

**THESE MINUES ARE NOT CONSIDERED OFFICIAL UNTIL
APPROVED AT THE NEXT REGULAR MEETING
OF THE ROXBURY ZONING COMMISSION.**

**ROXBURY ZONING COMMISSION
ROXBURY, CONNECTICUT 06783**

**Regular Meeting
Monday, April 13, 2009**

MINUTES

REVISED

Members Present: Robert Falconer, James Conway, Elaine Urban, Toby Goldfarb and Gary Coburn
Alternates Present: William Weed, Mary Elizabeth Peck and Stewart Kellerman

Others Present: Mr. Lasky, Mr. & Mrs. Birkins, Mr. Neff, Mr. & Mrs. Holroyd, Atty. Tracy, Atty. McTaggart, Atty. Marcus, Ms. Leeming, Ms. Loring, Atty. Lewis, Mrs. Goldfarb, Mr. & Mrs. Stuart

Staff Present: Mary Barton and Karen Eddy

Call to Order: Chairman Falconer called the Regular Meeting to order at 9:47 p.m.

Seating of Members: Chairman Falconer seated members Falconer, Goldfarb, Conway, Urban and Coburn.

Approval of Minutes:

MOTION: To approve the minutes of the Regular Meeting of March 9, 2009 as amended:
Page 2, para. 8 Add – Mary Barton noted that she could gather information for the Commission.
Last sentence page 4 – change Week to Weed.

MOTION: By James Conway, seconded by Elaine Urban. Approved 4-0 with Robert Falconer abstaining.

Lasky/88 Mallory Road – Special Permit Application:

Chairman Falconer stated for the record that he had reviewed the minutes and listened to the tapes of the March 9, 2009 Zoning Meeting.

Mr. Falconer noted he had read the Home Enterprise Regulation regarding the levels of intensity to the neighborhood. He read aloud the following sections of the Zoning Regulations:

- Section 6.2.4a. The location, type, character, size, scale, proportion, appearance and intensity of the proposed use and any building or other structure in connection therewith shall be in harmony with and conform to the appropriate and orderly development of the town and the neighborhood and shall not hinder or discourage the appropriate development and use of adjacent property or substantially or permanently impair the value thereof.
- Section 8.5 Category III Home Enterprise - This category shall consist of home enterprises that are not classified as Category I or II that have a low impact on the neighborhood so as to preserve

the residential and rural character of the neighborhood. Each application shall be assessed based on the particular characteristics of the proposed home enterprise. When making a decision the Commission shall be guided by the standards and requirements set forth in this section. In approving a home enterprise use the Commission may attach conditions to the special use permit which are necessary to assure compliance with standards set forth in this section. Failure to comply with the conditions of the special use permit shall be grounds for revocation.

- Section 8.6.3 There shall be no traffic, activity or noise of a nature or volume that causes a safety hazard or detracts from the rural character of the neighborhood.
- Section 8.6.8 – To insure the residential characteristics of the neighborhood the Commission may set hours of operation, as it may deem appropriate.
- Section 8.8.7 – The outdoor storage area shall not exceed 500 sq. ft.

Mr. Falconer noted that the conditions in the regulations are intended to protect all homeowners from having commercial enterprises next door that could grow to a point of impacting the neighborhood. He stated he does not wish to put anybody out of business, but he does want to protect the rights of the homeowners who live next door. He noted that he would be willing to grant a limited special permit. The outdoor storage limit of 500 sq. ft. means there can't a lot of equipment stored on the site. The applicant's request to have six vehicles on site would probably exceed that limit and we have no wiggle room with this regulation. Mr. Falconer also noted that the regulations allow for three employees so that would assume three vehicles. The owner's vehicle would be four. He noted he would not be adverse to four vehicles, but feels the six requested in the statement of use would be too many. He strongly suggests limiting the number of trips to the site. Employees must be allowed to arrive on the premises and depart from the premises. Part of their job would be to pick up vehicles and bring the vehicle back at the end of the day and pick up their personal vehicle and leave. They would have to make two trips in and out. Beyond that it becomes more of a commercial enterprise.

Mr. Conway commented that he would like to work something out that all sides can live with. He would consider six vehicles or pieces of equipment no larger than an F350 or comparable (pickup, backhoes or trailers). Employee's vehicles would not be considered in the six because employees would drop their vehicle and pick up another. He felt the 500 sq. ft. (outdoor storage 10' x 50') would be adequate to contain the six vehicles. He suggested limiting the hours from 7 AM to 5 PM Monday thru Friday, 8 AM thru 5 PM on Saturday and nothing on holidays. He suggested leaving it up to Mr. Lasky to limit the number of trips. Mr. Conway suggested revisiting the permit in a year to make sure there are no problems. He felt that with a Category III permit conditions could be set that would allow the business to continue to operate.

