



**** DRAFT ****

Hill ZBA

Meeting Minutes

August 16, 2021

In-Person special meeting and public hearing of the ZBA

Meeting was brought to order by Stephen Thomson, Chairman, at 7:00 p.m.

It was explained by the Secretary that the Board was in recess regarding the deliberations of the Excavation Permit Application(s) and subsequent submissions. The board is reconvening for the purpose of the special exception hearing for Jason Avery. When the board concludes, it will resume recess and will remain in recess until such time as the board reconvenes and deliberations resume.

Attendance: Stephen Thomson, Charlie Estes, Frank Marsh, Frank Razzaboni

Public: Jason Avery, David Thomson, (Abutter) and Randall Pabst (Abutter)

Old Business –

Minutes of Previous Sessions: A motion was made by Frank Marsh to accept the July minutes of the Public Meeting and Hearing as presented. Seconded by Frank Razzaboni - Motion passed unanimously.

The meeting proceeded with a brief overview by the Secretary explaining the posting requirements of a Special Meeting and Public Hearing(s) that are held on dates other than a regularly scheduled ZBA meeting that occurs every 2nd Thursday of each month. The explanation included the description between a Public Meeting and a Public Hearing and the need for proper posting.

Having been properly noticed and posted as required, the Public Hearing on the matter of Jason Avery's application for Special Exception was opened by the Chairman at 7:10 PM. Present was Jason Avery, David Thomson (Abutter) and Randall Pabst (Abutter.)

The Board re-reviewed the application submitted by Mr. Avery for the purpose of operating a small engine repair shop in the Residential/Commercial District. In accordance with Hill Zoning Ordinance Article V, Zone C, Section A, 7. a special exception by the ZBA is required for automobile repair garages and uses incidental thereto. The board finds small engine repair equivalent to automobile and uses incidental thereto requiring special exception. The board also re-reviewed the application with consideration to Article VIII D, 2. The board discussed and concluded that since Mr. Avery has previously been approved by the Planning Board for the same entity, at the same location, as a Home Occupancy, [although the Town did not have a Home Occupancy application and permitting process at the time it was approved by the Planning Board Chairman in June of 2020] it's reasonable to conclude the Planning Board shall find the site appropriate for its intended use. Additionally, recent citations reversed a previously held view that the Planning Board's "advisory role," specific to matters such as Hill's Article VIII, D 2, was required. The Supreme Court's ruling is that the Planning Board's role in these matters is advisory in nature and not required. The ZBA opines this should be considered on a case by case basis.

Mr. Avery provided his mostly verbal presentation. The Abutters responded with having no objection to Mr. Avery's special exception application being approved.

Mr. Thomson (David) wants the minutes to reflect that the special exception process is the proper procedure that was mishandled by the Chairman of the Planning Board since May or June of 2020. Mr. Thomson insists the minutes reflect that Robert Helmers performed a Meeting of the Planning Board via email dated July 25th, 2020 that was forwarded to the ZBA on July 8th 2021 per request of the secretary of the Board. The email is incorporated in the minutes as requested.

Chairman of the Board – Stephen Thomson wants the board and public to know of the circumstances leading up to the Planning Board Chairman’s decision for the current operation to be considered a Home Occupancy business in the commercial district. The meeting minutes and emails related to the approval by the PB Chairman were reviewed.

July 22, 2020 PB minutes state as follows: ***“Mr. Avery would like to start a small engine repair shop from his home located on NH 3A in the commercial zone and asked the board what he needed to do in terms of town approval. He would likely post a sign as allowed by town zoning. He plans to work out of his garage, would require minimal customer parking. He plans on travelling to pick up small engines, return to his garage for repairs. The property would principally be used and appear as residential property. The board expressed some concern over noise, smell and hazardous substances. The board tried to classify the enterprise as commercial or home occupation but did not reach a conclusion. Board was also not able to determine if a site plan review permit would be required. Mr. Helmers apologized for not being able to provide a current zoning ordinance. Internet was consulted but proved inadequate for all members to appropriately review. Each board member agreed to individually look at current zoning ordinance in next few days and email their opinions to chair. Board could then decide how to proceed. There is some urgency in the matter. Mr. Avery departed.”***

July 25, 2020 email states as follows: (Copied were – M Brady, Marshall Bennett, Tom Whitman)

Hi Jason,

Consensus is this is home occupation. For now go ahead and start operation. I will draft an application and we can catch up with the permit later, maybe at the August meeting.

Robert Helmers

Planning Board Chair

**** The ZBA Secretary shall request copies of all emails associated with the correspondence. ****

The August 2020 Planning Board meeting was cancelled as a result of non-attendance and the September meeting minutes reflect Bob Helmers met alone with a resident - Bob Welch to discuss converting a barn to a single apartment building. The minutes state – “NO PLANNING BOARD MATTERS WERE PENDING” which is contradictory to the email approval of a Home Occupancy application for Jason Avery. Mr. Helmers neglected to follow through with drafting an application for Mr. Avery to submit, neglected the application process and neglected the notice of decision required by town procedure and NH State Law.

It is also noted that Mr. Helmers did not produce a Home Occupancy Permit Application, nor did the Planning Board establish a process for Home Occupancy permitting, until July 15th, 2021 as shown in the July 2021 Meeting / Hearing minutes.

Chairman Thomson stated - To date, Mr. Avery has never applied for a Home Occupancy permit in the Town of Hill. (Despite the Planning Board Chairman’s email of July 25th, 2020.) The Public Hearing was closed at 7:35 PM. The Board engaged in deliberations - Taking all things into consideration – Charles Estes made a motion to approve the application for special exception. Seconded by Frank Razzaboni – Motion passed unanimously. Having no other business - the meeting concluded and the board recessed at 7:50PM.

Charlie Estes, Secretary ZBA