

TOWN OF SHEFFIELD
ZONING BOARD OF APPEALS
JULY 11, 2022
TOWN HALL – SECOND FLOOR MEETING ROOM
7:00 PM

Board Members Present: Eric Carlson, Chairman
Allison Lasso
Nicole Chase
Catherine Miller
Pat Levine

Others Present: Members of the Public-Sign in Sheet Attached

7:00 PM - Public Hearing Continuation – Administrative Appeal filed by John Muller regarding 1551 and 1515 Boardman Street. Chairman Carlson opened the hearing and read the hearing notice.

Attorney McCormick questioned the new notice that was published and asked if this was a continuation or a new hearing. The notice did not state continuation so it could be a procedural issue if the Board continues.

Attorney Belcher-Timme stated that the intent was to include both properties and the Board has determined at an earlier meeting that both properties would be included. He stated that in his opinion the notice was fine.

Chairman Carlson read the notice again and Attorney McCormick again stated her concerns with the notice not stating a continuation. N. Chase said that the hearing was reposted for clarification that it included both properties.

It was the consensus of the Board to continue this hearing.

Attorney McCormick asked if Board members had any questions from the site visit.

A Lasso asked for clarification regarding commercial activity on 1515 Boardman Street (1515), that is was only storage of salt and sand. C. Miller asked how many trucks are on the property. Attorney McCormick stated that no commercial activity took place at 1515 other than the salt and sand. P. Levine asked, isn't that commercial. Attorney McCormick replied yes, but there was an allegation that commercial activity was taking place in the garage at 1515 and that is false. C. Miller asked if the product was picked up at this location, reply yes it is loaded there during storms.

P. Levine asked what the thinking was for extending the business onto 1515. Attorney McCormick explained that 6.5 acres of land was taken from 1551 Boardman Street (1551) for the Appalachian Trail, which caused a space issue and that is when the storage of salt and sand began at 1515. P. Levine asked if any thought was given to applying for a permit at that time and asked if the land that was taken is used for farming.

Chairman Carlson stated that the Board would deliberate on each property separately. A. Lasso stated that the Board is not allowed to make any settlements, it is black and white for the Board's decision without any wiggle room.

Attorney McCormick stated that she has previously submitted procedural defects and the Board has not addressed them. They are as follows:

1. The appeal of the Building Inspector's (BI) decision was not filed within 30 days and the appeal was not filed with the BI

2. The appeal stated 1515 Boardman Street and did not mention 1551 Boardman Street and that the vote taken by the Board to include both was in conflict with Chapter 40A
3. There is an issue withstanding regarding 1551, as Mr. Muller is not a direct abutter, not within 300' of the property.

Attorney McCormick referenced cases that set precedence regarding standing and stated that Mr. Muller bears the burden of proving his case. The appeal is also lacking any test for noise. P. Levine asked - one of the properties does abuts Mr. Muller.

Chairman Carlson stated that any aggrieved party can file and appeal. Attorney McCormick responded that there are two types of standing. Presumptive---be a direct abutter or within 300' of the problem and applicants must prove that they are aggrieved by providing proof and no proof has been submitted. Mr. Muller has complained that noise is an issue but has not proved that it is coming solely from her client's property.

Attorney Belcher-Timme stated that he doesn't agree with the timing of the appeal and that it was date stamped. He acknowledged that the application filed lists 1515 but included 1551 with the attached documents. He stated that Mr. Muller is an aggrieved party by dust, noise and traffic.

P. Levine stated that according to Mr. Muller's previous statements this is not the time of year for the most noise. Chairman Carlson asked if it was the loading of the salt and sand. Darleen Wilkinson (owner of 1551) stated that November - March was the time of year that salt and sand was loaded. N. Chase stated that there were no specifics regarding times for the noise complaint. Mr. Muller stated that there if no difference in the time of year, but it is worse in the winter and stated that this morning 6 trucks went by.

Attorney Belcher-Timme stated that the Board is tasked with the determination on the activity on the properties, not Mr. Muller. Attorney McCormick again stated that the burden of proof is on Mr. Muller to prove that he is aggrieved.

A Lasso asked if Board members felt that Mr. Muller was aggrieved. N. Chase stated her concerns about no specific examples of the issue and asked Mr. Muller what his primary complaint was, he replied noise.

Chairman Carlson stated that the BI decision included both parties, Attorney McCormick stated that Mr. Muller only appealed 1515. P. Levine stated that this should not end up in court, maybe Town Counsel needs to clarify. Attorney Belcher-Timme stated that the Board could continue with evidence tonight and get a determination regarding standing from Town Counsel at a later date, he again stated that in his opinion there was no issue with standing.

It was the consensus of the Board to continue.

