

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, February 6, 2012 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

Present: Alice Briggs, Loretta Laurenitis, Jim Stewart, Sharon Monahan, Maude Salinger and Peter Leishman

Also Present: Dario Carrara, Code Enforcement Officer; Laura Norton, Office of Community Development

The meeting was called to order at 7:00 p.m. Chair Laurenitis introduced the Board and Staff. She reviewed the process of reading the application followed by a presentation by the applicant; questions from the Board; questions from the audience (in favor or opposed) and closure of the case followed by deliberation and decision. She also asked anyone speaking from the audience please state their name for the record.

Case No. 1177

Chair Laurenitis read the first case, a request for a Special Exception submitted by Sequoya Technologies Group to replace a pre-existing nonconforming use with a different nonconforming use on property located at 25 Community Lane in the Rural District. She then appointed Ms. Salinger to sit for the case.

Chair Laurenitis questioned the status of the property in question and asked Mr. Strickland “are you the property owner or you in conjunction with someone else?” It was noted the property was owned by Home Healthcare, Hospice & Community Services who moved out of the building last year to be more visible and central in a Main Street location.

Ms. Salinger noted they should be added to the application (to reflect a co-application status) “it is just a legal/housekeeping sort of thing” she said.

Andy Peterson introduced himself noting he was the real estate agent representing the Strickland’s. He showed the members a photograph of the building located beyond the Community Day Care on Community Lane. He noted “what most people don’t know is that this building exists out there” adding “it was built in 1980-81” and gave a brief description of how Hospice & Community Services (HCS) provided visiting nurses and therapeutic and wellness services to the community as well as comfort and support with end of life issues. He reiterated HCS had used the building since July of 2011 but had moved to the downtown for better access and greater community presence. “That move” he said “precipitated the sale of the building.”

Mr. Peterson introduced Tom and Debra Strickland of Sequoya Technologies LLC. He noted the LLC was a computer services company and was looking to convert the building into their headquarters as they continued to grow their company. He briefly reviewed the Special Exception criteria and reviewed the plans to update the building. He noted “this will certainly not diminish property values in the neighborhood; it will be doing nothing but helping the neighborhood.” He reiterated the building “had always been used as an office although it was located in the rural zone” and “It would be very difficult to change it (the building) to residential.”

Mr. Peterson noted the neighbors as not being within ear or eye shot with the gun club to the east and the Contoocook River to the west. He added “the size of the LLC is smaller than what is there now and will remain within the envelope of what the building was used for.”

Ms. Salinger confirmed that the non-conforming use of the property had not ceased for any reason for a period of one year or more within the last three years “so that is not an issue” she said.

Richard Skeels introduced himself as the CFO of HCS and gave a brief description of the history of the organization that included about 25 employees who would use the building as a home base (getting physician orders for clients, doing paperwork etc.) as well as sponsoring blood drives and flu clinics.

Ms. Monahan asked about the number of staff the Stricklands currently had with Mr. Strickland replying “right now we have 8 and could grow to 12 or 14 there.” He went on to note the company worked on computer systems and had no retail presence. Ms. Briggs asked about round trip vehicle trips with Mr. Strickland replying “well the original 8 and then 4 or 5 additional trips” adding “often times we work remotely and do not have to travel.” Ms. Briggs replied “so, 15ish a day?” with Mr. Strickland replying “yes.” Ms. Briggs then asked about the landscape changes. Mr. Strickland noted they planned to clear the trees to the old railroad bed and landscape in front of the building in a way that would accent their architectural changes. “Will you be visible from Route 202?” asked Ms. Briggs with Mr. Strickland replying “no.” “Will you be clear cutting?” asked Ms. Briggs with Mr. Strickland replying “no” adding “we will thin the trees just a bit for better visibility and enhanced security.” He also pointed out an area of thick brush that would need to be cleared as “some of the septic that is in there will have to be changed.” He presented a schematic of the building with the proposed changes that included a structural addition of an approximate 100 square foot entrance addition.

Ms. Briggs asked “are you planning for a sign?” with Mr. Strickland acknowledging that they were. “We don’t need much, a directional sign on (Route) 202 and perhaps one of the blue state signs.” Chair Laurenitis asked about the work hours with Mr. Strickland noting “7:30 to 5:30 Monday through Friday.” Ms. Monahan asked if they intended to change the footprint at all with Mr. Strickland replying “just adding about 100 square feet to the front as an entry.”

With no further questions from the Board Chair Laurenitis asked if anyone in the audience would like to speak. Mr. Peterson stood and reminded the members that while normal business hours were 7:30 to 5:30 “there are many times when activity could very well go in to the evening hours or occur on the weekends” and asked that there be no hard boundary on the scheduled hours. Mr. Strickland interjected “I am definitely there outside normal working hours.” Ms. Monahan asked about lighting with Mr. Strickland noting some lighting would be added to the exterior of the building and that they did intend to use the street light that was already in place in their lot. “But nothing neon” he assured them.

Ms. Salinger noted the property has been used for an office since the building was completed for the Visiting Nurses Association (VNA) in 1981. It was noted that the record reflected that the use was considered educational, a permitted use in the rural district and that when HCS assumed the business and assets of the VNA in 1997 the professional office use was continued without ever being contested by the town. A brief discussion of the Special Exception and Variance processes and how such a thing may have happened followed. Ms. Salinger concluded by noting “so by default it became what it is today” adding “so this application is a continuation of a non- conforming use” and asked “but what is our basis on a use that never officially existed?”

Mr. Carrara briefly reviewed the history of the use as an office for the past fifteen years. “It is a building never built for a residential purpose.”

A brief discussion about the use of the building being an office use versus an educational use for more than fifteen years followed with the members questioning whether a Special Exception or Variance would be more appropriate. Ms. Briggs noted “this is easily defined, a Special Exception is appropriate, and a narrower permission than a Variance.” She added “the use has been well established in the record as to what it was, there is nothing fuzzy here.”

Mr. Peterson briefly reviewed the history of the office use of the building noting “people would drive there, sit at their desks, answer the phones and go home at the end of the day” adding “nothing was ever contested by the town, it has never been objected to.”

Mr. Strickland noted that in terms of support, the Board should have a letter from the Monadnock Community Early Learning Center that noted full support for Sequoya and their intended use. Chair Laurentis noted the Board was in receipt of that letter.

The Public Hearing was closed at 7:30 p.m.

Deliberation

Ms. Briggs began with “this is pretty simple, it will reduce the number of trips each and reduces the impact of the non-conforming use. “I agree” interjected Ms. Salinger. A Notice of Decision was drafted by the Board. Ms. Briggs asked about imposing any conditions and a brief discussion of increased traffic past the day care (with a growing company) followed. Mr. Strickland noted a condition of no more than 25 people at the site would be fine and that condition was added to the Notice of Decision.

With a Notice of Decision drafted a motion was made/seconded (Salinger/Briggs) to grant the Special Exception with all in favor.

ZONING BOARD OF ADJUSTMENT

NOTICE OF DECISION

Case Number 1177

February 6, 2012

As specified in RSA 674:33, you are hereby notified that the request of **Sequoya Technologies and HCS**, for a Special Exception as set forth in Article VI Section 245-30 of the Zoning Ordinance is hereby **GRANTED**. The applicants requested the Board’s approval to replace one non-conforming use with another non-conforming use, on property located at 25 Community Lane, parcel number R003-033-100 in the Rural District.

In reaching this decision the Board finds that:

1. This property has been used as an office since 1981, when it was built for the Visiting Nurses Association (VNA), although it was never granted a special exception. The record reflects that the use was considered educational, which was a permitted use in the rural district. The actual use of the building by VNA, and subsequently by Home Healthcare, Hospice and Community Services (HCS), was as a professional office that was used by staff and occasionally by clients and the public. HCS assumed the business and assets of VNA in 1997, continuing the

professional office use. An office use is a non-conforming use in the rural district and the use was never contested by the Town. The Board therefore finds that it is appropriate to consider this application for replacement of a non-conforming use.

2. The proposed use is equally or more appropriate to the zoning district than the existing non-conforming use because Sequoya has a smaller staff size than HCS, anticipates much less public traffic, and will continue the professional office use of the building.
3. The non-conforming use of the property has not ceased for any reason for a period of one year or more within the last three years prior to making application because HCS operated from this building continually from March 1997 to July 1, 2011.
4. There will be no change to the existing footprint of the building other than the addition of an approximately 100 square foot entry.

The Board incorporates by reference the portion of Sequoya's application that addresses the general special exception criteria from 245-41 D.

In granting this approval, the Board imposes the following condition:

1. Sequoya will not have more than 25 employees at this site.

Signed

Loretta Laurenitis

Chairperson

Case No. 1176

At 8:05 p.m. Chair Laurenitis continued with the re-opening of the public hearing for Case No. 1176. She read the application, a request for a Special Exception for an elderly housing use on property located at the end of Mercer Avenue. With Mr. Stewart and Ms. Salinger recused, Chair Laurenitis appointed Mr. Leishman to sit for the case. She noted a re-opening was appropriate as they had closed the hearing at their last meeting on the case. "Now we have a letter from the Planning Board to accept and it (the public hearing) provides an opportunity for additional input at this point" she said.

It was noted that the response from the Planning Board “was basically that the parcel in question was desirable and should be considered for an elderly housing development but there was not enough detailed information to make a determination on density.”

Mr. Hicks noted he had some additional information and asked “may I give it you?” He went on to note “it is an attempt to try to clean up what I have been trying to say for the past couple of months.” Mr. Hicks distributed his handout to the members.

The members went on to review some of the questions they had had in the past in an effort to tie up loose ends. Ms. Monahan asked about the origin of 80 units being standard, Ms. Briggs asked about the ADA compliancy and asked for confirmation that while 5% of the units would be fully ADA compliant *all* the units would be adaptable. Mr. Hicks replied “that’s right.” When asked to provide a source for the 5% ADA requirement Mr. Hicks could not locate the data. He told the members “it is either in the elderly housing section in the building code or in the HUD Section 8 material I researched.” Ms. Briggs replied “if no source can be found we will add it to our conditions.”

Ms. Monahan noted she would like to take a moment and review *Powers and Duties of the ZBA* (Chapter II of the ZBA handbook). She read for the book “the Board of Adjustment cannot legally approve a Special Exception for a prohibited use if the ordinance does not identify that use, also the board cannot legally approve a Special Exception if the stipulated conditions do not exist or cannot be met.” Another member asked if they should review the new material presented by Mr. Hicks now or at a later date.

Chair Laurenitis redirected the members by noting “we need to decide how to proceed as a Board, so we all have the same information.” Mr. Leishman noted “we have been presented with a lot of new information that we need to digest” while Ms. Briggs interjected “well there is a lot of paper but very little information” adding “all you have to read is the red stuff.” Mr. Hicks (who had added the additional information in a red ink) replied “correct, to make it simple and address your criteria.” The members briefly reviewed the width of Mercer Avenue and the vehicle trips per day data. Chair Laurenitis mentioned the Planning Board had briefly discussed a similar application for the same use (but fewer units) had been denied in 1981 adding “I was not aware of that.” Mr. Hicks interjected “Tom Weeks brought that up” adding “it is not germane to this application and was pretty much told as much when he brought it up to the Planning Director.” (Ms. Briggs?) noted “we have to examine the application using the criteria we have right now” with Chair Laurenitis replying “I just wanted to mention it for the record.” She then asked Mr. Hicks “you are asking for 78 units right?” Mr. Hicks replied “correct.” Mr. Hicks briefly reviewed the density formula for §245-43 and noted “I am certainly asking for the maximum but I understand it says *up to* 10 units per acre.”

Chair Laurenitis opened the discussion to the audience for public comment.

Larry Jones introduced himself and began by noting he had some additional information. He noted RSA 304-C 53 Procedures for and Effect of Administrative Dissolution. He began to read “a limited liability company administratively dissolved continues to exist, but may not carry on any business except that necessary to wind up and liquidate its business affairs under RSA 304-C:56” Ms. Briggs interjected “this is not an issue we can consider I am sorry.” It was noted that the Board had received a legal opinion about the business status of the LLC involved and it was no longer a topic for discussion. Mr. Jones replied “alright” and sat down.

Steve Leone introduced himself as the homeowner of #3 Mercer Avenue. He also noted he represented the residents of #4 and #5 Mercer Ave. Mr. Leone has been present at all the meetings involving this case and once again noted he was not opposed to the project “I am just concerned with the access. It has a lot of issues.” Mr. Leone went on to mention his concerns with a significant increase in vehicle trips per day

through his small neighborhood. He noted parking issues, construction disruptions and most importantly safety issues existing before, during and after construction. He went on to say that when he bought his home he knew about the lot at the end of Mercer Avenue “but I thought it would become two lots actually and have two more houses down there. I did not think my road would become one of the busier roads in town.” He added “this severely alters the reason we decided to purchase the home we did.” He went on to say he has two small children “who like to be outside” and “1200 vehicle trips or even 700 certainly impacts the initial reason for purchasing my home.” He concluded by asking the Board to consider another way to access the property. “There is no reason not to research it,” he said.

A brief discussion about the access from US Route 202, the general size of the house lots on Mercer Avenue, the width of Mercer Avenue and specifics about the Town’s right-of-way (a total of 33 feet, 22 foot width of road with an additional 5 feet ROW on each side), general road repair, street parking, the addition of fire hydrants and sidewalks, an upgrade in utilities and a look at the overall streetscape in general followed.

Walter Roman introduced himself and his wife Lynn of 35 Goyette Drive. He had attended the Planning Board meeting where the Board was asked to give a recommendation about the Mercer Avenue lot. He reiterated his concerns (from that meeting) of increased traffic turning left up Goyette Drive to avoid traffic and congestion at the intersection. He noted drivers could go up Goyette to come out at Route 101 and Elm Street or go further up and come out at Route 101 and Old Dublin Road by Summerhill Assisted Living. “Admittedly, for that reason I am opposed” he said adding “either way it would be devastating for Mercer Ave.” A brief discussion about lot sizes and the proximity of the homes to the road on Goyette Drive followed.

Ms. Briggs asked Mr. Leone and then Mr. Roman about the (current) estimated traffic on their respective roads. Both gentlemen replied they could take a guess but neither was comfortable giving an actual number.

Ms. Briggs then asked both gentlemen “do you feel this proposed development would affect your property values?” Mr. Roman replied “yes, I think so” adding “and the elderly drive. I am 62 and I drive to Nashua every day to go to work. I am glad I don’t live on Mercer Ave. I can tell you that.” Lynn Roman introduced herself and asked for clarification of the definition of elderly and whether it was 55 years or 62 years and up. It was noted that the town’s zoning ordinance defined elderly as 55 years of age and older.

Alan Zeller introduced himself and asked for clarification as to whether the project was designed for elderly housing or assisted living. Mr. Hicks explained the project was for elderly housing apartments. A brief discussion on how things have changed and how the elderly are now viewed (as a much younger population than when zoning was first drafted) followed.

Mr. Hicks once again noted the evolution of the Summerhill Assisted Living Facility, and how it started as a farm house and a barn but with the support of the town has expanded year after year into small apartments and single rooms. He told the members “it has grown to 82 units without a lot of impact.” He also cited the current general (real estate) market “has done more to our property values than anything else” adding (in regards to his project) “decreased property values is more of a concern than a reality.” Ms. Briggs interjected “Summerhill is not before us.” Mr. Leone suggested the need for a market analysis.

Chair Laurenitis asked “if you are not planning to develop it how can you speak to it?” Mr. Hicks replied “I can speak to the fact it is not assisted living. It is an elderly housing apartment building with multi levels and apartments on all floors.” Chair Laurenitis asked “how do we know that is what would occur?” “Good question” replied Mr. Hicks but that is how these buildings are being built.” Mr. Leishman

commented on the fact that not all elderly housing units are in fact built that way citing a complex in Milford, N.H. A brief discussion about the intended construction of the development followed.

There were no further questions and the Public Hearing closed at 9:00 p.m.

