



TOWN OF NORTHBRIDGE

ZONING BOARD OF APPEALS

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Approved on January 14, 2010

ZONING BOARD OF APPEALS

MINUTES OF MEETING

SEPTEMBER 10, 2009

This meeting was called to order at 7:00 P.M. by Chairman Thomas Hansson. Other members present were: Diane Woupio, Sharron Ampagoomian, Carol Snow, Stephen Witkus, and Harold Hartmann. Also present was Brenda Ouillette, Administrative Assistant.

Absent from this meeting were William Corkum and Brett Simas.

A motion was made by Diane Woupio to approve of the minutes of July 9, 2009, motion seconded by Carol Snow, the vote being unanimous.

Stephen Witkus and Harold Hartmann abstained from voting as they were not present at the July 9th meeting.

PUBLIC HEARING: LUTHERAN SOCIAL SERVICES, APPLICANT

This hearing was held to consider the petition of Lutheran Social Services of New England, 51 Union Street, Suite 200, Worcester, MA appealing the Building Inspector/Zoning Official's Cease and Desist Order dated June 22, 2009 for property located at 2356 Providence Road, Northbridge, MA. The present use of the site is determined to be a lodging house and is not allowed under the Town of Northbridge Zoning By-laws.

The property, shown on Assessor's Map 25 as Parcel 113, is located at 2356 Providence Road in a Residential-2 zoning district. The property is owned by Pegasus Holdings, LLC, 2356 Providence Road, Northbridge, MA.

Diane Woupio read the public hearing notice. Assigned to this hearing were Thomas Hansson, Diane Woupio, Carol Snow, Sharron Ampagoomian, and Stephen Witkus.

Attorney Henry Lane was present on behalf of Lutheran Social Services of New England. Also present was Josephina Lance from Lutheran Social Services and Joseph Muner from Pegasus Holdings LLC.

ZONING BOARD OF APPEALS – MINUTES – SEPTEMBER 10, 2009

Chairman Thomas Hansson reminded the Board to focus on what is before them this evening. He stated that the Building Inspector issued a Cease and Desist Order because there were people living at 2356 Providence Road which is a violation of the Zoning By-laws. This petition is an appeal for relief from that Cease and Desist Order. The Board must decide if the Building Inspector was justified in issuing that order.

Attorney Lane began the discussion by stating that Lutheran Social Services is a non-profit organization involved with providing social services to immigrant populations. He introduced Josephina Lance as Regional Director who stated that their core mission is a federal program of refugee acceptance providing assistance to victims of violent crimes by governments around the world. The refugees are screened prior to entering the United States and arrive here through a referral by the United Nations. When they arrive, staff works with them daily. They learn English and cultural issues necessary to live in the United States with a class being held once a week. Right now they are focused on around 450 new arrivals to Worcester in the coming fiscal year.

James Sheehan, Building Inspector, was present and explained his reason for issuing the Cease and Desist Order. He classifies the building as a lodging house. The reason he classifies it as a lodging house is that he inspected the property with Police Chief Warchol on May 6, 2009 due to a complaint made to the Northbridge Police Department. The owner of the building, Joseph Muner, took them through part of the building and showed them some of the rooms the refugees were staying in. As a result of what he observed he spoke with a Mr. Ben Stephens, Program Manager for Lutheran Social Services of New England on June 9, 2009. Mr. Stephens told him that they were renting several rooms for temporary housing and there was no educational component at that time but might be at some unknown point in the future. Based on that information and what he observed, he consulted with Town Counsel and issued a Cease and Desist Order. When he wrote the letter ordering the Cease and Desist he can state as a fact that the building was only being used for housing. If they have developed an educational program since that time, he can't understand why they haven't provided that information to him so he can make a determination.

Ms. Lance responded to that by stating that at the time, Mr. Stephens had been on the job for about two months. She stated that she is not sure if Mr. Stephens understood the questions that were being asked of him. However it is true that classes were not running at that time.

Mr. Hansson asked Mr. Sheehan what the legal use of the building was and he replied that at the time of the Cease and Desist Order the legal use of the building was and still is a nursing home. No one has come to him and stated clearly that there are educational uses going on there. He observed people living there and was told by the Program Manager of Lutheran Social Services that they were using the building for temporary housing for refugees.

Board member Sharron Ampagomian asked Ms. Lance how long she has been associated with Pegasus Holdings. Mr. Muner responded since June and Ms. Lance agreed.

Ms. Ampagomian asked Mr. Sheehan how long people have been living there without the necessary permits. Mr. Sheehan responded that according to the letter from Ben Stephens,

ZONING BOARD OF APPEALS – MINUTES – SEPTEMBER 10, 2009

people started living there back in April. Mr. Sheehan provided a copy of that letter to the Board. He was not aware of it until the Police Chief received a complaint and he observed it for himself.

Mr. Witkus asked if they were legal immigrants and Ms. Lance replied that they were all legal immigrants. They receive their green cards a year after arrival but come with work permits from day one.

