

**Town of Milford  
Zoning Board of Adjustment Minutes  
May 16, 2013  
Paul Cunningham  
Case #2013-07  
Appeal from Administrative Decision**

Present: Fletcher Seagroves, Chair  
Zach Tripp  
Laura Horning  
Kevin Taylor  
Paul Butler, Alternate  
  
Katherine Bauer – Board of Selectmen’s representative

Absent: Bob Pichette

Secretary: Peg Ouellette

Paul Cunningham is requesting an appeal of Community Development Director/Zoning Administrator’s administrative decision regarding the continuance of a non-conforming use at 113 Savage Rd, Map 6, Lot 40, in the Residence “R” district.

**MINUTES OF THE MAY 16, 2013 MEETING WERE APPROVED ON AUGUST 1, 2013**

Fletcher Seagroves, as Chairman, opened the meeting stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes.

F. Seagroves stated that for this case the procedure would differ. He read the notice of a request for an appeal by Paul Cunningham to a Community Development/Zoning Administrator's decision regarding continuation of a non-conforming use at 113 Savage Road, Map 6, Lot 40 in the Residence R District. He then asked the applicant to come forward.

F. Seagroves informed Mr. Cunningham that he had had thirty (30) days to appeal the decision and it had now been 43 days. Therefore, he did not meet the 30-day window.

P. Cunningham responded that he filed his appeal when he did because he had not been informed by the Community Development office of the administrative decision to deny his complaint and close the appeal. He stated that he had requested in his Dec. 26 complaint that he be informed of what the decision would be. When he hadn't heard after almost a month, he had his wife file a Freedom of Information request to the Town for information about the decision. It was only in that context and those conditions he was informed. He immediately filed an appeal of the decision. Whether the office was required to inform the complainant of the decision in a timely fashion, it was something he had expected of the Town.

L. Horning asked if there was any reason he had not contacted the office for that decision.

P. Cunningham stated he was expecting a response from the office. The problem leading to his complaint was that the office had not provided evidence that a business was occurring there and had not contacted him about anything they had found out about it. The reason he did not contact the office after filing the complaint on Dec. 26 was that, it may have been Dana MacAllister, who told him that when something was determined he would be informed. He had been under that impression all along when he initially filed his complaint and when he filed the appeal.

F. Seagroves stated that in the Board's rules of procedure, which are available on-line, in Article 17, it mentions waivers to the Rules of Procedure. The applicant can get a waiver for the 30 days. A portion of the Rules of Procedure may be waived in cases where, in the opinion of the Board, strict conformance would impose a practical difficulty to the applicant and a waiver would not be contrary to the intent and spirit of the ordinance.

Z. Tripp asked whether the applicant must file a waiver, or whether the Board could hear it immediately.

F. Seagroves stated the applicant must file for the waiver.

P. Cunningham asked about the procedure after that.

F. Seagroves advised him to check with the office.

P. Cunningham stated he felt this was a maneuver by the Community Development director.

L. Horning said this was not the platform for that. She advised him that he needed to follow the procedures that are on-line and readily available to taxpayers. She would encourage him to take that course. The Board has offered an opportunity to him and he should take advantage of it. The Board will do its very best to take a look at all the evidence presented and make a decision.

P. Cunningham inquired whether he would have an opportunity to present additional evidence.

F. Seagroves responded that he would not have that opportunity this evening.

P. Cunningham asked if additional evidence could accompany the waiver.

F. Seagroves responded no.

K. Bauer, Representative of the Board of Selectmen, spoke, to clarify that the next procedure for the applicant was to request the waiver, as she didn't want him to get the impression it was automatic.

F. Seagroves said he has to request the waiver.

P. Cunningham asked if he requests the waiver and provide reasons.

F. Seagroves responded yes, and he has to answer a few questions.

P. Cunningham said, to be clear, he submits a complaint and an administrative decision is made, there is no responsibility of the director or zoning administrator to inform the complainant of the decision; and it is his (Mr. Cunningham's) duty to determine when that decision is made within the 30-day period?

F. Seagroves said he was not going to go there.

L. Horning stated there are guidelines on the web site of the Ordinance and Procedures the Board applies from there to make decisions. It is not up to the Board or the Town to lead anyone to an absolute answer. He would have to reach a conclusion on his own from the information. He can ask questions of the administrator and they would do their best to help, but it is not their job to clarify the Ordinance for him.

