

TOWN OF CHATHAM
MAY 27, 2010

ZONING BOARD OF APPEALS
FINAL COPY

Members Present:

Robert Leary
JP Henkel
David Everett, Chairman
Jeff Lick
Kary Jablonka
Adrian Ooms
Mitchell Khosrova(7:50)
Walt Simonsmeier, ZEO

Members Absent:

None

Public Present:

Matthew Greisemer	Carl Bornhorst
Robert Boll III	Tara Boll
Lauren Intrieri	Larry Intrieri
Michael Intrieri	L.M. Intrieri
John Antalek	Jennifer Boll
Robert J. Boll, Jr.	Arlene Butler
Pamela-Jo Nelson	Peter Linck
Catherine Linck	Thom Lipiczky
Linda Chernewsky	

The May 27, 2010, Zoning Board of Appeals meeting was called to order at 7:00PM by Chairman David Everett. The Pledge of Allegiance was recited. Kary Jablonka moved and Jeff Lick seconded that the minutes from the previous meeting be accepted. This carried.

PETER AND CATHERINE LINCK- APPEALING A DECISION MADE BY THE ZONE ENFORCEMENT OFFICER AS TO WHETHER A BUSINESS IS BEING OPERATED IN AN H-1 ZONE PUBLIC HEARING

Atty. Matthew Greisemer is representing the applicants, who are appealing a decision made by Walt Simonsmeier. Atty. Greisemer reviewed the appeal request. The Lincks contend that the neighbor, Larry Intreiri, has been operating trucks and equipment from his property since 1992. In February, 2010, the applicants sent a letter to Mr. Simonsmeier objecting to this. His response was that he couldn't say that it was a commercial use, so directed it to the ZBA. The Lincks state that this property is being used as a commercial enterprise in an H-1 zone, which is disallowed, and that there is industrial uses of vehicles on that property, and if it is a home occupation it is not following the guidelines because of the amount of dust, noise and pollutants that are being generated. Atty. Greisemer also provided information on the 18-wheeler truck that is at that location. It is registered to Lawrence Materials, Inc. at the Rt. 203 address. Lawrence Materials is a corporation, even though it has its franchise taxes due. Chairman Everett spoke of the Judge Williams stipulation that dealt with a similar situation---too many trucks on the property---but nothing was resolved, and it is still open. Clerk Marilyn Cohen added that three phone calls were received by the ZBA from adjoining property holders who had no problems whatsoever with what was happening on the Intrieri property. The locations of their homes were shown on a tax map. Mr. Intrieri was asked to

respond. He said that yes, he does park his truck at his house on Rt. 203, but since his property is below the road it can't be seen from the road. He does not run it for hours at a time. The most it is run for warm-up purposes is 7 minutes, and it is a very quiet vehicle. He was stopped for emission control in Connecticut recently and he fell way below (17%) the allowable standard (40%) of particulates. No smoke is visible from his vehicle, nor is there any dust. He comes home, parks the vehicle and then leaves in the vehicle the next day. As far as the contention that he has a bulldozer on the property, he does not own one. He has a pay loader, but it has not been on his property until this past fall, and it is not being used at all on the property. As far as the snowmobiles are concerned, that is his hobby. The fact that the neighbors shot pictures of the tires on the property means that they trespassed onto the property without permission. The blue tractor that is currently on the property belongs to his brother and it is being used to repair his driveway. He denies running a business from his home. Chairman Everett asked Mr. Intrieri what the purpose of the pay loader is. He responded that he is waiting to go elsewhere with it once the economy turns around. He does own it. At times he loans it out, and at times it is used in the business, but never at his house. He stated that he only has the one tractor and up to three trailers at his house, but only one trailer can be used at a time, and that he is the sole operator. Kary Jablonka asked where he maintains his records. These are at his home. Jeff wondered about any other equipment. Mr. Intrieri stated that there is no other equipment, that the snowmobiles are for his personal use. Robert Leary asked about the size of the lot. It is 1.87 acres. JP Henkel asked if he did snowmobile repairs on his property. Mr. Intrieri said that he might repair his own, but no others. He added that he feels that he has been a victim. He claims that many years ago he had to call the police because the applicant had been outside taking pictures of his children, and since then there have been these allegations against him of conducting a commercial enterprise on his property. He added that Judge Williams wouldn't sign the stipulation because he said that the Lincks needed to get a lawyer, and all the paperwork after that disappeared. He never has heard a complaint from the neighbor across the street who would be the one who would be bothered if there was a problem. Mr. Jablonka asked him if he was operating a business out of his home. He said he was not. He keeps records at his house, as many people do, but there are no advertisements for his business, nor are there any signs. The Public Hearing was opened at 7:32PM.