Board member Diane Woupio stated she was confused. The written confirmation of partnership with Eastwood Inn from Ben Stephens indicates that people were living there in April and yet Ms. Lance stated it was not until June. Ms. Lance replied that she was confused with the dates as she was not involved at the time.

Mr. Witkus argued that there are refugees living there without permission and in his opinion it is clearly being used as a lodging house unless they can provide a written plan or documentation to the Building Inspector proving otherwise.

Mr. Sheehan then stated that Lutheran Social Services is free to go into his office tomorrow morning with the documentation necessary to obtain a building permit for the use.

Attorney Lane argued that it is not for the Board to determine whether or not there was an educational program going on in June and it is not for the Board to determine whether or not the Building Inspector was correct in issuing a Cease and Desist Order. The Board needs to determine if the program they have outlined tonight is within the By-laws. That is the determination that the Board needs to make.

Chairman Thomas Hansson argued that that is not what is before them. He explained once again that the Building Inspector issued a Cease and Desist Order. The applicant is appealing to the Board to determine if he was within or out of bounds in issuing that Cease and Desist Order. It is not for the Board to determine if what they want to do there is allowed. He stated to Attorney Lane that it sounds to him like all they have to do is apply for a permit. Attorney Lane disagreed and stated that was not the issue. They could walk in every day and ask for a permit and it is going to be denied. They asked once before and the Board denied it. Chairman Hansson argued that they did not come before the Board and ask for a permit. They came before the Board before to appeal a prior decision of the Building Inspector to deny a permit. It was denied because the necessary documentation supporting an educational use was not provided to the Building Inspector. Attorney Lane argued that they appealed to the Board to ask that they be granted a permit and the Board said no. Now that issue is in court and will be dealt with when the time comes. Now they are back stating that this is a permitted use and they want the Board to make a determination because the Building Inspector in his letter states it is not a permitted use. They are asking for the Board to determine that it is a permitted use. Under the By-law, educational uses are permitted by right and the kind of activity they are conducting is educational and not housing for people on a permanent basis. It is transitional housing for people who are being culturally educated to live in the United States.

Mr. Witkus argued that they could be put up in an apartment as well as this facility. Attorney Lane responded that colleges have dormitories. In many instances, educational uses have to have a residential component as well. He added that you can't put these people just anywhere and try

ZONING BOARD OF APPEALS – MINUTES – SEPTEMBER 10, 2009

and educate them. Mr. Witkus replied that they have not seen a solid plan as to what is actually going on there. Attorney Lane responded by stating that they just heard it.

Chairman Hansson then stated to Attorney Lane that what he is asking the Board to do is bypass the Building Inspector and give him a permit. Attorney Lane argued that he was not asking for a permit because he is aware the permits are issued by the Building Inspector. What he wants the Board to do is simply say that educational uses are permitted in that zone. Mr. Hansson replied that the Board doesn't have to do that because educational uses are allowed in all zones. Attorney Lane argued that the Building Inspector says they are not so the Board needs to tell the Building Inspector that he is wrong and that educational uses are allowed in a Residential zoning district.

Mr. Witkus stated that in his opinion 150 hours of living versus 15 hours of education is not enough to classify it as an educational use.

Board Member Carol Snow stated that at the last meeting they all agreed that educational uses are permitted by right. Attorney Lane replied that he needs the Board to put that in writing.

Ms. Lance spoke up and stated that there is only one class per week going on but there are many hours of individual training that goes on. Mr. Witkus once again replied that there is nothing in writing documenting what actually goes on there.

Ms. Ampagoomian stated to the applicant that the Building Inspector has stated that what he needs is a plan outlining what their scope of education is. That has always been the issue. No plan has ever been submitted. It is not up to the Board to speculate as to what their educational process is going to be. She also stated that she understands what they are trying to accomplish and she is not ignorant of the fact that these people need to adjust to a new way of living. The problem is that nothing is being submitted to the Building Inspector for him to base his decision on. The Building Inspector has stated this evening that they can see him tomorrow morning with a plan. Ms. Lance responded to that by stating that she could not possibly see him tomorrow morning.

Chairman Thomas Hansson then read aloud a section of the letter that was sent to Mr. Ben Stephens, Program Manager for Lutheran Social Services of New England by the Building Inspector. "I understand that Mr. Muner believes that the future uses LSS is considering for the Site, such as employment training and ESL instruction, would be "educational" uses allowed by right in the R-2 zoning district. Because no such use is presently being made of the Site I cannot offer an opinion." Mr. Hansson stated that the Building Inspector was explaining his reason for ordering the Cease and Desist. It is not that educational uses are not allowed. He is agreeing with that. What he is saying is that what he observed at that time was not an educational use.

Attorney Lane replied that the Building Inspector was wrong. He added that Ms. Lance has given testimony that there is a class being taught once a week and the Board has no evidence that the Building Inspector was correct in his determination.

Mr. Witkus argued once again that the scope of their educational use of the building should be in writing. There has to be a physical plan that goes along with this use especially since the Police Chief has had to go out there on a complaint.

