

EXETER ZONING BOARD OF ADJUSTMENT APRIL 20, 2010 MEETING MINUTES

Present:

Chairman: Hank Ouimet

Vice Chairman: Marc Carbonneau.

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

Alternate Members: Mike Dawley, Martha Pennell.

Deputy Code Enforcement Officer: Barbara McEvoy.

Town Counsel: Attorney Walter Mitchell.

The meeting convened at 7:03 PM.

Agenda:

1. Case #1393: Appeal from an Administrative Decision, re: 100 High Street signage.
2. Case #1396: Variance request, re: 81 High Street.
3. Case #1397: Special Exception request, re: 17 Daniel Street.
4. Case #1398: Variance request, re: 59 Portsmouth Avenue.

Protocol:

It was announced that case #1393 is a continuance and that the public hearing is closed and there will be deliberations only this evening. It was announced that Chairman Ouimet would step down, Vice Chairman Carbonneau would act as chairman for this case and that Mr. Prior, Mr. Hauschildt, Mr. Cole and Mr. Dawley would be seated for the hearing. (Ms. Pennell stepped down). Town attorney Walter Mitchell was present and sat with the board during deliberations regarding case #1393.

New Business:

1. Case #1393, An Appeal from an Administrative Decision re: signage at 100 High Street.

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.

Acting Chairman Carbonneau gave a summary of the appeal that was heard at the last meeting. It was also stated that no additional information would be entered into the record and that it was necessary to have all discussion go through Acting Chairman Carbonneau.

Attorney Mitchell announced that there was a meeting held prior to this scheduled meeting between himself and the members of the zoning board. He stated that there was no need for the earlier meeting to be posted and that there are no minutes. The meeting between Attorney Mitchell and the zoning board members was regarding procedure and is allowed by client/attorney privilege. He also mentioned that correspondence had been received by the planning office after the public hearing was closed and that said correspondence is in the file in the planning office. Attorney Mitchell then stated that the office had been advised by him to not pass the additional correspondence on to the zoning board and clarified that the public hearing was closed and that there will be no new evidence presented this evening.

Continuing, Attorney Mitchell mentioned that regulations and districts have changed since the previous sign had been installed and that there is a question regarding grandfathered rights, and more specifically, abandonment and or discontinuance and if those rights had been lost. Attorney Mitchell then mentioned that in order for grandfathered rights to be lost, there must be a discontinuance of use, language in the ordinance and evidence of intent of abandonment as found in case law from the Supreme Court.

It was then clarified that Attorney Mitchell plays no role in making that determination and if the zoning board of adjustment finds that there is no abandonment, the case will be over. If they find that yes, abandonment has occurred, the zoning board would need to go to the current ordinance and decide as to whether the sign is consistent with the current regulations.

Mr. Dawley asked if anyone disputed that marketing of the property had continued after Century 21 (which had used the site for office use) had vacated the site. He then asked if the signage was linked to the building use whereas the structure is still there. Continuing, he asked if it was reasonable to argue that marketing of the office space included marketing of the signage.

Acting Chairman Carbonneau stated that he wanted to clarify that Century 21 took the sign when they vacated.

Attorney Mitchell stated that he was not the decision maker, and that the board needs to determine if the sign was linked to the property use.

Mr. Dawley then asked the board if any of them felt that abandonment had occurred here. Clarifying, he mentioned intentional removal of the sign.

Acting Chairman Carbonneau stated that there is no change of use justifying abandonment.

Mr. Cole mentioned that one would expect to be able to utilize remaining components to replace the sign by the new tenants. Continuing, he stated that if the property had been marketed as residential, that would have possibly constituted abandonment.

Mr. Prior mentioned that the property was previously marketed as residential but clearly as office use since Century 21 vacated.

MOTION: Mr. Dawley made a motion to deny the appeal of the Historic District Commission decision and state that grandfathered sign rights do exist. Clarifying that the Historic District Commission made the right vote for the wrong reasons.

Mr. Cole seconded.

The board then began a discussion of the motion that was seconded.

Mr. Hauschildt stated that he did not believe that the sign was linked to the building and that the sign use was therefore discontinued. He asked what the evidence was for intent.

Acting Chairman Carbonneau stated that the board had three options. To both uphold the decision by the Historic District Commission and deny the appeal, overturn the Historic District Commission decision or to modify the decision.

Mr. Dawley asked if there was any applicable case law regarding grandfathered land use, specifically involving signage.

Acting Chairman Carbonneau stated that in 2003 a permit had been issued for a sign and that the sign had been dealt with by the Superior Court under a different set of regulations.

Mr. Hauschildt stated that there was evidence of intent to continue the use of the sign, but that the actual use had been discontinued.

Mr. Prior stated that there was lack of evidence of discontinuance.

