

EXETER ZONING BOARD OF ADJUSTMENT MARCH 16, 2010 MEETING MINUTES

Present:

Vice Chairman: Marc Carbonneau.

Regular Members: Steve Cole, John Hauschildt, Robert Prior.

Alternate Members: Mike Dawley, Martha Pennell, Joe Stone.

Code Enforcement Officer: Douglas Eastman.

Deputy Code Enforcement Officer: Barbara McEvoy.

The meeting convened at 7:03 PM.

Agenda:

1. Case #1393: Harmon, Gilman, Megan - Appeal from Admin. Decision re: 100 High St.
2. Case #1394: Felder-Kuehl - request for relief of limitation on variances.
3. Case #1395: Felder-Kuehl – request for relief of limitation on special exception.
4. Case #1396: Wilson – Variance request re: 81 High St.

Protocol:

All of the ZBA alternates were present and the chairman began a discussion as to which alternate should be a voting member for the evening. Mr. Dawley stated that he would sit as a voting member for the evening or go home. Mr. Stone stated that he was busy on the home front. Mr. Dawley suggested that one alternate should sit for the whole meeting. The Chairman suggested that Mr. Dawley sit for the first (#1393) and fourth (#1396) cases of the evening and Ms. Pennell sit for the second (#1394) and third (#1395) cases and the alternates agreed. Mr. Stone left the meeting at this time.

New Business:

1. Case #1393: Appeal from Administrative Decision.

The application of Richard W. Harmon (95 Investment Trust), Greg and Julie Gilman and Alva Megan for an Appeal from an Administrative Decision made by the Historic District Commission (HDC) on January 21, 2010 with respect to signage approved for the property located at 100 High Street. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #71-51. Case #1393.

Mr. Greg Gilman of 96 High Street approached the board and mentioned that he was speaking on behalf of the abutters. He stated that twenty-four (24) square feet is not allowed for a sign in the zone. Section 5.7.8 (Sign in Historic District) of the Exeter Zoning Ordinance was referenced and he mentioned that the High Street property is identified as residential in the Historic District and that six (6) square feet is the maximum allowed for a free-standing sign in the zone.

Continuing, Mr. Gilman stated that the HDC was told by the Code Enforcement Officer that 5.7.4 allowed for twenty-four (24) square feet and that that was a mistake. He then mentioned that the HDC was unaware of 5.7.8 at the hearing and that this was confirmed through e-mail with HDC members.

Mr. Gilman then stated that there are conflicting provisions regarding 14.3 and that no notice had been received of the hearing. It was mentioned that noticing abutters regarding signs is not typically required by the HDC guidelines and that he disagrees with the guidelines. Mr. Gilman stated that the Commission Chairperson can make a decision otherwise and that the abutters have made clear to the Planning Department that they expect notification regarding meetings about signage at 100 High Street.

According to Mr. Gilman, grandfathered rights did not come up at the HDC meeting, and that the large sign previously approved for Century 21 was removed in October of 2007. (An e-mail from Mr. Harmon was referenced which documented the date the sign was removed.) Mr. Gilman continued by mentioning abandonment and referenced section 5.7.3 (E) – Non conforming signs and stated that if abandoned for more than one year, the sign shall be removed. Mr. Gilman then mentioned that the property became non-conforming when the Historic District was adopted and the sign was physically removed in October of 2007. He said that all rights disappeared October 2009 and that the HDC erred in approving twenty-four (24) square feet.

Continuing, Mr. Gilman referenced 5.7.3 (G) – Lighting, regarding visibility. He stated that the previous sign was “glowing” in Mr. Harmon’s home and that it was on a timer and went off late at night. He also stated that it would be acceptable to be lit until 6:00PM.

At this time, Mr. Gilman mentioned that a letter had been received from Mr. Catino several weeks ago (subsequent to the HDC meeting) regarding renovations to his condominium at 100 High Street. It was then mentioned that the maximizing of signage and lighting on the application was not being made in good faith and that it would have been brought forward at the HDC meeting, but the meeting was not noticed.

Mr. Dawley asked what the definition of “discontinuance” was.
Mr. Gilman stated that it was not relevant to the sign, only to the use.

Mr. Dawley then asked if the Century 21 sign had remained, would everything be okay?
Mr. Gilman then asked Mr. Dawley if he had had a meeting with Mr. Eastman on Friday and Mr. Dawley answered no. Mr. Gilman then answered the question (regarding if the Century 21 sign had remained) and he stated no, the use was abandoned.

Vice Chairman Carbonneau then mentioned that the board was charged with either upholding, denying or modifying the HDC approval.

Mr. Dawley asked who the chairman of the HDC was. The answer was Julie Gilman.
Mr. Gilman then stated that she had recused herself and had only found out shortly before the meeting about the sign issue being on the agenda and that he was in Washington at that time.

