

EXETER ZONING BOARD OF ADJUSTMENT *FEBRUARY 19, 2013 MEETING MINUTES*

Present:

Chairman: John Hauschildt

Regular Members: Bob Prior, Martha Pennell, Hank Ouimet and Rick Thielbar

Building Inspector/Code Enforcement Officer: Doug Eastman

Deputy Code Enforcement Officer: Barbara McEvoy

Chairman Hauschildt convened the meeting at 7:00 PM. He represented that all members present would be voting.

AGENDA:

1. Case # 1446: Allen Major & Associates, Inc. (on behalf of Chemtan Company Inc.)
Variance Request for Expansion of Non-conforming Use at 57 Hampton Road
2. Case #1447: String Bridge Capital, LLC
Variance Request for relief from Off-street Parking Requirements at the “Gardner House”
12 Front Street

NEW BUSINESS:

1. Case # 1446: ALLEN MAJOR & ASSOCIATES, INC. (on behalf of Chemtan Company Inc.)
57 Hampton Road

The application of Allen & Major Associates, Inc. (on behalf of Chemtan Company Inc.) for a variance from Article 5, Section 5.1.2 for the expansion of a non-conforming use to permit the proposed construction of a 18,000 square foot addition to the existing building located at 57 Hampton Road. The subject property is situated in the R-2, Single Family Residential zoning district. Tax Map Parcel #90-8. Case #1446.

Mr. Dave Ouellette, President/CEO of Chemtan approached the board. He gave the board a brief history of his company and mentioned that it originated in 1956 and the last expansion was completed in 1995. He stated that although the company predated the adoption of zoning in the town, they have strived to be a good neighbor given their location in a residential district. He commented that the company was not taking the proposed addition lightly or without great consideration and caution. He added that they believe the proposed expansion of the building would improve the appearance of the facility. Mr. Ouellette indicated that they had outgrown their current facility and we hoping to expand in an efficient manner for their future needs.

Mr. Bob Clark of Allen & Major, the applicant’s engineering firm approached the board at this time. He identified the location of the site, noted that it was twenty (20) acres in area and was located in the R-2 zoning district. He stated that application being presented was for the expansion of a non-conforming use in accordance with Article 5.1.2 of the Exeter Zoning Ordinance. Mr. Clark proceeded to review the proposed site plan and mentioned that several conceptual alternatives had been considered. He indicated that the existing building measured 15,000 sq. ft. in area and contained office, laboratory and warehouses uses. He indicated that the proposed addition was 18,000 sq. ft. in area and would be used primarily for

warehousing, although they were proposing some internal layout changes. He noted that the proposed increase of the building footprint would require an additional fourteen (14) parking spaces. Mr. Clark proceeded to review the parking layout and traffic pattern on the site. A variety of architectural renderings were also provided depicting several angles of the proposed construction.

At this time, Mr. Clark proceeded to address the criteria for variance as outlined in the application. He described the abutting uses both non-conforming and those that have been permitted by the zoning board in the immediate neighborhood.

Mr. Ouimet inquired about the pavement area and as to the percentage of overall increase. Mr. Clark indicated that the proposed location of the addition was on currently paved surface, therefore necessitating additional pavement to be added to accommodate parking, access drive and the loading dock area. He represented that there would be an increase of 2% of impervious surface overall on the 20 acre site. Mr. Ouimet asked if the Applicant had a calculation on the area of the paved surface only (excluding building coverage). Mr. Clark reviewed the existing and proposed paved areas and indicated that he did not have the actual figure on the total of paved surface but could provide that information for the Board, if necessary.

Mr. Prior mentioned that the location of the facility on the site was mostly up front and that there are wetlands and a brook to the rear of the site. He asked if the Applicant had any plans depicting the location of the building and proposed improvements as it relates to the on the entire site. Noting that the proposed pavement would extend approximately 200' beyond the building, he inquired as to the distance from that point to the property line abutting the Ashbrook Road residences. Mr. Clark represented there was approximately another 300-feet to the property line (to the west). Mr. Prior inquired about the location of the curb cuts on the opposite side of Hampton Road.

Mr. Ouimet clarified that the Applicant was not moving the location of their curb cut but was reducing the width and shifting it slightly to the west (approx. 10 feet). He asked if the site was in compliance with all other dimensional setbacks. Mr. Clark responded that it was in compliance and he then reviewed those setbacks.

Mr. Prior inquired about the elevations, noting that the proposed building was described as one-story, although appeared slightly higher than the original building as shown in the renderings.

Noting that she had visited the site and observed the existing slope upon entering, Ms. Pennell has some questions about excavation in the loading zone area. Mr. Clark briefly reviewed some of the construction details and indicated that they hoped to maintain the slope as it would be necessary for the proposed site improvements to match the floors of the existing loading dock.

