

**TOWN OF KILLINGTON ZONING BOARD OF ADJUSTMENT**  
**Meeting of January 9, 2014**

**PRESENT:** Ron Riquier, Chair  
Charlie Demarest  
Jay Hickory  
Ken Loeliger-Myers  
Marty Post

**START:** 5:32 p.m.  
**END:** 6:20 p.m.

**GUESTS:** Richard Horner, Zoning Administrator; Steve Durkee; Karen Durkee;  
Jim Haff; Andy Mirman

Ron Riquier, Chair opened the meeting at 5:32 p.m.

**1. Approval of Agenda**

A motion was made and seconded to approve the agenda. All in Favor.

**2. Approval of the Minutes**

Marty Post moved to approve the minutes of October 2, 2013 as written. Jay Hickory seconded. 4 in Favor; 1 Abstained (Demarest). Minutes were Approved.

**3. Public Hearing**

Ron Riquier opened the hearing on the appeal of Zoning Permit #13-042 by Jim Haff/Butternut to appeal the decision of the Administrative Officer to issue a permit to Killington Village Properties/Steve Durkee to construct a walk-in cooler attached to the restaurant located at 923 Killington Road.

Ron swore in Richard Horner, Jim Haff, Steve Durkee and Andy Mirman and opened the floor to testimony.

Appellant, Jim Haff, advised that in visiting a neighboring business he noticed the Permit sign in the window of the old Johnny Boy's restaurant and had not seen a Planning Commission hearing warned for review of that permit application. He noted that there have been storm water issues with this property in the past and with the Town contemplating a 1.4 million dollar bond to fix West Hill and Killington Roads, he felt the Zoning Administrator should not have issued a permit without making sure all of the stormwater permits were up to date and in place. Upon closer inspection of the approved permit, he saw that it was just for a walk-in cooler but there have been walls taken down and seats added to the restaurant and the cooler will take away 2 parking spaces from the 101 parking spaces required by the original permit. Vito Rasenas had a problem in front of his home on West Hill Road which went on for several years. The State was brought in and at the time it was found that there were stormwater permits that had not been complied with. He feels that when someone comes in for a permit, it is the perfect opportunity for the Town to make sure that particular property/development is up to date on its permits. He did not like the fact that review of the permit application was never warned, it was not on the Planning Commission agenda and Mr. Horner brought it up as an item in the Planner's Report.

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Dick Horner advised that in 2005 there was a hearing warned for Johnny Boy's restaurant to construct a walk-in cooler and attached storage room, it was approved and at that time they only built the storage room. Prior to that, Steve Durkee has taken fill from his property next to Charity's and constructed the retention pond that in the opinion of Bill Burke, Act 250 Coordinator, fulfilled the conditions of the stormwater permit. Because Mr. Haff did not indicate which stormwater permit he was referring to, Dick advised that he was unable to do any research on this matter but he believes Mr. Haff is referring to the 1993 storm water permit. If so, that permit related to a large expansion project that was proposed by Mr. Durkee at that time. That expansion was never built and therefore the requirements of that storm water permit related to that project did not have to be built. As a result of the issue on Vito Rasenas' property, there was a letter dated June 11, 2010 from Matthew Probasco, Stormwater District Manager for the State who did an analysis of the storm water problem on West Hill Road. The pertinent paragraph in that letter states:

“Please be advised that some compliance issues were discovered related to the permit during my site visit which will be pursued by our program. However, it is clear that the storm water related issues here are beyond the influence of the Comfort Inn site.”

Horner interpreted this to mean that the Comfort Inn property is not causing the storm water issues that Mr. Haff is raising.

Demarest confirmed that review of the Permit #13-042 was done under Administrative Review under Site Plan. He informed the rest of the Board that under this type of review only three things can be looked at: vehicular access and egress, parking and screening. He noted that the questions Mr. Haff is raising could not have been discussed at Site Plan Review under any circumstances, even if it had been warned. Since the cooler had been approved previously, he does not see that the Zoning Administrator did anything out of the ordinary at all.

Horner reviewed the Administrative Approval process as set forth in the Zoning Bylaws and advised that as required he reviewed the permit with the Planning Commission Chair, David Rosenblum, who could have required a public hearing if he felt it was necessary. Mr. Rosenblum did not require a public hearing and asked Horner to bring it to the attention of the Planning Commission at the next meeting, which he did and the Planning Commission voted unanimously to approve the permit.

Steve Durkee advised that prior to doing any work, he contacted Mr. Horner, Rick Oberkirch the State Permit Assistance Specialist, Bill Burke at Act 250 and a Civil Engineer to modify the Water/Wastewater Permit to increase the number of seats. For the record he made the following points: i) Mr. Haff's appeal with respect to the form is defective since he did not make any specific comments regarding the property, the regulatory provisions that are applicable or the relief that he is seeking and State law requires that; ii) Mr. Haff does not have the right to appeal since his property is not in the immediate neighborhood and he did not show that there is any affect to his property by this permit; and iii) This project/property meets all the requirements of the Zoning Regulations, in terms of set backs and dimensional requirements and this addition does not impact egress, landscaping, parking, lighting or signage. Mr. Durkee advised that he has made every effort to comply with any and all permit conditions. In 2004, when Johnny

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Boy's want to add the cooler and storage room, he went ahead and fulfilled the requirements of the stormwater permit and built the retention pond. He advised that the stormwater permit is up for renewal and he has hired an engineer to make that application and it is currently being reviewed. He has been advised that there is no need for an amendment since the amount of additional impervious cover does not come close to the 5,000 sq. ft. threshold which would trigger the need for such an amendment. This addition is 400 sq. ft. and is an insignificant change to the building outside of all of the Site Plan considerations.

Demarest moved that the Zoning Administrator's action was correct and the permit is valid. Ken Loeliger-Myers seconded. Discussion.

Andy Mirman advised that he owns a home on West Hill Road behind the Comfort Inn and this minor change by Mr. Durkee does not negatively impact him in any way. He feels that Mr. Durkee is improving his business and is entitled to have a walk-in cooler. He feels this whole thing is ridiculous. He noted there are water issues but that is not what this is about. This is about someone trying to conduct his business and the permit that has been issued should stay.

Vote on motion as stated. All in Favor. Permit #13-042 is valid and shall remain in effect.

Marty Post moved to authorize Ron Riquier to sign the Findings of Fact on behalf of the Board. Ken Loeliger-Myers seconded. All in Favor.

#### 4. Other Business

Marty Post asked whether going forward the Board can establish guidelines where an appeal application can be rejected if the appeal form is not complete. Horner noted that since this was an appeal of a permit he issued, he did not feel he had the authority to reject the appeal application and felt that authority rested with the Board. Demarest and Hickory both agreed that it is probably best to have the hearing rather than to reject the application putting the Town at risk of being taken to court. Horner suggested that the Board hold a re-organizational meeting after Town Meeting in March and at that time discuss procedure and possibly write a Policy Statement.

After some further discussion, the general consensus was to wait and see what happens after Town Meeting.

Marty Post moved to adjourn the meeting at 6:20 p.m., Jay Hickory seconded. All in Favor.

Respectfully submitted,

Lucrecia Wonsor  
Recording Secretary

NOTE: These minutes have not been approved by the Zoning Board of Adjustment and are, therefore, subject to change.