ZONING BOARD OF APPEALS – MINUTES – SEPTEMBER 10, 2009

Chairman Hansson stated that it is his interpretation of the By-law that the main use has to be educational and the lodging of the residents is only a small part. The primary use of the facility has to be educational.

Attorney Lane replied that all of these immigrants are here because they have to be educated as to what life is like in the United States. This program exists to provide orientation and cultural services to recent immigrants. It is not providing permanent housing but integration, culture, and orientation for life in the United States. Once they get orientated, they get permanent housing somewhere else.

Ben Muner spoke up and said that one of the important things to remember is that this is a very fragile group of people. Most of them do not speak a word of English and they are coming from war torn countries. The fact that they can be congregated into one central area with blends of similar ethnic backgrounds allows them to get some sense of normalcy. It isn't the fact that it is in Northbridge or that he owns it, it is the fact that the building lends itself to this type of program in a cost effective manner so that Lutheran Social Services can do a better service for their clients.

Mr. Hansson replied that the irony is that no one here is against what they want to do.

Attorney Todd Helwig spoke on behalf of the owners of Beaumont Nursing Home. He submitted a letter to the Board from his law firm supporting the decision of the Building Inspector. The primary dominant purpose has to be educational to be exempt from the By-law. It sounds to him like the primary, dominant purpose is to keep people until they can find a permanent place. The lesser incidental purpose is cultural. The other thing that he finds interesting about this is that he was here on March 12th for a hearing and it was the same conversation except it was foreign exchange students who were going to learn something on an unspecified plan without a curriculum or any identified faculty or hours. We are talking about the same thing again. There is no plan, nothing to say what they are doing.

A motion was made by Sharron Ampagoomian to close the public hearing and take the matter under advisement. The motion was seconded by Diane Woupio, the vote being 5-0 in favor.

Board members agreed that there was no evidence documenting the educational aspect of the use of the facility and the Building Inspector was justified in basing his decision on what he observed at the facility at the time. All the applicant needs to do is submit documentation supporting their program and the Building Inspector can then make a determination to issue a permit or not based on what is submitted.

A motion was made by Stephen Witkus to deny the appeal for relief from the Cease and Desist Order dated June 22, 2009 issued by the Building Inspector for the use of the property as a lodging house at 2356 Providence Road, Northbridge, MA. The motion was seconded by Diane Woupio, the vote being 5-0 in favor.

Tom Hansson will write the decision.

PUBLIC HEARING: GARY & BARBARA SUTHERLAND, APPLICANTS

This hearing was held on the application of Gary and Barbara Sutherland, 319 North Main Street, Whitinsville for a Special Permit pursuant to Article V, Section 173-12, Table of Use Regulations, in order to allow the construction of an addition to convert a single family dwelling to a two family dwelling located at 319 North Main Street, Whitinsville, MA.

The property, shown on Assessor's Map 6 as Parcel 10, is located in a Residential-2 zoning district and is owned by Gary and Barbara Sutherland.

Sharron Ampagoomian read the public hearing notice. Assigned to this hearing were Thomas Hansson, Carol Snow, Diane Woupio, Sharron Ampagoomian, and Harold Hartmann.

Mr. & Mrs. Sutherland were present to discuss their application for a Special Permit. Ms. Sutherland stated that they have lived at this address for 29 years. The house was built by her grandparents in the 1940's. They would like to construct the addition with separate living quarters to allow her daughter and grandchildren to live there. She and her husband would reside in the new addition, and her daughter and grandchildren would reside in the existing portion of the house. The addition will consist of a two car garage with living quarters above consisting of one bedroom, kitchen, bathroom, living room. Because of the topography of the lot it was suggested by the builder to build the garage level with the basement of the existing house and the living space would be equal with the top floor of the existing house.

A plan was submitted but that plan would be subject to change once the Building Inspector reviews it. Ms. Sutherland stated that the size of the addition has changed several times but it appears it may be 24 x 30 with the knowledge that it must fit on the lot without encroaching on the side setback requirements and that the front setback of the addition can be no closer to the street than the existing house. Also, the applicant is aware that they will have to upgrade the septic system and they are in the process of moving forward with that. Ms. Sutherland stated that she has already spoken with the Board of Health.

There were no abutters present to speak for or against the application.

A motion was made by Diane Woupio to close the public hearing and take the matter under advisement. The motion was seconded by Harold Hartmann, the vote being unanimous.

Board Members agreed that the existing house is pre-existing, non-conforming and allowing a two family would have no impact on the character of the neighborhood nor would it be more detrimental.

A motion was made by Carol Snow to grant the Special Permit to allow the construction of the addition to convert the existing single family home to a two-family home with the condition that the front setback of the addition be no closer to the street than the existing house. The motion was seconded by Diane Woupio, the vote being 5-0 in favor.

Carol Snow will write the decision.

There being no further business, the meeting was adjourned at 8:20 P.M.

ZONING BOARD OF APPEALS – MINUTES – SEPTEMBER 10, 2009

Attested by,

Brenda M. Ouillette
Administrative Assistant

**THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE ZONING BOARD
OF APPEALS (Approved on January 14, 2010)**