

Wolfeboro Zoning Board of Adjustment

Continued Public Hearing

June 6, 2016

Minutes

RECEIVED AND RECORDED

6/13, 2016 3:05 P M

Book No.

Page No.

Sarah M. White

WOLFEBORO, N.H. TOWN CLERK

Members Present: Fred Tedeschi, Chairman, Mike Hodder, Vice- Chairman, Chris Franson, Clerk, Hank Why and Suzanne Ryan, Members, David Senecal, Susan Raser and Sarah Silk, Alternates

Staff: Rob Houseman, Director of Planning & Zoning, Laura Morgan Spector, Esq. and Robin Kingston, Administrative Assistant

Chairman Tedeschi called this meeting to order at 7:00 pm at the Wolfeboro Town Hall in The Great Hall

Applicant: Families in Transition (FIT)

Owner: Green Mountain Communications

TM# 217-70

Case # 07-V-16

Continued Public Hearing

Variance for the conversion of the third floor property located at 16-18 Lehner Street to a 7 Bedroom Transitional Housing

Chris Franson read the public notice for the meeting.

Families in Transition/Green Mountain LLC ("FIT") has applied for a variance to convert the third floor of property located at 16-18 Lehner Street to 7 bedrooms to host 5-7 families (single women and their children) on a temporary transitional basis. Such a use is not defined in, and therefore is not permitted by, the Wolfeboro Zoning Ordinance.

Fred Tedeschi explained the public hearing was continued from May 3 & 10, 2016 and is limited to the three issues of safety, property values and homeless student numbers.

Maureen Beauregard, President of Families in Transition (FIT) addressed the Board and noted a report addressing the three issues has been submitted. 1). Need- A letter submitted on behalf of the GWRSD states there are 122 homeless students. 2). Safety - Letters have been submitted from the Chief of Police of Dover, Chief and Captain of Police from Wolfeboro as well as the Chief of Police of Manchester. Captain Rondeau and Chief Willard are both present to speak in favor. 3). Property Values – FIT hired Attorney Allard and compared all FIT owned properties.

Values were compared from 1991 to today. The information was reviewed by Bill Norton and his findings are that FIT does not contribute to diminished values of its surrounding properties.

Chairman Tedeschi clarified the first and second floors are not part of this application.

Maureen Beauregard confirmed office and counseling space will occupy the second floor which are permitted uses.

Denise Williams, resident of Glendon Street and REALTOR spoke in opposition and reviewed a presentation and letter previously submitted to the Board and is part of the file.

Sarah Silk asked about the chart and if these figures are strictly for homeless shelters for single adults.

Denise Williams responded it was a general survey done nationwide for the NAR.

Mike Hodder noted it encompasses all types of homeless shelters.

Kirk Gilmore, 50 Union Street spoke in opposition and summarized a presentation he previously submitted for the Board and is part of the file.

Captain Rondeau, Wolfeboro Police Department spoke in favor and explained he was asked to look at the impact and read the email he submitted relative to application which is part of the file.

Chief Willard, Manchester NH addressed the Board, spoke in favor and asked if you are talking about homelessness or criminals or addicts because to stereotype a group of individuals who are not as fortunate as the rest of us is a disservice to humanity. He has listened with a little disgust to the objections to this proposal as he himself comes from abject poverty and he was not an addict or bring down property values. These people need a hand up not a handout. These are children and you are giving them a place. You are making them better than what they were and one day they might be a police chief in the largest city in NH. They are not drug addicts; they are human beings and he did not realize you were different if you come from Manchester versus Wolfeboro. He personally lives two blocks away from the Manchester facility and his property values are not being diminished and he does not have to walk through groups of criminals, they are homeless. When the numbers are reviewed for calls to the police department most are checks and subpoena services and 911 calls when nothing has occurred. Very few are associated with the facility. What was submitted for number of calls is a misrepresentation. He offered to break all the calls down and can report what actually occurred. This is stereotypical nonsense.

Mike Hodder thanked Chief Willard for his attendance.

Chief Willard apologized for going on a rant but felt this project was important enough to be in attendance and address the Board.

Cynthia Marshall and Meghan Lapar, Kingswood High School Students and heads of Knights Against Hunger spoke in favor and read statements in favor of FIT as they believe students cannot be successful in school when they are hungry and do not have a home.