F. Seagroves stated that at the end of each case, he states that the applicant is approved and has a thirty-day appeal period if somebody thinks something is wrong. There is a 30-day window if someone thinks the procedure was wrong. If they grant a variance and someone comes in six months later and says that it is wrong, that is not right for the person getting the variance; if he has built a porch, for instance, he would have to tear it down. He apologized that Mr. Cunningham wasn't told.

L. Horning repeated, for the benefit of the audience, it is the complainant's personal responsibility to look at the ordinance and any administrative paperwork needed to glean information from in order to advocate for himself or present his side of the issue.

P. Cunningham asked whether he needed to be informed at all of this rejection. He couldn't file an appeal.

K. Taylor said that was a question to ask Bill Parker, why he was not informed.

F. Seagroves said the Board's rule of procedure state they have thirty days

P. Cunningham asked if that was after he was informed.

F. Seagroves responded after the decision was made. The paperwork indicates the decision was made on Feb. 2.

P. Cunningham replied that he had been notified that he would be informed.

F. Seagroves said he was sorry.

Complainant's wife, Suzanne, asked to speak. She stated her husband had a history of his oral complaint by phone and his paper complaint, and then he was on the phone with Dana MacAllister who said they would get back to him. They waited. When Paul said they had heard nothing, she submitted an information request to the Town and saw a note to Dana, not to the complainant to anybody else, that said "Dana, these are the reasons I am deciding this way and it's closed." So she asked Shirley Wilson in the office if she could speak to Mr. Parker. She asked Mr. Parker what was going on with the decision; they were not notified and it was closed. Mr. Parker told her they could appeal to the Zoning Board. Shirley gave her the papers. It came from Mr. Parker because he realized he hadn't told them. His memo was to Dana. Mr. Parker told her the procedure and gave her the forms. She felt the thirty day clock should start on that date, March 4 or so, when they learned of the decision. They immediately filled out the papers and followed every step they were told, submitting the money and coming to the Zoning Board last month. No one told them last month they were over the 30 days. It was tabled.

F. Seagroves said the Board received all the paperwork only four days before and there was not sufficient time to read it and come up with a good decision and he recommended they table it. When reading through it, they arrived at the 30 days.

Complainant's wife responded they should understand that the clock for she and her husband started when she went to the office, not when some paper was filed in the office. She and her husband made an oral and a written complaint which were very well documented, which is why they submitted all the documents from December.

F. Seagroves said the Board is bound by their rules of procedure.

Complainant's wife asked when the clock starts.

F. Seagroves responded it was the day after the decision.

Complainant's wife said that in the ZBA meetings they use intent. What is the intent? The intent is to give them 30 days when they find out something. Don't they have 30 days from when they are told of the decision?

F. Seagroves stated their procedures state 30 days from the decision.

Complainant's wife questioned the fairness.

L. Horning stated it was procedure. She repeated what she had told her husband, that they can get the procedures on line. The only date the Board is aware of is the date of the decision. No other information was supplied to the Board. They had no knowledge when it was made clear to the complainants when the decision was made clear to them. So, they were giving them an opportunity to apply for a waiver. As the Chair explained, that is reasonable safety net in place for them. As the Chairman read, strict enforcement of the Ordinance at this point for this particular situation gives them an opportunity to file for the waiver, which is their recourse. The Board is bound by the letter of the Ordinance as voted by the people of the town of Milford. The Board understands their frustration. It was not intended to be that way. But they have recourse in filing the waiver.

Complainant's wife commented thank goodness for the recourse because this was completely unfair; they were given no response by the Community Development Office. They found out through an information request. She spoke with Mr. Parker who said to file with the ZBA. They did everything right. They have it documented when they made the information request with the office, the date that would be an e-mail in the office. That is when the clock should start.

L. Horning said the Board does not have access to that information.

Complainant's wife remarked she was very surprised and disappointed, with all the reasonableness and judgment in the Board, this was very bizarre.

A member of the audience asked to speak, but the Chair informed him it was not a public hearing.

L. Horning made a motion to table the case until the applicant had time to make a request for a waiver.

Z. Tripp seconded the motion.

Motion passed 5 – 0.

Case # 2013-07 was tabled.