

Danville Zoning Board of Adjustment
July 14, 2015
7:30 pm

Members present: Chris Stafford-chairman, Tara Burkhart, Joe Luna, Curt Springer, Roger Denison

Others Present: Roger Whitehouse-Planning Board rep, Sheila Johannesen-Selectmen's rep, David LaPlume, Christina LaPlume, Dottie Billbrough, Kim Farah

Chris began the meeting by stating there are no alternates present and each member present will be a voting member.

2015-6 Rehearing

Chris said there had been a motion for rehearing filed July 6th for Case #2015-6. This was for Charles and Wanda Cote of 6 Cote Drive, known as Tax Map and Lot 4-2, who appealed an administrative decision made in a letter from the Selectmen, dated April 3, 2015 regarding Zoning Ordinance Article IV.A and X.C. The appeal had been denied by this Board on June 9 with a Notice of Decision subsequently sent to the applicant. Chris explained that anyone aggrieved by a decision of this Board may appeal it. This can include the applicant, abutters, the Board of Selectmen, or possibly another Board in town. This meeting is to determine if there are grounds for a rehearing of the issue. This could include new information that was not available during the hearing or a procedural issue that should be addressed.

Chris read the Notice of Decision for case #2015-6. Copies of the motion for rehearing, dated July 3, 2015 from John G. Cronin, were given to the Board members. It was discussed one paragraph at a time.

Paragraph 6.a:

- "...The Board did not care about state law or the zoning statute. All the Zoning Board was interested in was the Zoning Ordinance."

The Board agreed that during the two meetings dealing with this case, May 26 and June 9, the RSAs were discussed. However, the discussion was steered toward the issue of local zoning which is the focus of this Board. The letter from the state, which is the impetus behind the letter from the Selectmen, dealt with the applicant's compliance with local zoning. The letter from the state indicated they were waiting to see if the applicant complied with local zoning.

It was noted that state law is not the only controlling factor in this case. Local zoning and its requirements are big parts of this case. When the applicant referred to RSA 466 during the previous hearings, the Board steered the conversation back toward compliance with local zoning. This Board was consistent in redirecting the applicant to local zoning compliance. The Board agreed the reason cited in this paragraph is not grounds to grant a rehearing.

Paragraph 6.b:

- The Board "neglected to consider state law.... The Cote property is considered a farm by definition."

The Board disagreed with the reason stated in this paragraph. The Board had considered state law and concluded that importing and breeding puppies does not constitute a farm use. Local zoning allows farm uses in the residential/agricultural (RA) zone in which the applicant lives. On May 26th the applicant read RSA 21:34 and this Board disagreed with the applicant's interpretation, stating that it does not apply here. The Board agreed the reason cited in this paragraph is not grounds to grant a rehearing.

Paragraph 6.c:

- Referring to the original Selectmen's letter which cited the incorrect Zoning Ordinance article:

It had been made clear in the previous meetings that a scrivener's error was in the first letter. This was subsequently corrected with a corrected letter sent to the applicant via certified mail with a return receipt. The applicant misstated at the June 9th when the letter was delivered to his home. The applicant appeared to understand the purpose of the initial meeting, in spite of the error, and came prepared to discuss the correct zoning article at both hearings held for this case. The Board agreed the reason cited in this paragraph is not grounds to grant a rehearing.

Paragraph 6.d:

- "The State law provides that... 'farming' means all operations of a farm.... The dogs at issue in this case are domesticated strains of fur bearing animals."

Curt maintained his opinion that fur-bearing animals are those raised to be killed for their hides, and to have their fur sold as a product. The dogs raised at the Cote property are also not raised as herding dogs. It was pointed out that the applicant stated the bulk of their animals are imported for a short period of time, and then sold, or direct-shipped from off site. They may be there for a short while; this does not constitute raising animals. It was pointed out that the puppies are also not raised as support animals incidental to a farm operation. The Board agreed the reason cited in this paragraph is not grounds to grant a rehearing.

Paragraph 6.e:

- This deals with the issue of a vested use and that the family has been selling animals from this property for fifty years. This also deals with a use allowed by the ordinance, such as a farm in the RA zone.

