

**EXETER ZONING BOARD OF ADJUSTMENT
DECEMBER 17, 2013 MEETING MINUTES**

PRESENT:

Regular Members: Chair Bob Prior, Vice Chair John Hauschildt, Clerk Rick Thielbar, Martha Pennell
Alternate Members: Marc Carbonneau and Steve Cole
Building Inspector/Code Enforcement Officer: Doug Eastman

The meeting was convened at 7:00 PM. Chairman Prior introduced the Board members and explained the protocol for the meeting. He noted there were six (6) board members present and all would be participating in discussions, however voting members would be determined prior to deliberations.

AGENDA:

1. Case #1461: Jeff Turner and Lori Whitney (d/b/a Green Bean on Water)
33 Water Street
Rehearing on Modified Variance Request
2. Case #1467: Neighborhood Beer Company LLC
156 Epping Road
Special Exception Request

NEW BUSINESS:

1. Case #1461: Jeff Turner and Lori Whitney (d/b/a Green Bean on Water)

Rehearing on the modified application for a variance from Article 5, Section 5.1.2 and Section 5.6.6 for the expansion of a non-conforming use to permit a proposed increase of eighty (80) seats to the existing restaurant with less than the required number of off-street parking spaces being provided. The subject property is located at 33 Water Street in the WC-Waterfront Commercial zoning district. Tax Map Parcel #72-37.

Attorney Michael Donahue was present to address the Board on behalf of the Applicants, Jeff Turner and Lori Whitney. He briefly recalled for the Board that his clients had appeared before the Board in September seeking a variance from Article 5.1.2 for the expansion of a non-conforming use to permit a proposed increase of eighty (80) seats to the existing restaurant at this location, without providing the required number of additional off-street parking spaces. He indicated that the variance application was approved, however, a Request for Rehearing and Administrative Appeal were filed by the abutting property owner, Sweetwater Realty, LLC, on October 16, 2013. Attorney Donahue stated that his clients did not contest the rehearing request, had retained his services, and subsequently commenced discussions with the abutter to consider the future use of the entire property.

Attorney Donahue indicated that the Board voted at their November 19th meeting to grant the rehearing request to afford the Applicant the opportunity to present a de novo variance application noticing the need for relief from both Articles 5.1.2 (expansion of a non-conforming use) and 5.6.6 (parking) as suggested by Town Counsel. He stated that the application before the Board was prepared to constructively respond to the issues raised with the earlier application; he noted that the relief being sought was the same. He explained that the Applicant had refined its plan for the use of the entire property to now incorporate the use of the second floor of the former "Trends" space for retail as well. He pointed out that 'retail

services' was a permitted use in the WC-Waterfront Commercial zone, and that in accordance with Article 2.2.71 of the Zoning Ordinance, a restaurant use would be considered a permitted use. He noted that while the Applicant's proposal contemplated the expansion of a permitted use, the non-conforming aspect is there is no off-street parking available.

Attorney Donahue stated that his client has had good discussions with the abutter, and Sweetwater, LLC had no objections to the amended application. It was represented that the proposal for the proposed renovation of the entire building area (including the second floor of the former "Trends" gift shop/card store) with a commitment to complimentary hours of operation would be the most realistic approach. For clarification it was noted that a new 'fine-dining' restaurant (with 100 seat capacity) was being proposed in addition to the 30-seat expansion of the Green Bean. Attorney Donahue mentioned that Mr. Turner had recently obtained the building permit for the relocation of the kitchen and that the two restaurants would share the kitchen. He added that the restaurants would operate on partially off-setting schedules thereby limiting the intensity of the use of the property. He explained that although there will physically be 172 restaurant seats within the building, the Applicant has agreed to there being no more than 130 seats in the building being used at any one time; therefore, as with the earlier application, the use is being expanded by the addition of eighty (80) seats, which requires the same relief for off-street parking -- eighteen (18) parking spaces. For clarification, he review the parking calculations, noting that twenty-seven (27) off-street parking spaces would be required for the proposed increase of eighty (80) seats; however, given nine (9) spaces were grandfathered for the former "Trends" space, relief was being sought for a total of 18 spaces.

Attorney Donahue proceeded to review the variance criteria, noting that the hardship requirement warranted further discussion. He stated that there had been public comment in support of the proposed expansion and that it would be a benefit to the community as a whole. He represented that Mr. Turner had taken a proactive approach and had provided documentation of the community support for their proposal.

