



Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

Minutes of Meeting— December 8, 2016

The Hudson Board of Appeals met in the Selectmen's Hearing Room, 2nd Floor, Town Hall, Hudson, Massachusetts. At 7:00 PM, Lawrence Norris called the meeting to order.

Members Present: Lawrence Norris, Dorothy Risser, Todd Pietrasiak, Jason Mauro, Pamela Cooper, Darja Nevits; Christopher Tibbals, and Jill Schafer

Staff: Kristina Johnson, Assistant Director of Planning & Comm. Dev.

Other Attendees: See enclosed Matrix for a full listing.

Petition: 15 Hudson Street, *Administrative Appeal*

Present were: Aldo Cipriano, Atty. at Law, Town Counsel
William Pezzonni, Day Pitney, LLP
Jon Gomant, GSX Ventures
Kelly Andress, Sage Senior Living
Jon Delli Priscoli, First Colony Development

Lawrence Norris, Chairman, read aloud the public hearing notice. The petitioner is seeking an administrative appeal pursuant to Chapter 40A Section 13 and Chapter 40A Section 16 to reverse the decision of the Hudson Building Inspector denying a building permit for failure to comply with Section 5.2.2 and Section 5.2.3 of the Town of Hudson Protective Zoning By-Laws and determine if the proposed use as an assisted living facility is a permitted use allowed or intended to be allowed in this zoning district by Special Permit pursuant to Section 5.2.3.

Dorothy Risser, Clerk read the right of appeal.

Chairman Norris first explained to the petitioner the expected sequencing of the meeting. Attorney William Pezzonni, representing the petitioner, introduced himself and the development team present at the meeting. Attorney Pezzonni stated that he hopes to demonstrate to the Board that by way of example that an assisted living facility is actually akin to a convalescent home, as defined in the Zoning By-Laws.

Attorney Pezzonni explained that he met with the Hudson Building Inspector to discuss the proposed use and whether his client could move forward with special permit request. The Building Inspector expressed his uncertainty about whether the use of the assisted living facility fell under the definition of convalescent home, and subsequently denied the building permit. Attorney Pezzonni further explained that the petitioner is seeking an administrative appeal of the building permit denial in order to make the case that an assisted living facility are indeed what convalescent homes of the past have become.

Attorney Pezzonni then read the pertinent citation (Section 5.2.3 (e)) of the Hudson Zoning By-Laws, which describes the uses allowed by special permit in a residential zone, including convalescent homes. He underscored to the Board once again that the proposed assisted living facility is akin to a convalescent home; and therefore, the petitioner should be allowed to come before the Board to obtain a special permit. He also acknowledged the opinion issued by Hudson Town Counsel Aldo Cipriano. Attorney Cipriano does not concur that the petitioner can appear before the Board to obtain a special permit for an assisted living facility. Attorney Pezzonni noted that there is no definition in the zoning by-laws for assisted living facility or a convalescent home.

Attorney Pezzonni then began to discuss a memorandum he submitted to the Board and highlighted the fact that the Commonwealth of Massachusetts does not use the term convalescent home; the definition does not exist.

Jonathan Gomant provided an overview of the existing site and the siting of the proposed the assisted living facility. Mr. Gomant showed renderings of the proposed building and highlighted the following 1) parking will be located in the front of the proposed two-story building; 2) site is well buffered by existing trees and landscaping; 3) the building will be isolated from the adjacent residential neighborhood; and 4) the site driveway is located far away from the intersection and is expected to see only about 22 cars per hour. Furthermore, Mr. Gomant highlighted their commitment to provide a parking facility for members of the public to park to access the rail trail.

Kelly Andress, Director of Sage Senior Living highlighted her 27 years of experience, including her involvement with developing a community in Leominster. She noted that in the past assisted living facilities were an entirely new concept in elderly care; but, now the idea of assisted living facilities have become more ubiquitous as more people have elderly parents in assisted living. Ms. Andress provided an historical overview as to how assisted living facilities became part of society's repertoire for senior care and health care in general. Ms. Andress then discussed the type of care that is provided at an assisted living facility and noted that the average entrance age is 84 years of age and that the average length of stay spans from one month to two-years. She described the services the facility provides: three meals/day; transportation; 24/7 on-call medical care; physical and occupational therapy; medication coordination; and short-term respite care. Ms. Andress underscored that these assisted living facilities do not provide extra living saving measures, such as ventilators.

Chairman Norris inquired how many residents would the facility house, the number of floors, and its total square footage. Mr. Gormant indicated that the proposed facility will be 89,000 square feet on two floors and house 90 residents.

Dorothy Risser inquired as to whether the proposed Zoning By-Law change is in the pipeline for Town Meeting. Attorney Giannetti responded that the team missed the fall Town meeting by a couple of weeks. Ms. Risser clarified her question to inquire whether the petitioner has considered spring Town Meeting, as the warrant is still open. Attorney Pezzonni responded that they would work with the Town to prepare a warrant article for the By-Law change should it be necessary.

Jill Schafer inquired as to where in the By-Laws is the use nursing home referenced. Attorney Pezzonni indicated that it listed in the By-Laws as a commercial use, but it is not formally defined. Finally, he read directly from Attorney Cipriano's opinion about his understanding of the definition and function of a convalescent home.

Attorney Giannetti provided some background context about his involvement with the project, and noted some of the earlier discussion with the Building Department and the Planning Department. Attorney Giannetti indicated that time was of the essence and financing was being secured, seeking an administrative appeal was determined to be the most desirable option. He then stated his understanding of Attorney Cipriano's opinion that the Board has the ability to make a decision as to whether the Petitioner can proceed under Section 5.2.3 (e) for a special permit.

Kristina Johnson, Assistant Planning Director clarified for the record that Planning Staff did not direct the petitioner to pursue one regulatory procedure over another. Ms. Johnson indicate that staff did not make a judgment as to which procedure or process would be appropriate.

Todd Petrasiak, Vice President inquired if there is any documentation and/or citation in the Commonwealth regulations that state convalescent homes are in fact assisted living facilities; to which, Attorney Pezzonni said there is not.

Chairman Norris then opened up the hearing for public comment. Individuals noted below offered comments with respect to the administrative appeal

Stan Gordon, Quail Run Condominiums, Hudson

Mr. Gordon expressed his opinion that the Brigham Estate in its current state is an eyesore to the community, especially since it is located at the gateway into Hudson. Mr. Gordon registered his support for an assisted living facility in Hudson, and that it would give aging residents to remain in Town.

Bill Sullivan, 8 Cornish Drive, Hudson

Bill Sullivan acknowledged that professionally he is a commercial broker, and that he is member of the Town's Economic Development Commission. Mr. Sullivan indicated his familiarity with both the site and the Town's Zoning By-laws. Mr. Sullivan registered his support for the development, as it will bring economic benefits to the local businesses.

Dorothy Risser inquired about the process for acquiring a room at such a facility and the system of payment, to which Ms. Andress responded that it is typically private payment and residents rent the rooms. She provided further details on how the residents can structure the lease.

Pamela Cooper inquired if the assisted living facility would include an outpatient clinic, and if yes, what the ratio of residents to outpatients would be. Ms. Andress said that there will be no outpatient services provided; non-emergency medical services would be provided on location to the residents only.

Dorothy Risser asked the petitioner if there was any thought—when submitting the building permit application—to not having any reference to assisted living facility and naming the project

something generic such as Brigham Hill 2. Kelly Andress explained that even if they called themselves something generic or "Sage Convalescent Home," they are still subject to the Commonwealth's Assisted Living Regulations and Licensing procedures. As part of their license, Ms. Andress noted that they are required to comply with all state and local regulations as applicable.

Jill Schafer asked why the petitioner does not pursue the zoning amendment through Town meeting in May. She expressed her confidence that this amendment would definitely pass without issue. Attorney Pezzonni expressed his understanding; however, he noted that timing is of the essence because of financing and contractual commitments.

Further public comments are noted below.

Ed Westerman, 50 Stevens Road

Mr. Westerman stated that he is originally from Framingham and had recently moved to Hudson. He expressed his happiness with his decision to move to Hudson, and believed that an assisted living facility would further raise the bar even more for the Town. Mr. Westerman said that there is a need for this type of facility in Hudson, and urged the Board to vote favorably in support.

James Quinn, 8 Old North Road

Mr. Quinn discussed that longevity runs in his family, and he hopes that such a facility will be in existence when he reaches that age. He underscored that this issue is all about semantics and that Hudson "cries out" for such a facility. Mr. Quinn discussed the findings of his research about the paradigm shift for elderly care, as more folks are living longer lives. He concluded his remarks by stating that he could not think of a better use for the property.

Lawrence Norris, seconded by Todd Pietrasiak, made a motion to go into deliberative session.

Vote: 5-0-0, Unanimous

Ms. Cooper believes that the issue really boils down to semantics. As long as the proposed facility will not be providing outpatient services (which could result in increased traffic), Ms. Cooper expressed her support for the project.

Jason Mauro also agreed that the issue before the Board is about semantics; however, he believes that legal precedent does not allow the Board act in this instances. Mr. Mauro stated that he is not in favor of overturning the Building Inspector's decision.

Darja Nevits expressed her support for the facility and its proposed location; however, she believes that assisted living is more akin to a nursing home, which the current Zoning By-Law allows, just not in that zoning district. Ms. Nevits feels that an assisted living facility is closer to a nursing home in its function than a convalescent home.

Todd Petrisiak stated that he likes the project and its location. He noted that the petitioner's arguments underscore why the Town's Zoning By-Laws need to be amended; however, he

believes that the Board's job is to adjudicate based on the By-Laws before them, not invent ad hoc By-laws. Mr. Petriasiak expressed his wish to support the project, but he concurred that there is a distinction between a convalescent home and an assisted living facility.

Ms. Risser also concurred that an assisted living facility is more akin to nursing home than a convalescent home. She believe the appropriate remedy in this instance is to amend the By-laws.

Christopher Tibbals also noted that the project is a great in concept, but believes that the Board should uphold the process and adhere to the By-Laws as written.

Ms. Schafer also noted that the project is good, but the role of the Board is to enforce the Zoning By-Laws as written. She stated that the petitioner should get on the warrant for spring Town Meeting, and expressed her confidence that the amendment would pass.

Chairman Norris provided extensive comment with respect to the legal aspect before the Board. He stated that the legal question is whether the Board can properly fit the proposed assisted living facility into the existing definition in the Zoning; and, if it can, then the Board's decision would be upheld. Conversely, Chairman Norris stated if the proposed use is not specifically identified in the Zoning as allowed, he believes by default, therefore, that the proposed use needs to be prohibited. He reiterated that the Board needs to consider whether an assisted living facility is akin to a convalescent home, and he believes that although the Commonwealth of Massachusetts does recognize it, the Zoning By-Laws do not. Chairman Norris remarked that he has procedural issues with the petitioner's interpretation, and is not in favor of overturning the Building Inspector's decision.

Lawrence Norris seconded by Christopher Tibbals, made a motion to uphold the determination of the Building Inspector.

Vote: 5-0-0, Unanimous

Lawrence Norris, seconded by Todd Pietrasiak, made a motion to come out of deliberative session.

Vote: 8-0-0, Unanimous

Petition: 131 Coolidge Street, *Special Permit*

Present were: Aldo Cipriano, Atty. at Law, Town Counsel

Attorney Paul Giannetti

Anthony Parinello, Manna Wellness

Julia Germain, Manna Wellness

Stephen Poole, Lakeview Engineering

Lawrence Norris, Chairman, read aloud the public hearing notice. The petitioner is a Special Permit under the provisions of Section 5.11 through 5.11.9 of the Town of Hudson's Protective Zoning By Laws to allow the petitioner to operate a Medical Marijuana Treatment Facility at said address in an existing 17,716 square-foot building,

or any other action deemed necessary relative to the subject petition.

Chairman Norris noted that this property was the subject of a petition in 2015 to vary the required width of the access road to accommodate a drive through for a proposed bank, completely different than what the petitioner has now proposed.

Attorney Giannetti first stated his understanding from his former client, Mr. Paul Carney that the proposed use for 131 Coolidge Street was intended to be a bank; and therefore, that was why he was before the board to obtain a variance to allow for a drive up window. Attorney Giannetti underscored that his current client's building program does not contain plans for a drive through window, and that there is no need for one. Should the Board grant the Special Permit for the petition, Attorney Giannetti believes that the variance will expire in two years from its enactment.

Dorothy Risser followed up as to why the petitioner does not rescind the previously approved variance. Attorney Giannetti stated that he is not speaking for the landlord and that issued would need to be addressed by him directly. Ms. Risser then followed up by asking to have a copy of lease furnished for the record. Attorney Giannetti indicated that it was not provided in the application because it contained sensitive financial information, but he furnished a copy to the Board.

