

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, September 28, 2015 6:30 PM City Hall, Second Floor Committee Room

Board Members Present

Louise Zerba, Chair
Jeff Stevens, Co-Chair
Joseph Hoppock
David Curran
Steve Bragdon, Alternate

Staff Present

Gary Schneider, Plans Examiner
Thomas Mullins, City Attorney

Board Members not present

Nathaniel Stout

Others Present

I. Introduction of Board Members

Chair Zerba called the meeting to order at 6:30 PM and introduced the Board Members.

II. Minutes of the Previous Meeting: August 3, 2015

Mr. Hoppock made a motion to approve the minutes of August 3, 2015. Mr. Stevens seconded the motion which passed with a vote of 4 in favor and 1 abstention.

III. Unfinished business

None at this time.

IV. Hearings:

Continued ZBA 15-04/: Motion to Accept Late Filing, and for Rehearing for filing with the Zoning Board of Adjustment relative to ZBA 15-04, 815 Court St., Keene, NH.

Chair Zerba stated that ZBA 15-04 will be continued until the October 5, 2015 meeting.

ZBA 15-14/: Petitioner, Prospect Place of 361 Court St., Keene, regarding property owned by Kendall W. and Molly B. Lane of 99 Wyman Rd., Keene, represented by Thomas Hanna, Esq., of 41 School St., Keene, requests a Special Exception for property located at 99 Wyman Rd. and 0 Wyman Rd., Keene, which is in the Rural District. The Petitioner is requesting a Special Exception per Section 102-332, Permitted Uses in Rural District and Section 102-1111, Permitted Locations, Institutional Use on Wyman Road.

Mr. Schneider referred Board members to the map of Wyman Road and the surrounding area. Mr. Schneider explained that there are two different parcels on either side of the road in discussion and reside in the Rural District. Mr. Hoppock asked if any parcels are in the Corporate Park District. Mr. Schneider replied, no.

Attorney Thomas Hanna of 41 School Street, Keene, NH, stated that he submitted one application for both parcels. He continued, stating there are no special criteria that are distinct to one side of the road not the other.

Dr. Kimball Temple of 114 Jordan Road, Keene, NH approached the Board. Dr. Temple stated that he has been Prospect Place's Board President since 2010. He continued, stating that the facility was started in 1874 and referred to the narrative submitted to the Board members. Dr. Temple stated that the facility has been supported by Keene citizens and an endowment was received. He continued, stating that around 1995 occupancy became an issue. Dr. Temple stated that it is an older structure and gave an example of the facility only having one shower per floor. He continued, stating that the occupancy rate has been at only 50% since 1995 and the endowment is being used to make up the cost. Dr. Temple stated that the situation was worsened due to the 2008 financial crisis.

Dr. Temple stated that he was worried the facility would go out of business due to increasing competition. He continued, stating that in 2010 Board members and incorporators discussed the issue. Dr. Temple stated that the options were to sell the facility, keep the facility open, or create a new facility with independent units incorporated. Dr. Temple stated with independent units, the assisted living facility would be supported. Dr. Temple stated that the independent unit concept was the preferred option but it was unclear if resources were available. He continued, stating that a consultant familiar with the independent unit concept was hired to review the organization's assets. Dr. Temple stated that the consultant considered the project possible and the location needed to be determined. Dr. Temple stated that in 2011 the project came to a standstill because appropriate land was not found. In 2013, 48 acres on Wyman Road became available. He continued, stating that the municipal services available on this land were appealing.

Dr. Temple stated that the owners of the land were interested in selling the property and were asked if they would be willing to sell once funding was determined and the City approved. He continued, stating that the organization then researched if the new facility was marketable. Dr. Temple stated that in 2014 focus groups were held with over 300 people ages 65-75 with an average income of \$35,000-50,000 from Keene, Walpole and Brattleboro. Of these participants, 71 were willing to put a 10% deposit down. He continued, stating that the Board decided to proceed with the project. Dr. Temple stated that a Continuous Care Retirement Community (CCRC) is a new option for seniors, is run by a Board of Directors and is a non-profit entity. He

continued, stating that Prospect Place and the Woodward Home are the only non-profit senior facilities in Keene. Dr. Temple stated that having an entry fee option would subsidize health care. Dr. Temple explained that an entry fee would be required along with a monthly maintenance fee but would not increase if subsequent health care was necessary. Dr. Temple stated that putting an entry fee upfront would ensure health care. He continued, stating that there would be 141 independent units and 60 health care units in this proposed facility.