Mr. Turner addressed the Board and indicated that he was submitting a petition with 950 names on it in support of the Green Bean's expansion; he noted that the petition also asked to confirm if they were from Exeter. He indicated that approximately one-third of the signatures obtained were from Exeter residents. He also submitted a document containing over 100 posts made on FaceBook in support of the proposal. Mr. Thielbar commented that it was positive to hear from the surrounding communities.

Attorney Donahue continued addressing the variance criteria. He explained that many of the anticipated patrons of the restaurants will arrive on foot from local business and residences, and those that do arrive by vehicle will most likely be conducting additional business downtown and will have access to the municipal parking lot. He pointed out that a significant portion of any additional vehicle traffic would be related to the new restaurant's offering of dinner and later lounge services, and would occur after many of the Water Street businesses had closed. Attorney Donahue stated that the proposed expansion would have a minimal impact on the parking situation downtown. He stated that the benefit of granting the requested variances outweighed any loss to an individual, and would ultimately benefit the local businesses, residents and the community in general, therefore accomplishing substantial justice being done. He represented that granting the variances would not diminish surrounding property values, but will most likely increase the sales of the surrounding businesses, and in doing do, enhance their value.

Attorney Donahue stated that the Green Bean's proposal for expansion was a reasonable one that responds to the unique characteristics of the commercially zoned downtown property. He indicated that this property was one of several located along the river that had no parking available from the rear of the site unlike some of the other properties in the WC-Waterfront Commercial district and it was also not

feasible for any turning movements from Water Street into the site (i.e. courtyard area). He noted that due to the configuration of the property and the historic nature of the building that no substantial modifications could be made that would allow for any off-street parking. Attorney Donahue stated that given the special conditions of the property that literal enforcement of the provisions of the ordinance results in an unnecessary hardship to the owners of the Green Bean.

Mr. Hauschildt requested clarification on the proposed number of seats. Attorney Donahue responded that 100 seats were being proposed for the full-service restaurant, in addition to the 30-seat expansion of the existing Green Bean restaurant (currently with 42 seats), therefore bringing the total number of physical seats within the building to 172. In keeping with the relief sought in the previous application, and with the agreement made with Sweetwater Realty LLC, he reiterated that the Applicant has agreed that no more than 130 seats would be used at any one time. Mr. Hauschildt asked if there was any documentation of such agreement. Attorney Donahue indicated that there was not, only that Sweetwater Realty LLC was representing no objection to the application, as presented. He represented that the objective of the ordinance was being met. He also noted that the Applicant intends to present its off-setting operation plan to the Planning Board as part of a change of use application for the second floor of the former "Trends" portion of the building.

There being no further discussion, Chair Prior asked if there were any abutters or interested parties who wished to speak on the application. There was no public testimony; the public hearing was closed and the Board moved forward into deliberations.

There being more than five board members in attendance, it was determined that Mr. Carbonneau would be voting on the application and that Mr. Cole would only participate in the deliberations.

DELIBERATIONS

Board members concurred that it was not necessary to review all of the variance criteria again; however, they did want to focus on the 'hardship'. Mr. Carbonneau began the discussion by summarizing several points noting that the proposed use was a permitted use and would be a benefit to the public. He affirmed that the Applicant (as many of the other business owners do) and the Board were relying on the municipal parking lot for additional off-street parking needs. He stated that it would not matter what the use was, that any expansion would still require the need for additional parking.

There being no further discussion, Chair Prior indicated that he would entertain a motion if the Board was ready.

MOTION: *Mr. Hauschildt moved to approve the variance request, as presented, granting relief for up to 172 seats in total (to be shared between the two restaurant uses) with the condition that no more than 130 seats are to be occupied at any one time.*
Ms. Pennell seconded.
VOTE: *The motion passed unanimously.*

2. Case #1467: Neighborhood Beer Company LLC (Joseph Berwanger)

The application for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit a light industry use for the purpose of manufacturing beer to occupy a portion of the existing building at 156 Epping Road. The subject property is located in the C-3, Epping Road Highway Commercial zoning district. Tax Map Parcel #47-1.1.

Mr. Joe Berwanger, owner of the Neighborhood Beer Company LLC addressed the Board. He explained his proposal to open a production microbrewery with a tasting room and retail sales. He indicated that he was advised by Code Enforcement Officer Doug Eastman that a special exception approval would be required for such a use as it would be considered "light industry". He indicated that he would be occupying approximately 4,000 square feet of the existing 19,578 s.f. building which is situated on a 6.73 acre parcel at this location. He stated that there were no exterior changes being proposed and that currently there were ninety-seven (97) parking spaces provided on the site. Mr. Berwanger stated that he believed that this type of business would help to improve the nearby property values and initiate retail interest in this area of town. He commented that he understood that building the commercial viability of Epping Road was a current goal of the town and he hoped to contribute in that regard.

