

ZONING BOARD OF APPEALS
MINUTES
MAY 13, 2015
TOWN HALL ANNEX – COMMUNITY ROOM 1

Chairman Stebbins called the meeting to order at 7:00 p.m.

I. ROLL CALL

Present: Grady, Kravits, Manning, Mencer (7:05), Stebbins, Russotto

Absent:

Staff: Cullen, Attorney Edward O'Connell, Gilot

Chairman called the meeting to order at 7:03 p.m. He indicated for the record that Grady would not sit for the deliberations for the two previously held public hearings (ZBA#15-01 and ZBA #15-02).

II. PUBLIC HEARINGS

1. ZBA#15-04 – 1268 Poquonnock Road, City of Groton/Owner, Richard M. Stevens/Applicant, Erica Lotz, PE/Applicant's Agent, for a variance to Section 5.2 to allow 37 feet proposed height instead of 30 feet required height for a process building, to Section 7.2-3(S) for 35 proposed parking spaces instead of 52 required parking spaces for the overall facility. PIN#169807584778, RS-20 zone (Coastal Area Management) – Continued

Chairman Stebbins explained the public hearing procedures. Secretary Manning read the call of the hearing. Mr. Manning said all the mailings were in order except one needed clarification. Groton Sewer Authority owns a Pumping Station at the same address as applicant. The applicant had already spoken to the Town during the pre-permitting hearing on January 13th and considered that sufficient notification. The Town's comments were incorporated into their plan. The commissioners deemed this acceptable. Staff also pointed out that the Town was notified because of the adjacent parcel as well (Human Services building).

Erica Lotz from Fay, Spofford & Thorndike, 5 Burlington Woods, Burlington, MA, and Rick Stevens from Groton Utilities, 295 Meridian Street, Groton, presented the variance requests.

Ms. Lotz reviewed the overall site. The building was originally constructed in 1938 and renovations were made in 1947, 1962, and 1989. Most major components of the facility are aged and past their useful life. This project is to replace aged equipment and update technology for improved treatment. Ms. Lotz reviewed the site and detailed the access road, proposed new building, and the addition to the existing plant. The proposed Dissolved Air Flootation building would add a new treatment process to the plant. In an effort to reduce the amount of impervious surfaces, permeable pavers have been added in some of the parking areas, but it is necessary to maintain a paved area where chemicals are being delivered. She explained the stormwater and drainage features, and the need for the variances in height and parking spaces. Ms. Lotz distributed a set of photos of the existing site as viewed from the street. She stated that the tank with the tallest element on that site, a tank, will be removed. The second highest existing building is a lime silo, height 46.5 ft. Two new storage tanks are

proposed, at a height of 47 feet. The building height, driven by the water-driven treatment process, was explained in detail. A height of 34 ½ ft. is required to drive the water. Three additional feet are required for freeboard. The finished floor will have a 12 ft. tall saturator on a small pad off the floor, with valves above, for a total elevation of 56.5 ft., and 4 feet above to cover the structural steel. A parapet on the top to slope the roof for drainage would add an additional 2.5 feet. The building height is 35 feet. The regulations allow 30 ft. in the RS-20 zone. The original request was for 37 feet, but only 35 is required. The 37 feet was crossed out, and replaced with 35 feet.

The regulations require 1 parking space per 800 sq. ft. The existing building plus the new building, excluding the tanks and mechanical, etc. would require 52 spaces. If the pump rooms, etc., were subtracted, the requirement would be down to 42 spaces. 35 spaces are provided on the site. If all the staff came in at once, 12 spaces would be required; additional spaces for visitors and service vehicles would bring the number required to 24.

Staff said it is a locked and gated site, with a pass key required to access the site. The building predates zoning.

Rick Stevens detailed the process of the water treatment facility.

The State of Connecticut ranked projects by need through the Clean Water Fund. Of 150 projects in the state, this project was ranked number 1 in the state.

The Board asked about recessing the building into the ground. Ms. Lotz explained that would require replacing all the mains and all utilities in that area. The excavation would disturb some of the existing utilities. The pumping station dates back to 1908. The height of the tanks is regulated under Section 4.4 of the Zoning Regulations.

A CAM report was submitted. There would be no adverse impacts on the site.

The Chairman asked if anyone was present to speak for or against the application. There were none.

The Planning Commission's favorable referral was read into the record.

Staff said the unique situation regarding the equipment and use, and the establishment of the use prior to regulations. Manning asked if any neighbors would be impacted. Staff said town-owned property is adjacent, a church is across the street, and the adjacent cemetery grants use of their driveway.

The public hearing was closed at 7:44 p.m.

III. MEETING FOLLOWING PUBLIC HEARINGS

Decision on Public Hearing Applications

1. ZBA#15-01 - 40 High Rock Road, Bright Horizons Children Centers LLC/Owner, Stonington Behavioral Health, Inc./Applicant

MOTION: To overturn the Zoning Official's decision.

Motion made by Russotto, seconded by Mencer.

Discussion ensued regarding the letter the Zoning Official issued on the 23rd. The Board discussed the fact that he was not comfortable with the request for this use to be

considered a hotel/motel. The Board discussed the definitions of hotel/motel, transients, and the restriction of the public from entering the applicant's facility. The Board concluded that the proposed use did not meet the definition of hotel/motel in the Town of Groton Zoning Regulations.

Motion denied unanimously.