John R. White, Wolfeboro spoke in favor and was previously homeless, not an addict, drunk or criminal, just jobless and he was given a hand up. He asked what kind of community turns on its own and it is not Christian to turn your head and leave someone homeless. Would you rather have these people homeless and desperate than with a roof over their head and hope in their hearts?

Julie Jacobs, Wolfeboro spoke in opposition and commented this is a zoning issue and EDC is trying to make room for business. This is not the area you want to put FIT in.

Sally Humer, Director of End 16 Hours of Hunger, spoke in favor and stated she feeds 104 kids in the school district and the zoning on Lehner Street promotes a healthy mix of retail, professional offices, medical and residential uses and promotes mixed uses on the same parcels. Residential above commercial is just what is being promoted by the zoning and this is what FIT is.

Dr. Kathy Koon, Director NH Coalition to End Hunger spoke in favor and clarified the numbers in the state of homelessness report is a one day snapshot in time and largely not reflective of the complete picture and should not be used alone in understanding the picture of homelessness anywhere. Various agencies have different definitions of homelessness. FIT is focused on families and their numbers are taken from the NH Department of Education.

Bill Norton, Real Estate Advisor practicing throughout NH and has submitted a report to the Board. There has been no diminution of property values based on his review of 28-32 properties adjacent to FIT properties in Concord, Dover and Manchester. The report submitted deals with assessed values.

Dick Anagnot, Chairman of FIT and Real Estate Developer in NH spoke in favor. FIT cleans up properties in NH and surrounding properties also become very well kept. He has testified many times in court as to values and 7 units in any neighborhood are not going to devalue a property.

If homeless persons were camped in a yard then there would be devaluation however if housed, there would be no devaluation.

Jim Southern, Sewall Road, spoke in favor FIT and has visited and toured some of their facilities. This is for homeless families with children and populations are not mixed and asked the Zoning Board give this application its most considerable consideration.

Maureen Beauregard, FIT, followed up on the issue of the use. Substance abuse counseling would be referred out if anyone displays issues where other help is needed, they are referred out. They are not providing substance only case management. This is a place to stop, take stock of their lives and connecting the families to the community.

Kirk Gilmore rebutted the literature being a point in time that is an annual figure and he gave 3 years' worth of figures. He then asked why there are offices on the second floor if they are not providing services.

Brian Lombard, 64 Glendon Street, spoke in opposition and submitted a copy of his resume (is part of the file) and noted the letter submitted previously and is is part of the file. and spoke regarding property values and the setting of neighborhood boundaries. Property value info from other communities should not be relied upon because of community differences. What is recommended is assessing the effect of the non-permitted use with the first being the exterior condition of the subject property and second the proposed use of the property. There will be no exterior changes as no changes will be taking place to the exterior of the building. The use questions should be asked if activity, noise, traffic and reducing the quiet time in the neighborhood. The Manchester Police Chief stated that most of the calls were not to the FIT property but there were more calls, minor in nature to the neighborhood however they do not deny there was an increase in activities to the neighborhood which is what will happen in Wolfeboro. Captain Rondeau had noted there will be traffic, more calls, and some more additional responses although he feels comfortable his department can handle it. As for the use question, there will be increased pedestrian, vehicular and extended activity. There will be a reduction to the quiet time in the neighborhood and this will have a negative effect as a potential buyer will want to pay less for properties due to the increases related to the non-permitted use. The applicant should have used a local real estate firm to address the issue of values. It is clear they will see a reduction in property values. Additionally there are a number of current businesses in the building that could be forced to relocate and this could possibly affect 2,000 people. Consideration of the variance should look to protect surrounding property owners and property values. An amendment should be proposed to the Zoning Ordinance to determine the proper location for the proposed use.

Charles Wibel, Northline Road spoke in opposition and reviewed the statistics submitted in his letter to the Board and is part of the file.

Captain Rondeau responded to responses in the City of Dover and explained Police Departments use different tracking databases as there are various reasons for an address to show calls to. Do not think that each call is a disturbance call. The Police Department runs up and down North Main Street, South Main Street, Route 28 each day but it does not mean there is dangerous activity on those roads.

