

Stockbridge Zoning Board of Appeals Meeting - February 13, 2018

Purpose of meeting: To hear appeal of decision of the Building Inspector

Applicant: Dr. Charles H. Kenny

Property of concern: 35-37 Interlaken Road

Present for the ZBA: Jim Murray, Thomas Schuler (chair), John Hyson, Bob Jones, Buck Smith, Miles Moffatt (alternate)

Attendees at the meeting who signed in: (see attached sign-in sheet)

Meeting activities:

1. Introductions – ZBA introduced themselves
2. Mr. Schuler offered a moment to acknowledge the great contributions that passed ZBA members Linda Day and Jack Spencer made to the Town
3. Mr. Schuler called meeting to order, and recited the relevant activities that have taken place related to this subject appeal
 - a. This is an appeal of the refusal of the Town Zoning Enforcement Officer to enforce Section 4.1 of the Zoning By-Law
 - b. Notice of this meeting was made in the Berkshire Eagle on two different dates, as required
 - c. Record was read to reflect that timely notice was given to the various parties that could be related to this appeal
 - d. Town Building Inspector Ned Baldwin will not be present at the meeting due to illness. Typically, he would give a brief and procedural history. Instead, Mr. Schuler continued with the timeline related to this appeal.
 - e. 9/11/2017 - a corrected notice of violation was sent to Sheehan, owner of 35-37 Interlaken Road property
 - f. 10/23/2017 - a permit of occupancy was given to Sheehan
4. Richard Dohoney – counsel representing a number of nearby residents requesting action on the issue of the premises being used for business/real estate purposes. Nearby residents claim that the property is currently used for purposes not set forth in the allowed use table. Residents are asking the Town to prohibit open houses that are planned by Patrick Sheehan, the owner of subject property.
5. Mr. Silverstein, counsel for Sheehan presented a letter to the Board that had been submitted today
6. Counsel Dohoney spoke as to the history of the building permit and the appeal timing
 - a. After enforcement notice, open houses were being scheduled – in November, and planned for March. He feels these are not permitted, as defined under the use allowance. Letter just presented by Counsel Silverstein was referred to, and counsel is countering the elements of the letter, saying:
 - i. The appeal is timely
 - ii. The appeal is also right – action from Mr. Baldwin was requested in October. It appears he didn't act in a manner of enforcement

- iii. Lastly, argument that was made that the activity going on there is a commercial marketing process. Not individual free speech.
 - b. Dr. Kenny is filing this appeal as an abutter. He feels the actions taken by Sheehan have been to solicit as many people as possible to come to open houses for purposes of marketing his project
 - c. Wish the Board to issue an order that the activities cease; not wishing to ask for fines
7. ZBA member Murray asked for clarification – confirmation that the appeal is not against the building permit being issued, but for the fact that the Zoning Officer did not respond to a request.
8. ZBA member Hyson noted that the letter that was being discussed was only submitted today as part of the appeal process, and the ZBA hasn't had an opportunity to review the letter.
9. Counsel Silverstein spoke on behalf of Sheehan:
 - a. Substantive issue – certificate of occupancy – Mr. Sheehan resides there now, using it as a residence, and along the way, he is using it in a similar way as a person running for public office would do. He is not charging money for any of the open house activities
 - b. Discussed procedural issues, including timing of submittal of the appeal
 - c. Claimed a standing issue – an abutter has a presumption of standing. There can be no allegation of harm – due to the fact that there were 10 or 20 or so people at the property. Anyone can ask for a zoning information, but counsel says that since there was no harm, appellant is not in standing to ask for the appeal
10. ZBA members expressed their desire that the neighboring residents find common ground for settling their differences. They also said that they will have to rule based upon what activities can be done at a single-family home/residence, and consider the specifics of the appeal.
11. Joshua Peyron of 62 Interlaken Road expressed concern that he has observed:
 - a. Flyers and such made for the subject property seem to indicate business activities there
 - b. Police officers and a town fire truck have been observed at the subject property
 - c. Doesn't believe the subject property is "set up" for parties
12. Charles Kenny – the appellate, speaking as one of the concerned residents, spoke:
 - a. He's just dealing with the issues of activities going on near his home.
 - b. He received an invitation for an event; he attended the event, and felt it was clearly a marketing event – pitching the proposed project on the property
 - c. Some of these activities were held before Sheehan had the C of O
 - d. He would see ads for open houses at the theater – obvious marketing
 - e. The reason he brought the appeal at this time is that activities are continuing at the subject property
13. Stuart Hershfield of 6 Meadow Road stated that although he is not an abutter to the subject party, it seems the issue is there is nothing one can do if there is inactivity taken by a building inspector
14. Mr. Schuler asked that the counsels for both sides submit letters to the ZBA explaining the substantive legal position they are speaking from, not so the procedural issues that have been discussed at the meeting. He asked that such letters be submitted to the Town by Thursday so that the ZBA and its counsel can review and be prepared to consider by next Wednesday, the date proposed by the ZBA to continue the subject appeal process.