Jill Schafer inquired why the Provisional Certificate of Registration for a Registered Marijuana Dispensary from the Department of Public Health (DPH) referenced Framingham and Pittsfield but not Hudson. She reminded the Board and Attorney Giannetti that the updated DPH regulations now require the statement of an actual address; Ms. Schafer noted that the letter of non-opposition does not state an actual location of where they plan to operate. Anthony Parinello explained the terms of the long-term lease, and indicated his belief that since the letter was crafted under the old regulations, he is in compliance with terms of the provisional certificate. Mr. Parinello agreed to furnish the Provisional Certificate for the official administrative record with the Hudson location listed at the top; he noted that its omission in the petition was an oversight.

Attorney Giannetti described the details of the property and the building (which is multi-tenanted), and noted that the former tenant of the building was the Federal Bureau of Investigation (FBI). He noted that the petitioner has met with Police Chief Burks with respect to the safety and security plan, and the Planning Board approved the site plan.

Stephen Poole provided an overview of the proposed interior and exterior layout of the building and the site circulation and access details. Further, he discussed how people (patients) will circulate within the building. Darja Nevits inquired if the petitioner has executed a formal agreement to use the 20-foot access agreement, to which Mr. Poole responded that the agreement was put in place when the property was subdivided. There was some discussion amongst the Board about whether the access agreement actually exists; Darja then requested to have something formalized presented to Board.

Todd Pietrasiak inquired whether the petitioner is in compliance with the parking requirements, to which Mr. Poole indicated that when the building was permitted compliance with the parking requirements was demonstrated. Mr. Pietrasiak followed up and questioned the proposed spaces on Central Street shown on the site and whether the petitioner needs the four spaces to meet the requirements. Mr. Poole stated that the creation of the four spaces was a request of Mr. Carney and are subject to the approval of the Department of Public Works, and are not needed to comply with the parking requirements.

Mr. Parinello then provided an in-depth overview of how patients acquire a medical marijuana card and how they are processed through the facility. He then answered questions from the Board related to the internal circulation about the medical marijuana regulations. Ms. Cooper inquired about how the passage of the recent recreational marijuana ballot initiative could have an impact on the proposed dispensary at 131 Coolidge Street, to which Mr. Parinello said that it could. Attorney Giannetti followed up and reiterated that the petitioner is seeking a special permit for a medical marijuana dispensary only, and would have to await implementing regulations for recreational marijuana from the Department of Public Health.

Mr. Pietrasiak noted that the internal facility plan facility did not have proper dimensions shown in order to properly gauge the locations of the vault and other security elements. Mr. Poole acknowledged that the internal layout plans were taken directly from the architectural renderings and not shown to scale. Mr. Pietrasiak expressed concerns that there was no way for the Board to know if the internal layout matches the requirements outlined in the security plan presented and discuss with the Chief of Police. Attorney Giannetti agreed to submit a revised internal layout plan properly dimensioned and that shows the security measure to the greatest extent feasible without compromising the integrity of the security plan.

Thomas Moses, Town Administrator, clarified two previous points raised earlier in the meeting: 1) The Board of Selectmen recently chose not to issue a letter of non-opposition at that time, but did not close the door on the opportunity to issue one in the future; 2) the Director of Public Works denied the creation of 4 spaces on Central Street, as it is not appropriate to assign spaces on the public right-of-way.

Attorney Cipriano requested that the petitioner furnish a copy of the recorded access easement and noted that the security information being requested is part of the administrative ZBA record. He expressed concerns that once any additional security information is filed with the Planning Department, it would duly become part of the public record and subject to Freedom of Information Act request.

James Quinn, 8 Old North Road discussed his familiarity with the building, and recalled outfitting the mantrap system and other security elements with the General Services Administration. He inquired if the petitioner would be using the same man trap system and whether there would be any penetrations on the exterior of the building. Mr. Parinello affirmed the use of the existing man trap system and noted that they would be constructing an additional man trap at the exit based on the same system already in place.

Lawrence Norris, seconded by Jason Mauro voted to continue the public hearing to Wednesday, January 11, 2017.

Vote: 8-0-0, Unanimous

Assistant Director's Report

No report was given.

Minutes

Lawrence Norris, seconded by Dorothy Risser made a motion to accept the minutes of October 13, 2016, as written.

Vote: 8-0-0, Unanimous.

Adjournment

At 9:40 PM, Todd Pietrasiak, seconded by Dorothy Risser, moved to adjourn.

Vote: 8-0-0, Unanimous