

## Stockbridge Zoning Board of Appeals Meeting - **February 21, 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. Appeal was filed on January 5, 2018, not going to review all the history – that was done at last meeting.
2. ZBA received a response letters from attorney Dohoney, and from attorney Silverstein
  - a. Sent letters to town counsel Ray Miyares
  - b. Miyares sent a letter to town on Feb. 20, which was then sent to the two attorneys
  - c. Katherine Laughman, counsel for Sheehan attending
3. Attorney Dohoney: Appeal is only the Oct 27 letter for enforcement, and now responding to the letter from Sheehan attorney:
  - a. Only at end of December was there a written response (an email format). A minimal response, but it was the date that started the 30-day process, and the appeal was within the 30 days
  - b. Issue 4 – whether there is standing. Abutters have standing - that is clear
  - c. First amendment argument. Towns can protect free speech
4. Attorney Laughman:
  - a. Regarding the 30-day time - what was building inspector response? The email was ambiguous.
  - b. October 27 was when the C of O was given
  - c. The appeal is for whether there were commercial activities
  - d. 404 Mass, case 71; the Green case – in the case of an enforcement action, if a party wants to go to the next step, and they must be aggrieved, ie. specific harm brought to the individual making the appeal. Here we don't have a specific aggrievement.
  - e. Regarding non-procedural items, the substantive issues:
    - i. The activities taking place are not marketing; these activities have been political in nature. Mr. Sheehan is simply a resident at the property.
    - ii. Related to the assertion that the activities are akin to having a billboard
5. Attorney Dohoney, asked to address the substantive issues:
  - a. This is being run as a commercial business – there is an office, there is a sign, which shows there is business being conducted.
  - b. Assessor use – something that is customary and incidental to a home. Section 1 – home crafts, writing, computer programming. Type 2 items which require a special permit – where customers are coming in. Also, there are skilled services, such as a law

office. Type 3 is where trades people would have people coming to their house. ZBA should consider whether these activities are consistent with the zoning laws.

- c. Wide-spread advertising was done, which costs money and was likely tax-deductible.
  - d. The issue is that the zoning enforcement officer should take action – ask that these activities take place at another location that allows these
6. Smith asked whether there were significant disturbances. Kenney said that he’s used to having peace and quiet, and he is not having that now. He said Sheehan was doing these activities before Mr. Baldwin issued a C of O, so that shows he isn’t following the proper procedures.
  7. Dohoney noted there was an application for a special permit for entertainment
  8. Lockman – Sheehan is acting as a realtor in a remote address in another town (Southboro). There were signs, and they had permits for the signs. He doesn’t need a special permit. He is attempting to raise support for the prospective project.
  9. Josh Peyron – 62 Interlaken. Concerned that people will sit on the road and look at the property. It’s a bad spot for this kind of activity, in his opinion.
  10. Stuart Hershfield of 6 Meadow Road. Last year he sent a letter to people to ask for support to run for Planning Board. The idea that this was aimed at voters of Stockbridge is not what this is – it’s aimed at a much bigger audience.
  11. Discussion amongst all board members
    - a. All are guided by advice from the Town Counsel’s letter. It comes down to whether there is commercial activity, there doesn’t seem to be specific commercial activities.
    - b. Hyson questioned whether or not the appellant had standing and whether he was aggrieved.
    - c. Jones agreed with Hyson; it’s not clear that the appellant was aggrieved
    - d. Smith expressed sympathy with the appellant, but agreed that he didn’t think activities like open houses constituted a commercial activity and questioned whether a few open houses caused much of an impact to neighbors
    - e. Murray stated that he understands that the subject property is considered a Cottage Era estate; would not activities such as these discussed at the hearing be allowed?
    - f. Schuler questioned whether these were considered commercial activities and cited Town Counsel Miyares opinion letter which concluded that this activity, ie. open houses, was not a commercial activity. Also noted that even if was considered a commercial activity, that it would be considered incidental. The open houses that were held could be compared to realtor open houses that any homeowner may hold
  12. The ZBA vote to grant or uphold the appeal:
    - a. Unanimous – 5 board members voted to not uphold the appeal
  13. Probably by Wednesday there will be a complete file of all documents and minutes.