

**Town of Sanford
Zoning Board of Appeals**

The Sanford Zoning Board of Appeals held a meeting on Monday, April 26, 2010 at the Sanford Town Hall. The meeting was called to order at 7:05 P.M. by the Chairperson of the Zoning Board of Appeals, Jane Bowker.

Members Present:

Jane Bowker, Chairperson
Mark I. Patterson, Vice Chairperson
James T. Wendel
Naila Aslan-Khan
Kyle Landry
Paul A. Demers
Kimberly Stewart

Also Present:

Shirley Sheesley, Chief Code Enforcement Officer
Jamie Cole, Code Enforcement Officer
Charles Ellis, Administrative Assistant

Jane Bowker commenced with the Pledge of Allegiance.

First order of business, approval of minutes from April 12, 2010. Motion to accept from Jim Wendel and seconded by Naila Aslan-Khan. Voted, all in favor 5-0. Note, Kimberly Stewart was absent for the meeting on April 12th and Mark Patterson arrived moments after the voting.

Next on the agenda, the Administrative Appeal of Grondin Enterprises of 275 Jagger Mill Road, Sanford, Maine (Map R15, Lot 203). Property is located in the Industrial Business Zone (IB).

Shirley Sheesley gave a brief analogy as to how this appeal came about addressing her denial of a Certificate of Occupancy, to the appellant, for a small scale motor vehicle operation.

The Determination of Standing was paused to give disclosure of any conflict of interest or other fact that might disqualify any Board member with respect to the appeal. Jim Wendel recused himself from the appeal as he has a financial relationship with the appellant.

Continuing with Standing, the Attorney for Grondin Enterprises, Durward Parkinson, announced to the Board that Grondin Enterprises leases the property from Rowell LLC.

Jane announced the Administrative Appeal according to Section: 280-23.A of the Town Code.

The appeal was opened to public hearing with attention given to the appellant, Grondin Enterprises.

Representing the appellant, Attorney Parkinson delivered his presentation and background information of his client as to Grondin Enterprises' proposed business use within the IB zone. Durward highlighted Grondin's association with Triple A business and their "on-the-go" program. The basis for the program is to have the repairs done while on the road and to avoid towing of a vehicle when possible. Also discussed was the "mobile battery" service and the benefits to offering this to a Triple A client. This will be a simple business and not a gigantic tow station, limited to ten (10) vehicles on their property. They also understand that this will need to go through the site plan review process and will need to comply with their findings. Emphasis was placed on the IB zone and its very broad uses was presented by Attorney Parkinson to the Board members. He further stated as to the aggressive uses for this zone while referencing his client's intended use to keep it small. According to the Grondins, it would be in keeping with a small scale motor vehicle service and repair lot.

Ronald Grondin took the podium explaining to the Board his interest in meeting the requirements of Triple A, which are stringent. This particular property meets their geographical requirements within the IB zone according to Mr. Grondin. Part of their requirements include flatbeds for transporting vehicles and a sufficient battery storage area for battery replacement. Grondin can meet both requirements. Immediately following his deliberation, Mr. Grondin asked if the Board had any question(s).

Paul Demers asked Mr. Grondin for clarification as to the number of vehicles he planned to operate his business with. Mr. Grondin advised the Board that his Company has (4) flatbeds, (1) wrecker and (2) utility vans which the garage can accommodate.

Mark Patterson asked for clarification regarding this appeal and one previous appeal if they were from the same people or was the previous appeal from another company. Mr. Grondin acknowledged that it was his company that submitted the previous appeal. Mark asked if anything had been done to contact the Planning Board following the previous appeal. Mr. Grondin advised that they did meet with the Planning Director, Jim Gulnac and Shirley Sheesley from Codes. Mr. Grondin was under the impression that Planning would revisit their proposed use and then meet with the Board to discuss. Instead, Mr. Grondin advised that he read the newspaper one day and saw in the paper that the Board had met and decided against the proposal. To his knowledge, the Planning Board never notified him of the meeting so he could present his side.

Paul Demers asked Mr. Grondin if his previous appeal was for the same site or a different one. Mr. Grondin confirmed that it was for the same site but at that time it was strictly for a towing site which is not the case today. They had no building at the time, only a lot. Paul further asked Mr. Grondin as to how he approached, procedurally, his request for a Certificate of Occupancy and did he initiate a site plan review process prior to requesting a Certificate of Occupancy from Code Enforcement.

