

Town of Farmington
356 Main Street
Zoning Board of Adjustment Meeting Minutes
Thursday, October 20, 2016

MINUTES

Board Members Present:

Elmer Barron, Chairman
Paul Parker
Joe Pitre, Board Secretary

Board Members Absent:

John David Aylard, Vice Chairman
Joanne Shomphe

Staff Members Present:

Liz Durfee, Interim Planner

Others Present:

W. Packy Campbell, RSA Realty

BUSINESS BEFORE THE BOARD:

1). Call to Order:

Chairman Barron called the meeting to order at 7:15 p.m.

2). Review Meeting Minutes:

September 1, 2016- No omissions or corrections.

Motion: Mr. Pitre motioned to accept the minutes as written;
2nd by Mr. Parker.

The motion passed 3-0.

3). Motion for Re-Hearing of special Exception Approved by the ZBA on September 1, 2016 by W. Packy Campbell, Agent for Cormier Movers, Inc. to address conditions of approval of the September 1, 2016 decision #2 and #3:

2). The flood plain must be observed and adhered to and the building must not be constructed within the flood plain;

3). Installation of a deceleration lane;

The application for Special Exception was to allow a residential and commercial moving service with a 10,000 sq. ft. warehouse for vehicle servicing and transient storage of goods. The parcel is located at 359 NH Route 11 in the Commercial Business District.

Chairman Barron noted the agenda incorrectly stated that the Special Exception was approved on Sept. 6 when the meeting was held on Sept. 1 and suggested the Notice of Decision may have been dated and sent out on Sept. 6. He asked Ms. Durfee to check the records of the meeting and the decision to make sure the correct approval date appears in the records.

Chairman Barron said this meeting is a public hearing but that they could not take any testimony from the public. He said the purpose of the meeting was for the board to decide if they would grant or deny a re-hearing of the Special Exception application as requested by Mr. Campbell.

He said he received the information provided by Town Counsel where she stated the board may have exceeded their authority because the board cannot set the means or methods in requiring a deceleration lane (on Route 11). He said the board did not set the means or methods or how it was to be built, but simply that they wanted one. He then suggested that maybe the attorney misunderstood the board's intent. Ms. Durfee added that she also forwarded information to the members provided by the NH Municipal Association citing case law about what the ZBA is allowed to do. Chairman Barron said the board can require a deceleration lane for approval of the Special Exception but that the attorney recommended that proof that it is needed should be included in the decision and recommended the board grant the motion for a re-hearing.

Mr. Parker said he would like to speak on the flood plain issue.
Mr. Barron questioned if that was in question for the re-hearing.

Ms. Durfee said it was included in Mr. Campbell's request letter. She said the re-hearing would re-open the entire application review and the board can choose which issues to address.
Mr. Parker said the board must decide if there was any new information in the letter from Mr. Campbell that would require the board to grant the re-hearing. Based on the flood plain ordinance he said he didn't think Mr. Campbell's letter provided any new information.
Mr. Parker added that he felt the board was fully within its capabilities to make observations and to place the restrictions that were made as part of the conditions of approval because the Shoreline Protection Agency was created to work in conjunction with communities.

Chairman Barron said the board's issue in whether or not to grant the re-hearing centers on the deceleration lane. He said he had no problem with granting a re-hearing although it would re-open the entire application to review again and the board could speak to any issue they want to then. He said this particular portion of Route 11, near the Holy Rosary Credit Union, is the site of many accidents and suggested the board request the Police Dept. provide them with a list of the places, dates, times and fatalities from the accidents that have occurred in close proximity of the applicant's proposed business. Mr. Parker said he supported the Chairman's recommendation to include the deceleration lane as a condition of approval for the same reasons he cited.
Chairman Barron said that the Pike Industries facility has a deceleration lane in front of its entrance and they have a very limited number of accidents there despite the number of trucks the business has. He noted the building across from Pike has had a number of accidents mostly due to drivers attempting to go around someone who has stopped or is making a turn and occasionally due to someone parked in the breakdown lane.
He added that the state is about to turn Route 11 into a 3 lane road with the addition of a center turning lane and the breakdown lane is going to disappear next year leaving no place for drivers to "go around". Chairman Barron suggested if the board grants the re-hearing they should ask the DOT for their opinion on the issue, the Police and Fire Depts. for their accident records, traffic counts for the road from the last 1-2 years and any other pertinent information as evidence for their decision.

Ms. Durfee offered to obtain recent traffic counts from the Strafford Regional Planning Commission.

Motion: Mr. Pitre motioned to grant the request for the re-hearing for the Special Exception from Sept. 1, 2016 and to require receipt of information from the NH DOT, the Farmington Police Dept. and the Farmington Fire Dept. including accident reports, traffic studies and traffic counts and to schedule the re-hearing for December 1, 2016;

2nd by Mr. Barron;

Discussion: Mr. Parker asked if there is enough new information to grant the re-hearing.

