



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, July 19, 2016 – 7:00 p.m. – Town Hall Conference Room

Members Present: George Baryiames, Liz Cummings, Steve Gerrato, Leonard Schwab

Members Absent: Chair John Samonas

Staff: Jim Marchese – Building Inspector

Vice Chair Cummings opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Vice Chair explained the procedures of the Zoning Board of Adjustment, stating that a quorum was present and the meeting was being recorded.

1. Appeal of An Administrative Decision: 24 Bruce Court [Map R18, 39] – Commercial A
Owner: Hayward Realty Investments, LLC
Applicants: Hayward Realty Investments, LLC and Brian Graham (Greenland Auto Sales)
The owner and applicant are appealing an administrative decision requiring a Special Exception from Greenland Zoning Ordinance Article III – Establishment of Districts and Uses, Section 3.5 – Use Regulations, Section 3.6 - Table of Uses - L. Motor Vehicles, Item 1. Insufficient evidence was provided to illustrate an existing business.

S. Gerrato considered the application incomplete. In the past, three types of dealerships were allowed in the State: (1) auto wholesale dealership – can go to auctions and buy cars, but can only sell to other dealers and not the public; (2) bonded retail dealership – a building is not necessary, only an office is required; (3) retail vehicle dealership - sells five (5) or more motor vehicles at retail to the general public in a 12 month period, with an established place of business within the State. S. Gerrato felt the previous tenant was a bonded retail dealership; that type of dealership was cancelled by the State in 2015. He continued that the Board could not allow that type of dealership in Town; it is now an illegal dealership. He added that if the Board were to deny the appeal, the applicant could only return if there were material differences. Vice Chair Cummings clarified that if the appeal were denied, the applicant could return because he was seeking an administrative appeal of the Building Inspector's decision and not a Variance or Special Exception.

Steve Ells, attorney representing the owner and applicant, addressed the Board explaining this was an appeal of the Building Inspector's decision in a letter dated May 12, 2016 (Exhibit C – copy on file). The letter stated that the used car business had not been in existence since 2013 and the non-conforming use had been discontinued for over one year. Therefore, it was no longer valid. Planning Board approval was granted in 2000 for the use; the property is a pre-existing non-conforming use. There has been a continuous use of the property as a used car dealership since 2000. Dennis Hayward submitted a notarized affidavit that the property and office have been leased for used car sales until February 2016. In the fall of 2015, the previous Building Inspector noted storage of a tow truck and an RV on the property; both were removed after many discussions with D. Hayward. The Town was aware of an on-going business on the property as recently as November 2015.

DRAFT: SUBJECT TO CHANGE

The tenant vacated the property in February 2016. In April 2016, D. Hayward had to have the remaining used cars towed. A new tenant applied for an occupancy permit with the Building Inspector and has been denied. D. Hayward recently received a statement from the prior tenant that he had leased the property as a used car dealer from April 2013 through February 2016; a copy was given to the Board as well as an invoice from the towing company for removing the tenant's remaining inventory.

Attorney Ells concluded by stating that the Building Inspector's initial letter dated April 18, 2016, indicated that the tenant's license to sell cars had expired. It was noted that the previous tenant did not keep up with State licensing requirements. RSA 261:103-b (Unlicensed Sales Prohibited) clearly states that sale of less than four cars in a 12-month period does not require a license. Attorney Ells referred the Board to Exhibit A; there were no conditions requiring State licensing. He continued that the Town should do their due diligence for all the facts and information. Attorney Ells asked the Board to reverse the Building Inspector's decision and authorize him to approve the pending Certificate of Occupancy for the new tenant. He respectfully noted that the Board was a land use board and not a State licensing board.

The Building Inspector addressed the Board stating it's not a requirement for businesses to register with the Town. In his letter of April 18, 2016, the Building Inspector was looking for the applicant to provide further information that a business existed on the site; that did not happen. He received a Commercial Occupancy application on April 14, 2016. After doing a site inspection, he found that the business had an office on the second floor that's a substantial distance from the selling location. The staircase leading up the office was extremely dangerous and non-conforming. It was his feeling the staircase was built as an emergency egress from the second floor. Although the application was approved by the Planning Board in 2000, the building was constructed in 2002; the Planning Board had no knowledge there was an office associated with the business. There also appears to be parking in the wetlands setback, and there appears to be a lack of control in site management. Due to the increased uses and the uncertainty that a business existed on the site, the Building Inspector felt it should go before the Board.

Responding to a question from Vice Chair Cummings, the Building Inspector stated that if he had the information from the applicant that was given to the Board by Attorney Ells there would be no need for them to go to the ZBA. He would have required them to meet the minimum requirements of the code (stairwell and any other potential violations). Selling of used cars in the front portion of the property would have been a continuation. To the best of his knowledge, the business was non-conforming because it had lapsed for a year.

