Town of Amherst
Zoning Board of Adjustment
Tuesday March 15, 2016

ATTENDEES: R. Rowe, C. Vars, R. Panasiti (Alt), J. Ramsay, W. Sullivan (Alt), D. Kirkwood- Chair, and C. Mailloux- Community Development Director

D. Kirkwood called the meeting to order at 7:14pm, explained the ZBA process and introduced the board members

New Business:
CASE # PZ7129 – Appeal of Administrative Decision
Friends of Young Judaea, Inc. (Owner); Camp Young Judaea (Applicant) – Appeal of an Administrative Decision of the Building Official. 9 Camp Road, PIN# 008-059-000, Zoned Rural Residential

The Applicant is requesting the ZBA review the determination of the Building Official that cabins be sprinklered and temperature controlled, and that ADA compliant door operators be provided and drinking fountains be installed in order to satisfy IBC and NFPA requirements.

J. Griffin, attorney presented for the applicant.
Camp Young Judaea is a nonprofit organization that has been in operation for 77 years. It is an overnight camp for kids ages 8-15. Other representatives in attendance included Ken Kornreich- executive director, Paul Finger- board of directors, Marcy Kornreich- co-director and Stephen Peach- architect.

They are before the ZBA to appeal a decision of the building inspector from December that denied them the ability to replace two old girls cabins with new cabins. The new cabins include bathrooms and showers which the old cabins did not. The applicant is contesting the inspector's interpretation to require the cabins to be heated to 68 degrees, contain fire suppression sprinklers and have automatic door openers for ADA access in each cabin. There was an issue regarding drinking fountains, but that issue has been resolved.
The site plan was approved by the Planning Board. The project was halted in the building permit stage.

The new cabins are meant to replace the old open air cabins. The applicant's position is that they are not residences. They are only used seven weeks per year and are not rented or leased to other groups. There are two styles of cabins. One holds 14 campers + 3 counselors and the other holds 24 campers + 5 counselors.
The furthest point from an egress is 28 feet from a door and these are one-story cabins. The kids are 8-15 years old and shouldn't have any problem getting out in an emergency. Safety is of the utmost importance to the applicants. They are not interested in compromising the health or safety of the campers or staff.

However, the impact of upholding this interpretation will be an increase to cost of construction of $150,000 for each cabin. This is a significant cost especially as all of the cabins are planned to be replaced. Also, the imposition to heat and sprinkler the cabins will destroy the rustic camping experience for the kids that has been going on for so long.

The applicant understands that the building code enforcer believed the International Building Codes apply to this project, but they disagree with that.

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Criteria for reversal of a decision can be made three different ways.
1. True intent of the codes may not have been correctly interpreted.
2. The provisions of the code do not fully apply
3. Equally good or better form of construction has been proposed

Mr. Griffin has supplied a memo to the ZBA explaining his arguments for all of these criteria. The crux of the argument is that these cabins are not residences as described in the IBC. There is no use designation for summer/seasonal cabins in the IBC, but the interpretation that they are residences is not correct. They are only used for sleeping. The kids are in other buildings or outside all day doing activities.

The applicants are not seeking a waiver to any codes that unquestionably apply. They are seeking a common sense interpretation of the building code applied to a seven-week sleeping structure that doesn't have to comply with the codes of an R2 residential structure. These cabins are more like a lean-to or a temporary shelter.

With the enhanced smoke detectors they are proposing, the cabins are in equally good or better shape than what's required by the building department.

Legally, even if the board determines the codes apply, there is a clear exception in the IBC that if the primary purpose of the space is not for human comfort, the heating requirement can be eliminated. This requirement would entail insulation, sheetrock and windows to be added to the construction plans.

R. Panasiti spoke about some research he did to see if he could find separate requirements for campgrounds. He found an RSA, then went to the state regulations for the American Camp Association. This led him to the NH code of administrative rules which trumps the IBC in his opinion.
In those guidelines it talks about sleeping quarters and what's required.
He described who he contacted by phone: the national, then regional, then NH branches of the Camp Association. That all referred him back to the original RSA.
The sleeping quarter requirements are: one or more emergency exits and each sleeping area has one fire system. It also described residential vs seasonal campers. In R. Panasiti's opinion, there is no need to go through the process of appealing the decision.

Scott Tenney- Amherst Building official commented on the regulations R. Panasiti was referencing.
There are some minimal life safety requirements listed in the administrative rules, but nothing about how the building is to be constructed which is why he referenced back to the IBC. He does not see where the administrative rules trump the RSA 155. The administrative rules are primarily for licensing to operate the facility, not the construction of it.

W. Sullivan said camp is not meant for comfort. He said some of the board members are in agreement and suggested hearing from any opposition- anyone in favor of upholding the ruling- to keep this moving rather than to continue hearing from the camp/ appeal side since there is a lot of written material that's been presented.

