



ZONING BOARD OF ADJUSTMENT

WILTON

NEW HAMPSHIRE 03086

The September 13 meeting of the Board of Adjustment was called to order at 7:32 PM by Chairman Tom Mitchell. ZBA members present were Neil Faiman, George Infanti, Grayson Parker, Cynthia Harris and alternate Arlene Laurenitis, and Secretary-alternate Joanna K Eckstrom. Mitchell said there was one case to be considered this evening, that of Waterwear for a Special Exception to the terms of Article VIII, Section H to permit a commercial use within the Industrial Zone. Mitchell introduced Bill Hyde of Waterwear inviting him to present his case.

Hyde said Waterwear operates a swimwear manufacturing facility at the Riverview Mill complex. Men's and women's swimwear is manufactured for sale to swim teams throughout the country. Hyde wants to have a retail mill outlet on a trial basis within the complex in a 600 sf storage area the landlord has agreed to rent to him.

Mitchell asked what changes would need to be made to accommodate this. Hyde noted that at present the area is unheated, unelectrified, but that it is sprinklered. He proposes heating, lights, setting up three dressing rooms. There would be no plumbing and no rest rooms. Area would be accessed from within the manufacturing area as well as by way of an exterior door which would replace an existing window. Board members visited the site prior to tonight's meeting.

Mitchell asked that the criteria be addressed. First, does the site conform with lot requirements? Hyde was not sure, so Ms Eckstrom read from his Planning Board application, noting that according to NRPC representative, there is 3½ acres and frontage of 862' on Souhegan (Howard) St.

Much discussion ensued over the intent of #2 in the ordinance, specifically as it relates to percentage of area on an Industrial site that can be occupied by buildings, parking and drives. Arlene Laurenitis felt that this logically would apply to new construction in the district. Since the buildings, etc are already there, it must comply or does so by some prior consideration in the Site Plan review process of the Planning Board.

Mitchell said that even though the site may have been through the Planning Board process, there is a Planning Board problem by that Board's not having looked far enough into applications for this kind of use. According to the ordinance, Mitchell says two Special Exceptions are needed; one for the commercial use in the Industrial Zone, the second for waiver of terms of C2. Faiman agreed with this.

Parker felt that the Special Exception as presented should be granted. There are no changes proposed for the outside area and the lot has been in its present condition for many years. Harris agreed that no changes were proposed and that this is a lot of record.

Mitchell insisted that two Special Exceptions were necessary and Faiman said he could not vote favorably in view of the terms of our ordinances. Infanti added that since terms of C-2 aren't met, neither can he feel comfortable in proceeding with making a decision tonight. Mitchell said this is a literal interpretation of the ordinance but two requests would need to have been noticed and there was only one.

Infanti said he was comfortable with the applicants proposal but not without renoticing for the other exception.

Ms Laurenitis argued that there's already legal Industrial use of the site. Parker said he'd be embarrassed if he had to come back on the basis of the 60% factor. Faiman said he too would be embarrassed, but that we must follow ordinances. Harris said if hearing were to be continued to next Wednesday, she'd be unable to attend. Further she said she believes that this part of ordinance applies to new lots or lots without buildings and not those with buildings that predate zoning.

Infanti said it was not his intention to foul Hyde's plans. Asked what his time constraints were. Hyde said realistically he'd like to be operating by December/January. Secretary noted that if a second Special Exception were required, renoticing and newspaper advertising could be done within the deadline by advertising in the Telegraph. Letters would have to be mailed by Friday. Secretary also looked through Planning Board files to see if the site plan review for this complex could be found, but was unable to locate it.

Faiman said he sees the confusion as to whether this applies to existing construction. Laurenitis suggested calling Town Counsel at home for his advise. Mitchell called Silas Little who suggested two options: 1. the hard way would be to apply for variance to C-2. 2. Easier would be that by consensus of the Board, if it feels strongly that Section 6 does not apply to existing structures, then there's no need to enforce C-2. To do so, you'd have to tear down buildings or parking lots. Laurenitis agreed with this second option - the Board in its decision can specify this existing area.

It was the consensus of the Board to waive the lot requirement in Sect C-2 because it believes section 6 does not apply to this industrial complex. Vote on this consensus was unanimous in agreement.

Regarding anticipated traffic, Hyde said he expects no more than 3 customers at a time. As to fire hazard, Faiman wanted noted for the record that the area is sprinklered. Mitchell felt surrounding property values would increase and it would be attractive to the Town.

Faiman moved to accept the application on the grounds stated; second by Harris. Motion unanimous in favor. Special Exception granted. Note that applicant is scheduled for Non-Residential Site Plan review by Planning Board next Wednesday.

Minutes of the Aug 8 meeting were reviewed. Ms Harris noted several corrections/additions. Infanti moved to accept the minutes with Harris' additions; second by Harris. Unanimous in favor of accepting.

A work session then followed. At a recent Planning Board work session the consensus of that Board was that any application requiring hearings by both Boards must come before the Planning Board first. Ms Eckstrom argued that in some instances one could spend a lot of money for engineering or legal work only to find that when the applicant gets to ZBA that their request would be denied because the use would not be allowed in a particular zone. This is the extreme and probably has never happened in the Town's history but is possible.

There was some discussion as to what order such cases should be heard also about Home Occupations and which cases need to come before Boards. Ms Eckstrom noted that Lyndeborough says if more than 25% of a residence is affected by the Home Occupation, then Board consideration is necessary. She feels that Boards are being too literal and restrictive in interpreting the Home Occupation ordinance. Gave example of person who recently moved into Town who in the past has worked out of his home writing computer programs. He is, in effect, being required to defend his right to make a living at home by having to come before the Boards. Eckstrom argues that interpretations are becoming unreasonable. Parker and Infanti agreed that in certain instances, this is so. Both went on record as disagreeing with the word must as related to order of appearance before the Boards. The consensus of the Board was that it would continue in the manner it has in the most recent past - no defined order of appearance before the Boards.

Eckstrom noted that it might be better if joint hearings were held in this type case. Mitchell said there must be rules of order adopted for such hearings. Parker thought the Town had adopted same some time ago, but does not recall any times when joint hearings were held.

Other items of discussion in this work session were ZBA suggestions for changes to the ordinances.

Respectfully submitted,

Joanna K Eckstrom
Secretary