ZBA

#### Town of Epsom

**Zoning Board of Adjustment**

**08/15/18**

**In Attendance:** Glenn Horner, Chairman; George Carlson, Vice Chairman; Gary Kitson, Alternate; Andrew Ramsdell, Alternate, Mike Bussiere, Alternate, Leann Fuller, Recording Secretary

**Not In Attendance:** Alan Quimby, Mike Hoisington

**Also in Attendance:** Virginia Drew; Jay Hickey, Zoning Compliance Officer; Joni Kitson

**7:00 PM** Glenn called the meeting to order and introduced the members of the board.

The minutes of 07/18/18 were reviewed.

***Gary made a motion to approve the 07/18/18 meeting minutes as amended. Andrew seconded the motion. All in favor.***

Gary Kitson stepped down as a board member to present his case.

Glenn stated that there are only 4 members present and Gary has the right to ask for a continuance. Gary waived that right.

Glenn swore Gary in.

Glenn reviewed the procedure for the meeting.

**7:06 PM Case 2018-07** (Kitson – AA) - Gary Kitson has applied for an Administrative Appeal of the Zoning Compliance Officer’s determination that the replacement of a non-conforming sign for a different business on Town property was “grandfathered”. The applicant contends that the grandfather rights for the original sign had expired based on the requirements contained in both Article III.B.3.b and Article III. M. 7 of the Epsom Zoning Ordinances. The property is located on the south east corner of the junction of Dover Road and Center Hill Road within the Residential/Commercial Zoning District and is *not* identified on the Epsom Tax Map by Map and Lot number.

The members voting on this case will be Glenn, George, Andrew and Mike Bussiere.

Glenn advised that this public hearing was published in the Concord Monitor, posted at the Town Office & the Post Office and all abutters were notified by Certified Mail. All certified receipts were received back with the exception of George A. Towle, Jr. Gary mentioned that George did get the notification but the Town has not received the return receipt as of yet.

Glenn opened the public hearing at 7:10pm.

Glenn stated that he is looking at this as a learning session that everyone will learn from.

Gary started off by stating that this has nothing to do with Jay, or Dave Stuart. Gary did sit on the board when Dave came forward with the brewery. He is doing well. Gary asked if Mike Bussiere was familiar with the Blake’s Brook Campground sign. The sign is gone and the Blasty Bough Brewing Company sign is in its place.

Glenn requested the full history of how this came to fruition. Gary stated that he found out when the Selectman’s minutes were presented to him by his wife. The Selectman’s minutes were from May 21st, 2018.

Gary read the following excerpt from the May 21st, 2018 Selectman’s minutes:

***“Kelly noted that she spoke with Jay Hickey regarding the sign permit application and Jay said it had been a grandfathered sign and this is just a replacement on the same post at the same location on the Town owned land. Chris Bowes said if Jay approved it then there should be no need for more discussion. Virginia still had concerns about the use of the sign and that anyone could be interested to put a sign on town land. Board discussed location and size of the sign. Chris made a motion to approve the sign permit application for David Stewart/Blasty Boughs to be located on the corner of Center Hill Road (replaced the Blake’s Campground sign). Motion was seconded by Virginia Drew. Hugh Curley said he would like to approve the sign application subject to the Zoning Compliance Officer’s approval. Vote was 2 in favor and Virginia opposed. Motion passed.”***

Gary’s appeal is based on the wording that says that the Blake’s Brook campground sign was grandfathered. According to the deed from Merrimack County Registry of Deeds, Blake’s Brook Campground was sold November 17th, 2016. The deed was transferred from Mr. Bradley to Spike Horn, LLC.

Gary read from the Town of Epsom Zoning Ordinance:

***Article III, Section B: 3: b***

***“All such pre-existing non-conforming uses shall be permitted to be continued indefinitely and be exempt from the restrictions imposed by these ordinances subsequent to their commencement unless:***

1. ***The specific use has ceased for any (1) year period…”***

Glenn reiterated that if it is a grandfathered use and the use is no longer active for a year, that grandfathered right went away.

