

EXETER ZONING BOARD OF ADJUSTMENT
June 16, 2015 MEETING MINUTES

PRESENT:

Regular Members: Chair Rick Thielbar, Vice Chair Laura Davies, John Hauschildt, Kevin Baum, Bob Prior

Alternate Members: David Mirsky.

Deputy Code Enforcement Officer: Barbara McEvoy

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

AGENDA:

1. Case #1495: John Mueller & Martha Rush-Mueller –Special Exception – 32 Pickpocket Rd.

The Board rearranged the agenda to do Other Business first, as they had made a commitment for the Requests for Rehearings to go first.

Other Business:

- Request for a rehearing of Case #1480, Seacoast Family Promise, submitted on behalf of the “Hampton Road Neighbors”
- Request for a rehearing of Case #1480, Seacoast Family Promise, submitted on behalf of Susan and Joseph Stagnone, 9 Exeter Farms
- Approval of Minutes: October 21, 2014; November 18, 2014; December 9, 2014; March 31, 2015; April 21, 2015; May 19, 2015; and May 27, 2015

#1480 Request for Rehearing

Chair Thielbar said the Board has all had a chance to look over everything submitted for this request. He reminded that he was not in agreement with this application passing in the first place. There were a couple points he wanted to bring up. He said they have spent a lot of time talking about Seacoast Family Promise. He said that is irrelevant, as they need to spend more time on what SFP plans to do. They need to look at the “zoning creep”, or what may progressively happen at the premises in the future. Mr. Thielbar said the Board needs to decide how to go through with these requests. He said there are no new points. They do not need to argue each point.

Mr. Mirsky said this is a petition for rehearing, which is to give the petitioners an opportunity to present a legal error or any new evidence. He said he does not think the applicant meets the criteria of a community building. Also, he said only one side had presented an expert opinion. He thinks their decision was based on an error. He talked about the petitioner having presented enough information to grant the rehearing request.

Mr. Hauschildt said the two reasons for a rehearing are either new evidence or a legal error. He said he doesn't see anything new. Presenting expert testimony comes on an appeal, not a rehearing consideration. This is not an appeal. In regards to the use being a social community center, he said that was addressed many times. He thinks they have gone over that adequately.

Mr. Mirsky said the reason for a rehearing is the for the Board to correct an error. He said he thought the Board made an error.

Mr. Baum read what Attorney Durbin had submitted as to why a rehearing should be heard, saying there is new evidence and there were errors made. Mr. Baum said he understood the abutters only had a little bit of time to come back, but he said they had months to come up with an appraisal. He does not think it is fair to come in with this evidence when they had ample time to submit it before.

Ms. Davies said she didn't find the evidence that came in after the decision was rendered particularly persuasive. They did discuss the definition of a community building and voted on it before they came to their decision. She is not sure what the technical error was. She agrees there is no basis for a rehearing.

Mr. Prior said it was a split decision so there are bound to be people who agree or disagree, whether on the Board or not, if there was an error. He asked if the basis of the rehearing is based on the law. A technical error would be if the Board made a mistake in not deliberating about a certain point or something of the sort. He does not believe there has been a technical error made. The Board deliberated significantly about this. The opportunity to request evidence is not something that has an endless timeframe. He does not think there was new evidence that was not available at the time the Board made their decision. He said even if the Board had had this appraisal before, he does not think it would change the outcome. He felt there were no grounds for granting a rehearing.

Mr. Mirsky said he would not be voting because he is an alternate and it could cause a tie. He said, however, that he did consider there to be a legal error. He said he does not think it needs to be a technical error. He thought the Board had an opportunity to correct what he considered to be an error.

Chair Thielbar said he does not agree with the decision they reached, but he does agree it would not be productive to have a rehearing, and, therefore, he concurred they should deny the request.

A Motion was made by Mr. Hauschildt and seconded by Mr. Prior that in the case of the Request for Rehearing of Case No. 1480, Seacoast Family Practice, submitted on behalf of Hampton Road Neighbors, the Board deny the request for rehearing because there is no evidence that a technical error was made by the Board, and there is no new evidence that was not available at the time of the first hearing. With no discussion, the Board voted. Motion carried –all in favor.

A Motion was made by Mr. Hauschildt and seconded by Mr. Prior that with regard to the Request for Rehearing Case No. 1480, Seacoast Family Promise, submitted on behalf of Susan and Joseph Stagnone, 9 Exeter Farms, move to deny the request for rehearing because there is no evidence that a technical error was made by the Board, nor is there any new evidence that was not available at the time of the first hearing. With no discussion, the Board voted. Motion carried –all in favor.

New Business:

The application of John C. Mueller and Martha Rush-Mueller for a special exception per Article 4, Section 4.2 Schedule 1: Permitted Uses to permit the residential conversion of the existing structure into two residential units. The subject property is located at 32 Pickpocket Road, in the R-1, Low Density Residential Zoning District. Tax Map Parcel #98-21. Case No. #1495.

Ms. Davies read the application. She explained how Chair Thielbar is the direct neighbor of the applicants, so he excused himself from this matter. Ms. Davies said she also lives on Pickpocket Road and also has an accessory dwelling unit as part of her property. Mr. Prior said he also lives on Pickpocket

Road and has an accessory dwelling unit as part of his property. Ms. Davies and Mr. Prior left it to the rest of the Board to decide if there is a conflict. Mr. Mirsky asked them if they feel they have a conflict. They both answered no, so the Board had no issues.

Attorney Charles Tucker, attorney for the Muellers, spoke for his clients. He said the Muellers own the house as it sits. The first part of it was built in 1725, starting with five rooms. It was added on to in the 1960's. It has been two dwelling units since the 1970's. They can't determine the exact dates. It has been occupied as a single family. It is a big house, as it is basically two houses connected, suiting for two families. The modern zoning ordinance says you need a special exception to convert from a single family to a two family in an R2 zone. There are criteria that need to be satisfied. He said he believes the Muellers meet all criteria. He went through the criteria and explained how they meet each one, noting there were also special criteria for a two unit dwelling which had been satisfied. He indicated that the property is 1.4 acres in area, the structure has been a residence for 200+ years and his client has no intention on expanding the building.

Mr. Baum said the application says the applicant will provide evidence of satisfactory septic facilities prior to renovations. If there are no renovations planned, then why must this be included. Mr. Tucker said the Building Inspector indicated he would like that shown. Mr. Baum asked what the age of the septic is. Mr. Mueller said there are two current septic systems. There is a 1,000 gallon concrete tank and a 750 gallon tank as well. They are pumped regularly. Mr. Baum asked him to provide evidence before the issuance of any permits, and the Mr. Mueller said he would.

Ms. Davies asked how many bedrooms. Mr. Mueller said there are two bedrooms.

Mr. Prior asked for some clarification on the plan. Mr. Mueller described the layout. He said it is roughly 1120 square feet.

Ms. Davies asked if the public would like to make any comments.

Mr. Thielbar commented that he was the Mueller's neighbor (direct abutter) and that he does not have an accessory dwelling. He said there is no practical use for the two houses that have been there serving as one house. He indicated that he was in support of this request.

Ms. Davies read a letter from a neighbor saying they are not opposed.

Mr. Prior asked if it is a requirement that one occupant must be the owner. Mr. Davies said it is a requirement. Mr. Prior asked how any new owners will know this. Ms. McEvoy explained why it is a requirement.

Ms. Davies closed the public testimony.

A Motion was made by Mr. Hauschildt and seconded by Mr. Mirsky to approve the application as presented. During discussion, Mr. Baum made an amended Motion to add a condition that the applicant provide evidence to the Building Inspector of satisfactory septic facilities and potable water. The amendment passed, all in favor. In voting on the original Motion, all in favor. Motion passes.

Chair Thielbar joined the Board again.

Next, the Board did minute reviews.

October 21, 2014

A Motion was made by Mr. Hauschildt and seconded by Chair Prior to approve the minutes of the 10/21/14 ZBA meeting, as amended.

Chair Thielbar had some corrections. The first was to the bottom of page 2, changing “Ms. Fennell” to “Ms. Pennell”. The second correction was to the bottom of page 3, changing the wording in the Motion. He also had a correction to page 6, paragraph 5, reversing “it” and “if” in a sentence.

A new Motion was made by Mr. Hauschildt and seconded by Mr. Baum to approve the minutes of the 10/21/14 ZBA meeting as amended, and further amended by Mr. Thielbar. Motion carried – all in favor.

November 18, 2014

A Motion was made by Mr. Hauschildt and seconded by Mr. Prior to approve the minutes of the 11/18/14 ZBA meeting, as amended.

Ms. Davies had an amendment to page 4, paragraph 2, changing the wording to reflect Mr. Thielbar objecting to the use of a community building, not her.

Chair Thielbar had an amendment to page 2, paragraph 4, saying the fourth word should be “asked”.

A new Motion was made by Mr. Hauschildt and seconded by Mr. Prior to approve the minutes as amended.

Sue Stagnone had an issue with how her comments were reflected. She didn’t like the “see attached” next to her name. She thinks her content is misleading. She thought her comments were being treated unfairly. Mr. Mirsky said he doesn’t think she should feel she was treated unfairly. Ms. Stagnone explained what she had said at that meeting. She said she did add additional comments to her written attachment. Mr. Hauschildt said a large part of what is verbalized is not written in the minutes. Mr. Hauschildt asked the Board what they should do with the Motion. Chair Thielbar said he had no problem with the Motion. Mr. Baum proposed amending the Motion. Ms. Davies said she would like any additional comments that weren’t included to be included as long as they are relevant. Mr. Hauschildt suggested tabling this set of minutes until they are amended to reflect what went on. The Board agreed.

December 9, 2014

A Motion was made by Mr. Hauschildt to approve the minutes of the 12/9/14 ZBA minutes, as amended.

Chair Thielbar had some amendments. The first was on page 1, 7 lines up, changing the wording of “they are proposing”. The next was on page 4, end of the first paragraph, changing all “John King” to “Jon Ring”.

A new Motion was made by Mr. Hauschildt and seconded by Mr. Prior to approve the minutes of the 12/9/14 ZBA meeting, as amended before and amended during tonight’s session. Motion carried – all in favor.

March 31, 2015

A Motion was made by Mr. Hauschildt and seconded by Mr. Mirsky to approve the minutes of the 3/31/15 ZBA meeting, as amended.

Chair Thielbar had some amendments. The first was to page 2, paragraph 3. It was questioned if what he had said was reflected correctly in the minutes. The Board decided to go back and rewatch that portion of the meeting to see what was said. His next amendment was on page 3, paragraph 2, changing “buyers” to “abutters” and “other” to “others”. His next was on page 5. He said there are nine things offered by the applicant and nine things that were to be different, however they are the same. Mr. Prior suggested just taking out the first set of nine, as the second set was approved and incorrect.

Sue Stagnone asked for a point of clarification. Mr. Mirsky said they are not in public session and it is not appropriate for the public to speak.

A new Motion was made by Mr. Hauschildt and seconded by Mr. Prior to hold approval of the minutes until the sections pointed out earlier are reviewed and updated to reflect what was actually on the recording. Chair Thielbar said they do not need to vote on this.

April 21, 2015

The Board discussed the changes they had previously made to these minutes.

A Motion was made by Mr. Hauschildt and seconded by Mr. Prior to approve the minutes of the April 21, 2015 ZBA minutes, as amended. Motion carried –all in favor.

May 19, 2015

Mr. Hauschildt had an amendment to page 2, second to last paragraph, that begins with “Mr. Mirsky had an amendment...” the final sentence he questioned who is dangerous. He asked for some clarity. The Board had discussion and agreed that the yellow amended version they had was clear. He also had an amendment on page 3, last paragraph, line 7, changing “look” to “looking”.

Ms. Davies had an amendment on page 3, changing “six residential units” to “six residential buildings”.

Chair Thielbar had an amendment on page 4, changing “service” to “surface”. He asked for clarity in this section.

Mr. Hauschildt had an amendment to page 7, first sentence, changing “late” to “later”. Also on page 7, paragraph 5, changing “abutter” to “abutters”.

Chair Thielbar had another amendment on page 8, second line from the top, changing “of” to “for”.

The Board tabled these minutes.

May 27, 2015

A Motion was made by Mr. Hauschildt and seconded by Ms. Davies to approve the minutes of the 5/27/15 ZBA meeting, as presented. Motion carried –all in favor.

Adjournment

A Motion was made by Mr. Hauschildt and seconded by Ms. Davies to adjourn the meeting. Motion carried – all in favor.

The meeting was adjourned at 8:29 P.M.

The next meeting of the Exeter Zoning Board of Adjustment will be Tuesday, July 21, 2015 at 7:00 P.M. in the Exeter Town Offices.

Respectfully submitted,

Nicole Piper
Recording Secretary