Deliberation

Mr. Leishman began with “this is a significant site development that is somewhat overwhelming for the neighborhood” adding, “to me 78 units is too much.” Ms. Briggs interjected “I got a kick out of the Planning Board (in reference to the number of allowable units and their position that there was not enough detailed information provided by the applicant to make a determination). She went on to note “that is the fundamental problem, we have so little information and we have no idea what it will look like.” Mr. Leishman noted that most of the people in the room would be considered “elderly” by the town regulation parameter adding “I still hike and bike and ski” with someone interjecting “and drive.” Mr. Leishman replied “exactly, I think there has to be at least one (parking) space for each unit.” Ms. Briggs added “and the three-bed units would require at least two spaces.

Ms. Briggs went on to note she was confused by the options the town attorney had given them. She briefly reviewed the options of denial without prejudice to the applicant’s right to resubmit with the additional detail that the ZBA seeks, refer the application to the Planning Board for input or to approve a modest site density due to the lack of information.

Chair Laurenitis noted “if we do not understand it we should discuss it” with Ms. Briggs repeating “I don’t understand it” adding “I am very uncomfortable about determining a density when we do not have enough information.” Mr. Leishman expressed his disappointment with the referral to the Planning Board and their reaction to the request. In reference to the handout distributed earlier Mr. Leishman added “I would like to thank Mr. Hicks for the additional information but it is my opinion that much of that is his opinion.”

Ms. Briggs reiterated “Mr. Leone bought his lot thinking there were two lots down the road from him. That is a big step away from whatever this proposal is.” Ms. Monahan added “the density is a real problem with me.” Ms. Briggs replied “I think we should deny without prejudice” adding “we have no significant site plan, we have so little information.”

Ms. Monahan asked if the members could come up with their own density number and wait for a real plan. She noted some calculations she had completed and pointed out “if the area was a mobile home park there would only be 38 units allowed there.”

Mr. Leishman briefly reviewed the options as well. He noted “personally I am very uncomfortable with making up a density of our own.” He noted that to deny without prejudice would mean the applicant would have to come back to the Board “and that costs more money and time.” He also noted his hesitation to “bounce it back to the Planning Board because of the noted lack of success based on the first time we did that.”

Ms. Briggs interjected “so I propose we deny without prejudice” adding “first of all we do not have enough information and we all agree 78 units is too many.”

Mr. Leishman replied “I am trying to be fair to everyone but we are nowhere close to an approval.” He went on to say “If you put a gun to my head I am sure we could come up with a formula for the density but we don’t have a gun to our heads.” Chair Laurenitis interjected “and we have a proposal before us but the applicant admittedly would not be the developer so we have no way of determining what we will end

up with. That concerns me.” Chair Laurenitis also noted (for her personally) even with the friendliness of neighborhood and walkability to the downtown and services “it would not be my first choice.” Mr. Leishman commented very briefly on the limited green space and the big hill with Ms. Briggs interjecting “that is not our business; we are trying to determine if it (the lot) meets the criteria.” Ms. Monahan replied “so let’s move ahead but determine the density as a maximum of less than ten.” A brief discussion about the three options presented the ZBA by town counsel followed. Ms. Briggs concluded that discussion by (once again) noting “we just do not have enough information” with Chair Laurenitis replying “I agree and there is the traffic impact as well.” Mr. Leishman suggested the members continue the case and seek the advice of counsel. It was also noted that via request of Chair Laurenitis the meeting be face to face so questions could be answered directly and (hopefully) without misinterpretation. Mr. Leishman also noted that while the members could not pick a density “in fairness to the applicant, we can continue and save him the expense of reapplying.”

The motion was made/seconded (Leishman/Laurenitis) to continue the case to a date certain of March 5, 2012 at 7:00 p.m.

The members then briefly discussed a day/time to meet with town counsel.

Minutes:

A motion was made/seconded (Leishman/Laurenitis) to approve the Minutes of December 5, 2011 with all in favor.

The meeting adjourned at 9:34 p.m.

Respectfully Submitted,

Laura Norton
Administrative Assistant

Approved as written March 5, 2012