Mr. Goldfarb described three choices: deny the application, approve it without controls or approve it with modifications. He confirmed that Mr. Conway's list of vehicles were not only trucks. Mr. Goldfarb would prefer an 8 AM start time but if the vehicles are smaller that should be more tolerable to the neighbors. Larger vehicles like the triaxle would be eliminated. Knowing that the applicant does snowplowing, the trucks would be allowed to have plows on the front and sanders on the back. These would be no longer than the Ford 150's that people drive to the dump on Saturdays. Mr. Goldfarb asked why there would have to be six vehicles.

Mr. Conway felt that the 500 sq. ft area could hold the 6 vehicles. Mr. Goldfarb said his preference would be less than six because of the probability of the 6 becoming 9 when the employee vehicles are included. Mr. Conway noted that there is also 2,0000 sq. ft. of indoor space available. Mr. Goldfarb said he is not in favor of a denial of the permit nor a blanket approval. He would favor an approval with

modifications subject to monitoring by the ZEO. He expressed concern about putting a successful businessman under any more undo pressure in these hard times.

Mrs. Urban said she would like to keep the regulations in tack while working with Mr. Lasky to enable him to continue his business with restrictions. However, she would not expect three skid steers on trailers to be going up and down that road.

Mary Barton noted she included in the draft motion a listing of all the vehicles that were listed in the statement of use. The revised statement of use was reviewed. She noted she had read the minutes, listened to the tapes, visited both sites and met with both parties. She then prepared a draft motion with choices for the Commission. She did not share this with the applicant because it is not public record until the Commission gets it. She tried to address some of the items that would be outside the regulations such as the 500' of outside storage. She noted that Mr. Kelly (Attorney for the Birkins) would be willing to compromise on 2,000 sq. ft. of outside storage. Chairman Falconer noted that the Commission could not go against its regulations.

Mrs. Urban agreed with limiting the number of vehicles and the 7 AM start on weekdays. Vehicle limits would be governed by the outside storage regulation. She would ask Mr. Lasky to monitor the number of trips for his neighbor's welfare.

Mr. Coburn felt it was unfortunate that Mr. Lasky's business has grown bigger than what is allowed by the home enterprise regulations. He suggested that he begin to start looking to relocate his vehicles. He felt it would be discriminatory to limit the size of vehicles to an F350 or similar, as there are many other dump trucks in town. Mr. Coburn agreed with limiting the scope of the business to include a dump truck, a trailer and four or five other vehicles.

Mr. Falconer suggested rather than limiting the size/type of vehicles, the limit is on the parking area, which could not exceed 500 sq. ft. He reiterated that the triaxle is gone.

The vehicles listed on Mr. Lasky's statement of use and their sizes were discussed at length. It was noted that he has two 350 pickups, two F450 diesel flat beds, one Ford L8000 diesel dump truck, 2002 New Holland backhoe, 2005 New Holland skid steer, 1998 New Holland Skid steer and a 1993 New Holland skid steer, 2000 Peterbuilt 330 dump truck, 1992 Ford L8000, Komatsu loader and a F250 pickup. Mr. Falconer noted that the Peterbuilt dump truck, the 450, the F8000 and the Kamatsu would be over the size limit. That would leave 7 pieces of equipment that needed to be inside or outside.

Mr. Conway noted that skid steers are on wheels but need to be moved on a trailer. They could be put in the barn. If the skid steers are parked in the outdoor storage area they would be considered as one of the six vehicles.

Mary Barton noted that the garage is used for maintenance of vehicles and there are periods of time when the equipment stored in the garage would be outside. All the vehicles would eventually go in for maintenance.

Mr. Conway said that by limiting the size of the vehicles, he would be able to fit more vehicles within the 500 ft of outside storage.

Mr. Falconer noted the backhoe would have to go on a trailer. Mr. Conway said a trailer counts as a vehicle. The six vehicles could be trailers, trucks, and backhoes as long as they fit within the 500 sq. ft. Mr. Coburn felt that number of vehicles would be limited by the 500 sq. ft. so there would be no concern about which vehicles. Mr. Conway reiterated that the purpose for limiting the size of the vehicles is to

keep the larger trucks from going up and down the road. Mr. Goldfarb reminded that there are others in town with larger trucks. Mr. Conway felt that when that comes to the Commission it would be addressed.