Joy Feñey-Messieno, Wolfeboro resident and stated she is a top producing REALTOR in Wolfeboro. She stated she supports the work of FIT. Years ago Lehner Street (aka Factory Street) was a rundown road where you never wanted to go. In the last 10-12 years the properties have been improved. New residents and businesses have moved in and property values have increased. Now businesses and residents will be forced out. Manchester and Concord are large cities and you cannot compare them to Wolfeboro. This is not Dover, Concord or Manchester. Market value is defined by what a buyer is willing to pay and a seller is willing to accept. The purchase and sale is as much emotional and it is square footage and property values on Glendon Street, Union Street and School Street will be diminished if FIT goes in. No one is opposed to transitional housing and it is needed, just not in this location.

Elizabeth Kelley, Director of Child Advocacy Center of Carroll County spoke in favor and noted the rumors about pedophiles and sexual perverts that would be coming to the center about 10 years ago when they applied for a variance. Today the center exists and is helping children and is right there across the street from the Lehner Street property, subject in this application. The Center is quiet and is a wonderful spot which helps children and there is nothing happening there. No one who is selling or buying a house says I do not want to be there because there are sexual perverts or children that have been molested. People are making mountains out of mole hills.

Chairman Tedeschi closed the public hearing at 8:20 pm.

The Board deliberated on the application and the five points required for the requested variance.

After reviewing all of that testimony, the board finds and rules as follows:

1 & 2. The variance will not be contrary to the public interest and will observe the spirit of the ordinance

The Board considered if this proposal would alter the essential character of the locality and whether granting the variance would threaten the public health, safety or welfare.

Two board members felt that the conversion of this existing 5,000 square feet of commercial space to residential space was not consistent with the public interest and the spirit of the ordinance, particularly when the cumulative impact of all such potentially similar variances was considered, the majority of the board found that the proposed use was not contrary to the public interest and observant of the expressed purposes of the C-1 district.

The purpose of the district is "to protect the character of the existing downtown, maintaining its pedestrian scale, while promoting a healthy mix of retail, professional office, medical and residential uses within the district and promoting mixed uses on individual properties. It is intended to enable the downtown to remain a vibrant, compact commercial center, serving the needs of community residents, the region and tourists as the economic center, and to promote a complementary and diverse mix of commercial and residential uses." § 175-88.7.

Uses permitted in the district include nursing or convalescent homes, and the like; multifamily dwellings, beds and breakfasts, and inns. Uses permitted by special exception include affordable nonprofit housing for the elderly and affordable nonprofit workforce housing. See §175-91 and 92. Currently existing uses in the neighborhood include multifamily dwellings, a community center, and a nonprofit child advocacy center.

The majority of the members felt that the proposed use--temporary transitional housing--is similar to the existing and permitted uses by right and by special exception in the district and promoted the purpose of mixing uses on individual properties. It therefore would not alter the essential character of the locality. The board noted that this space could be converted to residential space as of right if it were, for example, converted to apartments.

The majority also discussed the public health, safety and welfare. While the majority recognized the concerns expressed by some members of the public regarding the addition of seven homeless families to the area, they noted that one cannot control who moves into a neighborhood, regardless of the type of housing they may occupy. The board also noted that the FIT facilities in other locations in New Hampshire had not produced any negative impacts on the public health, safety and welfare in those communities.

The majority of the board concluded that the variance will not be contrary to the public interest and will observe the spirit of the ordinance.

3. Substantial justice will be done by the granting of the variance

The majority of the board found that granting variance will do substantial justice because the benefit to town at large far outweighs the minimal loss from the deviation from zoning ordinance. The majority discussed the gain of transitional housing that the town both lacks and needs, and found that denying the variance would deprive the town of these services only at the gain of rigidly enforcing the ordinance.

Based on all of the evidence in the record, the majority of the board concluded that substantial justice would be done by the granting of the variance.

