

EXETER ZONING BOARD OF ADJUSTMENT SEPTEMBER 21, 2010 MEETING MINUTES

Present:

Chairman: Hank Ouimet.

Vice Chairman: Marc Carbonneau.

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

Deputy Code Enforcement Officer: Barbara McEvoy.

The meeting convened at 7:05 PM.

Agenda:

1. Case #1407: Variance request. Squamscott Community Commons, 56 Linden Street.
2. Case #1408: Variance request. 8 Clifford Street.
3. Case #1409: Variance request. 100 Domain Drive.

New Business:

1. Case #1407:

The application of Squamscott Community Commons for a variance from Article 12, Section 12.4 seeking relief from the three-year limitation on a previous special exception approval granted on July 31, 2007 for the proposed redevelopment of the former junior high school to a community building (ZBA Case #1336); and a previous special exception and variance approval granted on September 18, 2007 to permit the proposed cooling tower and mechanical appurtenances and height of the proposed building to exceed the maximum height regulations (ZBA Case #1342). The subject property is located at 56 Linden Street, in the R-2, Single Family Residential zoning district. Tax Map Parcel #82-13.

Attorney Charlie Tucker approached the board at this time and gave an overview of the project to date. He mentioned that the applicant had received a special exception and a variance for the project and that there is a three year limitation on ZBA approvals and that the approvals have lapsed. Continuing, Attorney Tucker stated that the applicant is hoping that the economy will pick up and they can continue with the project. He also mentioned that the Planning Board approval also needs an extension.

Ms. Robin Drunsic approached the board as a member of the board of trustees for Squamscott Community Commons and mentioned that the board needs to review building plans, a budget etc. Ms. Amy McLaughlin and Mr. Chris Davies, other board members for Squamscott Community Commons, were also in attendance for the meeting.

Chairman Ouimet asked the applicant about the Planning Board approval.

Attorney Tucker mentioned that it was a four year approval and due to substantial improvements and the purchase of the building, the approval was vested.

At this time, the Chairman opened the hearing to public testimony and there was none. He then closed the public hearing.

DELIBERATIONS

Mr. Carbonneau mentioned that this was the second case this year requesting extensions. He also stated that the project appears to be moving forward in good faith. Mr. Carbonneau also mentioned that he did not believe the board needed to review variance and special exception criteria for this case.

Chairman Ouimet mentioned that because this is a variance request from 12.4, the board does need to review the criteria.

Mr. Prior began a review of the variance criteria. It was mentioned that the reason for the request was to keep the approvals timely and not to give an indefinite approval. The board agreed that all of the criteria were satisfied.

MOTION: Mr. Hauschildt made a motion to approve the extensions for the variance and special exception approvals to September 18th, 2013 as requested.
Mr. Cole seconded.
The motion passed unanimously.

2. Case #1408:

The application of Kathleen M. Gallant (d/b/a The Blue Moon Market & Café) for a variance from Article 5, Section 5.6 seeking relief from the Off Street parking requirements to permit less parking than required for a restaurant use. The subject property is located at 8 Clifford Street, in the C-1, Central Area Commercial zoning district. Tax Map Parcel #72-123.

Ms. Kathy Gallant approached the board at this time and gave a brief history of the building since she occupied it sixteen years ago. She mentioned that the café portion of her business is growing to a lunch to dinner service and that the market area of her business has decreased and she plans to have a small retail area for dining customers. Ms. Gallant also stated that business is very active in town and she wants to continue to grow her business.

Continuing, Ms. Gallant stated that she currently has 42 seats and 15 spaces. She is requesting 72 seats with 60 seats to start. Ms. Gallant also mentioned that the dinner bar will not be open for lunch.

Mr. Hauschildt clarified that the business will be 9 spaces short for a 72 seat restaurant.

Ms. Gallant said that there is hardship thru downtown Exeter regarding parking issues and people need to get creative and walk. She also mentioned that there are 7 spaces on the street.

Mr. Prior mentioned that there is a sidewalk from the municipal lot to Clifford Street.

Ms. Gallant clarified that she is requesting 72 seats and that 15 off-street parking spaces are already provided. She also stated that the site plan is the same, there are no changes.

Chairman Ouimet mentioned that 15 spaces equal 45 seats. He then mentioned hardship criteria.

Ms. Gallant stated that a hardship is the economy. She stated that to sustain a viable business, she needs the additional number of seats to justify the cost to run the restaurant.

Mr. Prior inquired about the right of way and two parking spaces.

Ms. Gallant stated that there is 15' ROW to access Al Lampert's lot for parking and which also provided access to a house lot that had a structure back in the 1950's.