Mark Patterson inquired that if the Zoning Board of Appeals granted the appeal, would they still have to go through site plan review? Mr. Grondin confirmed that it would still require planning approval, to the best of his knowledge.

Jane Bowker asked if he had filed an application with the Planning Department. Mr. Grondin replied that he thought he had with Mr. Gulnac, Sanford's Planning Director. He then referred the Board back to the time he read the newspaper confirming that Grondin Enterprises never received direct notification from planning prior to reading the article in the newspaper.

Attorney Parkinson agreed that for the purpose of this meeting tonight, his client is fully aware that the "use" in that zone is "permitted with review" or "PR" and there would be no dodging of that, period, and suggested the Board review the merits of the denial.

With no additional questions from the Board, Jane Bowker turned the meeting over to Shirley Sheesley for rebuttal.

Shirley took the podium and announced her position as the Chief Code Enforcement Officer for Sanford. She noted that the appeal actually covered two issues, **SITE PLAN REVIEW and the USE**. Shirley also stated that this was an administrative appeal and hand distributed a chronology of the events dating back to September 11, 2008 with emphasis on how long this case has been on going. To further present her rebuttal and what the Board should be looking for in an Administrative Appeal, Shirley showed a copy of the original application from Grondin Enterprises. In their application for an Occupancy Permit to operate a mobile battery facility on the property at 275 Jagger Mill Road, Shirley elaborated as to why she denied Grondin Enterprises their Certificate of Occupancy. Her interpretation of what Grondin was asking for as a proposed use was not what they were actually doing. She referenced Section 280-5 of the zoning ordinance and the definition of a small scale service facility as a use involved in the service and repair of a motor vehicle offering a facility of approximately 2,000 square feet or less with fewer than 10 vehicles. The first point here, what's being proposed is really not a motor vehicle service facility where one could drive in with their vehicle and have it serviced! Her second point being that the mobile battery service was not the primary use of this lot. The third point being that the mobile battery service is an off-site activity. Also, and as pointed out by the appellant's attorney, the mobile battery service is not listed in the Table of Land Use and, therefore, not allowed, per Section 280 of the land ordinance. The fourth point being that if it was allowed, it would require Planning Board review and approval or Site Plan Review and approval BEFORE the Code Enforcement Office could issue a permit. This project did not have site plan approval. For the points mentioned above, the permit was denied. Under Section 280-96C no permit can be issued without the process through Site Plan Review.

The CEO next presented photographs taken of the site for display to the Zoning Board of Appeals and to the applicant. She mentioned vehicles parked on the lot, some with Grondin's markings and some that looked like they had been towed to the lot. When the application was denied, the lot was being used for towed vehicles.

A question presented by ZBA regarding as to what happened with the Planning Board following the appellant's earlier instructions, Shirley announced that the Planning Board did meet on February 3, 2010 to have general discussion as to whether or not to allow a tow lot as a conditional use within the IB zone. Although Shirley was not at the meeting, she understood that there were other tow companies represented. Grondin Enterprises did not have representation at this meeting. This was not a formal meeting but only to discuss the possibility of zoning changes, according to the CEO. Planning decided not to consider a zoning change to allow tow lots for Codes to follow and enforce.

A question from one of the ZBA members asked the Code Enforcement Officer if she knew why Grondin was not invited to the meeting. The CEO responded by saying that she didn't think any one was formally invited, this was what she was told.

Another question was asked by ZBA member Mark Patterson if the CEO knew if the other tow operators operate from garages. Her response was "they all operate out of Town" she believed, and usually when towing is required the disabled vehicle is towed to the closest service garage.

Paul Demers asked the CEO what the current site, including the building and grounds, are approved for and it's most recent use? Again, the CEO stated there was no occupancy permit issued for the appellant's intended use. In addition, Paul asked the CEO if at any time was the applicant instructed to go through the Planning Board for Site Plan Review? The CEO confirmed that the applicant was aware of the process and would need to proceed with the Planning Director, Mr. James Gulnac. She did not recall exactly what was said back in 2008 but knew the appellant was aware of the process.

Shirley clarified with Board member, Kimberly Stewart, that the primary use of the land, from the appellant, needs to be clearly identified and that the property in question is not being used as a tow lot.

Next, Jane Bowker asked Attorney Parkinson if he would like to rebut.

