

**TOWN OF FARMINGTON
ZONING BOARD OF ADJUSTMENT MEETING
Thursday, December 6, 2012
356 Main Street, Farmington, NH**

Members Present: Elmer W. "Butch" Barron III, John David Aylard, Joanne Shomphe and Joe Pitre

Town Staff Present: Director of Planning and Community Development Kathy Menici, Department Secretary Bette Anne Gallagher

Public Present: Susan Rillovick

At 7:08 pm Chairman Barron called the meeting to order.

BUSINESS BEFORE THE BOARD:

- **Review and approve Meeting Minutes of July 12, 2012.**

Joe Pitre motioned to approve the minutes of July 12, 2012 as written; 2nd John David Aylard. Motion carried with all in favor.

- **Any other business to come before the Board.**

Joe Pitre motioned to approve the 2013 Meeting Schedule as presented; 2nd Joanne Shomphe. Motion carried with all in favor.

NEW CASES:

Application for Special Exception Approval By: Susan P. Rillovick (Tax Map U05 Lot 167): To allow mixed residential and commercial use in an existing structure. Parcel is located at 5 Spring Street in the Village Center Zoning District

Chairman Barron clarified that this was the old brush factory. He said the applicant was asking the Board to allow a mixed residential and commercial use and asked the Planner if this is permitted. Planner Menici said it falls under the "catch all phrase" on page 33 in the Table of Permitted Uses, Section 2 Residential that lists residential uses not specified as needing a Special Exception.

Planner Menici explained that the applicant has a commercial building and would like to incorporate a residential use into it. She looked at other buildings in the district and how they are used as well as the number of instances where both uses are in same structure. Chairman Barron said mixed use is common in most New England towns especially in downtown areas.

The Planner said this would be owner occupied. Ms. Rillovick is the owner of the building and the owner/operator of the business which is presently a part time operation.

Chairman Barron said the email from CEO Roseberry indicates that she is already doing this. Ms. Rillovick said her decision to live in the building was made out of necessity not choice and she did not know the use was not allowed. The Chairman said she still would have needed a building permit.

The Chairman read the CEO's email and asked for discussion from the other members.

Joanne Shomphe asked the applicant if the trash is now picked up. Ms. Rillovick feels there has been change and that a lot of the trash is gone but there are other things such as wooden pieces that she planned to use in her business as trash to treasure. The Planner asked if the applicant could move these items indoors. Ms. Rillovick said there is room but she needs help.

The applicant said there had been a refrigerator and things under tarps because had to move in quickly. She said she suffered an injury to her Achilles tendon and was laid up for a while but she has been making weekly trips to the dump and the refrigerator and many of the other things are gone. She said she wanted to get done before snow fell this winter but her only day off is Friday and that's when she goes to the dump.

Joanne Shomphe asked what her business is. Ms. Rillovick said it is antiques and home décor and a lot of the business is done online now. Mrs. Shomphe asked if the business is open to the public. The applicant said she is open only on Fridays and Sundays and she may have a helper next year so she could do more. She said when she bought the building she had an inspection done and the building inspector's advice was not to change much because the building was so old any work attempted would be like opening Pandora's box in that one thing would lead to another. She chose her living area based upon what outlets were available and did as little as possible to live there. She showed a photo to the members indicating the area she is using. She said she has an antique cupboard for a closet. She also showed where the inventory for the store is kept both downstairs and at the top of the spiral staircase. She closes off certain areas so no heat is required and can close off her living quarters.

Joanne Shomphe asked if the Board granted a special exception would the applicant also have to go before the Planning Board. The Chairman said she would not and Planner Menici said the applicant would have to satisfy the CEO that the living area is safe. Ms. Rillovick asked what that meant. The Chairman said it would include fire egress and other criteria and that the co-mingling of uses would make it difficult to meet local and state codes.

Planner Menici said she would need to meet standards in the Town's housing ordinance and state building code as well as the life safety code which is the national fire protection code that the State has adopted. She added it is not as easy as saying that there are electrical outlets in this area so it can be used as a living area. Chairman Barron said codes must be met and one reason was so as not to endanger a firefighter trying to find her in the case of a fire. He also said the CEO was not trying to be difficult but had to be certain she is in compliance.

Butch Barron motioned to grant the Special Exception with stipulations to obtain a Building Permit; come into compliance with the Town's Housing, Maintenance and Occupancy Code, Building Code, Life Safety Code; and satisfy CEO Roseberry with regard to trash removal; 2nd Joe Pitre.