Chair Prior asked if the Applicant had any additional comments with regard to the special exception criteria. Mr. Berwanger responded that it was all in the application.

Ms. Pennell inquired about the tasting room. Mr. Berwanger explained that it would be basically similar to a bar, with bartenders and would be offering free samples and snacks. He indicated that tours of the facility would be provided and that a small retail area was also being proposed. He explained that due to NH Liquor Commission guidelines that brewery tasting rooms must be attached to the manufacturing facility. He mentioned that there was potential for a restaurant in the future, but noted that it was not part of the application being presented this evening.

Mr. Hauschildt inquired about the potential for odors. Mr. Berwanger indicated that the entire manufacturing process would be contained within the building and that adequate ventilation would be provided. He reiterated that it was as a very small brewery being proposed and that he anticipated having up to twelve (12) employees within the first three years of business. He briefly reviewed the parking regulations noting that one (1) parking space for every 300 square feet of retail area would be required in addition to one (1) space for each manufacturing employee. He stated that there was substantial off-street parking and adequate traffic ingress and egress to handle the anticipated increase of thirty (30) additional parking spaces and three (3) delivery trucks per week. He indicated that there would be some outside storage of multiple empty containers that would be recycled to farmers.

There being no further discussion, Chair Prior asked if there were any abutters or interested parties who wished to speak on the application.

Mr. Langdon Plumer, resident and member of the Exeter Planning Board, commented on the variety of zoning provided along Epping Road. He commented that he was looking forward to visiting the establishment.

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

DELIBERATIONS

Mr. Carbonneau commented that the Applicant was before the Board for a special exception, noting that it was determined that the proposed use was considered 'light industry' in accordance with the definition in our zoning ordinance. For clarification he asked for confirmation from the Applicant that the proposed use was not by any means going to be on the scale of Anheuser Busch facility in Merrimack or the Red Hook Brewery in Portsmouth. Mr. Berwanger responded that it was not even comparable in size to the Smuttynose facility in Portsmouth.

Mr. Hauschildt led the Board through a review of the special exception criteria. He commented that the proposed use was compatible with the C-3 zoning district uses, and he did not believe there would be any affect on abutting properties or nearby property values. He stated that it had been represented there was sufficient parking and loading area provided on the site to accommodate the additional business and it appeared to conform with all applicable regulations governing the zoning district. With respect to criteria “G”, that as a condition the Board may require the Applicant to obtain Town Planner and/or Planning Board review; board consensus was that the parking and traffic circulation, as presented, appeared to be satisfactory and that it did not warrant any additional review. It was also noted that criteria “I” relative to bulk storage of explosive materials and criteria “J” relative to being located in the “Professional Park district” were not applicable to the Applicant’s application.

There being no further Board discussion, Chair Prior indicated that he would entertain a motion at this time.

MOTION: *Mr. Hauschildt moved to approve the special exception request, as presented,
Mr. Thielbar seconded.
VOTE: The motion passed unanimously.*

APPROVAL OF MINUTES: November 19, 2013

Messrs. Carbonneau and Cole were not in attendance at the November 19th, 2013 meeting and were excused at this time.

MOTION: *Mr. Thielbar moved to approve the minutes of November 19, 2013, as presented.
Mr. Hauschildt seconded.
VOTE: The motion passed unanimously.*

OTHER BUSINESS:

Mr. Hauschildt provided a brief update on the discussions of the Zoning Ordinance Review Committee (ZORC). He indicated that revised language had been proposed for the section of the ordinance that addresses conversions (Article 4.2, Schedule I Notes – Conversions) and would be presented as a proposed zoning amendment.

Mr. Hauschildt also reported on the activities of the Form Base Code (FBC) subcommittee noting that things were proceeding well. He indicated they had recently hired a consultant, Mr. Jeffrey Hyland of Ironwood Design Group to assist them in their tasks and were planning a “Walking Tour and Visual Assessment” of the Portsmouth Avenue corridor (from High Street to Holland Way) to evaluate existing land use and development. He noted that an on-line survey was also being prepared to share the observations and recommendations from this event. Mr. Hauschildt asked that Ms. McEvoy provide the Board members with the detailed information.

CHAIRMAN’S ITEMS: None

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

The meeting was adjourned at 8:05 P.M.

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

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, January 21, 2014 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