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Exeter Zoning Board of Adjustment meeting.

EXETER ZONING BOARD OF ADJUSTMENT JULY 20, 2010 MEETING MINUTES

Present:

Chairman: Hank Ouimet.
Regular Members: Steve Cole, Robert Prior.
Alternate Members: Martha Pennell.
Deputy Code Enforcement Officer: Barbara McEvoy.

The meeting convened at 7:02 PM.

Agenda:

1. Case #1403: Variance request. 88 Portsmouth Ave.

New Business:

1. Case #1403:

The application of Kitty Ho Lam, Trustee for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses to permit a residential use (a two-bedroom apartment) on the second floor of the building located at 88 Portsmouth Avenue. The subject property is located in the C-2, Highway Commercial zoning district. Tax Map Parcel #65-121.

Protocol: With only four members of the board present, the applicant was given the option to reschedule the hearing. The applicant chose to continue as scheduled.

Attorney Carl Potvin, representing the applicant, approached the board at this time. He mentioned that he represented the applicant with a similar request nine years ago in a different town. Continuing, he mentioned that the space being considered for residential use had been used as retail/commercial and has been vacant for two years. Attorney Potvin then stated that the applicant is looking to occupy and run a restaurant on the first floor and live on the second floor.

A discussion regarding dimensions and access to the space continued and it was mentioned that there would not be a significant change and the residential use would not be visible. It was mentioned that there are fourteen (14) parking spaces on the site and that this mixed use would be consistent with the zone whereas there is a hotel, child day care etc. It was then mentioned that abutters to the property include an auto dealership, strip mall and a bank across the street.

Attorney Potvin then stated that the employees to occupy the apartment will work with the CEO to comply with all regulations. He also mentioned that someone will be on the site at all times for security/safety and he directed the board to look at the photos and plan included in the application.

At this time, Attorney Potvin began a discussion of the variance criteria as submitted with the application. He mentioned that the proposal would enhance/improve the appearance of the property whereas it is currently diminishing surrounding property values. He also stated that the building was well suited for the use being requested and commented that the property is less than a quarter (¼) acre in size; smaller than the surrounding properties. Continuing, Attorney Potvin mentioned that it has been difficult trying to find a tenant to occupy the site.

Mr. Prior asked if there was any other type of permitting needed for use of a restaurant. Attorney Potvin stated that the applicant owns several restaurants and is very familiar with the process.

Chairman Ouimet suggested that the board evaluate the residential request independent of the owners intentions for the first floor. He also stated that if zoning relief was required for the proposed use on the first floor, the applicant would have to come back.

Ms. Pennell mentioned a site visit. She also stated that parking was tight at the site with fencing on both sides of the property.

Mr. Cole asked about the rear of the building. He mentioned an overhead door and asked what was behind it.

Chairman Ouimet questioned the schematic layout and pointed out that there was no kitchen shown on the plan for the apartment.

Ms. McEvoy mentioned that a cooking facility of some sort was required for the apartment.

Chairman Ouimet mentioned that in regard to the occupants of the apartment using the kitchen on the main floor, a future owner may not have the same arrangement.

Attorney Potvin then stated that the request was totally connected to use of the first floor.

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

DELIBERATIONS

Mr. Prior mentioned an apartment above 98 Portsmouth Avenue and it was suggested that it be looked into.

Chairman Ouimet commented that the board is generally concerned with commercial uses in the residential zones.

Mr. Prior mentioned protection for the people living there and public safety and welfare.

Ms. Pennell stated that she was concerned about the occupant upstairs having children. She asked about a possible condition being that the apartment be limited to employees only.

Mr. Prior asked what the number of occupants can be for a dwelling unit.

Ms. McEvoy directed the board to the definition of dwelling unit.

Chairman Ouimet stated that the definition for dwelling unit includes cooking facilities.

Mr. Prior read through the variance criteria.

Ms. Pennell stated that if the apartment was used only for employees it would be okay, but not for a family for public safety issues.

Mr. Prior stated that all codes would have to be met to avoid any dangerous situations relative to an apartment being above a restaurant.

Chairman Ouimet stated that Mr. Prior's concerns would be addressed by the building and fire codes. He also mentioned that Ms. Pennell's concerns seemed to be centered on safety for children, bus stop access etc.

Continuing, Chairman Ouimet stated that the site in question was a small lot and there was a hardship to develop it as commercial and there is a burden with the property, more so than with other properties. He also mentioned that the proposed use seems to be reasonable and allows for flexibility in a commercial enterprise. It was then mentioned that a possible condition would be to restrict the occupants of the apartment to be employees of the business downstairs, irregardless if the business downstairs is a restaurant or not. It was then mentioned that the board should decide if all of the occupants have to be employees, or could they be a spouse, or a child.

Chairman Ouimet stated that the intent of the residential use was for employees.

After a round of discussion regarding possible conditions, the board agreed upon three conditions.

MOTION: Mr. Prior moved to accept the variance request by the applicant subject to the following conditions:

1. The residents of the proposed dwelling unit shall be principally employed by the business occupying the lower level of the subject building.
2. The property owner shall follow the guidance of the Building Inspector/Code Enforcement Officer with respect to the improvements necessary for the proposed dwelling unit to be in compliance with all local zoning, building and fire codes/regulations; and
3. The Zoning Board of Adjustment further recommends that a minor site plan review be conducted by the Planning Board prior to the issuance of a Certificate of Occupancy for the use on the first floor.

Mr. Cole seconded.

In discussion, it was mentioned that the original language for the motion needed to be amended.

MOTION: Ms. Pennell made a motion to amend the original motion by changing the word “accept” to “approve”.
Mr. Cole seconded.
The amendment to the motion passed unanimously.

MOTION: Ms. Pennell made a motion to approve the original motion, with conditions and as amended.
Mr. Cole seconded.
The motion passed unanimously.

Other Business:

1. June 15, 2010 Minutes.

MOTION: Mr. Cole made a motion to accept the 6/15/10 minutes as written.
Mr. Prior seconded.
The motion passed unanimously. (Chairman Ouimet abstained)

2. Alternates.

The board had a brief discussion regarding alternates, and the need for more volunteers to join the board.

3. Mr. Prior mentioned that he would not be available for the August meeting.

MOTION: Mr. Prior moved to adjourn.
Mr. Cole seconded.
The motion passed unanimously.

The meeting adjourned at 8:25PM.

The next meeting of the Exeter Zoning Board of Adjustment will be held, Tuesday, August 17, 2010 at 7:00PM in the Novak Room at the Exeter Town Offices.

Respectfully Submitted,

Christine Szostak
Planning & Building PT Secretary