Andrew stated that the new owner most likely did not know the ins and outs and his business has more of an online presence.

Gary continued by reading from the Town of Epsom Zoning Ordinance:

***Article III, Section M: 7***

***“Any permitted farm, business, professional or service enterprise which has ceased to operate for a period of at least one (1) year shall forthwith remove all signs along with any and all associated structures and materials which may have been erected on or off of its premises. Such removal shall occur no more than thirteen (13) months after the cessation of the business or professional enterprise. Signs which shall remain after the designated time period shall constitute a nuisance under these ordinances, but subject to removal by the proper authority and the cost of the removal shall be taxable to the owner of the parcel or the parcels of the land which may contain such signs.”***

Gary mentioned that the sign was removed but the posts were only cut off and the bases should have been removed. 13 months would have been December 2017. Gary also stated that any signs on Route 4 need to be permitted through the state once a year. With that being said, those applications need to be completed and paid for in February. On April 21st, 2017, the State sent a letter to Blake’s Brook Campground that they had not renewed their sign permit. In the letter it notes that if the sign is not removed by May 21st, 2017, the State will schedule the removal of sign. There was no response to that letter. The State sent a second letter via certified mail, it was undeliverable. The State then made contact with the new owner. The new owners stated they would be removing the off premise sign by September 10th, 2017 as they did not wish to have an off premise sign. At that point, it had not been a year yet and they cut the sign down as previously stated. Gary mentioned that the original owner did not pay the fee for the Sign, the new owner did not pay it but the town could have if they wanted the sign there. If the landowner chooses they can pay the permit. The town had the opportunity to pay for that if they wanted to use it later. Gary’s opinion is that free advertising is very good; maybe the Town should have paid for it.

Gary moved onto the Planning Board minutes of August 9th, 2017.

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***“John asked what they were doing with the old Blake’s Brook Campground sign at Route 4. Mr. Morton discussed that they do not want to advertise with signage.”***

Gary mentioned that they had the chance to say that they would like the sign but they have not. Gary also spoke about the requirements for this sign including following all State and Federal Rules.

***Article III, Section M: 3***

***“Off premise signs are permitted only in a commercial zone. Off premises signs are also permitted in the R/A, RLC and R/C Zones, subject to all state and federal regulations. “***

Gary continued to say that the sign has to be permitted through the State. Currently, it is not. The State contacted Blasty Bough Brewery to tell them they have to apply for the State permit. State pulled the permit and sent certified letter to Blasty Bough to tell them the sign can’t be there and they have to apply for the state permit. September was the cutoff date to get the sign permitted.

Gary discussed what lead to the Selectman’s vote to approve the sign permit. The Selectman made this decision based on a grandfather sign. To say this is a replacement is saying the same thing based on a grandfather sign, replacing in kind with what it was doing before, but this is not a replacement. The current owners did not want the sign; they said it twice, once to the state. The Selectmen are saying they are still grandfathered because the current sign is on the same post bases.

Gary read from an article written in the May 2008 issue of New Hampshire Town and City magazine by C. Christine Fillmore, ESQ. “But, It’s Grandfathered! Six Common Myths about Noncomforming Uses.

***“First, if the use is abandoned, it may be lost. “Abandonment” happens when the owner (a) intends to abandon or relinquish the use, and (b) takes some overt act, or fails to act, in some way that implies that the owner neither claims nor retains any interest in that use...Second, the idea of grandfathering is to permit property owners to keep what they have where they have it, but expansion or extension of that use is tightly controlled. RSA 674:19 states that a zoning ordinance “shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration.”***

Gary stated that another reason he brought this forward is liability. The Town owns that property, if someone climbs on that and hurts themselves, they will sue the landowner. Signs can be there, but in the rules a special exception must be granted for a non-conforming sign. That is when these concerns are addressed. Once a lawyer writes a letter to this town, we have to respond and that costs tax payers money. Gary made it clear that he does not mind seeing the sign there; George Towle said the same thing. He didn’t even know what the sign said. He also said he is not opposed to it as long as proper procedures were followed.