Chairman Barron said it seems as if the board knows what the requested information will reveal but without the actual evidence it may be a tough decision to defend. He added that the board does not have to address any other items in the application but can address anything that they want to.

Ms. Durfee said feedback from the attorney stated that the discussion during the Sept. 1 meeting didn't address why the deceleration lane was the specific design needed to ensure traffic safety. If the ZBA requires that specific type of traffic control method then there needs to be more discussion and evidence as to why that's the best design she said.

Chairman Barron said it would be entirely up to the applicant to bring in an alternative if they chose to. The bottom line is to protect the health, safety and welfare of people traveling in that area he said.

Mr. Campbell said the applicant does not have a problem with the deceleration lane. He said their problem is that it is not clearly defined and they could be required to put in one that is 100 feet long or 200 feet long.

Chairman Barron said the board cannot proscribe the means or methods for deceleration lane. Mr.

Campbell said they are also concerned that the DOT could say no to a turn lane because they plan to install a center lane which he said he found out about a few days after the Sept. 1 meeting.

Chairman Barron said he told him explicitly about the state's plans for the center lane at the Sept. 1 meeting.

Mr. Campbell said if the condition of approval said "installation of a deceleration lane as determined by the DOT" then he would have no issue with the language of the approval.

He began to describe his issue with the Planning Board when Chairman Barron stopped the discussion and said he should not have let him speak. He said this is not a public hearing and that the board could not have this discussion with him at this time. The abutters have not been notified so this discussion cannot take place he said.

Mr. Parker asked how he could ignore what Mr. Campbell just said. He said Mr. Campbell stated he has no issue with the deceleration lane. There were no length or bounds stated in the conditions so it would be whatever the DOT required he said.

Chairman Barron said it would be up to the applicant's engineer to come up with a plan for a deceleration lane and submit it to the DOT for approval. He said the DOT could also make suggestions for how they could meet the requirements for approval.

Ms. Durfee said that Mr. Campbell requested the re-hearing because the board has no authority to bind the approval of the application to the deceleration lane.

Chairman Barron said the board does have authority to set stipulations on matters of public safety and that his only problem with the board's decision is they didn't tie it to evidence to make an informed decision.

Mr. Parker said that is not the issue. It's a "meets and bounds" issue and there is no "meets and bounds" in the decision regarding the deceleration lane. The decision doesn't contain it and he has no issue with it he said. He added he didn't find any new evidence for a re-hearing after reading Mr. Campbell's letter. Chairman Barron then suggested the board meet with the Town's attorney for a brief discussion on the matter.

Ms. Durfee said she did not specifically request a physical meeting with the attorney. She then offered to read the attorney's e-mails to the board if it would be helpful.

Mr. Barron said an e-mail is not the same as conferring with your attorney.

Ms. Durfee asked if the board wanted her to ask the Town Administrator for permission to set up a meeting with the Town attorney.

Chairman Barron and Mr. Pitre agreed that it would be a prudent thing to do.

Chairman Barron noted that if the representative for the Municipal Association had read the board's decision on the matter, he wouldn't have written that we could not specify the means and methods which we didn't do. He didn't pay attention to what our decision was and ignored our decision. The attorney saw there was no means and methods and recommended we obtain evidence to back up our decision he said.

Mr. Pitre said the re-hearing has been requested and it is now up to the board to approve it or deny it.

Chairman Barron then asked the Cable TV Coordinator Robert Hall if there is an ability to hold a video conference with the lawyer.

Mr. Hall said he did not have that capability at this time.

Mr. Campbell asked if he could talk to Ms. Durfee for some clarification outside the room.

Chairman Barron said he could talk to her but not during the meeting without proper notice to abutters.

Chairman Barron said the board needed to determine when the meeting would be held and suggested they set up a conference call with the attorney prior to the start of the meeting to get their questions answered.

Ms. Durfee said she did not think there would be ample time to gather the requested information from the state, town depts. and the applicant if they scheduled the re-hearing for their next regularly scheduled meeting on November 3.

Chairman Barron said this would be an unscheduled meeting due to the deadlines involved and suggested they schedule the hearing for December 1. He suggested the motion be amended to include the meeting date. Mr. Pitre accepted the friendly amendment to his motion.

Chairman Barron asked if there was any further discussion on the motion. Hearing none, he called for the vote.

The motion passed unanimously.

4). Any Other Business to come before the Board: None.

5). Adjournment:

Motion: (Pitre, second Parker) to adjourn the meeting passed 3-0 at 7:50 p.m.

Respectively submitted,

Kathleen Magoon
Recording Secretary

Elmer Barron, Chairman