Mr. Dawley then asked if the appurtenances (equipment) were still in place.

Mr. Gilman referenced a more specific provision, 5.7.3 (E) and stated that the sign being off the post constituted abandonment.

Vice Chairman Carbonneau asked if any other applicant wished to be heard. Mr. Gilman answered no.

At this time, Vice Chairman Carbonneau opened the hearing to public testimony.

Attorney Scott Lapointe, representing Don Catino of 100 High Street approached the board at this time. He began by discussing the issue of abandonment. He stated that it is not logical to keep a Century 21 sign up when the business was not there, but logical to keep in place for the new tenant. He then stated that there is no requirement for abutters to be noticed and he referenced 5.7.7 "Heading" and stated that the terms Commercial or Residential applied to the USE (intent) and not the zone.

Mr. Don Catino of 100 High Street (unit 4) approached the board at this time and requested the board to read the entire letter that was referenced earlier and not the snip-it submitted by Mr. Gilman.

Mr. Sandy Winter of 100 High Street (units 1-3) addressed the board and stated that his earlier tenant (Century 21) had been forced out by the abutters and that the sign frame is stored in the shop and is ready to go back up. He also mentioned that lighting/wiring are still in the ground. Mr. Winter then mentioned that minutes were not available from the town although they were included in the application. He then began a discussion regarding a different issue at 100 High Street, a building permit and a fence. That issue was not addressed by the board.

Mr. Anthony Zwaan of Marlboro Street addressed the board at this time. He stated that he was a member of the Planning Board, he asked for clarification regarding the statement that a business had been forced out and he mentioned the abandonment issue and questioned whether a sign frame is all that is needed to keep *rights*. Continuing, he stated that with a new owner, the new sign should comply with the regulations whereas the subject property is in a well established residential neighborhood. Mr. Zwaan then asked the board to review the HDC decision and to keep in mind that the Historic District is fairly new to the High Street neighborhood.

Mr. Catino then approached the board and stated that the signage that was there was presented as part of the sales package when he purchased his condominium at 100 High Street.

Mr. Kline of 82 High Street approached the board and stated that the sign could have been kept in use to protect *rights*.

Mr. Dennis Pacquin of 75 High Street and Ms. Katherine Cook of 86 High Street both addressed the board and stated that they were there to support Mr. Gilman.

Mr. Gilman addressed the board at this time and cautioned them regarding the definition of abandonment and more specifically the general applicability. He stated that the goal should be to bring back to conformity when the opportunity arises.

Mr. Gilman then clarified that the abutter notice comment he made earlier was for the ZBA hearing (last case for this evening) and not the HDC hearing that was being discussed.

Continuing, Mr. Gilman referenced 8.2.2 - Intent of the downtown historic district and mentioned the Water Street commercial area versus residential areas and that the regulations are to retain characteristics.

Mr. Gilman then mentioned HDC minutes regarding lighting (in-ground and on top of the sign). He stated that the applicant was proposing an externally lit box sign and the applicant does not have any sign plan. Mr. Gilman then mentioned the proposed awning. He stated that the applicant has proposed signage on the awning as well as on the rear of the building. Concluding, Mr. Gilman stated that the previously mentioned “neighborhood dispute” was perceived.

At this time, Vice Chairman Carbonneau closed the hearing to public testimony.

DELIBERATIONS

Vice Chairman Carbonneau stated that the board can only decide on information presented whereas there are no criteria to discuss. He mentioned that the board can uphold, deny or modify the HDC decision.

Mr. Hauschildt mentioned residential and commercial districts and stated not USE as agued by Attorney Lapointe.

Vice Chairman Carbonneau mentioned that there were only ½ pages of minutes regarding the HDC meeting and that it was not on channel 22 TV.

Mr. Dawley stated that the discontinuance/abandonment issue needs to be resolved. He also mentioned the building and linkage of the accessory things such as signage. He stated that if grandfathered the HDC made the right decision for the wrong reason.

Vice Chairman Carbonneau asked if the argument was that the *right* was tied to the use of the building.

Mr. Dawley asked about the plywood “spacer” and if there would be any repercussions.

Mr. Winter stated that it belonged to the tenant.

Mr. Cole mentioned that another sign may have been needed to save the *right*.

Mr. Eastman approached the board and stated that twenty-four (24) square feet was allotted to the site with the previous signage. He clarified that the Century 21 sign was not twenty-four (24) square feet.

Mr. Eastman then stated that he submitted calculations to the board and that no sign permit has been issued prior to January 21 when the HDC approved the sign. He then stated that the appeal was against the HDC approval and not the Code Enforcement Officer and that the HDC approval was not clear.

