Zoning Board of Appeals
Town of Great Barrington

Minutes of the Tuesday, April 20, 2021, 7:30 PM meeting

The meeting was held via Zoom Video/Telephone Conference as stated in the agenda.

Vice Chair Ivory called the meeting to order at 7:30 and called the roll:

Members Present:
Vice Chair Carolyn Ivory, Stephen McAlister, Madonna Meagher, Michael Wise, and alternate member John Katz.
Not Present: Ron Majdalany
Also Present: Assistant Town Manager/Planning Director Christopher Rembold, Town Counsel David Doneski

Public Hearing: *to consider an amendment of the Board's decision of April 30, 2018 regarding use of the property at 11 Roger Road, which was issued on an appeal from a cease and desist order of the Building Inspector. This matter comes before the Board as directed in a remand order of the Land Court in the case of GJO, LLC v. Great Barrington Zoning Board of Appeals, et al., Case No. 18 MISC 000240, which approved an agreement for judgment between the parties and ordered a remand of the matter to the Board for the purpose of amending the 2018 decision to reflect the agreement for judgment.*

Motion: Katz moved to open the public hearing
Second: McAlister seconded.
Vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Katz-aye (passed 5-0).

Attorney Doneski summarized the issue to the Board, reading the following statement into the record:

> In November of 2017 GJO, LLC filed an appeal with the Zoning Board of Appeals from a cease and desist order issued by the Building Inspector and Zoning Enforcement Officer regarding the use of the property known as 11 Roger Road for operation of a trucking business and related activities. The appeal raised the issue of whether that use was entitled to zoning protection as a pre-existing nonconforming use. In a decision filed with the Town Clerk on April 30, 2018, the Board denied the appeal, and adopted a separate zoning enforcement order for the property – as allowed under the provisions of the state Zoning Act, Chapter 40A of the General Laws. GJO appealed the Board's decision to the Land Court and included in its complaint a request for a determination by the court regarding any pre-existing nonconforming use rights GJO may have with respect to the property.
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> After the complaint was filed, GJO filed a motion for a preliminary injunction against any zoning enforcement action by the Town; and in September of 2018 the Land Court granted an injunction that allowed for continued operation of GJO's business, subject to certain conditions. In its order, the court stated that "trucking" was a protected use at the property, based on the history of prior activities. In particular, the court authorized the continued use of the property as a base of operations for the business known as Irish Trucking to provide hauling services, with trucks of various sizes, to construction companies, and for storage of snow plow trucks and other vehicles and equipment.
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> Over a period of several months in 2020, the ZBA and Selectboard, working with Town Counsel, participated in a dialogue with GJO, through its attorneys, regarding terms of a possible agreement to resolve the litigation. At the end of the year, an agreement covering the various conditions that were included in the enforcement order section of the April 30, 2018 decision was

reached. The terms of the agreement were submitted to the Land Court in a document known as an agreement for judgment. That agreement provided for an order of the court and a remand to the ZBA for the purpose of holding a public hearing on adoption of the agreement as a replacement for the ZBA's 2018 decision. This type of remand hearing is typical when there is an agreement to settle a zoning appeal in a way that differs from the original decision.

The remand order summarizes the two main parts of the agreement for judgment: a declaration that use of the property for a trucking business is a lawful pre-existing nonconforming use, with additional detail on the scope of permissible use; and amendment of the 2018 decision to reflect the terms of the agreement for judgment.

The declaration in the agreement for judgment states that the property may be used as a landscaper's yard/trucking contractor's yard, specifically, a place at which a landscaper or trucking contractor stores and maintains the vehicles and equipment used in its business and from which it dispatches those vehicles and equipment to work sites, provided that such use complies with several specific conditions. Those conditions are as follows:

a. No active snowplow and/or sander operations at or from the Property at any time.
b. No storage, service or repairs of any snowplow or sander truck from October 15 through April 15; but up to nine (9) snowplow vehicles may be put in dead storage and may be serviced during normal hours of operation, from April 1 through no later than December 1. Proof that the stored vehicles are not insured to be operated on a roadway shall be provided to the Building Inspector. When the snowplow vehicles are brought to the Property for the start of the annual dead storage period, GJO shall give the Building Inspector a list of the vehicles, including make, model, color and license plate number.
c. No use or display of any flashing lights of any kind at the Property.
d. No storage, servicing or dispatching of any truck that exceeds 29,000 lbs. unladen weight at or from the Property. Up to nine (9) trucks (separate from the seasonally stored snowplow trucks) that do not exceed 29,000 lbs. unladen weight, may be stored, serviced and dispatched at or from the Property. Personal vehicles of employees (automobiles and pickup trucks) may be parked or kept on the Property, but no servicing or repair of these personal vehicles is allowed. No storage or servicing or operation of race car vehicles.
e. For the portion of Roger Road that is gravel and not bituminous pavement, GJO shall:
    i. Conduct periodic inspections to monitor status of the roadway;
    ii. Fill and grade that portion of the roadway at least twice a year to minimize potholes and ruts; and
    iii. Treat the gravel surface with calcium chloride during dry months to keep dust down.
f. Dispatch from the Property and servicing, repairing or maintaining trucks (or equipment) at the Property is limited to the hours of 6:00 a.m. to 7:00 p.m., Monday through Saturday. Employees may arrive at the Property in personal vehicles prior to 6:00 a.m., but no earlier than 5:30 a.m. Heavy trucks may be started no earlier than 5:45 a.m. to facilitate required pre-departure inspections but shall not be driven or otherwise moved prior to 6:00 a.m. There shall be no Sunday operations.
g. No idling of any vehicle or equipment for more than 15 minutes.
h. No jake braking at the Property.
i. The Building Inspector, or his/her designee, may enter the Property at reasonable intervals during the hours of 5:30 a.m. to 7:00 p.m., Monday through Saturday, to inspect it for compliance with these terms and conditions. Up to twelve (12) such inspections may be conducted per calendar year. In addition, the Building Inspector, or his/her designee, may enter the Property in response to a complaint received regarding operations at or about the Property, and when doing so shall

> notify GJO and/or any persons on the Property at the time of the date and elements of the complaint.
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> The agreement for judgment also states that the maintenance building on the property is a legally nonconforming structure.
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> After the close of the public hearing and any further discussion by members of the ZBA, the acting chair will ask for a motion to amend the ZBA's 2018 decision by replacing it with a decision that incorporates the terms of the agreement for judgment. As outlined in the remand order, the amended decision will be filed with the Town Clerk, and will be subject to an appeal by any person aggrieved by the decision, as allowed by section 17 of the Zoning Act for other decisions of the ZBA. Until the amended decision becomes final, the terms of the September 27, 2018 preliminary injunction will remain in effect.

Attorney Shawn McCormack was present representing GJO, LLC. He confirmed that Doneski accurately summarized the agreement.

Board members did not have any questions. Ivory said the board members are familiar with these terms, having been in the meetings with the Selectboard and Counsel when the agreement was drafted.

Ivory asked for public comment.

Jan Wojcik, 1 Roger Road, said he is disappointed the board has let the site continue to disturb the neighborhood, destroy the road, and pollute the environment. He hoped there could be a more logical solution than allow GJO keep running a noisy disruptive business. Ivory noted the board did not have much choice, as it was determined by the courts long ago that a business could operate there. Wojcik suggested GJO should contribute to the upkeep of the paved portion of the road, since the heavy trucks damage that portion of the road as well as the gravel portion. McAlister said the paved portion is a town road and maintenance would fall to the town. He added we are trying mitigate the impacts of the business, which is allowed and ordered by land court.

Wise said the court's preliminary injunction indicates that the business will be allowed to continue, and if we fight the land court, and likely lose, we will not have control over the impacts of that business. He said we are settling on these terms because the proposed settlement will constrain the business and set the limits. This settlement is the best option.

Roger Belanger, 43 Fairview Terrace, said the Town must follow through and enforce the proposed regulations.

Ruby Chang, 1 Roger Road, asked how the board will monitor the stipulations of the agreement. Ivory said the Town Building Inspector will have the authority to inspect and respond to complaints. Chang asked what the purpose of this meeting is. Doneski said when there is a resolution to litigation that is different than the board's original decision, the procedure is that the issue must come back to the board to formally adopt the settlement as a new, revised decision.

Chang asked if the board agreed with the decision which will allow this heavy machinery in a residential area. McAlister said if this came to the board today, he does not think the board would give it a use variance to allow a commercial operation here. But this is a preexisting condition. Wise added the limitations in the settlement will ensure the commercial operation will not expand further.

Motion: Wise moved to close the public hearing
Second: Meagher seconded.
Vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Katz-aye (passed 5-0). The public hearing was closed at approximately 8:05 PM.

Wise said we are able place conditions on the use; this is not entirely a failure.
McAlister said this is probably the best we can do given the history of the case.
Katz said it is important that the Building Inspector has the ability to inspect.
Meagher said we have listened to the neighbors and we have done our best.

Motion: Wise moved to amend the board's April 2018 order by replacing it with a new order that conforms to the terms of the agreement for judgement.
Second: McAlister seconded.
Vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Katz-aye (passed 5-0).

Doneski will write the decision.

Minutes:
Meagher moved to approve the draft minutes of February 23, 2021 as written.
McAlister seconded.
Roll call vote: Katz-aye, McAlister-aye, Meagher-aye, Wise-aye, and Ivory-aye (passed 5-0).

Citizen Speak: none
Ivory adjourned the meeting at 8:17 PM.

Respectfully submitted,
Christopher Rembold