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Effingham Zoning Board of Adjustment
Meeting Minutes
December 21, 2020
Via Zoom Video/Teleconference

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

Others Present: Nate Fogg, Rebecca Boyden (Zoning Officer), Chris Boldt (Special Counsel for ZBA), David LeFevre, Louis Manias, Fred Stratmann, George Silvestri, Chuck Schubert, Chuck Fuller (Selectman), Vicki Garceau of 9 Winter Rd, Anita Spencer of 825 Green Mtn Rd.

Chair Swanick called the meeting to order at 6:03pm.

Chair asked attendees to confirm their identities for the minutes. Lack of response. Zoom attendees encouraged to email zba.admin@effinghamnh.net if there is a connection issue, question or comment or call to login: 301-715-8592 if needed (number entered in chat). The chat feature will be left open for any questions as the meeting proceeds.

Nate forwarded two emails from abutters to the board.

**Continued Hearing for 244 Highwatch Rd (Green Mtn Treatment Ctr) Application
[3-prong application: Special Exception, Variance, Appeal of Admin Decision]**

Chair said the board has already taken testimony at last meeting and is about to close the public hearing and begin deliberations. Chair asked if the board had any further questions. Mr. Pittman said he received a long email from Mr. Silvestri today and asks if there is anything NEW to add that has not been spoken to previously? Mr. White does not have any further question. Mr. Ogren said he would be interested to know if Mr. Silvestri met with Mr. Spofford on the matter.

Mr. Silvestri raised a newspaper article about a COVID-19 outbreak in the facility across from him and the other facility in North Conway, affecting a number of residents. He is very upset about the outbreak and concerns about the operation of the facility. Mr. Ogren also concerned.

Mr. Pittman responded to an email from Ms. Spencer. She is not an abutter, no matter however meritorious her comments. She does have community interest, but not standing in the matter. Mr. Silvestri does have standing. Also, we as ZBA don't go into as granular a level of operational detail as the planning board is charged with in a site plan review.

Ms. Boyden notes there are three other properties owned by 244 Highwatch Road LLC. There are abutters to those other properties that may about this organization.

Mr. White said relocation of proposed project was favorable of the idea. Is that still the case? Mr. Lefevre said it is his understanding that Mr. Spofford represented at the last meeting he was agreeable to the relocation of the expansion to the "back orchard" or thereabouts, behind the

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existing facility, and there has been reason to think his opinion changed just because he is not here. Mr. Stratmann also confirmed that there has been no change in agreed location.

Chair stated that both sides provided testimony last time that property value issue is addressed by relocation of the planned expansion to the rear of existing facility.

Mr. Lefevre pointed out objection to notion that COVID-19 would affect this matter. Mr. Lefevre said he had nothing new but a more recent article on valuation.

Mr. Schubert said moving the location of the expansion will lessen affect to Mr. Silvestri but the added impact of the expansion of the services would still negatively affect Mr. Silvestri. Mr. White referred to his notes – moving it further back would minimize the damage. He agreed.

Mr. Schubert said of the new study Mr. Lefevre submitted; it's urban mathematical analysis.

Lefevre opined the lower purchase price of Silvestri property with existing Green Mtn Treatment Center meant he already bought into decreased property value. Doesn't answer question whether expansion will have a negative effect.

Turning to public statements, a few were submitted. It was suggested that anyone present may submit any additional comments now, via chat, so that public hearing may conclude public input.

Motion by Mr. Pittman, seconded by Mr. White, to close public input portion of hearing. All in favor: Pittman -aye, White-aye, Ogren-Aye, Fitzgerald-aye, Swanick-Aye.

DELIBERATION [Short break for the board via zoom, resumed at 7:30pm]

Mr. White suggested the variance criteria are a short list and clear cut. Might be easier to discuss sequentially. Mr. Pittman agrees with Mr. White and feels Special Exception is a bit messy and we should set aside initially. We may get our answers through variance discussion.

Mr. White offered that the variance is for relief from being an existing nonconforming use and asks if it would legalize the use for the future? Would this remove future checks for present or future operators on the property vis a vis this use. Chair Swanick said her understanding is that granting a variance could be conditioned (such as on relocated of expansion) but granting this discreet expansion should not open the gate for future expansion outright. Attorney Boldt offered that if the ZBA grants a variance for this specific expansion because it's not on the list and not compliant with 702, you can condition such to require any future expansion not then compliant with the zoning ordinance must come back to the ZBA.

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Mr. Pittman notes the list of permitted uses is limited and not comprehensive. Variance criteria, if we back into this and look at the last item: literal enforcement would create a hardship – the nature of the property, the existing operation pretty well aligns with the function that they want. Denying use might be an unnecessary hardship, they might have to go to Ossipee to expand, unless it's a reasonable progression of their operation. Trying to weave a few thoughts.

