it is not a farm use if the puppies are born elsewhere.

The Board discussed number 15 briefly. It was agreed that this statement (that the decision is illegal and unreasonable) is just a statement; no further comment was provided.

Joe made and Tara seconded a **motion to deny the request for a rehearing as items 14a-14k bring us no new information or information not already considered by the Zoning Board of Adjustment when the ZBA made the decision to not grant an appeal of an administrative decision.** The motion passed unanimously.

It was pointed out that while Tara was not present when the when the decision was rendered, she was present during all of the meetings in which testimony was presented.

Other Business:

The annual meeting will be held on May 3, 2016 at 7:30pm.

At 8:35pm Joe made and Jason seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison