

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

Present:

Regular Members: Chair Bob Prior, Vice Chair John Hauschildt, Clerk Rick Thielbar, Martha Pennell and
Alternate Members: Hank Ouimet
Building Inspector/Code Enforcement Officer: Doug Eastman
Deputy Code Enforcement Officer: Barbara McEvoy

The meeting was convened at 7:00 PM. Chairman Prior introduced the Board members and explained the protocol for the meeting.

AGENDA:

1. Case #1461: Jeff Turner and Lori Whitney (d/b/a Green Bean on Water)
33 Water Street, Tax Map Parcel #72-37
Request for Rehearing

NEW BUSINESS: No new applications received for consideration.

OTHER BUSINESS:

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

Request for rehearing on the application for 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 with less than the required number of 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.

It was noted that the property owners of the Green Bean on Water, Jeff Turner and Lori Whitney were in attendance, as well as Mr. Dennis Welcome representing Sweetwater Realty, LLC and news reporter Jeff McMenemy.

Chair Prior clarified the protocol for the Board discussion of the rehearing request noting that there would be no public testimony. He indicated that recommendations from Town Counsel had been received and he provided the Board members with a copy of the e-mail from Attorney Jae Whitelaw. Copies were also provided to Mr. Turner and Mr. Welcome. He asked if either of the parties wished to make any statement prior to the Board beginning their deliberations; both parties declined.

Chair Prior acknowledged that the correspondence received from Wadleigh, Starr and Peters, PLLC (on behalf of Sweetwater Realty, LLC) covered a lot of detail regarding the problems with the application, the parking issue and basically requested that the Board and Applicant start over and a new application be submitted.

Mr. Ouimet disclosed that he had not been present for the Applicant's original presentation to the Board; however he had reviewed all of the meeting materials and was prepared to participate in the discussion this evening. With respect to the request, he indicated that the Board was charged with evaluating whether, or if, its actions were unlawful or unreasonable. He made reference to the ZBA "Handbook for

Local Officials” and noted that it provided some guidance to Boards in considering whether a rehearing is warranted. He noted that the rehearing process was designed to afford zoning boards an opportunity to correct their own mistakes before appeals are filed in the court.

He stated that after reading the minutes from the meeting, he was of the opinion that the Board had not adequately explained their decision.

Mr. Ouimet suggested that he would consider that appropriate justification for granting a rehearing.

He commented that the legal description of the application clearly identified the relief being sought; however, it did not make reference to the specific article of the ordinance relative to the parking regulations. Mr. Ouimet noted that this was the procedural technicality raised by Town Counsel.

Mr. Hauschildt concurred; he added that the Sweetwater appeal had claimed that a variance from the parking requirements would also be necessary. Chair Prior clarified that the Board did consider the parking requirements as part of its public discussion and deliberations. Mr. Ouimet reiterated that Town Counsel’s position was that the specific article of the ordinance which regulates parking (5.6 Off-Street Parking) was not included in the legal description of the application.

Mr. Thielbar commented that Article 5.1.2 Expansion of Non-Conforming Use (as noticed) is what generated the review of the parking regulations because the non-conformity being expanded was the lack of adequate parking. He stated that the legal notice, which is what the abutting property owners receive as notification, clearly stated that the relief being sought was from the parking requirements.

General consensus was that the discussion on the application was focused on the appropriate relief being sought. However, according to the recommendation from Town Counsel, the legal description did not adequately notice the provisions of the zoning ordinance for which the Applicant was seeking a variance and therefore the notice did not meet the statutory requirements. Chair Prior clarified that there had been no new facts presented which would warrant a rehearing, although he thought the procedural issues did have merit.

Mr. Ouimet pointed out that the attorney representing Sweetwater Realty had mentioned several procedural errors in his client’s the appeal; however, in the memorandum from Town Counsel, only one procedural error had been cited.

Ms. Pennell commented on the allegation made in the appeal relative to the loss of grandfathered rights to parking (for the former Trends space) due to the proposed change in use. Mr. Thielbar stated that he disagreed with the attorney’s interpretation and that it was unrealistic to think that any parking dedicated to that use would disappear.

Chair Prior interjected and stated that specific discussion regarding the merits of the rehearing request were not appropriate for this discussion. He indicated that if the Board determines that a rehearing is warranted, those issues would be addressed in a subsequent public hearing. Mr. Thielbar commented that the Applicant needs to know what issues are to be addressed should the rehearing request be granted and a new application is to be submitted. Mr. Ouimet indicated that a motion to grant the rehearing would allow for the Applicant to come back with a new application to address the procedural issues and any provide any other additional information as they felt necessary. Chair Prior indicated that the Board hoped the Applicant would come back with a new application to be heard without prejudice based on the Board retracting its previous decision.

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

MOTION: *Mr. Hauschildt moved to approve (grant) the request for a rehearing received from Sweetwater Realty LLC and in doing so to vacate the prior decision made on Case #1461.
Ms. Pennell seconded.
VOTE: The motion passed unanimously.*

After a brief discussion, consensus of the Board was to schedule time at an upcoming meeting to discuss how the review of ZBA applications/and their subsequent decisions are associated with Planning Board regulations and/or the site plan review process.

APPROVAL OF MINUTES: September 17, 2013

Chair Prior commented on the use of the word “kybosh” and inquired if it really was a word found in the dictionary. Mr. Hauschildt indicated that it was and the correct spelling was “kibosh”. The correction was noted. Mr. Hauschildt also noted on page #10, first paragraph under the ‘deliberations’, last sentence, should read “*Mr. Hauschildt stated that the relief being sought for eighteen (18) spaces was realistic .*” (Delete the word ‘not’). Chair Prior also added that on page #11, first line, the second word ‘no’ should be changed to ‘not’.

MOTION: *Ms. Pennell moved to approve the minutes of September 17, 2013, as amended.
Mr. Thielbar seconded.
VOTE: The motion passed unanimously.*

CHAIRMAN’S ITEMS:

Chair Prior announced that there were currently open positions on the Board for any residents who may be interested in volunteering their services. There being no further business, Chair Prior indicated he would entertain a motion to adjourn.

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

The meeting was adjourned at 7:20 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, December 17, 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