Attorney McCormick stated that regarding 1551, it is a pre-existing non-conforming use that began on June 25, 1974 when the Joe and Darleen Wilkinson purchased the property and began operating an excavation business. This was a general trucking, excavating, storing/parking of equipment and materials, general construction business that serviced residential and commercial customers. P. Levine asked if the same customer base that existed in 1974 was the same as now. Reply was yes.

Attorney McCormick stated that Sheffield enacted Zoning on May 23, 1994 and this business was a pre-existing non-conforming with 35 employees. She also noted that two other construction companies with the Wilkinson name who travel Boardman Street. She stated that Mr. Muller's complaint is that the business has changed and expanded and to prove that there is a three part test. She referenced case law. She also stated that the following:

- A. The current use is exactly the same as it has always been and has the same client base.
- B. Minor alterations were made after the taking of property by the Appalachian Trail and a rebuild after a fire in 2001, but the business has not changed in volume. There has been a decrease in the number of employees and the number of large trucks.
- C. Impact on the neighborhood - there has been no difference since the beginning.

Attorney McCormick asked the Board to uphold the BI decision.

P. Levine asked about a prior statement by Attorney McCormick about leaving vehicles outside of 1551, what does that mean? Kevin Wilkinson responded that equipment is left on the job site and most of the time transferred from job to job.

Chairman Carlson asked Mr. Muller to detail what noise issue is occurring, Mr. Muller replied that dump trucks left at 6:30 this morning, machinery running, various loading and unloading and that he considers the mixing of salt and sand light manufacturing and that is not allowed per the bylaws. He also stated that the mixing of salt and sand began in 2018 and the expansion began a few years before that and that a traffic count has never been done on Boardman Street. Mr. Muller stated that this is the largest construction company in South County and mentioned a January storm that contractors were entering the business from 7 am to 8 pm. He stated that he is only asking for peace and quiet and this business should not be in a residential neighborhood.

Chairman Carlson asked Mr. Muller if the biggest problem is the loading of salt and sand during a storm, Mr. Muller replied no, the business has expanded and it can't expand. Mr. Muller also stated that this business has opened another location which will create more traffic. N. Chase asked won't this be less traffic, Mr. Muller stated no, it will be more.

Attorney Belcher-Timme referenced case law. In his opinion the expansion of the business created the loss of pre-existing non-confirming status based on: uses are protected with no modifications and if there are modifications then a permit must be obtained.

The Board discussed the materials on the property. Attorney McCormick stated that there is no digging/excavating or processing at either property. All materials are brought in. Attorney McCormick stated that the materials are now just sitting at 1515 and retail sales will take place at the Lime Kiln Road site. Kevin Wilkinson stated that they try to limit hours except for severe storms. Todd Wilkinson stated that they service 25 customers for sand and salt.

Mr. Muller stated that this business is manufacturing in the rural district, Attorney McCormick stated that there is no manufacturing, Mr. Muller disagreed. Chairman Carlson stated that he does not agree with Mr. Muller, the mixing of salt and sand is not manufacturing.

The Board discussed questions for Town Counsel. The questions are the standing issue for both properties and if a decision of no standing is made for 1551, can the Board continue and make a finding on 1515.

Mr. Muller stated that he wanted to bring up new evidence of a dump truck backing into the garage at 1515 and it was stored in that garage.

C. Miller moved to continue the hearing to July 25, 2022, seconded by P. Levine. The motion carried unanimously.

C. Miller moved to approve the minutes from June 23, 2022, seconded by N. Chase. The motion carried 4-0, P. Levine abstained.

N. Chase moved to adjourn the meeting, seconded by C. Miller. The motion carried unanimously.

Chairman Carlson adjourned the meeting at 8:42 PM.

Respectfully submitted:



Jill Hughes
Assistant Town Administrator

Documents Reviewed at this Meeting:

Administrative Appeal filed by John Muller regarding 1515 and 1551 Boardman Street

Sheffield Zoning Board of Appeals

Date: July 11, 2022

	Name – PLEASE PRINT	Street, Town
1.	GEORGE SOUDANT JR	1591 HOMERD
2.	Jesse Belcher-Timm	East Hampton, MA
3.	John R. Muller	1409 Boardman St.
4.	Todd Wilk	1500 Boardman St.
5.	Penn Wilkinson	1500 Boardman St.
6.	Tucker Wilkinson	1500 Boardman St
7.	Kathleen R. McCormuck	McCormuck Murtagh + Marcus.
8.	Wendy Wilkinson	171 Cook Rd
9.	Mark Rob. Tuller	84 Park Lane
10.	Joe Wilkinan	1551 Boardman
11.	Paul Green	Great Bayview Men
12.	Helen Wilkinson	1515 Boardman St
13.	Yvonne Lowry	9 Park Lane
14.	Darren Wilkinism	1551 Boardman

15. Laci Wilkinson Hullet Hill rd Sheffield, Ma
16. Mary Bartholomew 1080 Sth Undermountain Stth ^{Me}
17. Bill Tighe 19 Soume Lane Sheffield

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