Attorney Parkinson went through some of the businesses allowed in the IB zone with review; i.e.; motor vehicle service, motor vehicle repairs, motor vehicle sales & service.

Paul Demers asked if the appellant would be "selling" batteries. Attorney Parkinson said "we might be selling batteries". Explaining further, some of the uses in the IB zone, with review, include motor vehicle sales & service, motor vehicle maintenance, motor vehicle minor repairs including battery service. Speaking to the variation within the zone and the different forms of repairs, Attorney Parkinson highlighted Grondin's "on-the-go" program with Triple A Service.

Attorney Parkinson asked Ronald Grondin to come forward to explain the repair of a battery should it be necessary while servicing a car on the road. Mr. Grondin explained that some vehicles on the road may have to come to the shop in order to replace the battery. This is usually the case with “high end” cars like Pontiacs or Chryslers where a wheel, as an example, may have to be removed in order to replace the battery. In order to meet their contract with Triple A and get the customer on their way, they need a facility in order to bring the vehicle back for repair.

Attorney Parkinson asked the appellant to clarify the vehicles in the picture presented by Codes.

Mr. Grondin identified the vehicles pointing out which ones were Company owned and what they were used for in their operations. He identified one of the vehicles, a Chevrolet, brought to the lot from the Sanford Police Department, where the owner was extradited to another State and Grondin Enterprises is seeking legal ownership of the vehicle. Another vehicle was identified as an employee’s car. Another vehicle was identified as a box for the storage of equipment when they first moved onto the property. This was the result of vandalism following their earlier move to the lot. They have since been removed and he was hopeful that the problems went away as well.

Attorney Parkinson finished the presentation by explaining to the ZBA “the broad language of your own ordinance” repeating again the many broad and possible uses within the Industrial Business zone, including a junk yard. He also confirmed that the Grondins know they must go through the Site Plan Review process regardless of the outcome of tonight’s meeting. Attorney Parkinson recapped the initial confusion on behalf of the Grondins and stated they are aware of the procedure in going forth. They are also aware they are limited to ten (10) cars on their lot and are hopeful the Board will take a second look at their intentions in granting the appeal.

Mark Patterson asked Attorney Parkinson as to the principle reason for the denial by Codes of a Certificate of Occupancy, questioning the CCEO by saying “is that right Shirley”? Jane Bowker quickly responded by responding to Mark that the letter from Shirley, of February 26th, listed four reasons for the denial and this is what the appeal is being based on.

Attorney Parkinson explained to Mark that they were not trying to jump over the process, or to ask for another Certificate of Occupancy without following the correct course in first pursuing Site Plan Review. Hence, they are no longer confused on what needs to come first. He further stated that the Zoning Board of Appeals could properly affirm or confirm tonight that the Certificate of Occupancy was properly administered by the Code Enforcement Officer. Their objective this evening is to seek the Board’s approval that the “use” proposed fits the definition of a small scale motor vehicle repair service facility. In speaking to the Board, Attorney Parkinson asked for their finding on the substance that this does equate to a small scale motor vehicle repair facility.

Mark Patterson asked Grondin's Attorney to clarify what the appellant was looking for in the way of relief from ZBA. Both Attorney Parkinson and Mark Patterson agreed there was "no error" created by the Code Enforcement Officer in denying a Certificate of Occupancy to the appellant. Mark Patterson wanted to confirm that it was a question of land use in what they were dealing with this evening.

Jane Bowker, in speaking to the Attorney, reiterated Shirley Sheesley's position with the statement from the Planning Board that they saw no need to change the ordinance to permit a tow yard. Attorney Parkinson responded to Jane with his commentary regarding the definition of the proposed use and how it fits within the zone. He also encouraged the use of "common sense" with regard to land uses when a definition is not immediately identified or listed.

With no additional questions to the Attorney, Jane Bowker turned the meeting over to the Chief Code Enforcement Officer.

Shirley clarified to the ZBA that in the IB zone a Tow Lot is not listed and not permitted. She further clarified that when Mr. Grondin applied for the Certificate of Occupancy he was in a hurry to sign a lease with the owner of the property and wanted an answer within a day in order to execute a new lease. Shirley told him to go ahead and submit the application for her review and she would get back to him as soon as possible and did so the very next day.

