

EXETER ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 15, 2012

Chairman John Hauschildt called the meeting to order at 7:00 PM in the Nowak Room on the above date.

PRESENT: Chairman John Hauschildt, Vice Chairman Bob Prior, Clerk Martha Pennell, Members: Hank Ouimet and Pat Driscoll and Deputy Code Enforcement Officer Barbara McEvoy.

AGENDA: Case #1431: 124 Kingston Road – Variance Request

NEW BUSINESS: PUBLIC HEARINGS

DAVID HALLENBORG and SYLVIA CAMPBELL – CASE #1431

The application for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.1.2 B. for a proposed change of an existing non-conforming use. The Applicant is seeking permission to operate a pet store in the structure located at 124 Kingston Road. The subject property is located in the R-1, Single Family Residential zoning district. Tax Map parcel #101-9.

Prior to the application being presented, Chairman Hauschildt opened discussion with a procedural issue, noting that the application made reference to relief from Section 5.1.4 B which there is no such section. For clarification purposes, he indicated that it was most likely an error of using an old section reference and indicated the correct section to be referenced would be Section 5.1.2 B for *'any change in the purpose, manner, or extent of a non-conforming use is permitted by variance.'* He proceeded with a discussion as to whether a variance approval was even warranted for the Applicant's request. He commented that he did not believe a 'change of use' was occurring, noting that the current use of the property was "retail" and the proposed use was "retail" as well. There was Board discussion relative to different types of retail uses and what would be considered a "change" in the purpose, manner or extent of such a use to constitute a variance being required. Mr. Ouimet commented that 'retail use' was certainly not a permitted use in the R-1 zoning district; he pointed out that Article 4.2 Schedule I: Permitted Uses (table) no longer made reference to 'expansion of non-conforming uses' being a use permitted by special exception and therefore would require a variance. Board consensus was that the application warranted a public hearing not only to allow the Board to make inquiries of the Applicant but also give the citizens in attendance an opportunity to speak should they wish to do so.

Mr. David Hallenborg and Ms. Sylvia Campbell addressed the Board and proceeded to explain their application. Mr. Hallenborg indicated that he and Ms. Campbell were currently operating their business out of two locations (not in Exeter) and were hoping to combine them and utilize the building at 124 Kingston Road that Ms. Campbell's father owned. He indicated that the space would be utilized for retail and storage of their products – primarily fish, coral and occasional reptiles. He further clarified there would be no dogs, cats or other pets as normally found in a pet store. He indicated that Mr. Campbell had down-sized his chandelier restoration and lighting business and was currently operating out of his home in East Kingston, although wanted to retain a small drop-off/pick-up space at the subject property for local customers. Mr. Hallenborg noted that they were not proposing any additional signage and intended to utilize the existing free-standing sign. He indicated that Mr. Campbell was unable to attend the meeting this evening, and he provided the Board with a letter from Mr. Campbell (noting his East Kingston, NH business address). Mr. Prior read the letter into the record.

There being no further questions from the Board, Chairman Hauschildt opened the hearing for public comment.

Ms. Helen Stone, 120 Kingston Road, indicated that she was curious as to what type of pets would be sold from the facility. She stated that she understood the Applicants' proposal and asked for confirmation that there would be no dogs and/or cats, or other animals.

There being no further public testimony, Chairman Hauschildt closed the public hearing and the Board moved into deliberations.

Mr. Prior moved to approve the variance for 124 Kingston Road with the understanding that the first floor space would be occupied by a single retail business, per the application and any exterior signage will be solely for the retail business occupying the building; second by Mr. Ouimet. Discussion: Ms. Pennell stated that she thought the motion should be more descriptive with respect to the retail product being sold and not just a reference made to the subject application. She expressed concern that applications are not an attachment to the minutes so therefore any persons researching the ZBA minutes would not have the specific details as outlined in the application. Further board discussion ensued about the potential for substantial differences in various types of "retail" uses.

Mr. Ouimet moved to amend the motion to include "to accommodate and house fish, coral and occasional reptiles sold on line" (to replace the phrase "per the application") for clarification purposes; second by Mr. Prior. Discussion: Mr. Hauschildt indicated that he took issue with the way the amendment was worded, noting that he was concerned it would restrict the rights of the property owner. It was represented that inclusion of "to accommodate and house fish, coral and occasional reptiles sold on line" into the motion/decision letter would clearly define the Board's intent and afford the Code Enforcement Officer some clarity. Mr. Prior then indicated that he thought the descriptive wording "sold on line" also seemed to be restrictive and therefore would vote against the amendment. **Chairman Hauschildt called for a vote on the proposed amendment. VOTE: 2-3 (Ms. Pennell and Mr. Ouimet voting in favor). MOTION TO AMEND FAILS.**

Brief discussion ensued relative to the wording of the original motion and whether to make an effort to amend it or craft a new motion; **consensus was to create a new motion.**

Mr. Ouimet moved to approve the variance subject to the following conditions:

- **the first floor of the structure is limited to a single retail business to accommodate and house fish, coral and occasional reptiles; and**
- **any exterior signage on the property shall be solely for the retail business occupying the building.**

Motion was seconded by Mr. Prior. VOTE: 4-1 (Mr. Hauschildt voting in the negative).

A representative for the Applicant, identified as Mr. Hallenborg's mother, requested permission to address the Board. She indicated that she understood the conditions of the approval, but inquired if the sale of merchandise associated with the specific retail items permitted to be sold business (i.e. fish tanks and food supplies) would be prohibited where the inquired s to

OTHER BUSINESS

APPROVAL OF MINUTES: February 15, 2012

Mr. Prior moved to approve the minutes of February 15, 2012, as presented; second by Mr. Driscoll. VOTE: Unanimous. Mr. Ouimet abstained.

ELECTION OF OFFICERS

Mr. Ouimet moved to nominate the current slate of officers for the upcoming year (2012-2013); second by Ms. Pennell. VOTE: Unanimous. It was represented that the current slate of officers accepted the nomination and are as follows:

**John Hauschildt, Chairman
Bob Prior, Vice-Chairman
Martha Pennell, Clerk**

CHAIRMAN'S ITEMS

- **2012 ZONING AMENDMENTS**

Chairman Hauschildt announced that the three (3) zoning amendments proposed at the March 2012 Town Meeting passed by a majority vote and were adopted by the Town. He provided a brief review of the amendments and copies were distributed to Board members.

- **RULES OF PROCEDURE**

Chairman Hauschildt noted that the Board had reviewed and updated their “Rules of Procedure” in April 2011. He indicated that he did not believe there had been any changes and/or Board discussion that would necessitate any revisions this year.

- **UPDATE ON “FORM BASE CODES” SUBCOMMITTEE DISCUSSIONS**

Chairman Hauschildt provided an update on the progress of the Zoning Ordinance Review Committee (ZORC) research on “*Form Base Codes*”. He indicated that the FBC subcommittee continues to meet on the first and third Wednesdays of the month at 8:15 AM. and anticipates coming forward with a proposal for the ZBA and Planning Board to review in preparation for zoning amendment season in the fall.

There being no further business before the Board, ***Mr. Prior moved to adjourn; second by Mr. Ouimet.***
VOTE: Unanimous. The meeting was adjourned at 8:35 P.M.

The next meeting of the Exeter Planning Board will be held Tuesday, June 19, 2012 at 7:00PM in the Novak Room at the Exeter Town Offices.

Respectfully submitted,

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

:bsm