D. Kirkwood stated he was unclear about who trumps whom.

J. Griffin said it's vital that the decisions are made quickly as the applicants need to finish the cabins before the seven-week session begins. He is familiar with the code of administrative rules that govern the camp. They are operational in nature and the camp complies with them. Plans were made with

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these rules in mind. He requested this board decide tonight about the R1 standards that require drywall, insulation and fire suppression so they can move forward with construction.

C. Mailloux stated that through their research they discovered other local communities are holding camps to these IBCs as well. Scott and Steve did the research. Scott can't issue a permit for something that he believes doesn't meet the code. This board can decide if the interpretation was correct.

J. Griffin said they also researched and found around the country that the application of these codes are not enforced- especially for seven-week camps when it's not rented out to anyone else at any other time of year. He also stated that 10-12 years ago some of the cabins were replaced without these requirements enforced on them.

D. Kirkwood decided to proceed with the hearing tonight as the applicant is willing to do so.

Ken Kornreich presented a PowerPoint presentation giving a history of the camp, a listing of the facilities on site and activities they offer. He commented that they take care of people's children. Safety is their primary concern.
Paul Finger described the location of the property and how they plan to renovate while maintaining the character of the original camp facilities. The planning board approved the phased renovation. He showed pictures of the old cabins to be replaced. He described the budget costs for the buildings and the impact of the additional 20% increase in construction costs.
He said the architect's opinion is that nation-wide they have not seen these restrictions put into effect. He asked how to find the proper category the camp fits into with the International Building Code. They aren't any of the types of housing that is listed under the R2. There has to be some judgement made. People sleep there longer than 30 days, but not permanently.
The New England director of the Camp Association said overall, these restrictions are not enforced in these cases. There were three examples when the building officer enforced these codes and those are not seasonal camps. Camp Young Judaea's dining hall isn't even heated. Their water system is above ground and can't be used year-round. He went on to describe some of the letters of support in his packet. He also discussed the topic of human comfort and how the kids and parents aren't looking for that.

Mr. Peach- architect from Dennis Meyers of Manchester gave his presentation. The statute allows for the board to make an interpretation when necessary. The first thing he does when making an interpretation is to maintain life safety of the occupants of the building. After that, if there is a gray area, he has to make the best decision possible. He mentioned chapter 12 of the code which references interior environment. The exception is when the primary space is not meant for human comfort. He read the code. With that in mind, he feels ok about building the cabin with open windows, exposed studs etc. because it meets the needs of the clients.
The code about automatic door operators requires them on one door of an R2 structure. It's beyond the common sense of what they are doing with the cabins. They are manned by staff at all times and the bathrooms and sleeping spaces are accessible for wheelchairs.
Regarding the automatic fire sprinkler system; they can provide a safe, better response time with an enhanced smoke detector system based on the size of the space and the materials used. Rather than require the water based system that will have to be drained 10 months a year, they will provide a system that provides safety with an enhanced system that can be maintained over a long period of time.

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R. Rowe asked if there are handicapped provisions.
There are 36" doors, space around all doorways, a handicapped bathroom and low counters which all meet the codes. A sloped entrance was considered, but they prefer to rent a ramp as needed rather than build a permanent structure on a building that won't need it. The cabins are age bracketed, so a portable ramp could go to the appropriate cabin rather than have a permanent ramp on a cabin where it's not needed.

D. Kirkwood asked how the enhanced detectors will give them time to get out rather than the sprinkler. More detectors would pick up the smoke and heat faster. There are audible and strobe features. They did change where the exit doors were located and added a fire wall along the center wall based on meetings with Scott and the Fire Chief.

Public comment
None

CASE #PZ7134 – Variance
Energy North Group (Owner), Blackdog Builders (Applicant) – Request for approval of a variance to allow a second free standing sign where only one is permitted. 75 Route 101A, PIN# 002-066-002, Zoned Commercial.

Nick Barret of Blackdog presented
He gave a history of why they came to the ZBA the first time and what changes occurred between then and now. The landlord denied the request to have the Blackdog sign on the Mobil sign. Blackdog is willing to modify their sign design in order to have the new sign.

The hardship issue is the ingress and egress to the building. It is difficult to see the building when traveling east and difficult to turn when traveling west. By installing a new freestanding sign, drivers would be warned earlier to allow them to turn. The applicant understands they may have to make changes to the building sign to add this one. They are willing to remove the wall sign if needed and would ask for a variance to allow both signs until they can get the freestanding sign up.

R. Rowe asked how flexible they are on the size of the sign. Very. They don't want to undermine the signage regulations. They really just want a freestanding sign.

The board discussed the size of the sign being asked for. C. Mailloux clarified that in Amherst standards are that the sign area is only counted as the area of the sign itself. The posts of the structure don't count.

C. Vars said the original sign was for 46 sq. ft. They are allowed 65 sq. ft. on a commercial building. The sign on the building now is 44 sq. ft. plus the 20 sq. ft. of the free standing sign would equal 64 sq. ft. so he has no problem with the size of the sign.