Chair Swanick said that makes sense – and existing use on an existing campus, especially in light of the amount of acreage there and the relocation of the proposed expansion behind the facility.

Mr. White said the public interest portion, such as increase in traffic even truck traffic deliveries. It is at the end of a road but an increase in traffic could be an issue in the neighborhood. Chair Swanick said traffic is one of the impacts that the planning board has purview over.

Mr. Pittman said we are always trying to avoid any degradation of the public interest but there may be a little more traffic, but what is the reasonable measure of that. It is not that the only acceptable change is zero.

Mr. Ogren noted that traffic can add up, and there is the question about ambulances. This might relate to consideration of conditions to minimize traffic. Ms. Swanick suggested an express condition of site plan approval. Mr. Pittman like the suggestion in this regard. Private property interests involved and public interest involved in the service provided; it's a benefit to the wider community and it comes with some costs.

Chair Swanick said rural character is maintained by moving the expansion to the rear orchard and with keeping the front orchard as a screen. Mr. Pittman said it sounded like what Mr. Silvestri found as a most agreeable solution given the alternative.

Mr. Pittman made a point about the largest employer in Effingham. The expansion could only mean more jobs in a town with no industry. So, it is a public interest benefit. There is usually some sort of drawback to some social services. He walked through his view of the criteria.

1. Variance is in the public interest, as just noted.
2. Spirit of ordinance observed – to maintain the good will and best interests of the community.
3. Substantial Justice is done – abutter bought aware of the facility.
4. Value of surrounding property is not diminished.
5. Literal enforcement would result in unnecessary hardship – it is already a going concern and this is a reasonable expansion.

Mr. White reminds that Mr. Silvestri bought in knowing what was there - stunning view on one side and a drug treatment facility on the other - and was the beneficiary of the precipitous drop in value mentioned earlier. Can we say there would be no drop in value?

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Mr. Ogren notes that Mr. Silvestri said in his letter, page 2, number 1, second full paragraph, increased expansion could decrease his value. Mr. Pittman thinks he got a great deal on that property. Moving the expansion removes the issue in his opinion. Mr. Ogren pushed back and said the increase might not be temporary for construction but constant increase due to expansion. Chair Swanick said it is an issue for the planning board to evaluation and mitigate.

Mr. Fitzgerald said no matter how you look at it, there may be a diminution in property value, but by I've lived in this town my whole life. I see it adding value to the town, adding jobs in a town where there are very few. There must be a balance, weighed out. I feel like moving expansion to the back is a way to balance that out and bring down potential diminution in value. I can understand the abutter point of view. Mr. Ogren expressed thanks for that feedback.

Mr. White reminds that moving the expansion addressed a lot of abutter concerns. And site plan will address a lot of public concerns. I feel we've considered all the ramifications. There are other oversight bodies of the state that also weigh in and make sure the proposed expansion.

Chair Swanick said seems there is emerging consensus. Mr. Pittman agreed as per a variance prong of the application. Mr. Ogren raised concerns re handing of COVID. Mr. Pittman suggests we look beyond the daily news and look at the larger picture. Mr. Ogren agrees with Mr. Pittman. Mr. Ogren asks can we require the front orchard be kept? Ms. Swanick say yes as a natural vegetative buffer, as a screen for the abutter, which maintains rural character. Yes.

Motion by Mr. Pittman, to grant a Variance to 244 Highwatch Road LLC, Tax Map 405 Lot 3, for relief from the Table of Uses and Section 702, for this specific 36-bed expansion of the existing treatment facility, with these conditions: 1) the expansion is moved to the rear of the main facility, 2) front orchard be maintenance as a natural vegetative buffer, 3) obtain site plan approval by the planning board, and 4) future expansion must comply with then current zoning ordinance or return to the ZBA. Based on all the discussion in deliberation of the five criteria. Seconded by Mr. Ogren. All in favor, Pittman-aye, White-aye, Ogren-aye, Fitzgerald-aye, Swanick-aye.

Chair asked applicant if wish to withdraw the other two requests for relief? Mr. Lefevre would prefer to await 30-day appeal period. Atty Boldt suggested they then be tabled so that in order to raise them new notice would have to issue. **Motion to table the other two requests for relief, by Mr. White, seconded by Mr. Fitzgerald. Mr. Pittman, seconded by Mr. White. All in favor, Pittman-aye, White-aye, Ogren-aye, Fitzgerald-aye, Swanick-aye.**

Motion to Adjourn by Mr. Pittman, seconded by Mr. Ogren. All in favor, Pittman-aye, White-aye, Ogren-aye, Fitzgerald-aye, Swanick-aye. The meeting adjourned at 9:10pm.