Mr. Coburn said he has a 5'x 10' enclosed trailer for his motorcycle and a backhoe in his yard. It's not illegal because a backhoe is farm equipment.

Mr. Falconer noted the regulations limit height to 10 feet. A backhoe on a trailer would be higher than 10 feet. Mr. Conway did not feel it would be a problem if the backhoe was removed from the trailer and it would be included in the 500 sq. ft. of outdoor storage.

Mr. Falconer reiterated that the 500 sq. ft. is the legal limit per the regulation and allows no wiggle room. So the question is are we going to tell him which vehicles make up that 500 feet? Mr. Coburn said he did not think we should. Mr. Conway said, so then we let him drive the triaxle up Mallory Road, the L800, which per Mr. Lasky is the size of a town truck. Mrs. Urban said not limiting size would not solve the problem, but restricting the 500 sq. ft. and the larger vehicles because of height restrictions would work. Mr. Falconer noted that big dump trucks over 10 ft. in height would be eliminated.

Mary Barton questioned if the outdoor storage regulation was meant to describe product/items rather than vehicles because it talks about items being stacked. She said it up to the board to interpret the regulation. Mr. Goldfarb agreed that outdoor storage was not intended to describe vehicles. Chairman Falconer said the town attorney's interpretation of outdoor storage included vehicles. Mr. Goldfarb said the town attorney could be wrong.

Discussion continue about whether to limit the size of the vehicles or to allow the applicant to decide which vehicles could be kept within the limits of the outdoor storage regulation.

Mrs. Urban noted that a typical workday would require 8 trips not including three employees, which would be 6 more trips. A typical day would be 14 trips back and forth.

Mr. Coburn pointed out that a typical business with three employees would have them arriving at work, going to lunch, returning from lunch and leaving to go home. This would be 12 trips per day.

Mrs. Urban felt that the traffic should not devalue the neighborhood. Mr. Conway cautioned about adding conditions that can't be policed such as the number of trips per day. Mrs. Urban said she was suggesting a restriction on trips but rather a minimum expectation, which would be 8 trips using FSM vehicles.

Mr. Coburn used the example of a newspaper delivery service with three employees. They have to come in, grab their vehicles, go out and come back in. You can't limit the trips to a degree. Mrs. Urban suggested that Mr. Lasky govern the number of trips.

Mr. Coburn said he is more concerned about the quality of life of the neighbors than what he's storing on the property.

Mr. Falconer said that if the number of trips is an issue, Section 8.6.3 states that there shall be no traffic or noise of a nature or volume that causes a safety hazard or detracts from the rural character of the neighborhood. If a business requires a lot of trips in and out then maybe that is not a suitable home enterprise under regulations and should be denied. Mr. Falconer said we have to take a look at the intent of the regulations. If we don't set limits we are not following the intent of the regulations.

Mr. Conway argued that the regulation has no (specific) limits so how can we set limits. Mrs. Urban felt that if complaints were raised again about excessive noise, dust, traffic, etc. then that would be a violation

of the permit. Mr. Falconer argued that the regulations are not specific. What detracts from the rural character of the neighborhood might be two trips for one person and 8 trips for another. If we don't put something out there to protect the neighborhood then we aren't following the intent of the regulations. Mrs. Urban gave an example of a high school student with a 350 pickup truck going in and out 8 times a day to attend school and activities. Mary Barton noted that they are using it as a passenger vehicle versus using it for a home enterprise.

Mr. Conway felt that work efficiency would keep trips to a minimum. Not much work would get done if they were making many trips back and forth each day. It would take care of itself. He expressed concern about attempting to regulate the number of trips.

Mr. Coburn noted that in Section 8.6.1 Home Enterprise uses should be clearly subordinate to the use of the premises as a resident. He questioned whether this business is overtaking the residence. Mr. Goldfarb said the house comes first on the property or there could not be a home enterprise. Subordinate doesn't mean smaller.

Mrs. Urban asked about the square footage of the storage facility and the house. Mr. Conway said the storage facility is 2,000 square feet. Mary Barton said the regulations allow for up 90% of the floor area of the house or 2,000 square feet whichever is less.

