

ZBA  
Town of Epsom  
**Zoning Board of Adjustment**  
**09/05/18**

**In Attendance:** Glenn Horner, Chairman; George Carlson, Vice Chairman; Andrew Ramsdell, Alternate; Mike Hoisington, Planning Board Rep; Alan Quimby, Member; Leann Fuller, Recording Secretary

**Not In Attendance:** Mike Bussiere, Alternate; Gary Kitson, Alternate

**Also in Attendance:** Virginia Drew, Selectman; Jay Hickey, Zoning Compliance Officer; Joni Kitson; Hugh Curley, Selectman; Debbie Sargent; Peter Arvanitis

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

The minutes of 08/15/18 were reviewed.

***George made a motion to approve the 08/15/18 meeting minutes as amended. Andrew seconded the motion. All in favor. Mike H. and Alan abstained.***

Glenn reviewed the procedure for the meeting.

**7:10 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.

Glenn mentioned the notice of continuation for this case was made at the previous meeting. It was also posted at the meeting room and at the post office.

Glenn summarized the previous meeting stating that the selectman voted to allow the Blasty Boughs Brewery sign based on grandfathered rights. However, the old (Blake's Brook Campground) sign received a Variance in 1987. The Blasty Bough Brewery sign was in violation due to not receiving state approvals. After much of the discussion, it was determined there was a 20 day filing limit for Administrative Appeals per the board's rules and procedures. That mandates upholding the decision made by the Selectmen.

Andrew asked when that 20 day time period started. Glenn asked Jay if he had a copy of the sign permit so we can find out when it was issued.

Andrew spoke about the Selectmen minutes stating that Hugh deferred to the Zoning Compliance Officer (ZCO) but then voted to approve the permit. The date on the sign permit is key.

Jay produced the sign permit. The date on the approved sign permit was June 26<sup>th</sup>, 2018. The Administrative Appeal was filed July 31<sup>st</sup>, 2018.

***Glenn opened the public hearing for public comment at 7:19pm.***

Andrew asked Hugh if the Selectmen minutes stated the sign permit was approved and if there was any context related to him deferring to the ZCO. Hugh stated that he approved it in principal but wanted Jay to verify the information. Hugh stated that if Jay was not right and it was under grandfathered status he may not have signed it. (That information was not reflected in the minutes).

***Glenn closed the public hearing at 7:25pm.***

***Andrew motioned to deny the administrative appeal of an administrative decision for the replacement of a non-conforming sign for a different business on Town property has been "grandfathered", seconded by Alan. All in favor.***

The Administrative Appeal was denied for the following reasons:

The Administrative Decision challenged by the appeal in this case was found to be flawed in that the original sign had received a variance, specific to the original sign, and never had "grandfathered rights" which were used as the basis for approving the new sign. In addition, it was determined that other zoning ordinance requirements were not observed in approving the sign including obtaining State approval prior to construction. None the less, the Administrative Appeal was filed after the 20 day limit prescribed in the Board's Rules of Procedure which mandated that the Administrative Appeal be denied and the Administrative Decision upheld.

**Case 2018-08** (Blasty Bough Brewing Co. LLC – SE) David Stewart, on behalf of the Blasty Bough Brewing Co. LLC, has applied for a Special Exception, as required by the Note contained in Article III.M.6, to place off premise signs on Town property which do not meet the requirements of Article III.M.3.b. Specifically the size of the sign exceeds the maximum 6 ft<sup>2</sup> allowed per sign face. 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.

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 Andrew Gosselin and Sunrise View Leasing, LLC.

Glenn swore David Stewart in.

David Stewart stated that he wished he got in touch with the owner prior to the Blake's Brook Campground sign being removed. He ended up approaching the Town, he was told to speak with the State, and the State directed him to approach the landowner. David then found out that the landowner was the town. He then submitted a sign permit and received approval from the Selectmen and put the sign up. Glenn asked if he received State approval. David stated he did but did not have the approval with him at the meeting. There is a sticker on the sign for State approval. Glenn requested to have that proof brought to Jay for the file.

Glenn had a few questions:

1. Who will maintain the sign and the area around it?  
David said he would do so.
2. Is the Town being compensated in any way?

David said that beyond the expense of the permit, the town is not receiving any compensation.

3. Is the town protected by any liability insurance?

David said he does not know but will find out. He does have business liability insurance just unsure if the sign is covered.

George Carlson asked what the size of the sign is and David said it is just shy of 49 square feet per side. David understood the size requirement allowed to be 50 square feet per side.

The current sign is not as big as Blake's Brook Campground sign. Mike H. asked if they used the same post holes and David said yes, the new sign is on the existing posts.

Andrew asked if the prior owner can come back and put a sign up and Glenn stated that the Lawyer said no. If this Special Exception is approved, it supersedes the Variance and the Variance is revoked. In this case, the Variance does not go with the land.

