

Approved: _____
Approved with changes: _____
Unapproved: _____

Effingham Zoning Board of Adjustment
Meeting Minutes
November 30, 2020
Via Zoom Video/Teleconference

Members Present: Theresa Swanick (chair), Tim White (vice chair), Jim Pittman, Knute Ogren, Lenny Fitzgerald.

Members Absent: none

Others Present: Nate Fogg, Mike Cahalane (Selectman), David LeFevre, Eric Spofford, George Silvestri, Fred Stratman, Chuck Fuller, Scott Frankiewicz, David Strauss, Rebecca Boyden, Louis Manias, Randy Turmel, Chris Boldt (Special Counsel for ZBA).

Meeting called to order at 6:00pm.

Minutes:

The ZBA reviewed the notes of the non-meeting on November 16, 2020. No vote was needed.

Board Business:

Theresa noted that she will make sure that current NH RSA books and the current 2020 Zoning Ordinance are delivered to new and returning members.

Turmel Special Exception Application Review:

The ZBA questioned whether or not Mr Turmel needed a rejected building permit in order to proceed.

The ZBA reviewed the application checklist for Turmel and found it to be complete.

Knute Ogren made a motion to accept the application. The motion was seconded by Jim Pittman. Roll call vote, Jim Pittman- aye, Knute Ogren- aye, Leonard Fitzgerald- aye, Tim White- aye, Theresa Swanick- aye. The motion carried.

Chairman Swanick opened the public hearing for Turmel's Special Exception. Turmel needs a special exception as allowed in sections 9.04 and 7.09 of the zoning ordinance.

Randy Turmel represents his wife's trust and they have owned the property for 18 years. Their family has grown, and they would like to use the property year-round. They are asking for a demo-rebuild of the structure. The 28' x 32' footprint shows the overhangs and deck on the property.

The ZBA reviewed the special exception criteria. A) The lake home has existed since 1959, B) The demo-rebuild will not reduce the property value because of the large capital investment, C)
A) The lake house has been on the site since 1959

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- B) The project will not reduce property values as there will be a large capital investment in the property
- C) The same property use will continue on the property
- D) They already have a drilled well and modern septic system
- E) Onsite parking is provided at the property. Can park 6+ cars
- F) Will not be a nuisance since the same use will continue on the property
- G) Adequate septic existing on the property. A state approved septic was installed in 2012
- H) No abutters are opposed to the project.

No monitoring well are required for this project. The owners cannot justify putting more money into the property without doing a complete demo-rebuild.

Knute Ogren noted that they had not requested a building permit.

Jim Pittman, Tim White, and Mike Cahalane lost power due to poor weather conditions and have rejoined the meeting.

Rebecca Boyden noted that this is a grandfathered, non-conforming structure but that goes away when the structure is demolished, which is why the special exception is necessary. She can suggest that the new building will be less non-conforming.

Jim Pittman made a motion to approve the Turmel special exception application. The motion was seconded by Knute Ogren. Roll call vote, Jim Pittman- aye, Knute Ogren- aye, Leonard Fitzgerald- aye, Tim White- aye, Theresa Swanick- aye. The motion carried and the special exception was approved.

214 Highwatch Road, LLA Application:

Tim White lost connection to the meeting due to poor weather conditions.

ZBA members present reviewed the application checklist and found it to be complete.

Jim Pittman made a motion to accept the 214 Highwatch Road, LLC application. The motion was seconded by Knute Ogren. Roll call vote, Jim Pittman- aye, Knute Ogren- aye, Leonard Fitzgerald- aye, Theresa Swanick- aye. The motion carried.

Tim White rejoined the meeting.

The ZBA decided to set a date to continue the Highwatch ZBA hearing in case too many being disconnected due to the weather.

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The continuance date was set for December 14th at 6:15 pm via zoom.

Knute Ogren made a motion to set an application continuance date of December 14th at 6:15pm via Zoom. The motion was seconded by Jim Pittman. Roll call vote, Jim Pittman-aye, Knute Ogren- aye, Leonard Fitzgerald- aye, Tim White- aye, Theresa Swanick- aye. The motion carried.

