

CAMDEN ZONING BOARD OF APPEALS
MINUTES of MEETINGS
October 15, 2013

PRESENT and VOTING: Chair: Frank Toole; Members: Jean Belair, and Sam Smith; and Alternate Member Ed Libby

ALSO PRESENT: Town Attorney Bill Kelly and CEO Steve Wilson

ABSENT: Members Tom Laurent and Linda Norton

The Meeting was called to Order at 5:00 pm in the Washington Street Conference Room.

The Chair announced that former Alternate Members Jean Blair and Linda Norton have been appointed by the Select Board as full members with both terms expiring in 2016. He also welcomed newly appointed Alternate, Ed Libby.

Mr. Toole informed Mr. Libby that Alternates do not participate in voting on Applications, but do sit with full privileges during review and deliberation. When a Regular Member is absent, Alternates sit as full voting members.

1. ELECTION of OFFICERS:

MOTION by Mr. Belair seconded by Mr. Libby to nominate Frank Toole as Chairman and Sam Smith as Vice Chairman.

VOTE: 4-0-1 with Mr. Toole abstaining

MOTION by Mr. Toole seconded by Mr. Smith to appoint Jeanne Hollingsworth as Secretary.

VOTE: 5-0-0

2. NEW MEMBER ORIENTATION:

Town Attorney Bill Kelly was present to review rules, laws and policies that Board members must adhere to during and after reviews of applications.

Mr. Toole explained that the Board met nearly every month for many years and dealt mostly with expansions within the Shoreland. The Zoning Ordinance was changed to authorize the CEO to issue these permits in most cases. Now the Board meets mostly to hear applications for Special Exceptions. When there is an appeal the Board gets a packet to review prior to the meeting – usually two weeks in advance.

Mr. Kelly noted that this is the point at which Board members must start taking steps to ensure that the Application they will review will be done as fairly as possible. *Ex parte* Communication rules start when the Board is in the process of fact-gathering and don't stop until the time frame for *all* appeals at all levels has expired and even beyond that in case the application is resubmitted.

Ex parte Communication is any communication between a Board member and any member of the public regarding an application that was not held when a record was being created at an actual meeting of the Board - communications between Board members when they are not in session is included in this ban as are conversations with interested parties such as the Applicant or an abutter. In addition to person to person encounters, the forms of communication covered by this rule are emails, phone calls and letters.

1 This is all done in the interest of fairness – everyone involved in, or even interested in,
2 the process want to know what the Board knows about the application and Board members need
3 to be acting on exactly the same information when they make their decision. Any written
4 materials or emails received by a Board member should be shared and put into the record during
5 a meeting of the Board. Failure to disclose this information or taking part in conversations can
6 cause a conflict and the member may not be able to continue to sit in review.
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8 In a small Town members will encounter people they know who want to talk about the
9 application, and sometimes it is very important to avoid any conversations about an application.
10 In a situation where a member cannot avoid speaking to someone who is insistent, they learn
11 when they can temper their conversation and speak in an abstract manner about the Board
12 process.
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14 Mr. Kelly provided Board members with the following amterials:

- 15 • The Maine Statute authorizing the establishment of Boards of Appeal
16 <http://www.mainelegislature.org/legis/statutes/30-A/title30>
- 17 • Information on Maine’s Right-to-Know Law
- 18 • The Maine Municipal Association’s Manual for Zoning Boards of Appeal
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20 He noted that the Board is created by a Statute that gives them the authority to apply
21 discretion in making their decisions. They are not like the Planning Board who must judge only
22 whether or not an applicant has complied with the ordinance.
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24 The ZBA’s role in hearing Special Exceptions is to ensure that what the applicant wants
25 to do results in the least impact. Because the Board can apply conditions to their approvals – they
26 are in fact encouraged to make conditional approvals - the Board can find the best situation to
27 reach this end.
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29 Applicants also come with requests for variances, and the ZBA is given the authority to
30 hear these requests. However, the Statute also includes a set of standards the Applicant must
31 meet that are difficult to reach in order to obtain a variance. The Courts have said that the basic
32 test for approval now is that without a variance, the applicant will see “no economic return” on
33 his property. There are other levels of variances allowed to grant requests for relief from space
34 and bulk standards and residential setbacks, and some issues involving disabilities. These
35 requests are not held to the “no return” standard and the CEO has been given authority to grant
36 some disability issues without coming to the Board.
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38 Because of this discretion and authority it is important that decisions are based only on
39 the facts heard in a public forum so the record is clean and appropriate, and the findings made by
40 the Board pass muster. These finding must be very specific – Courts hold Zoning Board to
41 extraordinarily high standards of fact finding given that they are citizen boards.
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43 Members should avoid “Independent Fact Finding” – making trips to the property outside
44 of a Site Walk the Board may convene. Don’t go purposefully looking for answers to things you
45 don’t know. In a small Town members of the Board are probably going to bring their own
46 knowledge of properties and situations to the hearing and that is understood. But any due
47 diligence is the responsibility of the Applicant and they must provide enough information for the
48 Board to make their decision. It is possible to request that information on a complicated matter

1 be submitted beforehand, and everyone involved is entitled to a copy of any information that is
2 to be brought to the Board.

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4 The Applicant is required to prove their case with facts and show specifically how they
5 will meet the criteria involved.

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7 Mr. Toole described the structure of all meetings:

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9 Members are asked to declare any possible conflict of interest
10 The CEO provides a brief summary of the Application
11 The Applicants make their presentation
12 All Board members have the opportunity to question the Applicant
13 The Public Hearing is opened and Proponents and Opponents and those with general comments
14 come forward to speak. They announce their name and address to show standing.
15 The Public Hearing is closed
16 The Board deliberates – from this point on non-voting Alternates are not permitted to participate
17 Members vote

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19 The CEO did a spot poll to see if members might be interested in having computers like
20 the Select Board does so they can keep all the ZBA communications and information regarding
21 applications – things like letters, plans, etc. – in one place. The computers would eventually
22 replace all the paper that is generated for meetings. Members can also have a dedicated Town
23 email address if they like so all Zoning Board messages come to one address and don't get lost in
24 other personal mail.

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26 Mr. Kelly warned that any email sent or received regarding the Zoning Board are public
27 documents and can be obtained to use in appeals.

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29 The Board voted to stay with paper documents to use at meetings.

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31 Select Board Chair Martin Cates asked the Board to consider making a change to their
32 Public Hearing procedures that would fall in line with the new procedure the Select Board has
33 adopted: Citizens are not called forward to speak by the categories "for or against". Sometimes
34 people in a small town don't want to have to take a public position against an applicant. By
35 doing away with categorizing public comments, the Select Board hoped to encourage people to
36 participate to a greater degree.

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38 Mr. Toole suggested that all they would have to do is simply changed their procedural
39 outline to say "comments"; Mr. Wilson will email a revised outline to members for their
40 consideration at the next meeting. Mr. Toole said their first order of business should be to make
41 the change to the procedure so they can begin using it at the next meeting.

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43 Mr. Libby asked if Mr. Kelly would be present at the meetings. Mr. Toole replied that he
44 and Mr. Wilson usually go over the Application – if it looks complicated they will ask Mr. Kelly
45 to attend.

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47 There being no further business before the Board, they adjourned at 5:45.

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49 Respectfully Submitted,
50 Jeanne Hollingsworth, Recording Secretary