Toby Goldfarb summarized the previous discussion as follows: Except for Gary Coburn there is some consensus among the Commissioner. It should be possible for the applicant to run his business because he's running without some of the larger pieces of equipment now. If we were to limit the size of vehicles to Ford 350's or smaller, Mr. Lasky who is bright and flexible will find a way to run his business and we will not have neighbors complaining. He noted that he would like to limit the type of vehicles. He is not concerned about the number of trips. Mr. Goldfarb suggested limiting the vehicles to those on the inventory list and limiting the size as defined.

Mr. Falconer called for discussion of the draft motion (that Mary Barton had prepared.) He noted that the Commission must make a decision on this application by midnight. Each section of the draft motion was discussed at length and the following final language was approved. Changes from the draft to the final motion are shown in bold.

- 1) The total number of vehicles was eliminated.
- 2) The list of vehicles was discussed at length and the motion was changed as follows:
No vehicle can be stored on the 88 Mallory Road site, which is larger than an F-350 pick-up truck or equivalent.
- 3) All vehicles related to the Category III Home Enterprise must be parked a minimum of **30 feet** from all lot lines and highways. (The 30-side setback was decided upon)
- 4) Parking spaces was eliminated.
- 5) The Home Enterprise shall be limited to 3 part-time or full-time outside employees other than the residents of the single-family dwelling known as 88 Mallory Road.
- 6) No more than 30% of the floor area of the **residential building** located at 88 Mallory Road shall be used for the Home Enterprise.
- 7) The total area used for the Home Enterprise uses including accessory buildings and ~~indoor~~ all storage areas shall not exceed ninety percent of the floor area of the residential building or 2,000 square feet in area whichever is less. **Notwithstanding the foregoing the outdoor storage areas cannot exceed 500 sq. ft.**
- 8) The hours of operation for the Home Enterprise shall be from:
 - a) **7:00 Am to 5:00 PM Monday through Friday**
 - b) **8:00 Am to 5:00 PM on Saturday and no activities on Sunday**
 - c) **Snow plowing activities are exempt from the hours of operation**

- 9) **There shall be no outside storage of materials in connection with the Home Enterprise.**
- 10) The outdoor storage area (~~parking spaces/area~~) and outside storage items such as plows and sanders that are utilized in the operation of the Home Enterprise shall be screened as follows: A year round buffer shall be provided along the side yard property line between the Lasky property and the Roxbury Land Trust property and along the driveway where the accessory building is visible from the abutting properties as this is the view that is visible from the abutting properties and this is the view that is of concern of the neighbors. The buffer shall be five-foot high evergreens four foot on center preferably spruce.
- 11) Underground storage tanks shall be prohibited.
- 12) Outside storage items or vehicles used in the Home Enterprise shall not exceed ten feet in height ~~when staked~~.
- 13) This section was eliminated.
- 14) This section was eliminated.
- 15) This section was eliminated.
- 16) This section was eliminated.
- 17) **Application for renewal of the special permit for outdoor storage shall be renewed annually one year from the date of approval by the Commission.**

MOTION: To approve the application by Frank Lasky/88 Mallory Road for a Home Enterprise Special Permit with modifications. By Elaine Urban, seconded by Toby Goldfarb and unanimously carried. (*See full text of the motion with modifications attached*).

High Meadow Riding Club – Special Permit Application – Public Hearing continued to May 11, 2009

Frank Lasky – Conditions of approval: Mr. Lasky asked if he could have 90 days in which to comply with the conditions of approval of his Special Permit. Chairman Falconer on behalf of the Commission granted his request and asked that a statement to that affect be included in the approval letter.

Stuart/160 Baker Road – Application for Food Concession Truck

Michelle and Tim Stuart presented a site plan and pointed out the proposed location for a food concession trailer on their property at 160 Baker Road. Mr. Stuart noted that the parking area was not worked out.

Mary Barton introduced her report to the Commission, which provided a detailed analysis of the proposed application. She pointed out that Regulation Section 5.4a does not allow for a second driveway and the driveway ordinance requires both a state and town driveway permit. Mary suggested that a variance would be needed for a second driveway.