Dr. Temple stated that in order to finance this facility, tax exemption would be necessary. He continued, stating that in order to get state assistance, sponsors would have to be determined. Dr. Temple stated that the Woodward Home is using their endowment as well and merger is being discussed. Dr. Temple stated that there would be transportation available as well.

Mr. Hoppock asked Dr. Temple to give an overview of the regulatory process besides zoning approval by City Council. Dr. Temple stated that they have been working with the state and are regulated with through the Department of Insurance. He continued, stating that the Department of Insurance has disclosure including financial feasibility and resident's approval. Dr. Temple stated that there has recently been probate approval in terms of using the endowment. He continued, stating that a certificate of need is also necessary.

Jim Phippard of Brickstone Land Use Consultants LLC approached the Board. Mr. Phippard stated that the petitioner is before the Board tonight seeking a Special Exception and will be returning to the Board before the building process for multiple Variances. He continued, stating that once all Zoning Board approvals are done, they would file a Site Plan Review with the Planning Board. Mr. Phippard stated that City Council would then be approached to request configuration changes and road surface changes to Wyman Road. He continued, stating that state permits would be necessary for the alteration of terrain, water and sewer, and wetlands. Mr. Phippard stated that they are very early in the process.

Mr. Phippard stated that he was retained in 2011 to do the initial site search for the facility. He continued, stating that about 25 acres of land were requested. Mr. Phippard stated that the topography, soils, vegetation, road network access and flood plains were all reviewed during this process. He continued, stating that proximity of utilities were also important. Mr. Phippard stated that 205 properties were located which led to 12 chosen for a detailed review and finally a conceptual site design was applied on 4 parcels. He continued, stating that each site had restraints including land with a large hill where erosion was a concern.

Mr. Phippard revealed a map of the land to the Board members. He continued, reiterating that there are two parcels on either side of Wyman Road. Mr. Phippard stated that this area is appropriate because the facility will not fit into a residential lot size. He continued, stating that although the zoning is Rural, there are large industrial buildings on three sides of the lot. Mr. Phippard stated that Wyman Road was widened and drainage improvements were conducted in the 1990's to support the nearby businesses giving the site in discussion access to City water and sewer. Mr. Phippard stated that the users of this water have to put reducers in because the pressure is too high. Mr. Phippard stated that access to City water and sewer is a huge advantage. He continued, stating that power was also extended and the system was increased due to the industrial usage. Mr. Phippard stated that there are steep slopes on the property including

precautionary slopes He continued, stating that the central area of the property currently has a three story barn built in the 1700's. Mr. Phippard stated that they are working with a history consultant, Lynn Monroe as well as archeologist, Bob Goodbee. He continued, stating that there are other structures on the lot and they will be reviewed to determine if they are eligible for historical status. Chair Zerba asked what the next steps would be if the buildings are eligible. Mr. Phippard stated that relocating the buildings would be an option. He continued, stating that this process will take another year and the Heritage Committee will be approached for assistance. Mr. Phippard stated that the materials will be salvaged if the building has to come down.

Mr. Phippard stated that another restraint is the large field adjacent to Black Brook which is part of the 100 year flood plain. He continued, stating that this area cannot be built due to the wetlands and will remain preserved. Mr. Phippard stated that there are portions of the land to the west that are considered wetlands including manmade drainage ditches. He continued, stating that there is also a pond to the north of the property which will remain intact. Mr. Phippard stated that there will be impacts on these areas.

Mr. Phippard showed an aerial view of the preliminary design. He continued, explaining the different functions of the buildings sectors. Mr. Phippard stated that the facility is able to fit on the land with an addition of floors. He continued, stating that a height Variance would be requested at a later date. Mr. Phippard stated that soil borings were also conducted and no ledge was found. He continued, stating that buildings can be cut into the hillside due to the absence of ledge. Mr. Phippard stated that by cutting the building into the hillside, the frontage view will only show two stories and the four story structure will not be seen by the public. He continued, stating that this will maintain the character of the community.