2. ZBA#15-02 - 40 High Rock Road, Bright Horizons Children Centers LLC/Owner, Stonington Behavioral Health, Inc./Applicant

MOTION: To grant the variance as requested.

Motion made by Russotto, seconded by Kravits.

The Board concurred that no hardship had been proven. Some commissioners felt that the change of use should be should be addressed with the Zoning Commission. The Board discussed Section 8.5-8 which addresses the powers of the board. They also discussed the definition of hotel/motel. The Chairman stated that he had done some research on the Department of Justice website with regard to group homes and reasonable accommodation. He stated that under the Fair Housing Act only dwellings are protected. He also discussed that there cannot be an undue burden to the administrative or financial resources of the town. He stated that the Zoning Commission writes the definition of "hotel" and that this interpretation was stepping on the toes of the Zoning Commission.

Staff stated that this is not only a variance, but also a reasonable accommodation request. According to federal law, the Board needs to make sure they address the following points: qualified individuals, protected class, administrative burden to town, and alteration to municipal program.

O'Connell reiterated Staff's comments that in addition to the usual hardship criteria this request invokes the Fair Housing Act. Reasonable accommodation was requested for addicted individuals. The Board will need to review the three-part test: 1) does it qualify as a dwelling; 2) are the individuals considered to be a protected class, and 3) would it put undue financial or administrative burdens or alteration of the municipal program. This is in addition to the traditional hardship analysis

Manning said he would like to review the criteria which had been submitted in the agenda packets. The Board said they would like assistance putting together the appropriate language with the attorney to craft a final decision.

Attorney O'Connell reminded the Board that under the Zoning Regulations all decisions must set forth reasons and findings that are complete, detailed and specific.

The Chairman thought the applicant should have taken another avenue and approached the Zoning Commission for a new regulation for the use. He said the Federal Housing Act does not cover hotels, only dwellings, yet the applicant wants a hotel. He stated that they couldn't have it both ways.

Manning stated that a change in the Zoning Regulations was added in 1993, to cover treatment centers discussed in regulations. The Chairman reminded him that this is only supportive housing and does not include an in-house treatment facility.

Manning requested some time to review previous memos submitted in the record.

MOTION: To postpone discussion of ZBA 15-02 until after a recess, change the order of the agenda to move discussion of ZBA 15-04 to next on the agenda, and then a brief recess so that Manning could review some previous memos.

Motion made by Manning, seconded by Russotto. Motion passed unanimously.

3. ZBA#15-04 – 1268 Poquonnock Road, City of Groton/Owner

The Board concurred that the applicants showed the site predates the zoning regulations, the ground water and old pipes located on the site preclude building the facility into the ground in order to comply with the height regulations; also, there would be no pecuniary benefit.

MOTION: To grant the variances as requested.

Motion made by Grady, seconded by Russotto, so voted unanimously.

MOTION: To approve the CAM application as presented because it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts.

Motion made by Kravits, seconded by Grady. Motion passed unanimously.

Motion to take a 15 minute recess was made by Mencer, seconded by Russotto. Motion passed unanimously.

Grady left at 8:43 p.m.

The meeting resumed at 8:59 p.m. The Chairman and each of the Board members stated they were not involved in any discussion regarding the application during the recess.

Staff's March 9th memo to the Board was discussed. She said it was specific to the appeal. The March 4th memo spoke to reasonable accommodation.

The Board must first address the variance. Then, under the federal Fair Housing Act, it must be reviewed if it meets the reasonable accommodation criteria.

Attorney O'Connell said that the Fair Housing Act applies, is properly before the commission and should be analyzed, even if another method would have been better for the applicant.

The Board discussed the definition of "dwelling". Stebbins said that the applicant asked them to make this use a "hotel"; that would be changing the meaning of hotel in Groton. The building houses 192 people and is not publicly accessible to the traveling public. As proposed, the building would only available to a restricted group. He questioned if it is a dwelling by definition because under FHA it is protected only if it is a dwelling. Staff read the definition of "dwelling" under the Federal Fair Housing Law Section 8.2(b). She reviewed that the FHA must involve a dwelling. She reviewed the points for reasonable accommodation, including protected class, qualified individuals, undue financial or administrative burdens to the town, and alteration of a municipal program.

O'Connell stated that the Board must review with specificity the four topics as required by the Fair Housing Act, in addition to the standard variance requirements.

Manning requested time to reconsider all of the testimony, as well as the Fair Housing Act requirements.

Mencer and Russotto stated that they would not be present on May 27th. The Board said they had 65 days from the closing of the hearing to make a decision.

The Board asked Attorney O'Connell to prepare for them an outline of each of the items that must be addressed for the next meeting.

Motion on the floor was withdrawn.

Motion to postpone deliberation of ZBA #15-02 to June 10th was made by Mencer and seconded by Russotto. Motion passed unanimously.

IV. CORRESPONDENCE - None

V. APPROVAL OF THE MINUTES OF MINUTES OF April 22, 2015

MOTION: To approve the minutes of April 22, 2015 as amended.

Motion made by Manning, seconded by Kravits so voted unanimously.

VI. OLD BUSINESS - None

VII. NEW BUSINESS

a) New Applications

Two besides the one listed on the application. All three applications are residential.

VIII. REPORT OF STAFF - None

IX. ADJOURNMENT

Motion to adjourn made at 9:50 p.m. by Russotto, seconded by Kravits. Motion passed unanimously.

Tom Manning, Secretary
Zoning Board of Appeals

Prepared by Debra Gilot
Office Assistant III