Mr. Prior mentioned that twelve (12) square feet was for each owner with twenty-four (24) square feet being the total.

Vice Chairman Carbonneau mentioned that the appeal was not representing what was applied at the HDC. He also stated that it was unclear as to what the HDC approved.

Mr. Cole acknowledged Mr. Schutz from the HDC in the audience at this time.

Mr. Gilman addressed the board during deliberations and stated that an alternative was available and that was to remand the case back to the HDC for another hearing and to obtain clarification of the approval.

Mr. Catino then addressed the board during deliberations and stated that the regulations allow for twenty-four (24) square feet for the entire property (two buildings) and that the application was made jointly. He stated that the proposal was to subtract any square footage of signage on the awning from his twelve (12) square feet from the free-standing sign.

Vice Chairman Carbonneau commented that there was a better and more detailed presentation at the HDC.

Mr. Dawley mentioned that the other property owner will be back requesting vested rights (appeal of HDC decision) for a sign smaller than six (6) square feet.

Mr. Prior reiterated that the Commercial/Residential distinction was regarding ZONE, not USES and that this issue falls under 5.7.8. He also stated that the abandonment and discontinuance issue needs to be clarified.

Vice Chairman Carbonneau asked where the twenty-four (24) square foot allowance came from.

Mr. Eastman discussed non-conforming use and section 5.7.6.

Mr. Dawley asked if there had been any discussion with legal counsel regarding abandonment. Mr. Eastman answered yes, regarding use.

Mr. Dawley then stated that a legal opinion may be needed regarding the sign issue.

Mr. Hauschildt mentioned that you cannot link the two.

Mr. Dawley stated that the signage regulations are linked to the USE.

The consensus of the board was to separate the issues. (Mr. Dawley voted Nay).

Vice Chairman Carbonneau suggested the following:

1. Getting a legal opinion regarding the definition of abandonment with respect to the sign.
2. Getting a legal opinion on continuance of use (regarding new definition of non-conforming Use).

Mr. Prior asked if under 5.1.3 continuance covers signage.

Mr. Hauschildt mentioned 5.7.3 (E) and non-conforming signs.

At this time, during deliberations, Mr. Gilman asked the board who will be asking the questions of legal counsel?

Vice Chairman Carbonneau stated that it was standard procedure to send the minutes of meetings to legal counsel.

Mr. Hauschildt mentioned 5.7.3 (E) regarding defining abandonment and 5.1.3 regarding discontinuance and agreed that legal counsel needs to weigh in on the definitions.

Vice Chairman Carbonneau stated that the board needed a copy of the original HDC application.

MOTION: Mr. Dawley made a motion to table the discussion until the April meeting to seek pertinent legal opinion. The continued hearing in April will not be open for any further testimony and will only be for deliberations. The motion was seconded by Mr. Cole. The motion passed unanimously.

At this time, the board took a five minute recess.

The meeting reconvened at 8:50PM.

Mr. Dawley stepped down and Ms. Pennell became a voting member.

2. Case #1394: Request for relief of three-year variance limitation.

`Case #1395: Request for relief of three-year special exception limitation.

The application of Felder-Kuehl Properties, LLC for a variance from Article 12, Section 12.4 seeking relief from the three-year limitation on two previous variance approvals granted on March 20, 2007 for the proposed multi-family development on Epping Road (former ZBA Case #1325). The subject property is located in the R-4, Multi-Family Residential zoning district. Tax Map Parcel #55-75.1. Case #1394.

And

The application of Felder-Kuehl Properties, LLC for a variance from Article 12, Section 12.4 seeking relief from the three-year limitation on the previous special exception approval granted on January 17, 2006 for the proposed commercial development on Epping Road (former ZBA Case #1300). The subject property is located in the C-2, Highway Commercial zoning district. Tax Map Parcel #55-75. Case #1395.

The case was opened and it was clarified that the applicant was asking for a variance from 12.4 which is a three-year approval restriction. The original case was number 1325 (residential development). It was also noted that #1395 was the same request for case number 1300, (commercial development).

Attorney Michael Donahue approached the board on behalf of his client Bob Felder, and gave the board a brief review of the project beginning in 2006. He stated that his client was following direction of Town Counsel to submit a variance application.

Vice Chairman Carbonneau mentioned that this discussion was specific to the “time frame” of the previous approval; not any specifics of the original request.

Mr. Dawley mentioned that the first application, #1325, was for the residential portion of the project in which two variances were granted. The second application, #1300, was for the commercial portion of the project in which one special exception was granted.

A review of the timeline of approval of the project was discussed including the scope, detail and process with changes in market conditions, etc., which have delayed the process. It was also mentioned that full cooperation with town officials and abutters has been on-going throughout the project and that improvements have begun on the property.