Mike reiterated that the major contention is they need to follow the checks and balances. In Gary’s eyes, 2 selectmen looked at this as friends. Without thinking of the other people in the Town and what ramifications this would bring. Glenn stated that this could be a bigger issue as the Selectmen are deciding which business can put a sign on town property without a formal process.

Mike asked if the owner of the sign was notified and Glenn stated he was not obligated to notify them by certified mail. Their notification was properly accomplished by the public notices. As far as the owner of the sign is concerned, he has a legal sign because the selectmen have approved it. George asked if the town would be liable if he was told to take it down and he loses business.

Jay Hickey was not present at the Selectmen meeting where they discussed this sign. Glenn stated the way it read was that Kelly told the selectman it was grandfathered and they were ok with that. Glenn asked Jay if that was the normal process. Glenn wanted to know if they completed any research or provide any evidence to back up their decision. Glenn said that it appeared that they had no information that it was grandfathered other than just “Jay said”. He did not believe that this was the best way to go about making administrative decisions. Jay stated that he spoke with the owner and said that he needed to get permission from the Selectmen and then go to the Zoning Board for a special exception.

Jay stated that he told Dave Stuart that he needed to come to the ZBA after the frame work went up. Jay did have conversations with Dave and was not trying to mislead him in anyway. Jay mentioned that thinking about it after the fact; he would have handled it differently. Jay stated they did get a permit to demo the sign. Jay told them to make sure the sign was in the same spot. Even though the old one should have been completely removed. Andrew asked who is to say that the sign is not an issue for traffic since the new sign is different. Dave sent a picture to Jay regarding it. Safety issues were not verified. Safety is per the local zoning ordinances because it is outside the right of way on Townproperty. Mike asked if there were any other signs in town that would fall under this. Glenn mentioned that this appeared to be a unique situation.

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Glenn brings forth more information and stated that the Blake’s Brook Campground sign received a Variance in 1987. They were in fear of losing business so they hoped this sign would prevent them from going under. As far as he knows, that is still in effect as it goes with the land. If that converts from Spike Horn, LLC back to a campground, then they may have rights to advertise there. Currently, there is a variance and a sign permit. Gary mentioned that Dave Stuart had gone to the State and applied for a blue directional sign and then pulled his application. Gary believes someone may have approached him and made him aware of that there may be a place to put a bill board sign.

Andrew stated that it had a specific purpose and that is no longer. Luckily, that property owner does not want it there.

Jay’s goal is to follow the town regulations and to assist the person in completing a project under our guidelines. Dave Stuart is the kind of guy that will do what is right even if he is not comfortable with it. Jay said that if he goes to talk to him and tell him to start all over again, he will do that. Gary mentioned that he has done everything he has been asked to do.

Glenn stated that one of the questions he has is if a sign permit was actually issued by the Selectmen. The minutes stated that Chris was on board, Virginia said no, and Hugh wants to talk to Jay. If Jay told Hugh that it was on a grandfathered piece that the campground originally had, he would be comfortable with that. Did Jay know there was a Variance at that point? No Jay stated, he found it after. It was technically never grandfathered, it was a Variance. Somehow the grandfathered word got out, Kelly passed it on and it got out of control. Glenn stated that date of the permit will be important. That is when the administrative decision was made.

Gary asked if the selectman knew they needed a special exception. Dave Stuart did ask Jay if he should take down the sign or cover it up and Jay told him to leave it for now.