Acting Chairman Carbonneau cited 5.1.3 of the Exeter Zoning Ordinance and mentioned the issue of discontinuance of more than one year. He also mentioned 5.7.3 (E) regarding non-conforming signs and the “global issue of intent.”

Mr. Hauschildt asked if it would be better to amend the Historic District Commission decision.

Mr. Prior stated that it was unnecessary to amend.

Mr. Dawley stated that whatever signage Century 21 had can carry forward for the new tenant regarding square footage.

The motion passed unanimously.

(At this time, Chairman Ouimet joined the board as chairman and a voting member. Mr. Carbonneau stepped down as acting chairman. Mr. Dawley was excused and stepped down. Ms. Pennell was re-seated). At the conclusion of this case, Attorney Mitchell excused himself from the table.

2. Case #1396, a request for a Variance re: 81 High Street.

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.

The applicant Steve Wilson of Hampshire Development Corporation approached the board at this time to present his case to the board. He described the lot as having two acres and lastly being used as the Eventide Nursing Home. Continuing, he mentioned that his proposal includes a conversion to medical offices and offices for agencies providing support services to special needs groups. He mentioned that it is located in the R-2 zone, the previous use was non-conforming and there are condominiums and apartment projects on either side of the property. Continuing, Mr. Wilson gave the board a number of scenarios and stated that it is not feasible for residential. He then reviewed the criteria for variance that he received from the application..

Mr. Hauschildt asked about parking and it was mentioned that the building is 10,000 square feet in size. He then stated that 6,700 square feet is being used and has 52-53 spaces and that engineering was done to be able to accommodate parking. He stated that he would prefer to not develop on the east side for additional parking but would expand parking to the rear. He then asked about the wetland buffer.

Mr. Ouimet asked what would be acceptable as a condition.

Mr. Wilson stated that that was not unreasonable.

Mr. Carbonneau asked what the hours of operation were going to be. It was answered that the hours would be 9:00AM until 4:30-5:00PM, Monday through Friday and ½ day on Saturday.

Mr. Carbonneau asked about the intensity of use. He wondered what the number of employees would be and what the additional parking requirements would be for either congregate or office use.

Mr. Wilson stated that the type of traffic would be different.

Mr. Prior cited the section 2.2.47 (definition of medical office) and asked where the agencies providing support services came from. He commented that the language was not in the ordinance.

Mr. Wilson stated that he was approached by someone looking to lease that type of elderly support service.

Mr. Prior then asked if there would be an increase in use considering wheelchair vans, busses and caregiver vehicles dropping off clients.

Mr. Carbonneau asked if a professional office has a difference in parking regulations.

Mr. Prior then stated that he was unsure about approving a use that has no identity in our zoning ordinance.

Chairman Ouimet asked if there was any other category more suitable to identify the use being proposed.

Mr. Wilson answered no.

Chairman Ouimet then asked for clarification. He asked if there were to be any exterior changes being proposed for the building. It was answered that only parking improvements and the removal of the garage and barn would occur and perhaps the addition of a false turret.

At this time the chairman opened the hearing to public testimony.

Attorney Mark Sullivan approached the board at this time and introduced himself as an attorney representing Greg and Julie Gilman, Richard Harmon, Ernest Padrasky and Kate Cook. He spoke to the board about commercial sprawl on Hampton Road and he spoke in opposition to it all. Attorney Sullivan then stated that the previous non-conforming use had been abandoned. He then mentioned that a nursing home would now require a special exception and that considering the point to get closer to a permitted use, there should be a push toward residential use.

Mr. Carbonneau stated that the request is coming in but as a variance request.

Attorney Sullivan then asked what will happen? Would the site be sold to the hospital? He then presented arguments to all variance criteria and stated that there is no hardship and that the property needs to remain residential.

Anthony Zwaan of 7 Marlboro Street approached the board at this time. He stated that there needs to be a better handle of notification of changes. He then mentioned signs on the property and stated that abutters are at a disadvantage. He then asked why this brings unpleasantness and he mentioned negativity and stated that he needs to protect the neighborhood and that it is a continuous battle. He also stated that he was worried about property values and the emotional and personal issues relative to the battle.

Continuing, Mr. Zwaan stated that the neighborhood is being forced with major change. The nursing home fit into a residential neighborhood and it was stated that there have been changes from commercial back to residential (Dr. Miller property). It was then stated that what was being proposed contained "wide-open uses" and is scary. He mentioned that there is no shortage of office space and that this is a very challenging property, but clarified that there is no hardship. The major issues relative to this site are parking and traffic and it was also mentioned article 5.13 of the zoning ordinance "discontinuance of a non-conforming use."

A resident of Emerson Common at 75 High Street asked why it was not feasible for a multi-family use. It was stated that there is concern for expansion of parking and that there was concern for the removal of the barn whereas it is a beautiful structure.

