

**Town of Epsom
Zoning Board of Adjustment
4/20/11**

In Attendance: Glenn Horner, Chairman; John Dodge, Planning Board Liaison; George Carlson; Mike Hoisington; Mark Riedel; Alan Quimby; Darlene Phelps Recording Secretary

Also in Attendance: Rick Belanger; Dave Fiorentino; Jay Hickey, Rob Topik; Attorney Rachel Goldwasser; Attorney Michael Cretella, John Klose; Bucky Stiles; Herb & Lee Bartlett; Attorney Simon Leeming; Len Gilman; Keith Cota; *one name illegible on sign-in sheet (later determined to be Scott Snedeker)

CASE 2011-04 David Fiorentino has also applied for an Administrative Appeal to overturn the Zoning Compliance Officer's (ZCO) February 7th 2011 decision that Condition #5 attached to a prior Variance approval (Case 2008-18) restricted a commercial garage to storage use only.

The property in both cases is located on White Birch Lane (private road) within the Residential/Agricultural Zoning District and is identified on Epsom Tax Map U-2 as Lot 4.

7:00 PM

Glenn opened the meeting. The minutes of 4/6/11 were reviewed. Alan made a motion to approve the minutes of 4/6/11. George seconded the motion.

Glenn read an emailed letter sent by Attorney Goldwasser asking for some considerations for changes to the draft minutes of 4/6/11. All proposed changes were discussed & several changes were made. All voted in favor of accepting the amended minutes as final.

In response to the applicant's attorney's request for his recusal in this case, and as Glenn had done at the original public hearing, Glenn asked George to take charge of the meeting again tonight. George reviewed the application before the board tonight. George reviewed a copy of the Zoning Compliance Officer's decision. The Board reviewed the letters to and from Jay Hickey, Attorney Tony Soltani and David Fiorentino. The purpose of tonight is to decide whether or not to support or overrule Jay Hickey's Administrative Decision.

John Dodge said the 3 key words he sees are "off premises business." Mark agrees, and said that even though there were a lot of things said that night – the applicant never stated in his original application or during the original testimony that he wanted to do maintenance. All of the focus was on storage for personal and commercial items only. Alan feels Jay interpreted Condition #5 correctly. George said the original decision is ambiguous, because there was a discussion of what could be stored there, but no discussion of what else could be done there. Mark reminded the board members that Jay's decision is based upon advice from the Town's legal counsel. Alan also reminded the board that if Dave was not happy with the way the original decision was written, he had 30 days to appeal the decision to the board to have it changed. Mark stated it is the applicant's responsibility to present all of the evidence. It is not up to the board to question him about what his intent was.

Glenn said the unique nature of this case is that tonight's appeal is centered around a decision that this board authored... so this board knows the original intention of the way the condition was written. Mark said he recalls a brief comment about the potential of

what could happen should the property be sold in the future. Glenn stated that he doesn't feel the board intended for Dave to have full commercial use on the property – it was a storage situation only. Mark feels that this board's responsibility is to the Town of Epsom and the original decision has hurt the applicant, the abutters, the town, etc. George said even though he feels that Jay made a fair interpretation, he doesn't necessarily think it's fair to tell someone he cannot change the oil in his own garage. Glenn reminded George that because this board authored the decision, he is able to take into consideration what his original intent was, and whether George intended for Dave to be able to do this type of maintenance in his garage.

Glenn asked if the board members think that the condition was written with the intention of storage only, as that is how he wrote it and the board approved it.

George said his intention was not to prevent Dave from doing simple maintenance, but he does not want to go against Jay's decision. Alan said he cannot say with all certainty that his intent was to prevent Dave from changing the oil on his personal vehicles, and today he feels strongly that he must support Jay's interpretation.

Mark said he is very certain that the condition was written for storage only. There is nothing in the record stating that there was to be more than storage. Mark feels Jay is correct in his interpretation. Mark doesn't feel there is any "wiggle room".

John wasn't on the board for the original Public Hearing; however he feels that Jay's interpretation is correct.

Glenn noted that no fines were assessed by Jay for this infraction.

Alan made a motion to uphold the Zoning Compliance Officer's February 7th 2011 decision that Condition #5 attached to a prior Variance approval (Case 2008-18) restricted a commercial garage to storage use only.

John seconded the motion. All in favor.

8:00 PM Old/New Business

Glenn announced the OEP Spring Training on June 11 at the Radisson in Manchester.

8:10 PM Alan made a motion to adjourn. Mark seconded the motion. All in favor.