Attorney Donahue then stated that when addressing the criteria for variance, the provision clearly states "completion." Continuing, he stated that approval for the commercial development has already expired and the residential development will expire later this month.

Mr. Hauschildt mentioned a four-year time period, from the date of the signing of the residential plan and asked if that was adequate time for completion.

The Vice Chairman opened the hearing to public testimony at this time and there was none.

DELIBERATIONS

Mr. Prior stated that the applicant was following the correct process and that there has been a good faith effort.

**MOTION: Mr. Prior made a motion to grant variances for cases #1394 and #1395 to extend the timeframe approval to 11/12/2013 as requested.
Ms. Pennell seconded.
The motion passed unanimously.**

At this time, Ms. Pennell joined the audience and Mr. Dawley became a voting member.

3. Case #1396: Variance request.

The application of Steven P. Wilson (d/b/a Hampshire Development Corp.) for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses to permit medical offices and offices for agencies providing support services (on site and in the community) for special needs groups to occupy the existing structure(s) located at 81 High Street (former Eventide Home Site). The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #71-97. Case #1396.

The applicant, Steve Wilson addressed the board and provided a background of his company via reading a narrative submitted with his application. He then discussed the site and mentioned that the site was closed after a feasibility study indicated expansion was necessary although restricted by site conditions. The property was under agreement since the fall of 2009.

Continuing, Mr. Wilson stated that his request is for use for medical offices and for support staff for agencies providing services for special needs. Mr. Wilson then addressed the criteria for variance and mentioned that other professional office uses are in the neighboring area and that this proposal was consistent with the residential neighborhood. He stated that with two levels, there is 10,000 square feet of commercial space in the building with parking for 20-25 vehicles. Mr. Wilson also stated that the plan would be to reduce the hours of operation from 24-7 to office hours.

Mr. Hauschildt asked about the other services, support staff and outreach services. He mentioned that *other uses* is not specifically addressed in the ordinance and clarified that this proposal would be consistent with medical office use.

Mr. Prior asked about parking. He asked if fifty-five (55) spaces would be needed. Mr. Wilson stated that he would be looking for two or three tenants for the building.

Mr. Hauschildt asked if a wetlands scientist had reviewed the property. Mr. Wilson stated yes. Calculations had been done approximately 1 ½ years ago.

At this time, Vice Chairman Carbonneau opened the hearing to public testimony.

Ms. Kate Cook of 86 High Street approached the board. She stated that she had not been noticed for this meeting and requested that the meeting be ended now.

Mr. Eastman provided the board with a chronology of the abutter list at this time. He stated that the notice for Ms. Cook had been sent to Kansas and that was the last address listed on the GIS on February 4, 2010.

(A copy of an e-mail was presented to the board and Mr. Eastman regarding Ms. Cook's request that her mailing address be changed from the Kansas address to the High Street address).

The board had a discussion at this time regarding possible appeals.

Mr. Zwaan of Marlboro Street approached the board and stated that they were still in public session and he would like to speak.

Vice Chairman Carbonneau acknowledged Mr. Zwaan.

Mr. Zwaan discussed a proposal for more public notice of land use cases and suggested using signs. He had samples of signs to display to the board and mentioned how they could be used to identify parcels that were being discussed at land use board hearings.

After Mr. Zwaan gave his presentation, Vice Chairman Carbonneau closed the public session.

**MOTION: Mr. Cole made a motion to table the hearing without prejudice to the April Zoning Board of Adjustment meeting. The meeting will be re-noticed and abutters will be re-notified.
Mr. Hauschildt seconded.
The motion passed unanimously.**

Other Business:

1. February 16, 2010 Minutes:

**MOTION: Mr. Prior made a motion to approve the February 16, 2010 minutes as submitted.
Mr. Hauschildt seconded.
The motion passed 3-0. (Mr. Cole, Mr. Carbonneau and Ms. Pennell abstained).**

2. ZORC Update:

Mr. Hauschildt reported that all of the zoning amendments passed and changes were underway for next year. He also mentioned that ZORC was working specifically on energy planning regulations that were Office of Energy and Planning related.

3. The Board requested clarification on criteria language for their “cheat sheets”.

4. Alternates:

Ms. Pennell would like to know ahead of time when she is needed.

Mr. Eastman suggested that all alternates attend all meetings.

It was suggested to send an e-mail reminder when agendas are posted.

MOTION: Mr. Cole made a motion to adjourn.

Mr. Hauschildt seconded.

The motion passed unanimously.

The meeting adjourned at 10:30PM.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, April 20, 2010 at 7:00PM in the Nowak Room at the Exeter Town Office building at 10 Front Street.

Respectfully Submitted,

Christine Szostak
Planning & Building PT Secretary