Mr. Phippard stated that most of the area is forested and will remain forested to minimize runoff and preserve the character of the area. Mr. Phippard stated that Wyman Road is a concern due to traffic. He continued, stating that the width of the road was a concern and averages about 20 feet wide. Mr. Phippard stated that the road surface also has a lot of cracking and uneven pavement. He continued, stating that the petitioner is willing to rebuild the road up to the development area.

Mr. Phippard stated that a corner of the road was identified as a very steep curve and will be flattened to improve sight in both directions. He continued, stating that there is a hill of concern that will be flattened both horizontally and vertically in order to increase the line of sight. Mr. Phippard stated that this will be a big improvement for the local business, Miracles in Motion as well. Mr. Phippard stated that proper signage will then be added to identify the curve and additional striping will be painted. Mr. Phippard stated that a travel speed analysis was conducted and found that the speed around the curve is under the speed limit but increases afterward. He continued, stating that they suggest curve cut locations at three sections of the road.

Mr. Curran asked if Marlboro Street locations were reviewed. Mr. Phippard stated that land was reviewed but due to environmental issues and space restraints, no property fit their needs. Mr. Hoppock asked if public transportation would be available. Mr. Phippard stated that Corporate Park is already on the bus line. Chair Zerba asked if an expert has reviewed the public water and sewer to determine if it will be efficient for the facility. Mr. Phippard replied that both Public

Works and the Fire Department were consulted. He continued, stating that the only issue is that most of the water is used from the top of the hill when flushing hydrants and would decrease water availability to the facility. Chair Zerba asked if the remaining unused land would be put into a conservation easement. Mr. Phippard stated that the area in the 100 year flood plain could possibly be conserved however the forested area will remain open for future developments if necessary. Chair Zerba asked if there is concern with an increase of traffic on Walpole Road if individuals are avoiding Route 12. Mr. Phippard stated that traffic concerns will be discussed at the Planning Board but believes that the majority of cars will remain on Route 12 due to better road conditions. He continued, stating that Walpole Road has about 740 cars per day but the capacity of the road is 1,800 a day. Mr. Phippard stated the facility would bring about 400 additional cars a day. He continued, stating that the peak driving times also differ and so the impacts would not be as severe. Chair Zerba asked if it would be up to Department Of Transportation (DOT) to install a light. Mr. Phippard stated that this will be a Planning Board issue.

Attorney Hanna approached the Board. Attorney Hanna stated that he began this project five years ago. He continued, stating that a request was submitted for Med Kopczynski, ACM/Health & Building Safety Director, to determine the use of this property. He continued, stating that the Master Plan did not have a CCRC in it and Mr. Kopczynski determined it was an Institutional use under the Zoning Code. Attorney Hanna stated that the City Council was then petitioned to allow part of Wyman Road to have a Special Exception for Institutional Use. He continued, stating that in July, City Council received recommendations from the Planning Board and on a vote of 10-3; City Council amended the Zoning Ordinance to add a portion of Wyman Road to the Permit Institutional Use.

Attorney Hanna discussed the criteria.

Granting the Variance would not be contrary to the public interest.

Attorney Hanna stated that Miracles in Motion is next door and believes they will have a symbiotic relationship with volunteer efforts. He continued, stating that there are many other Institutional Uses nearby and pointed out that the Jonathan Daniels School is also in the Rural District. Attorney Hanna pointed out that Group Homes are also permitted in the District. Attorney Hanna stated that the Institutional Use is consistent with the Master Plan. Attorney Hanna stated the Planning Board determined Institutional Use on Wyman Road was consistent with the Master Plan. He continued, stating that the end of the site is a mile from Route 12, and the first half mile has been improved due to Corporate Park which includes public water and sewer. Attorney Hanna stated that the slopes of the land speak to the advantage as well. He continued, stating that only those coming from the southern side of Walpole Road will they see the four story building. Attorney Hanna stated that there are many facilities in close proximity that the residents will use including Cheshire Medical Center, YMCA and several churches.

If the Variance were granted, the spirit of the ordinance would be observed.

Attorney Hanna stated that a letter was submitted by Powers, Smith & Associates which determined that there will be no negative impacts to the abutters. He continued, stating that the closest residents north of the lot are over 1,000 feet away. Attorney Hanna stated that Miracle in

Motion has been contacted and after construction, there will not be a noise problem. He continued, stating that if there are any horse showings, loud construction would be stopped. Attorney Hanna stated that residents to the north have a large vegetation buffer and will not see the facility from their location. He continued, stating that most activities will be indoors and quiet. Chair Zerba asked if the Lory property will be able to see the facility. Attorney Hanna stated that they will not be able to see the facility and there is a large amount of forested area between the two lots. Attorney Hanna stated that this development should not adversely affect the road due to off peak traffic.