The Board determined that raising puppies is not a farm related occupation. There was also no evidence presented during the hearings that this is a non-conforming use. This was determined during the June 9th meeting when each section of the applicable Zoning Ordinance for the RA zone was discussed and none of them apply to this property. The paragraph stated the family has been selling animals from this property for 50 years yet no evidence was brought to the discussion to corroborate this. The Board offered the applicant time to present proof that the sale of dogs has been ongoing prior to zoning, yet the applicant provided no proof. The Board agreed the reason cited in this paragraph is not grounds to grant a rehearing.

Paragraph 6.f:

- "The Board... focused on the need for a Special Exception without determining whether the existing use was an allowed use. No findings were made... whether the state law deserves consideration."

It is unclear which state law this paragraph references. The Board had mentioned that a special exception allows certain deviations from zoning, and had pointed out that selling puppies from this property, which is not a farm use, could be an allowed use if a special exception were

granted. However, no application for a special exception has been filed so this Board has not deliberated on this matter. The example was given that a property may have a hair-dressing shop on a site. This may be an allowed use per local zoning if a special exception is granted, and until that property owner obtains a special exception, that use is not a legally permitted use. If they have not obtained a special exception for that business, they are not in compliance with zoning.

Paragraph 6.g:

- “The Board...erred by not allowing a continuance, as requested by the applicant.”

It was pointed out that the letter referred to in this paragraph was marked “attorney/client privileged.” The Board decided to disclose it to the applicant in the interest of being open. It had been received by the Board members only two hours before the meeting in which it was given to the applicant. While time was given for the applicant to read the letter, it was agreed that this may be grounds for a rehearing. It is also understood that if the letter had not been given to the applicant, this point would not be discussed at all.

Paragraph 6.h:

- This refers to procedural error by stating Joe voted and the Selectmen’s representative acted on the case.

It was stated in prior meeting minutes that those present during the May 26th meeting were the same members voting at the June 9th meeting. This did not include Joe. It was noted that at both hearings the Selectmen’s representative had excused herself from the table to sit in the audience during this portion of the meeting. While Joe had remained at the table during the June 9th meeting and participated in the discussed, he did not vote. It was pointed out that all members of a board, including alternates, are encouraged to attend all meetings even if a quorum is present and the alternate will not participate in voting.

Joe made a motion, subsequently withdrawn, to grant a rehearing. After a short discussion, Chris made and Joe seconded a **motion to grant a rehearing based on the reason stated in paragraph 6.g.** The motion **passed** unanimously.

It was agreed a rehearing could be held on August 18th and this will be the only item on the agenda. The meeting was opened to the public.

Selectman Farah stated her opinions for the following paragraphs:

- a. This was discussed at the prior meetings.
- b. Zoning in the RA district does not restrict farming, but a farm still needs to conform to state and federal law. RSA 674:32-6 is not being restricted.
- c. The Selectmen issued a corrected letter after the error was discovered and the hearing was reposted. The postal service showed a receipt date several days prior to when the applicant stated he received it.
- d. Perhaps a clear definition for fur-bearing animals should be obtained.
- f. The Selectmen would have addressed the issue of an allowed use first, as the first point of contact for a home business per the Zoning Ordinance.

Selectman Farah also asked if the applicant still has the option to request a variance rather than a rehearing. She was answered that they may. They also have the option of requesting a rehearing after the rehearing. Curt mentioned that a rehearing makes all these points moot.

13 Coburn Hill-Court Decision

Chris informed the Board of the recent decision rendered by the courts regarding the case of Teale vs Town of Danville. The court ruled in the Town's favor. It was noted that this was a phenomenal expense to the town.

Email Policy

The email policy adopted by the Heritage Commission was reviewed briefly. It was agreed there is a level of detail that may not be necessary for this Board. The Board meets as needed, making some communication via email necessary to forward minutes, applications, and other pertinent information. Discussions have not been made via email and it was agreed by all that discussions should never occur via email. The policy should also address etiquette.

At 8:45pm Joe made and Tara seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison-clerk