Jennifer Boll, who lives three doors away from the Intrieris stated that she is very upset about this allegation. Mr. Intrieri is trying to provide for his

family. He is often gone for weeks at a time. They are quiet, good neighbors. It is normal for someone to drive the vehicle they go to work in at their home. Keeping records at home is normal. This is not a gated community. Ms. Boll said that she is supportive of Mr. Intrieri's endeavors and said that there is no undue impact on the neighbors.

Mr. Intrieri added that he lives on a main road where the vehicles often go 55-60mph. All vehicles use this road and there is dust, dirt and noise from many of these vehicles, unlike his vehicle.

Robert Boll said that he lives uphill from Mr. Intrieri. He is an excellent neighbor who is helpful and who works hard. He brings his truck home, parks it and then is gone 4-5 days. It is good that the town of Chatham allows people to park a truck on their property.

Carl Bornhorst said that he is new to the area and to him the only loud noises are the motorized boats, the trains and the geese. He doesn't hear the truck.

Robert Boll III lives across the street from Mr. Intrieri. He said that he is a great neighbor. His house is above Larry's, and he would be the one to complain if there was an issue, but there is no problem. They are glad to have him in the neighborhood. The Public Hearing was closed at 7:40PM.

Atty. Greisemer added that Mr. Intrieri is admitting he is running a home business, and if one were to Google the business the Rt. 203 address is listed as the location.

ZEO Walt Simonsmeier said that the Town of Chatham has no definition for a commercial business, and even if there was one, this would not fall under that. There are 2 to 300 other people in the Town who do the same thing. If this is deemed a business, others can complain too. To be a business or a home occupation, it must be run at that location. This isn't. Kary Jablonka wondered what does constitute a business. If Mr. Intrieri was loading and unloading stone at his home and then reloading it to his truck to take it somewhere, it would be a business. It wouldn't be a business just because the phone rings at the house. Having the pay loader there might cross the fine line into considering it a business, but it isn't being used. Mr. Jablonka said that having the tractor, two or three trailers and the pay loader are all integral in the operation of his business, and parking and storing the vehicles on a property would be considered part of a business, so at what point does it become a business? Mr. Intrieri said that he is not doing billing at home. He cited examples where this week he billed from a motel room

and from a driver's lounge while his truck was being serviced. Although payments are received at his house, he could get a post office box. Chairman Everett stated that he is concerned about setting a precedent here. In considering the home as an accessory use, one must look at the degree of use. Atty. Greisemer reviewed what living in an H-1 zone means. It does not permit the storage of large vehicles, which is what is being done here, so it is a clear violation. Mr. Everett stated that a decision has to be rendered taking into consideration the facts that are before the board.

ZEO Walt Simonsmeier stated that the Town Code, when it refers to the front yard, is looking at the setback. In this case, it is 25' and the truck is not parked in this setback area. After listening to what most of the neighbors present are saying and to what Mr. Intrieri is saying and what is supported by the emission control document submitted, the issue of fumes being emitted is not happening. The main issue continues to be the fact that there is no definition of commercial use, which is what the Board will have to decide upon. As far as the tractor which is currently on the property, many people have them, and this isn't an issue. There is also no law against having snowmobiles, and Mr. Intrieri is not repairing others. The Board was polled as to their thoughts on this being a business as opposed to an accessory use.

Mitchell Khosrova feels this is a business. Vehicles need to be stored elsewhere. JP Henkel feels that Mr. Intrieri has the right to drive his vehicle home, whatever that may be. He has an issue with the pay loader and the extra trailers, but if they weren't there, he'd think it was an accessory use. Bob Leary feels that one tractor would be OK, otherwise there are too many trailers so it would be considered a business use. Kary Jablonka has a problem with the pay loader, but feels that the truck and two trailers would be an accessory use. David Everett feels that with the present equipment it would be a business, but if some were to be removed he would reconsider this as an accessory use. Jeff Lick feels that it is a business because the records are kept here and this is the home base. The volume of the equipment is also a concern. Adrian Ooms feels that if the pay loader is the issue, Mr. Intrieri said that he would move that. The business is an address only, so he would consider it an accessory use.