Mr. Hoppock asked about service vehicles and activities. Mr. Phippard stated that the road to the facility will be constructed so that service vehicles will travel from Route 12. Attorney Hanna stated that there will be no nuisance to vehicles or pedestrians. He continued, stating that Walpole Road is a very narrow and it will not encourage additional traffic. Attorney Hanna stated that there will be walking paths and a tunnel underneath the road to the health center.

Granting the Variance would do substantial justice.

Attorney Hanna stated that the municipal services available were one of the more attractive parts to the land. Attorney Hanna stated that staff will be on site 24/7 and the only issue with this is the road. He continued, stating that consultants have determined that the road is adequate to handle the amount of traffic.

Mr. Hoppock asked about the tax exempt status. He continued, stating that the property would not be taxed under this status but he assumed that the organization would still want the City to maintain the services. Attorney Hanna stated that he is involved with many contracts concerning Payment In Lieu Of Tax (PILOT) negotiations including Cheshire Medical Center and a Buddhist facility and temple. He continued, stating that the general framework of PILOTs is recognition on the side of the municipal services and the private entity as to what should be paid for. Attorney Hanna stated that this is typically 25% of the taxes. He continued, stating that there has been a commitment to pay a fair Payment In Lieu Of Taxes.

Mr. Curran asked how often are these agreements are updated. Attorney Hanna stated that it varies, from 5-10 years at least. Chair Zerba asked about the road north of the facility and if should be updated. Attorney Hanna stated this would not be part of the PILOT which relates to a substitute for taxes. Mr. Stevens asked about the lighting and if it will affect neighbors. Mr. Phippard stated that this is part of the site plan review. He continued, stating that they will use full cut off, LED fixtures with timers. Mr. Phippard state that lights will be reduced in the parking lot area as well.

Chair Zerba opened the public hearing.

Barbara De Matteo of 30 Moore Farm Road in Keene, NH approached the Board in support of the Variance. She stated that she is representing the *Miracles in Motion* Board. Ms. Demadio stated that she met with the petitioner twice and feels that there is a good working relationship. She continued, stating that any concerns of water being disrupted are no longer in place. Ms. Demadio stated that communication has been open in reference to construction noise as well. She continued, stating that this will be a partnership and many seniors ride and volunteer.

Mr. Pernaw was requested by the Board to speak in reference to the petition. Steven Pernaw of Pernaw and Company in Loudon NH approached the Board. Mr. Hoppock asked if he is worried about the fixing of the curve in the road (which has the slowest speed now) and an increase in speed due to improved conditions. Mr. Pernaw replied yes, which formed the basis for recommendations. He continued, stating that the paver marking should continue down the project frontage and discourage people from driving down the middle of the road. Mr. Pernaw stated that advanced warning signs should be put in place as well. He continued, stating that they recommended 25 MPH. Mr. Hoppock asked about speed bumps. Mr. Pernaw stated that he would not recommend speed bumps and Public Works would likely not endorse this. Chair Zerba asked if the double line will continue up Walpole Road. Mr. Pernaw stated that the distance has not been discussed but it will go down to the brook at least.

Mr. Curran asked if there will be bump outs by the front entrance. Mr. Phippard stated that this construction period will be over a year and once the facility opens traffic will increase. He continued, stating that his concern is if employees stop using the tunnel. Mr. Phippard stated that if a speed table was necessary, it would be best by the driveway. He continued, stating that this creates extra maintenance and is not the first consideration. Mr. Phippard stated that bump outs can be discussed.

Chair Zerba stated that a DOT representative stated that, *“the increase in traffic volume might warrant reassessment of the intersection and consideration of safety and capacity improvements.”* She continued, asking what a significant increase would be. Mr. Pernaw stated that DOT looks at projects that have over 100 vehicles during peak hour but this will be between 40-85 vehicles. He continued, stating that it will be the same under post development conditions. Mr. Phippard mentioned that the Planning Board may require approval from DOT.