Mr. Falconer asked if they could use the existing driveway. Mr. Stuart felt it would interfere their landscaping. Mrs. Barton felt they probably wouldn't want people driving into their yard and up to their house. She suggested that a ZBA variance would be needed for a second curb cut. They could then ask for a verbal approval from the First Selectman before they go to DOT for a permit. Chairman Falconer explained that the Commission does not have any flexibility to alter the Zoning regulations. Mr. Stuart asked about modifying the existing driveway. Mrs. Barton said as long as it's done with one curb cut that would be ok. Mr. Goldfarb wondered if ZBA would like to see something from the State. Mrs. Barton suggested that they go to the State to get a preliminary approval before they go to ZBA. Mr. Stuart explained that they would like to have the concession fairly close to the road for visibility. He spoke of a previous proposal for a horseshoe driveway. He indicated a willingness to work with any type of driveway configuration necessary. Mary Barton explained that if they planned to install lighting, a plan should be submitted to show the placement and type of fixtures.

Mr. Kellerman asked about Health Department approval. Mary Barton said that Health Officer Keith Vaughn would not have a problem with this plan as long as they obtained a food license.

Mr. Goldfarb asked about electricity and Mr. Stuart indicated that he would run a line from the greenhouse to a small sub panel.

Mrs. Barton noted that the regulations mention a paved parking area. Mr. Stuart noted that the gravel was so good that it would not need paving. She wondered if they would want to define the parking area with curb stops.

Mary Barton explained that the application is a site plan permitted use, which would allow 65 days for a decision by the Commission or by June 16th. It was noted that this application would not require a special permit and public hearing but it must come to the Commission because it is a Commercial use.

Mrs. Stuart said she would like to go ahead and order the truck if possible.

Mr. Coburn asked if they should withdraw the application until they have finalized the site plan.

Mrs. Barton explained that the truck is 30 feet. Mrs. Urban asked if it would be considered a building. Mrs. Barton felt it would be considered a structure as it sits on the ground.

Mr. Stuart said that if the Commission approved a proposed driveway plan, he would move the landscaping.

Mr. Goldfarb questioned what other impediment to approval there might be. Mrs. Barton said the issues were the driveway, lighting, parking and location of picnic tables. Mrs. Stuart said they would like to have 3 or 4 picnic tables.

Mr. Kellerman wondered if a variance would be needed for the number of parking spaces. Mrs. Barton said they are limited to one parking space per 200 square feet of floor area.

Mr. Goldfarb said while we can't approve it now, if we don't see any impediments, and its something that we would like to see happen, we could indicate probable acceptance of a finalized plan.

Mr. Falconer asked about bathroom facilities. Mrs. Stuart said that Keith Vaughn agreed to let them get a porta-potty, which would probably be located beside the greenhouse.

Mr. Goldfarb said he thinks its something the Commission would like to see happen. If that gives the applicant enough comfort, they could order the truck. Mrs. Stuart said she was ok with that.

Mr. Falconer indicated that discussion of the application would continue on May 11, 2009. There was discussion about scheduling this application prior to next month's public hearing as a special meeting. It was decided that it would be placed near the beginning of the agenda of the regular meeting. Mr. Falconer suggested that the applicants contact Mary Barton directly with any questions or special concerns prior to the next meeting.

Building Lot Requirements – Tabled.

Utility Cabinets – Tabled.

Review of Zoning Regulation Section 18.1.1 – Tabled.

Plan of Conservation & Development – Assignment of Zoning Representatives – Mrs. Urban said she had attended one meeting and plans to attend another next month.

ZEO Report- Mary Barton noted that she is getting to know the community. She got a laptop and has experienced technical difficulty with it. She is looking into several complaints. She is going back to Szymanski's because of complaints by abutting neighbors. Mrs. Barton plans to have a written report for the next meeting. She noted that when she prepares a draft motion typically she would email it to the Chairman and the Town Attorney and provide comment before the meeting. She could not give it to the rest of the commission prior to the meeting because it becomes a public document. Normally she would prepare a review of any application that would appear on the agenda.

Chairman Falconer said he apologized for not being at the last meeting to introduce Mary Barton, but he understood that Mr. Conway did an eloquent job.

Chairman Falconer asked Mary Barton to look into the issue of the appearance of the latest building located near the communications tower. Mrs. Barton noted that Barbara Henry had spoken to her about placing a stockade fence around the transfer station.

Chairman's Report – No report was given.

Communication: Information mailed with the packet was noted.

MOTION: To adjourn the meeting at 12:25 a.m. **MOTION BY:** Gary Coburn, seconded by Toby Goldfarb and unanimously approved.

Respectfully submitted,

Karen Eddy
Land Use Administrator

Cc: B. Henry, P. Hurlbut, R. Dirienzo, R. Lowe, J. Pierpont, R. Falconer, R. Munson, G. Steinman, G. McTaggart

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Regular Meeting of the Roxbury Zoning Commission.**