Chairman Hauschildt clarified that the existing outdoor storage would be moved inside the proposed facility. He noted that it had been represented that the peak season for the facility was February through April for deliveries. Noting that there were several uses proposed for within the facility, Chairman Hauschildt asked the Applicant to clarify the square footage allotted to each use. Mr. Clark responded that the breakdown of the total 31,000 square feet was as follows: 20,000 s.f. of warehouse/industrial space, 5,000 s.f. laboratory area and 6,000 s.f. office space. Chairman Hauschildt asked about the potential of additional personnel. Mr. Ouellette responded that the facility could maintain efficient operation with the current staff working directly on site (5 administrative persons, 6 lab persons and 3 warehouse persons); he noted they also had several employees that travelled.

Chairman Hauschildt began a discussion regarding parking. It was mentioned that the site currently had fourteen (14) off-site spaces in addition to the loading dock area. Mr. Clark indicated that a total of twenty-eight (28) spaces were being proposed. Chairman Hauschildt indicated that the parking, as proposed, did not comply with the minimum requirements, noting that thirty (30) spaces would be required for just the office and laboratory space, excluding the warehouse use. Mr. Clark responded that the site was currently deficient in required parking (according to the current ordinance) although it functioned adequately; he suggested that a waiver would be requested during the site plan review process. Chairman Hauschildt inquired if the Applicant was seeking any relief from the parking requirements as part of the application; Mr. Clark responded that they were not. Mr. Ouimet stated that conversely if the Applicant was not seeking relief from the parking requirement, the Applicant would be restricted by the 28 spaces whereas the program (i.e. specific area of uses within the structure) would have to match the parking requirements or they would be out of compliance. Chairman Hauschildt clarified that the Applicant may not be successful in obtaining the permits necessary for the project until either 1,250 s.f. of office area is deleted, or the Applicant returns to the Board for the appropriate relief; Mr. Clark acknowledged that he understood.

Mr. Thielbar had several questions regarding the outside storage. Mr. Clark identified those areas currently used for the outside storage. Mr. Thielbar stated that eliminating the outdoor storage was a positive factor, although he asked if there was any assurance it would remain as such. Mr. Ouellette indicated that at their current level of business, the proposed warehouse space would be adequate for storage therefore eliminating the need for any additional outside storage in the future. He explained that there was new technology available allowing them to increase their capacity of storage within the warehouse to compensate for future growth. Mr. Thielbar asked if the Applicant would be willing to accept a restriction prohibiting any outdoor storage. Mr. Ouellette responded affirmatively.

There being no further questions from the Board at this time, Chairman Hauschildt opened the hearing to public testimony.

Chairman Hauschildt asked if there was anyone present who wished to speak in favor of the application; no one came forward. He then asked if anyone wished to speak in opposition to the application.

Mr. Thomas Needham, 25 Meadowood Drive, approached the board. He identified the location of his property and mentioned that he was familiar with the terrain. He expressed his concerns relative to wetland violations, storage of empty containers, proximity of the power lines and flow of water impacts. He encouraged the Board, before making any decisions, that they verify what has been presented by the Applicant this evening. He suggested that the Applicant was unable to respond definitively to numerous questions from the Board and it appeared as though the application was incomplete. Mr. Needham alluded that the numbers being presented were unclear and were just not adding up properly.

Mr. David Lang of Exeter Road (Hampton, NH) inquired about the use of the facility, if it was strictly a laboratory or if manufacturing would also take place there. He inquired about the chemicals present on site and their hazardous ratings, whether the facility was on town water and sewer, and what environmental regulations govern the operations of the facility – local, state, federal, or all three. He indicated that he was concerned with the environmental issues including ground water, wells and wetlands. Chairman Hauschildt explained that the Board's purview was limited and their focus was on the proposed expansion with respect to dimensional and use regulations. He added that the environmental issues would be handled by the Conservation Commission and Planning Board in a separate review should the variance be granted.

Mr. John Kirn of 7 Nathaniel Way approached the board. He expressed concern regarding the increase in the number of deliveries and the time and frequency of them. He also commented on hazardous waste issues, anticipated traffic impacts, safety issues due to lack of sidewalks and a concern about the value of homes nearby.