Glenn stated the application for the administrative appeal ended up with the lawyer who asked when the administrative decision was approved. Based on the minutes it was May 21st. The lawyer asked Glenn what the rules and procedures for filing an Administrative Appeals were and that was when Glenn found out that they must be filed within 20 days of the administrative decision. However, Glenn never mentioned that to Gary so as far as compensation goes, that will be discussed later on. If the administrative decision was made on May 21st, then the decision stands as Gary’s appeal was filed beyond the 20 day limit.

Andrew stated that there could be two signs because one has a variance (Blake’s Campground) and one has a permit (Brewery). This was a rush decision of 2 selectmen which created a mess for not deferring to the proper board.

Glenn stated that Gary should have been informed his appeal was not within 20 day time limit necessary to challenge the administrative decision. George asked if Gary will be getting his money back and Glenn stated he would like to do so because Gary did not receive all the process information necessary to make an informed decision.

Mike asked how to circle back with the selectmen to make sure this does not happen again. Glenn stated that we may have to uphold the decision because the appeal was not timely. However in addition, wecould do a letter to the selectmen to point out the multiple errors when they signed off on this sign permit.

Andrew says the town is the landowner and as a landowner, since we have given permission, can we revoke that permission? Glenn said that they have a sign permit and we could tell them to rip it down but the town may be open to the cost. But Dave can come to rectify it by coming back to us and doing it the right way. Nothing to do with whose sign is up there. There has to be thoughtful discussion regarding this to resolve the issue in the best interest of all parties.

Mike asked if David is willing to appease, would it make sense to request it but Glenn stated that he has a permit, nothing we can do now.

Virginia asked who sent it to the lawyer. Glenn said that normally he gets applications and supporting info. He gave it to Kelly with a note that said to send to all board members except Glenn and Gary. At the same time, Glenn was updating the contact list. When the office staff received the contact list, they thought he wanted it sent to the lawyer based on the contact list. Virginia asked if we are paying legal fees for reviewing this and giving us an opinion. Glenn could not answer that. Virginia Drew wanted the board to know that she called David Stuart but one thing that was brought up at 2 selectmen’s meeting was that she wanted further information from Jay and that it should go to ZBA.

Gary stated that the first thing to do is go to the selectmen. He did the right thing. He had notice he should have come here. Gary does not believe this is a moot issue just because of the date. He is not in compliance; he is not registered with the state. Three things he knows he needs and has not done. That permit is illegal because he did not follow the zoning. Glenn stated the administrative decision may have been made but there was no evidence submitted to the board to verify it.

Andrew stated that currently there is no evidence that there is a signed sign permit. There are no Selectmen minutes that verify the permit was signed.

Glenn stated that they do need the permit to verify the date. The lawyer wants the rules revamped.

Jay thinks that Dave got sidetracked as he is normally good. Andrew believes he will follow the proper permits.

Gary mentioned he does not believe it should be revoked but the process should be finalized with a timeline. He only has one piece of the puzzle.

Jay believes this will get resolved very quickly.

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***Andrew motioned to continue Case 2018-07 to September 5th, 2018, seconded by George. All in favor.***

Gary joined the board for Other Business.

Glenn stated that the rules and regulations need to be amended to include a statement regarding filing fees. In order to do so, it needs to be reviewed at two meetings. Glenn recommends the following statement: If an applicant for an administrative appeal is given incorrect or insufficient process information which negatively impacts his case as determined by the board, the board can vote to reimburse the applicants filing fees.

Glenn spoke about Ricky Belanger’s departure from the ZBA. A new member will need to be appointed. The alternate that has been on the board the longest can be appointed but that is up to the Board.

***George made motion to nominate Andrew as a full member of board, seconded by Mike. All in favor.***

Virginia commended the chair and the board for their work and due diligence. She also mentioned that the letter for the inventory forms was helpful and the Selectmen unanimously voted to put them into effect for 1 year.

***9:19 PM Glenn made a motion to adjourn, seconded by Mike. All in favor.***