Discussion: John David Aylard suggested using a definite time frame and the Chairman asked Ms. Rillovick what she thought would be a reasonable time. She responded that it is tough now with winter weather and would like to have until spring adding that she has no help and does not have the means to hire someone to assist her.

Planner Menici said she wanted to bring to Ms. Rillovick's attention that even if the items referred to as trash are items she considers materials that she hopes to use for her business, the Zoning Ordinance does not permit outside storage of materials, equipment or products in the Village Center District and she would need a variance to store these things outside. Chairman Barron said if the Board stipulates a time frame she would not need a variance during that time.

Chairman Barron said it should be added to the motion that within one week Ms. Rillovick get a building permit and sit down with CEO Roseberry to make a plan. It was explained that she needed the permit because there was never a residence in the building, it was always a factory and she needed to find out from the CEO what was required to comply with all codes. The Chairman added that the Board cannot consider the financial burden portion of her request since that is not allowed by State law.

Planner Menici said that the Zoning Board can only give relief from the Town's Zoning Ordinances and Regulations based upon the application submitted and cannot waive building codes or life safety codes because they are state and national requirements. Chairman Barron added that the Board would not want to waive them even if they could.

Ms. Rillovick asked for more time and the Board agreed she could have two weeks to obtain the permit and meet with CEO Roseberry.

The Board discussed granting 120 days to remove everything. Planner Menici said the Board could address this in two ways with separate completion dates for inside and outside or the applicant could apply for a variance. The Chairman felt that a hardship would be very difficult to prove.

Ms. Rillovick said she could show proof she was working on cleanup and intended to comply. The Board said until cleanup was finished she would still be in violation and that a time frame must be set as the situation could not be allowed to go on for an extended period of time.

The Board decided that April 30, 2013 would be appropriate for the exterior but that if there are any unsafe or health related conditions they must be taken care of immediately. Chairman Barron added that the applicant must satisfy the CEO with regard to immediate health or safety issues including rodent harborage, etc.

The Board considered 120 days for interior compliance but decided on an April 30, 2013 deadline for both interior and exterior with continuous progress.

The Board considered the General Standards for Special Exception agreeing that only the following paragraphs applied:

- b) no hazard shall be created to the public or adjacent property on account of potential fire explosion or release of toxic materials.
- c) no detriment to property values shall be created in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other Structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment or other materials.

Planner Menici said that with regard to criteria specific to the Village Center District only paragraph (1) applied:

- 1) The proposed use is consistent in character with other uses allowed within the VC District and listed in the Table of Permitted Uses as P or PR and is consistent with the purpose of said district.

She added that residential uses are permitted in this area.

The Board discussed whether they needed to consider anything about a possible rental situation. The Chairman said he did not think so but it should be clear that approval will only be for one residence. Planner Menici said that the standards that would apply in this situation would not vary whether owner occupied or rented because it is mixed use in the same building and commercial/residential uses in a single structure have specific standards. She said the Board should be clear that this is for a single residential unit not multiple units.

Ms. Rillovick said she had heard that a rebate of fees was possible in financially difficult situations and requested that the Board refund her fees. Planner Menici said this would apply only to the application fee because the abutter and public notice fees are direct costs so the amount to be considered was \$150.00.

John David Aylard said they should deal with the motion on the floor.

Motion amended as follows:

Butch Barron motioned to grant the Special Exception with the following stipulations:

- 1. Applicant must obtain a Building Permit and meet with CEO Roseberry within two weeks of this approval;***
- 2. Applicant must come into compliance with Farmington’s Housing, Maintenance and Occupancy Code; the Building Code; and the Life Safety Code;***
- 3. Applicant must satisfy CEO Roseberry with regard to cleanup of any immediate health or safety issues including rodent harborage;***
- 4. This approval is for one dwelling unit only; and***
- 5. The deadline for both interior and exterior complete compliance is April 30, 2013 with continuous progress to be shown.***

2nd Joe Pitre. Motion carried with all in favor.

Chairman Barron said the Board would now address the issue of fees. After considering a refund and whether it should be the full application fee or one-half the fee the Board decided as follows:

Joanne Shomphe motioned to refund the application fee of \$150.00; 2nd Joe Pitre. Motion carried with all in favor.

At 7:51 John David Aylard motioned to adjourn the meeting; 2nd Joanne Shomphe. Motion carried with all in favor.

Respectfully submitted,
Bette Anne Gallagher, Department Secretary

Elmer W. "Butch" Barron III, Chairman
Zoning Board of Adjustment

Date