Public comment
None

J. Ramsay moved and C. Vars seconded to go into deliberations. Vote unanimous
J. Ramsay moved and C. Vars seconded no regional impact. Vote unanimous

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D. Kirkwood stated that W. Sullivan will vote for K. Shea

CASE # PZ7129 – Appeal of Administrative Decision

Discussion

R. Rowe compared the code sections. Life safety is an issue and the applicant has a plan to protect in that situation. The board discussed how the facility is or isn't defined in the codes.

C. Vars understands both sides of the issue. What else can the building inspector do? He's just following the codes.

W. Sullivan said he looks at it as a non-issue because they are camp cabins.

D. Kirkwood said it's a system of checks and balances. Better for the inspector to be literal with the code enforcement and the burden is on the applicant to ask for relief. There is a gray area. What they are presenting is a small dormitory- where groups sleep which is in the codes. But then there is the issue of comfort and without a specific definition that is hard to define. But what the campers are going there for is the camping aspect. What constitutes comfort to those campers? That is where there is some flexibility.

J. Ramsay pointed out that the seasonal aspect of the camp is distinct. It is used only in the summer.

W. Sullivan said that's why he doesn't consider it a residence.

This concluded the board discussions and they proceeded to answer whether there was an error made in the interpretation of the Building Code by the building official as follows:

W. Sullivan said the decision was made in good faith but yes, there was an error made. The word residence in the International Building Code does not apply to the cabins that Camp Young Judaea wishes to construct.

R. Rowe True

J. Ramsay inspector did not err in his decision. He is held to a higher standard to uphold the safety of Amherst residents. Not True

C. Vars the inspector had no choice, but he will agree it was a misinterpretation

D. Kirkwood said it was a misinterpretation of the gray area of human comfort. The way human comfort is applied at Camp Young Judaea is unique; therefore an 'error' was made.

4 True 1 Not True

D. Kirkwood stated that having passed the test, the appeal is granted.

R. Rowe moved no regional impact. J. Ramsay seconded. Vote unanimous

CASE #PZ7134 – Variance

Discussion

C. Vars restated his opinion that the total signage is ok with him.

W. Sullivan wasn't at the previous meeting and asked why it was denied before. Due to the size.

1. The Variance will not be contrary to the public interest.

C. Vars yes building set back from the road. No visibility and hard to find if you don't know where you're going. It will help their business visibility and safety

J. Ramsay agree and signage on the site meets restrictions

R. Rowe true

W. Sullivan true

D. Kirkwood true

5 True

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2. The Variance is consistent with the spirit and intent of the Ordinance.
J. Ramsay yes not going to cause negative impact to the site or public safety
C. Vars yes
W. Sullivan yes
R. Rowe yes
D. Kirkwood yes
5 True

3. Substantial justice is done.
W. Sullivan yes no harm to public. Benefit to applicant is obvious- it is hard to see their current sign
D. Kirkwood purpose of sign ordinance is to have a fair display and not detract and this doesn't
C. Vars agree
J. Ramsay agree
R. Rowe yes
5 True

4. The values of the surrounding properties will not be diminished.
R. Rowe yes based on common knowledge of that area and uniqueness of that property won't diminish
W. Sullivan yes
J. Ramsay yes
C. Vars yes
D. Kirkwood property values are subjective and the board can rely on their general knowledge of the area to make a determination. But the applicant did not address that so no, he didn't demonstrate it. We know it from our common knowledge. True
5 True

5. Literal enforcement of the provisions of the Ordinance would result an unnecessary hardship.
R. Rowe true this is reasonable based on the uniqueness of the property particularly in the location it's going
J. Ramsay yes it's reasonable. It's unique- the building is visible from one direction but not the other
C. Vars agree not against the ordinance
W. Sullivan agree
D. Kirkwood location of building is unique on the angle. It's a reasonable use, industrial/commercial area and only visible from one direction
5 True

D. Kirkwood stated that having passed all of the tests, the request for variance is granted.

C. Vars moved and J. Ramsay seconded to come out of deliberations at 9:07pm. Vote unanimous

Other Business:
The board discussed appointing members.
C. Vars moved to reappoint Alternate R. Panasiti for an additional 3-year term. J. Ramsay seconded. Vote unanimous

Mr. Sam Giarusso (not present) previously indicated he is interested in a ZBA position.
J. Ramsay moved to appoint Sam Giarusso to an alternate position through 2018. C. Vars seconded. Vote unanimous

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Minutes: January 19, 2016
R. Panasiti moved and R. Rowe seconded to approve the minutes of January 19th as submitted.
Vote: 5 in favor with W. Sullivan abstaining

Minutes: February 16, 2016
R. Panasiti moved and R. Rowe seconded to approve the minutes of February 16th as submitted.
Vote: 4 in favor with W. Sullivan and J. Ramsay abstaining

D. Kirkwood stated it is C. Mailloux's last meeting before she leaves for a new job. She came in with large shoes to fill and did it quickly and well. She displayed knowledge of state RSA and departmental regulations and zoning ordinances and made the board member's lives easier. He thanked her for her work.

R. Panasiti moved and J. Ramsay seconded to adjourn at 9:16pm. Vote unanimous

Respectfully submitted,
Jessica Marchant

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