Mr. Prior asked if the ROW is plowed and the answer was yes. He then inquired about employee parking and it was mentioned that it will not increase in size whereas there will be two shifts.

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

Mr. Scott Kuckler of 12 Clifford Street approached the board and stated that he was in support of the proposal.

An attorney representing Lampert's Automotive approached the board at this time. He stated that the abutter, Mr. Lampert, has concerns regarding the proposal including the applicant's failure to meet the criteria for variance. He stated that the change will be substantial and there will be a significant increase in traffic thru the neighborhood.

Continuing, he stated that unnecessary hardship was not established and that foot traffic into Mr. Lampert's property will inevitable increase. (He distributed photos to the board at this time.) The applicant's attorney also mentioned that a liquor license has already been obtained and bar stools have been proposed. He then mentioned that there may be an increase in lights and noise and he stated that the applicant was wondering if outdoor seating is planned. He then stated that the municipal lot is full all day.

Mr. Carbonneau stated that the proposal seems to be a reasonable number of seats for expansion. He mentioned that 45 seats (15 spaces) is reasonable.

In rebuttal testimony the applicant mentioned that there has been no conversation regarding cutting through, parking etc. on the Lampert property. She stated that a liquor license had not yet been approved and the dinner bar would be opened until approximately to 10PM Friday and Saturday nights.

Regarding traffic, she stated that traffic is still one way and she has been unsuccessful in requesting that the street be returned to a two-way. Ms. Gallant stated that the building is handicapped accessible with a ramp and a bathroom; evening parking is not as it is during the day and that over flow parking will take up in the municipal lot. She also stated that she is willing to work with the neighbor.

Mr. Cole asked about the capacity total.

Ms. Gallant stated that in accordance with the fire department, the building meets 90 person egress with current access points.

Mr. Prior asked about the relocation of the light pole. It was mentioned that the utility light is not owned by Ms. Gallant. Ms. Gallant also mentioned that the town permits seasonal seating and her establishment has approximately ten seats.

DELIBERATIONS

Mr. Hauschildt mentioned that there are currently 15 spaces and there are 24 proposed and that this is a substantial increase. He mentioned traffic flow and stated that he was comfortable with some relief but not to the extreme that was being requested.

Mr. Prior stated that people will learn the traffic flow and that 9 spots are not a huge number. He also mentioned that he did not know how many spaces would be available in the municipal lot in the evening. Mr. Carbonneau mentioned that this is a slight expansion of the existing business and that it is not new ore a national chain restaurant. He stated that it was not going to impact the downtown and that a key point was the proximity of the business to the municipal lot. Mr. Carbonneau also stated that the board should not limit expansion when several doors down on Water Street there is a restaurant with no parking.

Mr. Prior mentioned that more traffic was generated with the retail use as opposed to a restaurant use.

Mr. Carbonneau began a review of the criteria.

Chairman Ouimet stated that he was looking for additional traffic information to justify the increase/expansion. He also mentioned that there was a lack of public testimony considering there is a 50% expansion of the parking numbers.

Mr. Prior stated that this is a local, established business and that this is a modest business expansion. He also mentioned that traffic will self regulate.

Mr. Carbonneau mentioned that the proposal is substantial with seats going from 35 to 70 and spaces going from 15 to 24.

Mr. Prior acknowledged concern of overall traffic within the neighborhood. He also mentioned that other issues brought forward by the Attorney are reasonable between the property owners and he stated that this is an already established business.

Mr. Carbonneau mentioned that an option could be to deny 72 seats and allow 60 at this point. He then asked if the applicant could request 72 seats at a later date or if once denied, can she not request again? He also asked if the applicant could modify the application.

Mr. Prior mentioned that in regard to the proximity to other restaurants including 11 Water Street and Loaf and Ladle, this business is exclusive because it has off-street parking.

Mr. Carbonneau mentioned that it is allowed to have a commercial use.

Mr. Prior stated that imposing any additional level of complexity (2-step process) is unfair. He also stated that the difference between 60 and 72 spaces will have no significant impact.

MOTION: Mr. Hauschildt moved to approve the variance request for parking subject to seating being limited to 60 seats.

Mr. Cole seconded.

In discussion, it was mentioned that the applicant could return if she chose to do so.

The motion passed 3-2. (Mr. Prior and Mr. Hauschildt voted Nay)

3. Case #1409:

The application of First Altex Realty Trust for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses to permit business, medical and professional office use within the existing building located at 100 Doman Drive. The Exeter portion of the subject property is located in the R-2, Low Density Residential zoning district. Tax Map Parcel #88-5.