Mr. Kevin Tacy, 63 Hampton Road provided a hand-out of information to the Board (copy on file) to accompany his comments. He identified the location of his property noting that it was nine (9) acres in area and was adjoined on two sides by the subject property; he noted that they share a total of 1,944 linear feet in common and have done so for thirty-five (35) years. Mr. Tacy stated that he could successfully present a credible argument for each of the five criteria required for the variance but would focus only on the diminution of property values and hardship issues. He indicated that the photographs provided were taken most recently and illustrated the current conditions of the visual neglect that does not fit into the spirit of being a good neighbor in a residential neighborhood. Mr. Tacy made reference to the 1994 agreement with Chemtan (as part of their last expansion reviewed by the Planning Board) to provide a 'green hedge' along the property line to protect the abutting property values. He indicated that as depicted by the photographs, the hedge does not exist – the plantings did not survive and have never been replaced. He indicated that when questioned about the issue, Mr. Ouellette's response was "We tried, but they didn't make it." Mr. Tacy expressed concerns about the "Notice of Intent" (dated September 2008) for discharge of cooling water into Ash Brook and the adjacent wetland areas noting that it raised ground water contamination issues and public health concerns. He noted that the same document also made reference to the facility operating five days per week – with one shift per day. Mr. Tacy stated that there was no hardship justified for the application as it was the Applicant's decision to expand its business and that Chemtan's growth should not be the neighborhood's burden to bear. He indicated that approving such an expansion would without a doubt diminish all of the surrounding property values.

Ms. Martha Judson of 53 Hampton Road approached the board and stated that she was concerned about property values and lighting associated with the parking expansion. It was noted that the lighting issue would be handled during the Planning Board review process. She commented that as a company taking pride in their business that you would not expect the visual disarray as is currently present.

Ms. Debra Zollner, an abutter across the street at 48 Hampton Road, expressed concern about parking being moved to the front of the building. She commented that she believed there was currently some evening activity taking place on the site given the truck traffic in the later hours of the evening. She also alluded to the approval granted for the Exeter Rental site (just west of the subject site) in which tree planting was required, and that site is also without the landscape buffer required because "they tried but could not maintain the green buffer". She commented that the "landscape buffer" requirement was not working for development along Hampton Road.

Mr. Jesse LaFreniere, 743 Exeter Road (Hampton, NH), approached the board and identified his property as being located on the town line, as he actually owned property in both Exeter and Hampton. He urged the board to focus on the zoning issue associated with the proposal --- a non-conforming use in a residential neighborhood and the potential impacts that such an expansion would have on the surrounding properties and the public health, safety and welfare of the community. He suggested that given the proximity of the site to surrounding towns, particularly Hampton, the Applicant's request should also be reviewed by their zoning board. He indicated that the Applicant had no hardship and that profiteering of a private company does not constitute a hardship. He stated that the only hardship that existed was the one on the existing neighborhood.

Mr. Mike Christofferson, 12 Meadowood Drive addressed the board and identified the location of his property to the rear of the subject site. He noted that he was currently the President of the Meadowood

Homeowners Association and wished to go on record expressing the Association's concerns relative to adverse property values, public health and safety issues, and traffic impacts concerns.

Mr. Mike Dawley, 10 Hunter Place, made reference to the square footage of the existing building and indicated that the proposed changes would in fact double the building area – a substantial expansion. He also spoke of the previous zoning changes from 1992 regarding the establishment of the NP-Neighborhood Professional zoning district in the Hampton Road neighborhood (west of the subject property) and rezoning of properties along Hampton Road (from approx. Guinea Road and further east), including Ashbrook Road, from R-1, Low Density Residential to R-2, Single Family Residential zoning. He commented that those changes have proven to be beneficial over the years and have kept the expansion of non-residential sprawl to a minimum.

Mr. Bob Deschaies of 16 Meadowood Drive commented that the purpose of zoning was to eliminate non-conforming uses and that the magnitude of this proposal was of great concern as it would double the area of the existing facility.

REBUTTAL TESTIMONY

Mr. Clark commented that most of the issues brought up by the abutters appear to be planning board related. He stated that the applicant will schedule a hearing with the planning board if they are successful in obtaining zoning board approval. Mr. Clark clarified that there were no wetland violations on the site or any problems with the flow of water.

Mr. Ouellette approached the board in rebuttal and indicated that there was a well on the property, and the facility was on town sewer. He indicated that there would be no changes to the current delivery schedule. In regard to chemicals, Mr. Ouellette stated that they were not proposing any additional uses on the property and clarified there would be no changes from what is currently taking place. Mr. Clark mentioned a landscaping and fencing issue from the past; he suggested that they would be open for conducting a site walk if the board would like to do so. He also stated that the industrial waste water associated with the company is pumped and cleaned annually. With respect to the "Notice of Intent", it was represented that it had involved a very small hazardous waste issue and that the company complies with all federal and state regulations.

Mr. Ouimet asked if there would be any increase of chemicals on the site. He also asked if there would be an attempt to limit deliveries to between 8am and 5pm. Chairman Hauschildt asked if there are night time operations at the facility and Mr. Ouellette answered not currently, although mentioned there was the likelihood for overtime perhaps 2-4 times per week.