Mike H. asked what is to prevent others from putting signs on town property. Glenn likes to think that this is a highly unique situation and if a similar situation would come up that the Selectmen would say there is no precedent for that.

Alan asked if this Special Exception is approved, is it just for the Blasty Bough Brewery sign on this piece of property and how to verify that. Glenn mentioned it would be spelled out in the decision.

Andrew asked David if he was going to get a blue sign from the State and he said he was but then found out the land was owned by the town and decided to try for a sign on that property. Alan asked if someone told him that a sign could go there. David said there was already a sign at that location. Mike H. questioned if the Variance granted in 1987 was for the sign because it exceeded the allowable square footage or if it was for the placement of the sign. Glenn said it was for both. The Blake's Brook Campground sign came down in September of 2017.

Andrew asked David if he gave any testimony at the Selectmen's meeting for the sign permit and David said that he did not know the process. He spoke with the Town, submitted the application and was told he received the permit, and then put the sign up.

Glenn mentioned that the sign is structurally divided into two parts which appears to be four sides but it is only for one business. Glenn wants to make sure it stays that way and there will be no other businesses on that sign.

David stated that he is not suggesting he is going to but if he did want to advertise other aspects of his business, would he come back for another variance?

Glenn answered yes, he would need to.

Andrew asked Hugh if there was a picture of the sign and dimensions with the sign permit. Hugh stated there was. Andrew asked if the picture and dimensions were exactly like it stands. Hugh said it is and they considered it two sided with four panels and East and West signs. David mentioned that it was divided like that to make it aesthetically pleasing.

***Glenn opened the public hearing for public comment at 7:44pm.***

Glenn swore Debbie Sargent in.

Debbie Sargent was wondering if there is a reason why the Town can't have nice posts put in with arrows that point up to where businesses are.

Glenn mentioned that it is in the Zoning Ordinances and in order for that to change there must be a warrant article submitted and voted on in March by the residents. However, where does it end? Will billboards be allowed?

Debbie Sargent does support the Blasty Bough Brewery sign.

Hugh spoke and stated he was in support of the sign. He stated that it was done with class as the whole operation has been done and a great addition to the town.

Virginia Drew said that the issue when she voted no at the selectmen meeting was because she felt it needed to go through the process. She has no issue with the sign.

Glenn asked David if he had any pictures of the sign to include in the file, David did give Glenn one for the case file.

Huge asked if anyone knows what a Blasty Bough is. A Blasty Bough is a dried branch of pine that has turned to a copper color used as kindling to start a fire.

David mentioned that the owners of Blake's Brook Campground came to the brewery and mentioned they were very happy to see a sign there.

***Alan motioned to close public hearing at 8:02pm, seconded by George. All in favor.***

The checklist was reviewed:

- Question 1. All members answered yes.
- Question 2. All members answered yes.
- Question 3. All members answered yes.
- Question 4. All members answered yes.
- Question 5. All members answered yes.
- Question 6. All members answered yes.
- Question 7. All members answered yes.
- Question 8. All members answered yes.
- Question 9. All members answered yes.

Mike H. is concerned about creating a new non-conforming sign. He believes it is wrong, especially since the sign is exceeding the size allowance by 800%. The Blake's Brook Campground sign was non-conforming, then it was taken down creating it to be conforming, now going back to non-conforming. Mike H. also mentioned that the Special Exception checklist does not reflect the situation.

Glenn mentioned that the purpose of the Blake's Brook Campground sign was the need for business.

Andrew said that Blake's had a case they presented; at that point, the board felt that it was ok. This is now a new case. It could have been different if procedures were followed but our hands are tied and the checklist does not reflect the situation.

Glenn said that he agreed and that a Special Exception is not warranted for this situation as it should be a Variance but the note in the Zoning Ordinance states that a Special Exception is required.

***Andrew made a motion to approve the Special Exception submitted by David Stewart, on behalf of Blasty Bough Brewing Co., LLC as required by the Note contained in Article III.M.6, to place off premise signs on Town property which do not meet the requirements of Article III.M.3.b, seconded by George. All in favor.***

This Special Exception approval recognizes that the Blasty Bough Brewery Company sign is currently erected on Town Property on the southeast corner of the intersection of Center Hill Road and Route 4. The sign was erected following Board of Selectmen meeting approval and the issuance of a sign permit by the Zoning Compliance Officer (ZCO).

