

EXETER ZONING BOARD OF ADJUSTMENT NOVEMBER 18, 2014 MEETING MINUTES

PRESENT:

Regular Members: Vice Chair John Hauschildt, Rick Thielbar, Kevin Baum and Laura Davies
Alternate Members: Hank Ouimet and Marc Carbonneau
Building Inspector/Code Enforcement Officer: Doug Eastman
Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Vice Chairman Hauschildt announced that he would be chairing the meeting this evening in Chair Prior's absence. He introduced the Board members and explained the protocol for the meeting.

AGENDA:

1. Case #1480: Seacoast Family Promise - 27 Hampton Road
2. Case# 1487: Tuck Realty Corp. – Highland Street

Vice Chairman Hauschildt announced that the Planning Office had received correspondence from Mr. Michael Garrepy, of Tuck Realty Corp. requesting a continuance of their application (Case #1487) until the Board's December meeting. He indicated that the Board would address this item prior to commencing with the Seacoast Family Promise application.

NEW BUSINESS:

1. Case #1487: Tuck Realty Corp.

The application for variances from Article 4, Section 4.3 Schedule II for relief from lot area, lot width, lot depth, front, side and rear setbacks to permit six (6) single family residential lots in the R-2 zoning district. The subject properties are located on Highland Street and Portsmouth Avenue, and are within the R-2, Single Family Residential and C-2, Highway Commercial zoning districts. Tax Map 65, Lots 138, 139 & 142.

Attorney Sharon Somers was present on behalf of the Applicant. She explained that although the required public notice of the application had been made, an error on the abutters' list which was submitted with the application had been discovered. Therefore, the Applicant was requesting a continuance until the December meeting to allow for adequate time to correctly notify the one abutter.

DELIBERATIONS

MOTION: *Mr. Thielbar moved to grant the request to continue the application of Tuck Realty Corp. until the Board's December meeting.
Motion was seconded by Ms. Davies.
VOTE: *The motion passed unanimously. Mr. Ouimet abstained.**

Chairman Hauschildt indicated that the Board's next meeting was scheduled for Tuesday, December 9th, 2014 at 7:00 PM in the Nowak Room of the Exeter Town Office. He represented that this announcement would serve as notification to abutters, with the exception of the one corrected certified mailing.

2. Case #1480: Seacoast Family Promise

Continuation of the application for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses to permit the existing structure located at 27 Hampton Road to be utilized as a community building. The subject property is situated in the R-2, Single Family Residential zoning district. Tax Map Parcel #87-36.

Chairman Hauschildt recalled that the Board was in the “rebuttal” phase of the hearing when the September 16th meeting was adjourned due to technical (audio and filming) difficulties. He noted that in Mr. Prior’s absence, it would be necessary to have another member seated for the meeting this evening. He explained that Messrs. Thielbar and Baum were not present at the September meeting; however, were both prepared to discuss and deliberate on the application this evening. It was decided that Mr. Thielbar would remain seated; Mr. Baum excused himself and departed.

Attorney Sharon Somers addressed the Board on behalf of the Applicant. She provided a brief recap of the September 16th proceedings. She indicated that her submission, dated November 3rd, was organized to address the questions and concerns raised by the Board at that meeting. She reviewed each of those points as outlined in her submission and concluded by stating that the Applicant was amenable to having conditions of approval imposed should the Board approve the special exception application. She provided a “Proposed List of Conditions” labeled as Exhibit G of her submission.

Chairman Hauschildt as if Attorney Somers could indicate when she is finished with each point so that board members may ask questions.

Mr. Ouimet asked to clarify that there is a two-tiered approach for the drug testing and the criminal records check; an instant check followed by a more thorough check that takes some time. What happens in that interim period? The potential guest is admitted to the program?

Attorney Somers indicated that the potential guest is not admitted into the program until the instant drug test done. If the drug test comes back showing drug usage that person is not admitted and is referred elsewhere. The criminal check is the same thing. The results come back within 24 hours. They don’t admit anyone right away, so by the time they are ready to make the decision to admit the person they will have those results. If something comes up that was not shown in the first checks, then the person will be asked to leave.

Attorney Somers continued to review information submitted as Exhibit G, Proposed List of Conditions.

Attorney Somers further indicated that upon entering the meeting this evening she was handed a 24 page document which was submitted to the town at the end of business today. She has not been able to review it or to discuss it with her client. She objects to this being considered by the board as it is not timely or fair for the board. If there are further questions from the board she would be happy to answer them at this time.

Ms. Susan Stagnone interjected to raise a point of order. She indicated that she had prepared a written statement which she had distributed to the seated board members prior to the meeting and she wished to address her comments with them. She stated that a considerable amount of information had been presented by the Applicant’s counsel and abutters and/or interested parties should have the opportunity for public comment.

Discussion concerning where previous meeting ended due to running out of tape.

There being no further questions for Attorney Somers from the Board, Vice Chairman Hauschildt indicated that the Board would proceed to open the hearing for public comment and requested that comments being made should only pertain to the information provided in the rebuttal submission heard by the Applicant's counsel this evening.