4. The values of surrounding properties will not be diminished by the granting of the variance

While one board member felt that FIT had not met its burden of demonstrating that surrounding property values will not be diminished by the grant of the requested variance, the majority of the board found that the information submitted by Mr. Norton on behalf of FIT to be compelling. That information concluded that properties adjacent to 28 of 31 of the FIT facilities elsewhere in the state had actually seen an increase in their assessed values. While the board acknowledged that many of those buildings had been dilapidated and thereafter improved by FIT while the property at issue was already in good condition, it noted that given the existing good condition of the building and the neighborhood, the maintenance of the exterior in good condition would, at most, have a neutral impact on the value of surrounding properties.

The majority also noted that the testimony presented by local realtors was not based on any actual evidence, but instead based on national studies of properties and neighborhoods that were not comparable to this family focused transitional housing.

For the foregoing reasons, and based on all of the evidence in the record, the majority of the board concluded that surrounding property values will not be diminished by the grant of the variance.

5. Literal enforcement of the provisions of the ordinance will result in unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that ordinance to the property and the use is a reasonable one

The board considered whether the property was unique in its surroundings, and a majority of it found that it was. The building is located 3 to 4 blocks from the local regional school, and within walking distance to many services. The building is 4 stories and 19,000 square feet, which is oversized for the neighborhood, if not the town, and is dominant on the lot, which is small at 11,700 square feet. Moreover, the building is unique in that no other non-municipal building in town has an elevator, a third floor, sprinklers, or is ADA compliant.

The majority of the board also found that there is no fair and substantial relationship between the purpose of the ordinance and the application of the ordinance to the property and that the proposed use is a reasonable one. The majority found that the restriction on temporary transitional housing was not necessary to fulfill ordinance's underlying purpose, given that the district anticipates mixed uses; and that the proposed use is consistent with existing and permitted uses in the district, many of which allow extended stays by unrelated persons who need special care. The board noted that allowing this use in the local mix of preexisting uses,

particularly given that there would be no alteration to the exterior of building and no requirement for additional services, was reasonable.

The majority of the board noted that the first two floors of the building would remain commercial, which satisfies mixed use purpose of the district. The proposed use was not meant to be someone's permanent residence, which might "tip" the balance in the neighborhood to too much residential; but was more like inn, dorm, boarding house, all of which are defined in, and permitted by, the zoning ordinance.

The majority of the board concluded that the literal enforcement of the zoning ordinance to this unique property would result in unnecessary hardship.

It was moved by Mike Hodder to approve the application presented in ZBA Case # 07-V-16, TM 217-17, 16-18 Lehner Street, Families in Transition (FIT) / Green Mountain Realty, LLC with the following conditions:

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation, and this notice herein shall be generally determining.
2. The first and second floor shall be restricted to non-residential use.
3. The application as submitted to the ZBA, may not satisfy the submittal requirements for Site Plan Review.
4. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay all recording fees.
5. This Variance shall be valid if exercised within two years from the date of final approval, or as further extended by local ordinance or by the Zoning Board of Adjustment for good cause.

The Board discussed the motion and limiting the hours of delivery by truck.

Rob Houseman noted the Noise Ordinance has a standard of 6:30 am through 10 pm Monday through Saturday and 10:30 am through 10:00 pm on Sunday.

It was moved by Suzanne Ryan to amend the motion to state that truck service deliveries be limited to the hours of 6:30 am through 10 pm Monday through Saturday and 10:30 am through 10:00 pm on Sunday.

Suzanne Ryan withdrew her amendment to the motion.

It was moved by Suzanne Ryan to amend the motion to state if the variance is granted it shall not exceed 7 bedrooms/ 7 families and not exceed 120 days in length of stay.

The Board discussed the amendment.

It was moved by Fred Tedeschi and seconded by Suzanne Ryan to amend the motion to have a maximum occupancy of 28 persons/7 bedrooms. Fred Tedeschi and Suzanne Ryan voted in favor. Hank Why, Mike Hodder and Chris Franson voted in opposition. The amendment failed.

The original motion by Mike Hodder was seconded by Hank Why. Mike Hodder, Hank Why and Chris Franson voted in favor of the original motion. Suzanne Ryan and Fred Tedeschi voted in opposition. The motion passed.

It was moved by Fred Tedeschi and seconded by Mike Hodder that the Zoning Board suspend its decision pending approval of the written notice of decision on June 13, 2016. All members voted in favor. The motion passed.

Respectfully Submitted,

Robin Kingston
Administrative Assistant