The Sign may remain in place provided the following conditions are met:

1. The Sign currently consists of two faces, each divided into 2 segments, with outside dimensions of 49 ft<sup>2</sup> per face and shall not be enlarged.
2. Verification of State approval for the Sign, previously obtained by the applicant, shall be provided to the Board at the applicant's earliest convenience.
3. The applicant shall obtain insurance for the Sign which indemnifies the Town of all liability that may result due to Sign installation and maintenance. Verification that the Sign is insured shall be received by the ZCO within 1 month of the date of this decision. Failure to insure the Sign within the time limit specified or letting the insurance laps at any time in the future, will require that the Sign be completely removed from Town property by the applicant.
4. The Sign, which is structurally divided into 4 segments (2 facing eastbound and 2 facing westbound), shall exclusively advertise the Blasty Bough Brewing Company and no other business or enterprise.

Note: This Special Exception revokes and replaces the 1987 Variance approval of the Blake's Brook Campground sign which was removed from this same location.

**Other business:**

1. Amendment to the Rules and Procedures

- a. Andrew asked about changing the 20 day Administrative Appeal timeline. Glenn stated that back in 2013; Jay mentioned moving it to 45 days. Mike H. mentioned changing it to 30 days or as determined by the Board.

Glenn read the change:

"Appeals from an administrative decision shall be filed by application to the board within 30 days of the ZCO decision or as determined by the board by majority vote."

- b. A second amendment was as follows:

"If an administrative appeal applicant is given incorrect or insufficient process information from a board member or ZCO, which negatively impacts their case, as determined by the board, the board can vote to reimburse the applicants filing fees."

Discussion ensued regarding whether the amendment should read "...from a board member or ZCO" or "...from a town official"

***Andrew made a motion to accept the amendment to the rules and procedures as written, seconded by George. Mike H. and Alan were not in favor. Motion passed 3-2.***

Mike H. and Alan preferred the amendment to read "...from a town official".

Glenn reiterated that Gary was not aware of the 20 day filing deadline as Glenn did not make Gary aware of it.

***George motioned to reimburse Gary's filing fees for the administrative appeal. Andrew seconded. All in favor.***

2. Peter Arvanitis stated that he was in attendance to discuss the "blanket" Special Exception application that he had submitted.

The "blanket" Special Exception was for Gauthier Drive which is located in a Residential/Commercial Zone. The goal of the "blanket" Special Exception was to receive a conditional approval for multiple different uses not currently allowed in that zone. This would allow the prospective tenants to bypass the Special Exception process and go right to the Zoning Compliance Officer and receive the Business Occupancy permit. Peter mentioned that he had spoke with office staff, Central Regional Planning Commission and the Economic Development Committee and were all in agreement that this would be the best way to obtain those Special Exceptions for non-conforming businesses. Peter mentioned that they have lost prospective tenants due to the lengthy process of obtaining a Special Exception.

Glenn stated that Special Exception approvals are for unique businesses which provides the parameters to the board. They are done on a case by case basis. Glenn also stated that he would not accept it as a blanket application. If an application is submitted, there is a hearing within 30 days. The blanket application includes no details.

Peter believes that submitting a Special Exception application for each individual unit will hinder the process. Peter stated that he submitted the application on August 21<sup>st</sup>, 2018, so there should be a hearing by September 21<sup>st</sup>, 2018. Glenn does not believe that the application is appropriate because there are too many variables and he will not accept that application as is.

3. Follow up discussion regarding notifying the Selectmen about proper procedures

Virginia spoke that she is aware of the process and recommended that the Selectmen receive the minutes from both meetings regarding the sign. She believes that would be more effective than sending them a memo. Mike H. mentioned that he prefers a memo so there is documentation and Virginia stated that it is in the minutes as documentation. Jodi Kitson mentioned that if there was a memo sent to the Selectmen, the board must specify that it is read and included in the minutes. Andrew questioned what it cost the

town for this sign discussion with the legal fees and reimbursement to Gary. Glenn was unable to answer that currently.

Mike H. mentioned that this is not the first time the Zoning Boards hands have been tied due to proper procedure not being followed. Glenn said that the Special Exception was done and believes that the Selectmen know what happened. The Zoning Board is advisory and the Selectmen are the decision makers. This is a unique situation but it is time to move on.

#### 4. PA28 Inventory Forms

Virginia wanted to make the board aware that the Selectmen will be revisiting the vote on the PA28 inventory forms. Jay Hickey spoke that when they got rid of the inventory forms it became a big issue with doing his job as that information is vital. The cases he deals with including the ones on Northwood Lake, he checks the inventory forms. Joni mentioned that it was brought up to the Selectmen that a resident would like to revisit that decision and the Selectmen decided to wait until Virginia was back to do so.

Glenn spoke again with Peter regarding the Special Exception application and made him aware that they want specifics for the businesses and the blanket Special Exception is not valid. Peter said there could be conditions for the blanket Special Exception. However, the board agreed that there are too many variables to consider. Peter said that they have interested parties in the units but have decided to the process will take too long to get into the units. Glenn stated that the way to make it simple is to not shortcut the ordinances but change them. The Zoning Board is bound by the rules. The Zoning Board does not want to be known as unfriendly to businesses in town.

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