ZBA member Naila Aslam-Khan asked Shirley as to who complained about Grondin's towing operation, as listed in her chronology, exhibit G. Shirley responded by saying she thought it may have been a competitor of Grondin's and could go back to the file for confirmation if necessary. With no further questions, Jane turned the meeting back to the appellant.

Paul Demers asked Mr. Grondin as to the licensed vehicles parked on the lot and if he charged a fee for those that were towed and stored on the lot. Mr. Grondin confirmed that fees are charged.

Jane Bowker asked Mr. Grondin, procedurally, what happens if a customer on the road is detained because they can't fix the vehicle, is the option left to the customer as to where they would like to have their vehicle towed? Mr. Grondin said they are not affiliated with any particular service center and, therefore, they would tow the vehicle to the customer's preferred center. The question was then asked, "how often is a vehicle towed back to their facility"? No clear answer to the number of cars returning to the lot other than under the guidelines of Triple A. They prefer seeing the customer's repairs done roadside and quickly sent on their way. Occasionally, if they cannot be repaired roadside they are towed to the lot.

Paul Demers asked if Triple A still provided gasoline service if a motor vehicle should run out of gas while on the road? Mr. Grondin confirmed that they do provide gasoline service, if necessary. It's all part of their services. The point Paul was making was that even though they provide a gallon or so of gasoline, it does not make them a gasoline station.

Paul asked Mr. Grondin as to how many batteries he stocks on site for servicing a Triple A customer? A response from Mr. Grondin confirmed various types and size batteries are stored for battery replacement.

Paul also asked for clarification as to the area Grondin Enterprises leases, according to the Tax Assessor's property card for Rowell LLC. Also asked was the location of vehicles stored on the lot and how they are secured while in their attendance. All are stored within the secured building or storage area, confirmed by Mr. Grondin. Paul confirmed with Mr. Grondin that he did require a Site Review agreeing with Shirley Sheesley.

Kimberly Stewart asked the appellant how many calls come in from the Town vs. the number of calls from Triple A? In the volume of calls received, Mr. Grondin estimated that less than five percent are calls initiated by the Town. Weather, especially a snow storm, can bring about a call for the towing of several vehicles. Mr. Grondin also confirmed there are five tow companies that work for the Town of Sanford and all of the Companies are on a rotating call list. As an example, for Grondin Enterprises to tow ten cars, the Town of Sanford would have a requirement to remove fifty cars (most unlikely). The big part of their business is weather related.

Jane Bowker asked the Board if they had any more questions before closing the hearing to the Public. With no further questions, the hearing was closed for Board deliberation.

Some comments expressed from the Board were: (a) we are a big Town now and towing service should be an allowed use; and, (b) we are not sure why the Town does not wish to have a tow lot.

A motion was made by Mark Patterson to Grant the appeal and seconded by Paul Demers.

Paul Demers made the comment to the possibility with the Planning Board remaining silent on it due, in part, to the confusion of a towing service accompanied with the lack of a site plan review. Mark Patterson seconded Paul's motion.

At this point, Jane Bowker took the procedural method in granting the appeal following the guidelines established in an Administrative Appeal process. Upon clarification in the wording, the Board reaffirmed that this was Mark's motion and seconded by Paul Demers.

A copy of the Findings of Fact are attached and made a part of these minutes.

Following the vote by the participating Board members, the discussion turned to the By-Laws.

Naila Aslam-Khan requested the By-Laws be tabled for another date. Mark Patterson stated he had reviewed the By-Laws and was okay with them, as submitted earlier. Kyle Landry spoke up to say he did not see a need to debate them further. Kimberly Stewart had a couple of questions regarding past events which prompted Naila to again request the By-Laws be tabled. Jane Bowker referenced her comments in *italic* asking the Board if they agreed with them. Mark stated he thought they were well written.

Paul suggested for any appeal reconsideration that the Town Attorney be present at the hearing.

Motion by Mark Patterson to accept the By-Laws without the changes as proposed and seconded by Naila Aslam-Khan. Voted all in favor 7-0.

Mark Patterson asked Shirley if there were any cases down the road and Shirley responded with a “no”. She also spoke on the new revised “Findings of Fact” in acknowledging a simpler way for the applicant to follow. It is designed so if you answer “yes” to the questions, you get approval. If you answer “no” to any of the questions, you do not get approval.

Motion to adjourn the meeting by Mark Patterson and seconded by Kyle Landry.
Meeting adjourned at 9:01 P.M.