David Everett moved that with the polling of the Board, this be tabled until the next meeting, so that Atty. Rappleyea can write up a decision for consideration at that meeting after which a vote will be taken. This was seconded by JP Henkel and carried.

PAMELA-JO AND DREW NELSON- REQUEST FOR A VARIANCE TO ALLOW AN EXTENSION ON A PROPOSED SECOND STORY TO THEIR HOME THAT DOES NOT MEET SETBACKS PUBLIC HEARING

Mrs. Nelson reviewed the project and showed the new and updated rendition of the second story. She also turned in the postal receipts indicating that the adjoining property holders within 500' were notified. Although it is changed a little, it does not affect the request for this variance. A 33.1 foot variance in the front and a 23 foot variance on the side are needed. The Public Hearing was opened at 8:44PM. There were no comments. The Public Hearing was closed at 8:44PM. Mitchell Khosrova moved that a 33.1 foot variance from the front and a 23 foot variance from the side be approved for this project to be completed. Kary Jablonka seconded the motion and it carried unanimously. The approval fee was submitted.

WHITE BRIDGE FARM- REQUEST FOR AN INTERPRETATION OF THE ZONING CODE WHICH WOULD ALLOW THE RENOVATION OF THE FIRST FLOOR OF AN EXISTING STABLE TO USE AS A GATHERING SPACE WHICH WILL INCLUDE A KITCHEN AND A BATHROOM AS AN ACCESSORY USE. PUBLIC HEARING

Linda Chernewsky is representing the client. She reviewed the request and stated that the application was redone per the advice of the Board to request this as an interpretation of the Zoning Code. She turned in the postal receipts indicating that all the adjoining property holders had been notified. She stated that she spoke with Victoria Kremer who said that she was happy to have people doing something on the farm. Chairman Everett asked if she would have a problem making it a condition that this space is not to be used as living quarters. This would not be a problem. The Public Hearing was opened at 8:47PM. There were no comments. The Public Hearing was closed at 8:47PM. Mitchell Khosrova moved that the first floor of this stable can be used as a gathering space, which will include a kitchen, bath and laundry facilities, but would not be used for living quarters as an accessory use to the main house. This was seconded by David Everett and carried. The approval fees were paid.

DONALD TUBBS-REQUEST FOR A VARIANCE WHICH WILL ALLOW AN OUTSIDE BOILER THAT CANNOT MEET THE SIDE SETBACK INFORMATIONAL

When Mr. Tubbs came to apply for his building permit for the outside boiler, he learned that he needed a variance because he can't meet the setback. He had placed it where it is because the neighbor had expressed an interest in hooking into the boiler, although this has not happened. This wood boiler, according to ZEO Simonsmeier is an

accessory use. Currently the stacks are 12-15' off the ground on a 1" pad of crusher run. There was some discussion as to whether this is considered a structure. Mr. Simonsmeier stated that the Department of State considers this an accessory use. In order to do what Mr. Tubbs is proposing, he would need a 30' variance. Mr. Everett stated that a survey would be required with both sidelines and the distances from the boiler on that survey prior to a Public Hearing. He also indicated that the variance criteria would also have to be met. He cautioned that utilizing outside boilers right now is a big issue, and Mr. Tubbs can expect that there might be some controversy regarding this from the public. If the survey is submitted, this will be set for a Public Hearing in July.

BEVERLY HOUSE- REQUEST FOR A VARIANCE WHICH WILL ALLOW FOR AN ADDITION TO BE CONSTRUCTED ON THE RESIDENCE THAT CANNOT MEET THE SETBACK INFORMATIONAL

Tom Lipiczky is representing the applicant who wishes to put a 180 square foot addition on the back of the existing farmhouse which was built around 1775. The addition would be about 38' from the property line, and 50' is required. All of the adjoining property is owned by Bill Landford who has sent in a letter indicating that he has no problem with this plan. Chairman Everett stated that a survey of the property will be needed. If this is received, the Public Hearing will be set for the June meeting.

Dave Everett moved and Jeff Lick seconded that the meeting be adjourned. The meeting ended at 9:20PM.

David Everett, Chairman

Respectfully submitted,

Marilyn Cohen, clerk