

Approved: _____
Approved with changes: _____

Effingham Zoning Board of Adjustment
Meeting Minutes
March 29, 2021
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, Norm Daroska, Frederick Peterson, Bryan Berlind, Mark and Jacob McConkey,

Meeting called to order at 6:00pm.

Minutes: The ZBA reviewed the minutes of the meeting of November 30, 2020.

Three corrections were offered. On page 3, 4th paragraph should read “They currently operate as ‘Green Mountain Treatment Center’ instead of ‘Lakeview Neuro Rehab Center’...” On page 3, paragraph 7, between 15 and 16 thousand square feet. On page 4, “there” should be “their”.

Jim Pittman made a motion to approve the minutes of 11/30/20 as amended. Knute Ogren seconded the motion. Roll call vote: Jim Pittman- aye, Tim White- aye, Knute Ogren- aye, Lenny Fitzgerald- aye, and Theresa Swanick- aye. The motion passed.

Daroska Application Review (6:15):

The ZBA reviewed Daroska variance application. Mr Fogg noted that one abutter was not notified. The parcel appears to be a right of way on one tax map, but when reviewed on the adjacent tax map it is clear that it is a parcel of land owned by Mr Cormo. This was not caught in time for a proper notification. It was decided to notify the additional abutter and continue acceptance of the application to a future date.

Knute Ogren made a motion to continue the application review and public hearing until April 12th at 6:00pm via Zoom. The motion was seconded by Tim White. Roll call vote: Jim Pittman- aye, Tim White- aye, Knute Ogren- aye, Lenny Fitzgerald- aye, and Theresa Swanick- aye. The motion passed.

Board Business:

Knute Ogren suggested that attachments for future applications be numbered Daroska 1, Daroska 2, Daroska 3, etc. This would avoid confusion as to whether each ZBA member was looking at the correct attachment.

Jim Pittman suggested loading the documents to a Google Drive so that everyone would have access to the same documents rather than looking for the correct email with attachments. This would work whether meeting via Zoom or in person.

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Meena LLC Special Exception Application Review (7:00pm):

It was noted that the tax map was hard to read and figure out.

The board reviewed the application checklist and abutters appeared to be properly noticed.

Jim Pittman made a motion to accept the application as complete. The motion was seconded by Knute Ogren. Roll call vote: Jim Pittman- aye, Tim White- aye, Knute Ogren- aye, Lenny Fitzgerald- aye, and Theresa Swanick- aye. The motion passed.

Meena, LLC, requests a Special Exception per Art.9, Section 904 of the Zoning Ordinance, to allow operation of a gas station under Section 1005, and Change/Expansion of Non-conforming Use per Section 702, to add gas pumps and to convert a laundromat into a third apartment.

Jim Pittman noted that the ZBA process instructions list “Reading the Application”. He questioned whether this was necessary in this case as no abutters are present, if the board members have had time to read the application. A straw poll of the members indicated that reading the application aloud was not necessary and the applicant was agreeable to save time.

Mark McConkey introduced himself as authorized to represent the applicant, and reviewed the application. This was a gas station and convenience store in the 1990s; there were underground tanks which were removed in 2015 as the previous owner did not want to stay in that line of business. He gave his opinion that a convenience store without gas pumps is not viable typically, having been in the same business himself for 20 years. The new owner has gone through application with NH DES and received permit for construction with pages of conditions.

Mr. McConkey said the owner intends to keep the convenience store, and use the food service that has been licensed in the past, and is still in the process of being licensed by NH Health and Human Services.

He stated currently there are also 2 apartments and a laundromat on the property. The owners intend to convert the laundry to a third apartment and has state approved septic. Parking – presently there are 13 spaces lined out on plot, with adequate space for an additional 15 spaces.

Existing signage, some illuminated, some not. Owner simply bringing back what was there originally. A boundary survey was previously done of the property by Thaddeus Thorne Survey, which was used by Mr. McConkey and the engineer in charge of putting USTs (underground storage tanks) back into the ground. Canopy is still there. Space is adequate in terms of lot loading. As an owner of similar larger operation, he can answer any questions.

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Chair Swanick noted that converting the laundromat to an apartment is less traffic, less coming and going, a less intensive use on the property.

Tim White noted that a 3rd apartment is problematic in terms of standards for multifamily dwelling. 1.25 acre per unit plus 2 spaces of required parking, it does not meet the zoning requirements. The 2.03 acres. Third apartment would be nonconforming. McConkey assured that septic is approved but if third apartment is an issue, he could strike it from application.

Mr. Ogren appreciated the possible removal of laundromat with its water discharge, which was installed a very long time ago before current environmental standards. He asked who determines that environmental standards are adhered to? Chair Swanick said DES must approve USTs. Mr. McConkey said they had approval already with several pages of construction requirements to adhere to. Mr. Fogg pointed out that he glanced at the DES approval regarding testing of pipes, ensuring alarms are operating properly, etc.

Mr. White asked about site plan review. Chair affirmed it would be required after ZBA approval.

Jim Pittman noted it is continuing use as convenience store without a significant lapse of use. Chair Swanick said yes, as noted by Mr. McConkey the USTs were removed in 2015 and the gas pumps is a use they want to add back in.

Jim wondered if the issue of abandonment of use in zoning ordinance apply? Mr. White said he considered it moot in that they are asking for a change of use to add gas to the convenience store.