A motion was made by Mr. Hoppock that the Zoning Board of Adjustment approves ZBA 15-14. Mr. Bragdon seconded the motion.

Mr. Hoppock stated that it will not change the neighborhood and will not decrease the profit of homes in the area. He continued, stating that all criteria are met.

Mr. Bragdon stated that the purview here is limited and the petitioner meets all of the criteria. He continued, stating that the points were laid out well and the large issue was City Council allowing this facility in the District.

Chair Zerba went over the Findings of Fact.

Granting the Variance would not be contrary to the public interest.

This passed unanimously.

If the Variance were granted, the spirit of the ordinance would be observed.

This passed unanimously.

Granting the Variance would do substantial justice.

This passed unanimously.

If the Variance were granted, the values of the surrounding properties would not be diminished.

This passed unanimously.

Unnecessary Hardship:

_ A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

- 1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*
- 2. The proposed use is a reasonable one.*

This passed unanimously.

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-14.

ZBA 15-15/: Petitioner, Steven Wilder Automotive, LLC, owner Steven Wilder of 306 Webb Depot Rd., Swanzey, NH, requests for an Enlargement of a Nonconforming Use for property located at 384 Washington St., Keene, which is in the Medium Density District. The Petitioner requests to increase the organization of the lot and allow more vehicles to be enclosed and out of the parking lot during repairs.

Mr. Schneider displayed a map of Washington Street and stated that the automotive repair garage which is not a permitted use in this District and with an expansion, would be an addition of a non-conforming use. He continued, stating that the particular addition would be on the southwest corner of the building.

Mr. Hoppock asked about dimensional issues. Mr. Schneider stated that he contacted the architect and she feels everything complies with the Zoning Ordinance. He continued, stating that the next step is with the Planning Board. Mr. Schneider stated that this petition is to get the expansion of the Non-Conforming Use approved. Chair Zerba asked what would happen if the Board approves the petition tonight but there is too much impermeable surface. Mr. Schneider stated that they may have to come back to the Board.

Celina Wilder, of 306 Webb Depot Road, Swanzey approached the Board. She stated that the property will expand the current building by 900 square feet to allow more vehicles to be housed. Ms. Wilder stated that it will add to the property value and help conform to the residential houses in the area. She continued, stating that Katie Sutherland is the architect. Chair Zerba asked if the cars outside will be going inside this structure. Ms. Wilder replied, yes. Mr. Bragdon asked about

the stabilized grass parking. Ms. Wilder stated that it will continue to be stabilized parking and customers' park there. She continued, stating that there is very little grass.

Chair Zerba asked if it will be changed to a one way traffic flow. She replied, yes. Chair Zerba asked what the hatch lines are in the middle of the design. Mr. Schneider stated that these are usually represented as setbacks. Mr. Stevens asked what the setbacks in the property would be. Mr. Schneider stated that this is a corner lot on two different streets. He continued, stating that to determine setbacks a of corner lot, the smaller of the two sides is the front of the property. Mr. Schneider stated that the front setback is 15 feet, the rear setback is 15 feet and the side setbacks are 10 feet. Mr. Schneider stated that this petition meets setbacks. Mr. Bragdon asked if this applies to parking. Mr. Schneider stated this will go into more detail at the Planning Board.

Mr. Bragdon stated that it is a reasonable expansion. Mr. Hoppock asked if it would be appropriate to add conditions about setbacks. Mr. Schneider stated that the architect should address this and if they do not meet requirements, they may have to come back to the Board.

A motion was made by Mr. Hoppock to approve ZBA 15-15. Mr. Curran seconded the motion.

Chair Zerba went over the Findings of Fact.

Granting the Variance would not be contrary to the public interest.

This passed unanimously.

If the Variance were granted, the spirit of the ordinance would be observed.

This passed unanimously.

Granting the Variance would do substantial justice.

This passed unanimously.

If the Variance were granted, the values of the surrounding properties would not be diminished.

This passed unanimously.

Unnecessary Hardship:

_ A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

- 1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*
- 2. The proposed use is a reasonable one.*

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-15.

V. Non Public Session (if required)

VI. New Business

VII. Communications and Miscellaneous

VIII. Adjournment

Adjournment at 8:20 PM

Respectfully submitted by:

Lana C. Bluege, Minute-taker
September 28, 2015