Davis LeFevre who is representing the applicant discussed the application. Mr Lefever has done a couple of the applications previously. Some ZBA's are receptive, and some are not. Effingham has a permissive zoning ordinance which means that if something is not allowed, then it is prohibited. He noted that at the federal level some protection to this type of use is given, similar to how cell towers receive some protection. The use cannot be excluded everywhere within a town. Our zoning ordinance has allowances for variances, special exceptions, or permitted. By checking all the boxes on the application he feels that he gives the ZBA the maximum number of ways to approve the project.

The existing facility sits on a 71-acre parcel and there are 13 buildings on the property. They currently operate as Lakeview Neuro Rehab Center serving 88 residents. They would like to add 36 additional residents for a total of 124.

They are asking for 1 additional structure, which is permissible. The ZBA is asked to decide on the expansion of the existing use. This will allow them to provide their services to additional people. The residents at the facility are not court placed and do not have mental illness.

Eric Spofford noted that the existing main building is considered residential and is built to the R-4 building code. The new building would be considered institutional and built to the R-2 building code, more like a hospital.

The new building would be between 15 and 15 thousand square feet. It would have a reception area, client rooms, cafeteria, and beds.

David LeFevre noted that they had a conceptual design review with the planning board. The planning board cannot approve without relief from the ZBA.

Knute Ogren asked if they needed this approval first.

Tim White noted that sometimes it is a chicken and egg type of situation. Anti-discrimination law does not allow this type of facility to be zoned out of town. They are asking for expansion of a non-conforming use. The current use existed prior to the town having a zoning ordinance.

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David Lefevre asked to finish going over ways for the ZBA to approve the expansion.

Option 1- zoning ordinance section 7.02 expansion of a non-conforming use. Difficult to understand. Allowed by special exception.

Jim Pittman noted that there is circle logic in the ordinance. Tim White believes that section 7.02 was written with mostly residential structures in mind.

A straight special exception as allowed in article 9. Similar uses are allowed to expand by special exception. Health use treatment allowed to expand by section 9.03 of the ordinance.

Typical stay at the facility is 35 days.

George Silvestri believes the expanded facility will decrease his property value by 11-17%. He finds trash and hypodermic needles on his property, and there has been trespassing. The expanded use will decrease his property value appraisal because of the facility expanding. He noted that there are lines down the road to get into the treatment center. Federal law exists because nobody wants a treatment center down the road from them.

Levis Manias, a licensed NH appraiser, noted that the facility is only expanding by 15%, they are on a dead-end road, and there are less than 50 vehicle trips per day. There facility in Canterbury is similar. He also noted that Mr Silvestri must go to the end of his driveway to see the facility.

George Silvestri pays a lot to live next to a treatment facility. He would be pleased to provide his real estate report to the ZBA.

David Lefevre and Levi Manias both live near treatment centers. No two places are alike.

Their real estate reports will both be given to the ZBA and shared with those who would like to see them.

Eric Spofford noted that the facility existed when Mr Silvestri purchased the property across the street.

George Silvestri noted that it is not the facility, it is the expansion that he opposes.

Davis LeFevre noted that this is a very rural setting and is the best place in town for this facility to be located.

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Me LeFevre noted that in another town the facility was treated as an educational facility and allowed to expand. The clients are learning coping skills and living skills. If this is considered an educational facility, then they would be allowed to expand. They are seeking zoning relief. They will still need to go through planning board review.

Eric Spofford noted that they are providing a safe, residential environment to receive treatment and education.

Theresa Swanick noted that they had already continued the public hearing (as a precaution) and were not closing the public input portion of the meeting, allowing for more input when the hearing resumes.

Michael Cahalane returned to the meeting after being bounced out.

Theresa Swanick reminded the participants that the continued meeting would take place on December 14th at 6:15pm via zoom.

Adjournment

Tim White made a motion to adjourn the meeting. The motion was seconded by Jim Pittman. Roll call vote, Jim Pittman- aye, Knute Ogren- aye, Leonard Fitzgerald- aye, Tim White- aye, Theresa Swanick- aye. The motion carried and the meeting ended.

The meeting ended at 9:00pm.