Jim said he opinion on a third residential apartment is it's a less of impactful use of the property than commercial laundromat, with water usage and traffic reduced in that change. Ordinance required per 702 that a change bring use into closer conformance or make nonconformance no worse. He feels goal would be achieved with that conversion.

Mr. White said we need to be explicit with the apartment as part of application. Jim agreed but said that since it is commercial property site plan review is required and the details of the apartment could be reviewed by the planning board for approval. Chair Swanick said yes, that is good point; the design, the more granular plans, need to be approved by the planning board. Mr. White said the gas pumps requirements are in order, just question the third apartment. Jim said it is a preexisting structure with changes proposed internally to that structure and going to a less impactful use, from operation of commercial laundromat to a residence. Mr. Ogren noted the plan says a 3-bedroom apartment. Chair Swanick said again that level of detail could rest with the planning board. We address the permitted change or expansion of use. Mr. McConkey said septic allows existing two apartments plus one 3-bedroom as long as laundry is discontinued.

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Mr. Ogren asked if we had all documents we need to decide the gas tanks and the apartments. Mr. White says the Board could punt on deciding the issue of apartment. Mr. Ogren suggested deciding on the gas tanks so they can get to installing for the summer business. Mr. White said he'd like to see the apartment decided but not sure it should be done now. Mr. Pittman re-emphasized that they are just changing the internal aspect of the structure – changing use from laundry to apartment. If we split this into two applications, they will have to come back again if we can't decide both now.

Mr. Pittman asked if the Board is ready to deliberate. Chair asked if board ready to close public input. Chair Swanick closed the public input for the application, noting that none were present, and moved into deliberation. (7:56pm)

The ZBA members reviewed the Zoning Ordinance Article 9, Section 904 Special Exceptions, Items A – I were met. Section 702, Change or Expansion of a Nonconforming Use was reviewed with respect to gas pumps being proposed. The requirements for Section 1005 (Automobile Service Station) were met with section 904 conditions. Chair Swanick made the distinction this is not an auto repair station, rather just a gas service station with gas, convenience and food. The definition is in 302. No vehicular repair service or work on automobiles will be permitted.

Mr. Pittman said he is ready to approve the application with exception of apartment, just the addition of gas pumps. In discussion, members circled back to a third apartment being a less intensive use of the property than the existing laundromat. The property is already a non-conforming use and changing to an apartment could be viewed as a reduction in the impact of non-conformity.

Mr. Pittman would rather approve the whole thing. Mr. White cautioned the board re parking. Mr. Ogren asked re parking required for gas station and convenience store. The ordinance says "adequate". Mr. White says ordinance say 1 space for every three expected customers.

Mr. Fogg indicated Mr. McConkey may be helpful. Mr. McConkey noted that business needs 11 spaces: there are parking spaces available for (2) employees, (9) customers, (6) 3-apartments. It looks to him that there are another 15 spaces that could be striped for use on pavement and it will be raised at site plan before the planning board.

Mr. White indicated the apartments would have required a variance even to be there. It has already operating as a two-family dwelling. The nonconforming aspect no worse if add a third apartment in converting the laundromat. Wasn't formally addressed in application but was addressed in the plan provided.

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Mr. Ogren asked again if all the paperwork needed to decide the apartment addition (conversion) is before the Board, should we address it. There is a question about whether laundromat will continue operating if we do not approve the additional apartment. Chair Swanick says the board could approve adding gas pumps with existing apartments. Mr. Ogren not interested in making applicant going through an extra step if the Board has all the information needed to make a decision vs make applicant return with new application (for the apartment conversion).

Chair Swanick said she could see approving a third apartment but not how many bedrooms that apartment should be allowed. Mr. Ogren asked if that is a planning board issue?

Mr. Pittman said ZBA does not get into detail inside the building. The structure is not changing. Lot size is known. The Board doesn't need more information than have now. For him, comfortable moving forward approving this with an additional apartment. The application says additional apartment, without specifying number of bedrooms.

Mr. White felt site plan review can take care of the details – expansion of a business that is residential. Maybe a variance is not necessary in this case. If someone moves to approve the whole thing, we are good. We have it on record that we looked at the whole thing.

Mr. Pittman said that this is where square peg doesn't fit in round hole... Intention here is close enough. Mr. Ogren asked about a second story, if they wanted it, would they have to come back to ZBA? Mr. Pittman said most likely yes. Chair Swanick said yes. Mr. Ogren said, that is ok with me. Mr. White said a second story would go to a building permit and would be flagged.

Jim Pittman moved to approve the special exception application for adding gas pumps to the convenience store and converting the laundromat to a third apartment in accordance with Article 9 Special Exception, Section 904 Conditions of Approval, per section 1005 Automotive Service Station, and per section 702 Change or Expansion of Nonconforming Use. Lenny Fitzgerald second the motion. Roll call vote: Tim White- aye, Jim Pittman- aye, Knute Ogren- aye, Lenny Fitzgerald- aye, and Theresa Swanick- aye. Motion passed.

Next Meeting: April 12th at 6:00pm via Zoom.

Adjournment:

Jim Pittman made a motion to adjourn the meeting. Lenny Fitzgerald seconded the motion. Roll call vote: Jim Pittman- aye, Tim White- aye, Knute Ogren- aye, Lenny Fitzgerald- aye, and Theresa Swanick- aye. The motion passed.

The meeting adjourned at 8:39pm.