At this time, Chairman Hauschildt re-opened the hearing to public testimony after the rebuttal.

Several residents readdressed the Board in an effort to seek some assurance that if the Board were to grant approval of the application that it would do so with specific conditions that would be made enforceable.

At this time the public hearing was closed and board deliberations resumed.

DELIBERATIONS

Board discussion ensued relative to whether the Applicant had satisfactorily addressed each of the criteria for granting the variance. There was board consensus that granting of the variance would be contrary to public interest and that in doing so, the spirit of the ordinance would not be observed.

MOTION: *Mr. Ouimet moved to deny the variance application as it was determined that the Applicant had not satisfactorily met the required criteria.*
Mr. Prior seconded the motion.
VOTE: *The motion passed unanimously.*

(The board took a short break at this time, 9:20 until 9:27PM.)

2. Case # 1447: STRING BRIDGE CAPITAL LLC
Gardner House – 12 Front Street

The application of String Bridge Capital, LLC for a variance from Article 5.6.2 to permit a social club to occupy the structure located at 12 Front Street with less than the minimum required amount of parking spaces. The subject property is situated in the C-1, Central Area Commercial zoning district. Tax Map Parcel #72-2. Case #1447.

Mr. Eric Chinburg, a member of String Bridge Capital LLC addressed the Board. He described the social club project to the board and stated that parking for a “social club” was not defined in the zoning ordinance. He and his group made a good faith effort to determine the different uses for the club and calculate parking requirements appropriately.

Mr. Prior mentioned that there was no differentiation for parking for public or private club uses in the zone.

Mr. Hauschildt asked if relief is being sought realistically, for 40-60 seats.

Mr. Chinburg stated that the property currently has 6 spaces and that the social club would have various uses other than dining. He clarified that there is 5400 square feet of living area in the building.

It was decided by the board that they would deliberate on a 75 seat restaurant. This would equate to a requirement for 25 parking spaces. Also, the club would have approximately 1800 square feet of recreation facility usage which would require 6 additional parking spaces. The total amount of parking spaces required for the “social club” would be 31. There are currently 6. The applicant is requesting relief for 25 spaces. It was also clarified that there would be no office use in the club.

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

The owner of the Dudley House, abutting property at 14 Front Street, approached the board. He stated that he was not opposed to the social club and that he thought it was a good use for the property. He also mentioned that he was agreeable to work out an agreement with the applicant for any additional parking needs.

There was no rebuttal testimony and the chairman closed the public portion of the hearing at this time.

DELIBERATIONS

Mr. Prior asked about rear access for the social club and it was mentioned that that was undetermined at this time. He then led the board through the criteria for special exception.

These minutes are subject to possible corrections/revisions at a subsequent
Exeter Zoning Board of Adjustment meeting.

Mr. Ouimet asked about the proposed hours for the social club. It was stated that the current proposal is for the club to be opened for lunch and dinner.

MOTION: *Mr. Prior moved to grant the variance request permitting relief from the requirement to provide an additional twenty-five (25) parking spaces for the proposed facility (referred to as a 'social club'). It was represented that the proposed facility would include a restaurant use, with the first floor open to the public, and not to exceed a total of seventy-five (75) seats; the balance of the usable area within the structure would be utilized as private recreational use.*
Ms. Pennell seconded the motion.
Discussion: *Mr. Ouimet suggested that the motion be amended to include that the recreational use of the building be limited to 1,800 square feet in area.*

MOTION: *Mr. Ouimet moved to amend the motion by including reference that the recreational use within the building be limited to 1,800 square feet in area.*
Ms. Pennell accepted the amendment and seconded.
VOTE: *The motion passed unanimously.*

*Chairman Hauschildt called for a vote on the amended motion. **VOTE:** The motion passed 4-1. Mr. Thielbar voting in opposition.*

APPROVAL OF MINUTES: January 15, 2013 .

MOTION: *Mr. Prior moved to approve the minutes of January 15, 2013, as presented.*
Mr. Thielbar seconded.
VOTE: *The motion passed unanimously. Mr. Ouimet abstained.*

OTHER BUSINESS: None

CHAIRMAN'S ITEMS: None

There being no further business, Chairman Hauschildt indicated he would entertain a motion to adjourn.

MOTION: *Mr. Ouimet moved to adjourn.*
Mr. Thielbar seconded.
VOTE: *The motion passed unanimously.*

The meeting was adjourned at 10:50 P.M.

The next scheduled meeting of the Exeter Zoning Board of Adjustment is Tuesday, March 19, 2013 at 7:00 P.M. in the Nowak Room at the Exeter Town Offices.

Respectfully submitted,

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