L. Schwab asked when the business was last viable. D. Hayward responded that it was addressed in the tenant's letter as April 2016. Although that letter was not notarized, D. Hayward's was notarized. L. Schwab countered that a bill of sale for the last car sold would indicate the viability of the business. S. Gerrato added that they wanted to continue a dealership that is no longer allowed by the State and they were asking permission from the Board for that to continue. Attorney Ells stated they were seeking permission for a valid, non-conforming use. The finding from the Building Inspector was that there was an abandonment of the business for over a year; they felt it was an error on his part.

Vice Chair Cummings stated that in D. Hayward's affidavit, the business continued until February 2016. There was a discussion about the reason the previous tenant may have lost his dealership license. Vice Chair Cummings reminded members that what was before them was whether the Building Inspector erred in his decision based on the information he had at the time. The Board had notarized and sworn paperwork indicating there was an auto dealership on the premises through February 2016. The Board also had a statement from the previous tenant, not notarized or sworn, stating the same. There was a lengthy discussion regarding the car dealership being licensed.

Vice Chairman reminded the Board they needed to be careful they did not become the Zoning Board of Adjustment and Planning Division; they were not an arm of the Planning Board. The Planning Board's responsibility was the planning; the ZBA's role was to grant/not grant based on whether an administrative official erred, or if a Variance or Special Exception was involved. The Board was deciding whether or not the use had expired. The Building Inspector may have erred because he lacked all the information needed to make a viable decision. The Building Inspector's denial was reviewed by the Board. G. Baryames stated that based on the information the Building Inspector had at the time, he denied the Certificate of Occupancy. Evidence was given to the Board stating that the business was in operation during the period of time in question. Did the Board feel the evidence presented to them was authentic and true? If yes, the business has been running through February 2016. Vice Chair Cummings added the sworn statement before them was through February 2016.

Vice Chair Cummings opened the meeting to public comments. There being none, she closed the public hearing and returned to the Board.

MOTION: *S. Gerrato moved to deny the Appeal of an Administrative Decision for 24 Bruce Court [Map R18, 39]. Second – L. Schwab*

DISCUSSION: S. Gerrato made the motion to deny because he was uncertain of the legality of the information presented. There was a lengthy discussion regarding the licensing of the previous tenant and the last date of a viable car dealership operating on the property.

MOTION: *S. Gerrato moved to deny the Appeal of an Administrative Decision for 24 Bruce Court [Map R18, 39]. Second – L. Schwab; two in favor, two opposed. MOTION FAILED*

Vice Chair Cummings stated the Board had reached a stalemate. She suggested the applicant consider withdrawing without prejudice and resubmit a Certificate of Occupancy to the Building Inspector based on the new information and wait for a full Board.

Attorney Ells and D. Hayward left the room for a brief period to discuss their options. Vice Chair Cummings stated for the record that the Board's decision was pending while Attorney Ells spoke with his client.

2. Requests for Variances: 125 Ocean Road [Map R21, 51] – Commercial C
Owner: Harbor Links Estates, LLC
Applicant: Bluebird Greenland, LLC
The owner and applicant are requesting the following Variances from the Greenland Zoning Ordinance:
- a. Article III – Establishments of Districts and Uses, Section 3.5 – Use Regulations, Section 3.6 – Table of Uses – M. Wholesale Trade, Warehousing and Distribution, Item 2. Warehousing is not allowed in that district. The existing use is non-conforming; expansion of a non-conforming use is not allowed per Article 7.10.
 - b. Article VI – Signs; Section 6.3 – General Provisions, Subsection 6.3.7(B). A freestanding sign (pylon) of 147 sq. ft. and two wall signs of 65 sq. ft. each, a total of 277 sq. ft., is requested. The Ordinance allows 48 sq. ft., per side, in that district for a single business on a lot.

The applicant requested a continuance to the August meeting.

DRAFT: SUBJECT TO CHANGE

MOTION: Vice Chair Cummings moved to grant the applicant's request to continue the Requests for Variances for 125 Ocean Road to the meeting on Tuesday, August 16, 2016. Second – S. Gerrato; all in favor. MOTION CARRIED

3. Approval of Minutes: Tuesday, June 21, 2016

There was a brief discussion regarding the items that must be met by the YMCA before the Occupancy Permit could be issued.

MOTION: Vice Chair Cummings moved to approve the minutes of Tuesday, June 21, 2106. Second – S. Gerrato; three in favor, one abstain (G. Baryiames). MOTION CARRIED

Return to Item 1:

When Attorney Ells and D. Hayward returned, they asked to meet with the Building Inspector to work out the issues including bringing the building to code. They also requested that the case be continued to the meeting on Tuesday, August 16, 2016, if there was no resolution.

MOTION: Vice Chair Cummings moved to continue the Appeal of an Administrative Decision for 24 Bruce Court [Map R18, 39] to the meeting on Tuesday, August 16, 2016. Second – L. Schwab; all in favor. MOTION CARRIED

4. Other Business

L. Schwab will meet with the Sign Committee on Thursday, July 21, 2016.

5. Adjournment

MOTION: Vice Chair Cummings moved to adjourn at 8:03 p.m. Second – L. Schwab; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, August 16, 2016 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: 