Ms. Sue Stagnone, 9 Exeter Farms Road. Abutter and member of the Exeter Farms Board of Directors. Read prepared statement. (See attachment).

Mr. Boyd Allen, 8 Hunter Place, inquired about who would be responsible for the enforcement of the conditions of approval, if the Board were to grant the Applicants' request. He also asked what recourse and/or protection there would be for the abutters.

Code Enforcement Officer Doug Eastman advised that any violation of an agreement of this board, first we would check it out and assess what the circumstances were. What happened and why it happened. A warning would be issued first. If there were another violation, a special exception could be moot. The community building definition, he has to base his decisions on the information they give him. When people read the definition, they don't read the entire definition which reads: "Focusing on promoting health and general welfare of the community." There were other organizations that were going to be part of the YMCA. Seacoast Family Promise could have been part of that campus.

Mr. Kurt Virkaitis, President of Exeter Farms Homeowners' Association (26 Exeter Farms Road) also had questions regarding enforcement of the proposed conditions. He inquired if the Town would be checking records on any type of a regular basis. He expressed considerable concern relative to the diminution of market values of the surrounding properties.

Chairman Hauschildt stated we want people to speak to this is not going to be a homeless shelter.

Mr. Kurt Virkaitis stated he knows that, but that's not how it's going to be perceived. It's a homeless transition facility.

Mr. Chris Gilroy, 25 Hampton Road, Unit A-3. Indicated that he had also delivered some materials to the Planning office today. He proceeded to make references to concerns with the Family Promise organization in other locations.

Mr. Reinhardt Schumann, property owner of 25 Hampton Road, also expressed vast concern relative to market values. He stated that it was the burden of the application to show there is no loss of property value for these properties. He indicated that the professional opinion rendered was from the Applicant's own realtor. It's not the burden of the public to provide this evidence.

In rebuttal, Attorney Somers stated that Mr. Eastman's interpretation was sound. She noted that his interpretation was not part of the administrative appeal. There is a history of evidence of community buildings. It is an issue that does not need to be worried about. Neighboring properties would be protected and not adversely affected. She asks that they grant the application.

At this time, Vice Chairman Hauschildt indicated that the public portion of the hearing was closed and the Board would not be taking any further public input from the audience.

Prior to deliberations, the board took a short break; the meeting was reconvened at 10:05 PM.

DELIBERATIONS

Board consensus was there seemed to be a large concern from the abutters as to whether the proposed use should be considered a “community building” in accordance with the definition set forth in the town’s ordinance.

Mr. Ouimet suggested that the Board should have discussion on this issue as it may become the basis for an appeal if the application should be granted. Mr. Carbonneau commented that it was unfortunate that such discussion had not taken place at the September meeting. He proceeded to read the definition of “community building” from the ordinance. Code Enforcement Officer Doug Eastman indicated that he had reviewed the application and found acceptable for consideration by the Board. Vice Chairman Hauschildt polled the Board members for a vote to see if they concurred with the interpretation that the proposed use would be considered a “community building” (and to proceed with deliberations). All board members, with the exception of Ms. Davies, concurred; the Board continued with deliberations.

Lengthy discussion ensued regarding the conditions of approval presented by the Applicant and the practicality of enforcement.

It was represented that any conditions imposed upon the Applicant should be limited and enforceable. It was noted that any special exception approval (and conditions) would run with the property. Mr. Carbonneau commented that the operational conditions would be difficult for Town staff to monitor on a daily basis; however, most likely such violations would be generated by a complaint from an abutter. Ms. Davies commented that Conditions #4,5 and 12 relative to the hours of operation and capacity of the facility were reasonable. The Board extended their discussion to include scenarios of the potential for future occupancy of the site and enforcement of conditions that may have been specific to this application. Mr. Carbonneau commented that approval of a “community building” could become really broad. Mr. Hauschildt reiterated that any conditions imposed upon the Applicant as part of a special exception approval would run with the land and would apply to future occupants; he noted that any deviation of such conditions would require further review by the board.

- MOTION:** *Mr. Thielbar moved to deny the special exception request, as requested, on the basis that it failed to meet the special exception criteria, specifically the following:*
- *B. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected;*
 - *C. That the proposed use will be compatible with the zone district and adjoining post 1972 development where it is to be located; and*
 - *H. That the use shall not adversely affect abutting or nearby property values.*

Motion was seconded by Mr. Carbonneau.

VOTE: *The motion passed, 3-2. Ms. Davies and Mr. Hauschildt voting in the negative.*

OTHER BUSINESS:

APPROVAL OF MINUTES:

The minutes of the September 18th, October 2nd and October 21st, 2014 meetings were deferred until the Board’s next meeting.

MOTION: *Mr. Thielbar moved to adjourn.
Mr. Carbonneau seconded.*

*These minutes are subject to possible corrections/revisions at a subsequent
Exeter Zoning Board of Adjustment meeting.*

VOTE: The motion passed unanimously.

The meeting was adjourned at 10:35 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, December 9th, 2014 at 7:00 P.M. in the Nowak Room at the Exeter Town Offices.

Respectfully submitted,

Barbara S. McEvoy
Deputy Code Enforcement Officer
Planning & Building Department

DRAFT