Mr. Ernest Podrasky of 86 High Street approached the board at this time. He referenced Portsmouth Ave. to Buzell Ave. as being totally residential. He stated that parking will not be adequate and traffic will be an extreme impact. Continuing he stated that many uses, including Alcoholics Anonymous (AA) meetings etc., can be categorized under the use being requested.

Mr. Bill Campbell of 111 High Street stated that they are a "real" neighborhood. He noted that beyond Buzell Ave. and within the Historic District were only two offices. The offices are located at 100 and 108 High Street.

Mr. Mark Harrison of 60 High Street, a dentist, stated that he has office space on Portsmouth Ave. He mentioned that there are changing faces of healthcare (extended days and hours) and that a better use, other than medical offices, should be sought for the property.

Ms. Donna Harrison of Emerson Common stated that the main windows of her unit look over the parking lot of the home and that it would be an invasion of privacy and not friendly.

Mr. Peter Michaud introduced himself as a speaker on behalf of the Heritage Commission for the chairman John Merkle. He stated that in a district where National Register standards could be applied, enough integrity of the building is left to possibly qualify. He then stated this could be a resource to Exeter and he also stated that he would urge the board to evaluate impacts.

Ms. Michelle Light of 75 High Street also stated that she was concerned about the use not being appropriate for the neighborhood.

Mr. Dennis Pacquin of Emerson Common stated that he was concerned about the parking, snow etc., and for preserving the barn.

Mr. David Allen from 92 High Street, stated that he concurs with the neighbors and does not approve of the proposal.

At this time, 9:00PM, the chairman opened the hearing to rebuttal testimony from the applicant. Mr. Wilson stated that it was his intent to preserve the east side of the property regarding parking and agreed the barn was worth preserving. He stated that he could demolish 8,000 sq. ft. of masonry building to create a reasonable square footage for a single family home. Continuing, Mr. Wilson stated that he could possibly mimic properties on either side (approximately 10-12 units) although nothing is really suitable for residential application and that would not be economically feasible.

It was then mentioned that this would be a low impact use in the neighborhood without demolishing the building. Mr. Wilson stated that he understands the objection to the other language for support services and can remove that from the proposal.

Mr. Hauschildt asked if there could be lower impact, feasible/viable uses for the property.

At this time the public hearing was closed.

DELIBERATIONS

Chairman Ouimet stated that this was not an example of a non-conforming use. It is a variance request and there is no bearing to what previously existed.

Mr. Hauschildt read through the criteria for variance at this time. It was mentioned that there are issues changing the character of the neighborhood (or threaten the public health, safety and welfare) and the prevailing issues were the scope/commercial aspect of the proposal/intensity of use and traffic and parking.

MOTION: Mr. Prior made a motion to deny the variance request based on the proposal not meeting criteria 1, 2, 3 and 5.

Mr. Cole seconded.
The motion passed unanimously

(At 9:35PM the board took a 10 minute break. At 9:45PM the board convened).

3. Case #1397, Special Exception request re: 17 Daniel Street.

The application of Maureen Carey for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Section 4.2 Schedule I Notes for the conversion of an existing single family residence to revert back to a two-family residence (2 units). The subject property is located at 17 Daniel Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #73-291.

Ms. Maureen Carey approached the board at this time as the broker representing Ann Hadeka. She described the request as being to make a conversion of 17 Daniel Street to a two-family. She stated that it was originally a two family and it was converted to a single family four years ago. Ms. Carey also stated that the kitchen and electric services for two units still exist.

Mr. Hauschildt asked about parking.

Ms. Carey stated that there were six parking spots and a two car-garage on the site.

Mr. Carbonneau inquired about conversion criteria. He asked if a conversion to a two family would require an "owner occupied" restriction.

Mr. Ouimet clarified that approving the conversion would make the property be treated as a two family home.

At this time, the chairman opened the hearing to public testimony. There was none.

DELIBERATIONS

Mr. Carbonneau stated that two-family was permitted by special exception and read through the criteria. The board agreed that all of the criteria was met through their discussions.

MOTION: Mr. Carbonneau made a motion to grant the special exception request, as presented, for 17 Daniel street to revert back to a two-family whereas the applicant satisfied all of the criteria for a special exception.
Mr. Prior seconded.
The motion passed unanimously.

At this time, Chairman Ouimet asked if the board would like to continue with the evening's agenda whereas it was 10:00PM. The board agreed to continue.

4. Case #1398, Variance request re: 59 Portsmouth Avenue.

The application of Pennacook Hoteliers, LLC for a variance from Article 5, Section 5.7.5 seeking relief to exceed the maximum aggregate area requirements for signage in a non-residential

zoning district. The subject property is located at 59 Portsmouth Avenue, in the C-2, Highway Commercial zoning district. Tax Map Parcel #65-136 and #65-133.