Mr. Jon Ring of Jones & Beech engineers approached the board on behalf of the applicant. He mentioned that the owners were present and he gave an overview of the property. He stated that the building was currently zoned R-1 and there was a variance granted in 1984. ZBA case #615 was brought to the board by Apollo Computer. He mentioned that the computer company used the building for warehouse and light industrial and office was an accessory use. The owner was now seeking an office use for the property in the existing building. Mr. Ring also mentioned that the Planning Board approved a parking expansion plan for the site on August 26th of this year.

Mr. Ring then stated that it was unfortunate that the town has not re-zoned the site yet and he mentioned a request made to the Planning Board to consider an amendment to rezone the site to an I (Industrial) zone.

At this time Mr. Ring addressed the criteria for variance. He also mentioned that all previous uses had offices and that this request was to clarify the right of office use on the site will not be jeopardized. Mr.

Ring also stated that he was working on a letter to submit to the Planning Board to formally request rezoning for the site.

Mr. Hauschildt asked for clarification of the original variance and the total square footage that was allocated to office use.

Mr. Ring stated that he had no idea but that the total would be tenant driven.

It was then mentioned that in 1984, office use may have not been permitted in the I zone. In today's regulations the I zone will permit all uses being requested.

Chairman Ouimet then asked Mr. Ring why the applicant was here.

Mr. Hauschildt mentioned that in the original approval for "Industrial Use" an office was an accessory use.

Mr. Ring stated that the applicant was only looking for "business/medical/professional offices" whereas light manufacturing/warehousing was already permitted by variance. He also stated that the variance may be moot in two months after the December 16th meeting is posted with the proposed amendment to re-zone the site.

At this time the chairman opened the hearing to public testimony and there was none.

DELIBERATIONS

Mr. Prior stated that the concept of approving an office use in the R-1 zone he does not support. However, this is a very different situation, the site is isolated and contiguous with Stratham's Industrial zone and this is an exception that qualifies.

Chairman Ouimet clarified that this was not a proposal to develop but a clarification of an existing development.

Mr. Hauschildt stated that it was consistent with the abutting uses in the Industrial Park. Mr. Hauschildt then began a review of the criteria.

MOTION: Mr. Hauschildt moved to approve the variance request as proposed.

Mr. Cole seconded.

The motion passed unanimously.

Other Business:

1. Re-hearing request of Riverwoods, case #1404:

(Mr. Prior stepped down at this time)

Mr. Carbonneau stated that the applicant had tried to tie the proposal as an ancillary use. He stated that conceptually, the project was visually appealing and there was enough new evidence to warrant a rehearing.

Mr. Hauschildt mentioned that the lot merger was a new component to the proposal and that the board could now re-evaluate the application.

Mr. Cole stated that he agreed with Mr. Carbonneau and Mr. Hauschildt and that he had a problem with the earlier proposal with the building being disjointed from the whole parcel.

Chairman Ouimet stated that he agreed. He also stated that notification should be made to ALL abutters, not just to the “Reedy” parcel.

MOTION: Mr. Hauschildt made a motion to grant the rehearing.

Mr. Cole seconded.

The motion passed unanimously.

2. Chairman comments:

Chairman Ouimet mentioned that he had the opportunity to talk with Mr. Dawley, who had most recently resigned his spot as an alternate on the board. He mentioned that Mr. Dawley sends his best wishes to the board members. Chairman Ouimet then thanked Mr. Dawley for his many years of service to the town.

3. Minutes 8/17/10:

Mr. Prior mentioned that the minutes for case #1404 was factually correct, but that the ‘emotionally charged’ rebuttal testimony directed at the abutters from Attorney Boldt (attorney for Riverwoods) was not accurately reflected in the minutes.

Mr. Carbonneau mentioned that for clarification purposes, on page 5, paragraph 7, the term “no visual/aesthetic impact on the residential neighborhood” should have been included.

MOTION: Mr. Prior made a motion to approve the August 17, 2010 minutes as presented.

Mr. Cole seconded.

The motion passed unanimously.

4. Rules of procedure:

Mr. Cole will be sending the board members copies of the new wording.

MOTION: Mr. Prior made a motion to adjourn.

Mr. Cole seconded.

The motion passed unanimously.

The meeting adjourned at 9:50PM.

The next meeting of the Exeter Zoning Board of Adjustment will be held Tuesday, October 19, 2010 at 7:00PM in the Novak Room at the Exeter Town Offices.

Respectfully Submitted,

Christine Szostak
Planning & Building PT Secretary