Mr. Chris Thompson, the representative of Pennacook Hoteliers, LLC approached the board at this time and began a presentation for a request for additional signage for the new hotel his organization is building on Portsmouth Avenue. He stated that currently, 65 square feet is allowed and the applicant is requesting 100 square feet which is the maximum allowed in the C-2 zone. Mr. Thompson also stated that the reasons for the request include visibility in relation to the layout of the building and the depth of the site.

Continuing, Mr. Thompson stated that the free-standing street sign will remain at twenty-four (24) square feet and be nine (9) feet tall. He clarified that it will not be twenty-five (25) feet in height as allowed, and it will be 9 feet to avoid blocking the view of abutters' properties.

Mr. Carbonneau asked for clarification of the sign drawings submitted.

Mr. Thompson distributed additional copies to clarify the intent of the request.

Mr. Prior asked what the aggregate would be for all three signs and it was answered one hundred (100) square feet.

Chairman Ouimet asked if the applicant is only allowed sixty five (65) square feet, would the port-cochere sign be eliminated?

Mr. Thompson replied most likely that that sign would be eliminated and he would then need to raise the height of the free-standing sign.

Mr. Hauschildt made the comment that the applicant adequately addressed the criteria.

At this time, the chairman opened the hearing to public testimony.

Mr. David Allen of 92 High Street approached the board and stated that he was in support of the variance and asked the board to hold the applicant to the plan as presented.

Mr. Anthony Zwaan of 7 Marlboro Street stated that the individual signs will conform to the zoning ordinance. He wanted clarification of the statement that twenty-five (25) feet in height being allowed.

Mr. Thompson stated that the applicant would accept the condition that if additional signage is allowed and the variance granted, the signage will only be what has been presented.

Mr. Carbonneau stated that the relief being sought was for the "aggregate" amount.

It was also mentioned that the port-cochere structure was set back fifty (50) feet from the road and the actual building was set-back was another twenty (20) feet and therefore reducing the visibility of the signage.

Mr. Prior mentioned that the front sign above the port-cochere, alone, will not accomplish what the applicant hopes to do. It was also mentioned that the free-standing sign will not exceed twenty-four (24) square feet in area.

Mr. Carbonneau stated that the board should hold the applicant to what was presented.

Chairman Ouimet mentioned the “On the Vine” variance request for signage example and that the board needs to proceed with caution to pay respect to the past.

Mr. Cole read through the criteria for variance at this time.

MOTION: Mr. Carbonneau made a motion to approve the request for a variance, as presented and depicted on the sign plan distributed this evening.

The motion was withdrawn by Mr. Carbonneau.

Mr. Hauschildt suggested that the language of the motion be clarified. He suggested including the language that the plan is for one hundred (100) square feet aggregate with specific size and height at the street.

Mr. Thompson said the applicant would be happy to stay with the plan submitted.

MOTION: Mr. Hauschildt made a motion to approve the variance request for a total of one hundred (100) aggregate square feet of signage for the site with the street sign not to exceed twenty-four (24) square feet and ten (10) feet in height. The remaining seventy-six (76) square feet of allowed signage will be split between two building/wall-mounted signs in which neither sign will be larger than fifty (50) square feet.
Mr. Prior seconded.
The motion passed unanimously.

Other business:

Minutes: March 16, 2010 meeting minutes:

MOTION: Mr. Carbonneau made a motion to approve the minutes for the March 16, 2010 meeting of the Exeter Zoning Board of adjustment as written.
Mr. Cole seconded.
The motion passed unanimously. (Mr. Ouimet abstained).

Updates:

Mr. Carbonneau gave the board an update regarding correspondence from Upton & Hatfield regarding the Gaudreau, Old Town Farm Road case. He stated that the court upheld the decision of the board. Mr. Carbonneau also mentioned that he had attended the hearing back in December.

Criteria Information Schedule, aka “cheat sheet” update:

The board suggested photo-copying the chart in the back of the zba workshop book, placing it on the flip-side of the cheat sheet and laminating it.

Procedural by-laws:

The board discussed asking town counsel, Attorney Mitchell and contacting other towns regarding posting and notification procedures and how they are addressed in by-laws.

MOTION: Mr. Hauschildt made a motion to adjourn.

Mr. Cole seconded.

The motion passed unanimously.

The meeting adjourned at 10:55PM.

The next meeting of the Exeter Zoning Board of Adjustment will be held Tuesday, May 18th at 7:00PM in the Novak Room at the Exeter Town Offices, located at 10 Front Street.

Respectfully Submitted,

Christine Szostak, PT Secretary
Planning & Building Departments
Town of Exeter, New Hampshire