Town of Rutland

Zoning Board of Appeals

Minutes: August 28, 2019

Meeting Opened: 6:33 P.M.

Attendance:

Board Members Present: Richard Surrette (Chairman), Chris Senecal (Vice Chairman), Robert Paulsen, Jacob Morris, Paul Kirrane

Board Members Absent: Arthur Wells

Guests: Clea Blair, Jr., Atty. George Kiritsy, Shawn Moore, David George (Town Planner), Norm Anderson, Tomeca Murphy (Secretary)

Votes:

Motion to accept meeting minutes from August 7, 2019—Motion made by Paul Kirrane, seconded by Chris Senecal; vote unanimous at 7:34 P.M.

Motion made to close the meeting--Motion made by Chris Senecal, seconded by Paul Kirrane; vote unanimous at 7:46 P.M.

Hearings:

Application for Use Variance: Rutland Plaza Inc., 79-81 Main St.
Continued from August 7, 2019

Notes:

Attorney George Kiritsy presented alongside Clea Blair, Jr. on behalf of Rutland Plaza Inc. Prior to opening the floor, Rick Surrette shared that the Town Administrator had sent a letter to the board stating that a use variance is considered an extreme relief and advised against it as the letter of the bylaw must be followed. Attorney Kiritsy argued that the zoning bylaw hasn’t updated the language since the Zoning Bylaw Enabling Act. According to his research on the Registry of Deeds, 2 use variances were granted by the ZBA in residential zones. One was the Bedrock Golf Club in 1993 and the other was the Rutland Veterinary Clinic, allowing expansion of a commercial building in a residential zone. Attorney Kiritsy feels that based on Appeals court cases, specifically one in 1980, this request is not a significant deviation from the bylaw and should be allowed. He also stated that the whole purpose of a variance is to stray from the bylaw and that there are no known appealers at this time. He believes the bylaw to be outdated and in need of revision.

Paul Kirrane said that, based on all of his research, the board does not have the authority to grant a use variance. He stated that this is not an existing business (as the previous examples were), thus there is no option for being considered grandfathered in. Paul did find that the board can grant a special use permit, which would allow the business to operate for a specified period of time with the hopes of amending the bylaw at Town Meeting. He did not feel that not having anyone to appeal the variance was a valid argument for approval.

Jacob Morris had a concern with the fact that both town counsel and the Town Administrator don’t believe the ZBA has granting authority for a use variance. Rick expressed that he believes use variances are extraordinary cases and require proving hardship, which the applicants have not. David George (Town Planner) stated that granting of a use variance by the ZBA is not expressly stated in the current bylaws. He is unfamiliar with a ZBA granting a special use permit, but he offered to send the question to town counsel to see if there's precedence.
Clea Blair, Jr. argued that this is a zoning relief board, not an enforcement board. He has sat on the Board of Appeals and knows that they are able to grant a use variance. Attorney Kiritsy hypothetically asked about dimensional variances that are granted all of the time despite the court system saying they should rarely be issued. According to Attorney Kiritsy, he found 9 pages on the Registry of Deeds dating back to 1990 of variances granted in the town. Regardless, Rick feels that Section 64 of the bylaw is clear that the board does not have the granting authority. Chris Senecal then asked if the board can't grant it, then who can? He knows from experience that use variances exist in other cities and towns and feels the board is the best entity to do it.

Paul suggested that an amendment be made to the bylaw to specifically mention Rutland Plaza. Mr. Blair then suggested approving the use variance, but specifying it is for Rutland Plaza only because he fears that the bylaw could still fail at Town Meeting. Chris feels that it's the best thing for the town and the situation is being over complicated due to our very litigious society.

The board then voted to close the public comment portion of the hearing.

Motion made to close public comment—Motion made by Robert Paulsen, seconded by Jacob Morris; vote unanimous at 7:11 P.M.

Bob Paulsen, a voting member, is in agreement with Chris's sentiments. Bob did ask for clarification on whether or not this variance would change the zoning from Light Industrial to Town Center 2 district. The answer to this was no—it wouldn't change the zoning, but rather would allow retail in a Light Industrial zone where only cultivation is allowed according to the marijuana bylaw. Rick also agrees with the sentiment that it is in the best interest of the town, but he feels that the town should change the bylaw if they want marijuana business in town. Rick then asked the board for their input on the letter from the Town Administrator. Chris is concerned an approval may start a precedent, but this is also a very unique case. He also feels that Section 64, paragraph 3 of the bylaw gives the board authority to grant the use variance. Chris's argument is that Mr. Blair is not the retailer going for the special permit to operate a marijuana business, he's strictly asking for a use variance. At this time, Rick is not comfortable with granting the use variance and the board voted.

Motion to approve the use variance for Rutland Plaza, Inc., 79-81 Main St.—
Robert Paulsen—Yes Chris Senecal—Yes Richard Surrette—No
Use variance denied & Rick will put the decision in writing for submittal to the Town Clerk

Discussions:

Chris Senecal felt that it wasn't clear to applicants what is needed when submitting to the Board of Appeals. He drafted up a “Standards for Review for Site Plan Approvals” and “Site Plan & Special Permit Submission Requirements.” The board reviewed and all are in favor of implementing these documents moving forward. The ZBA rules have not been updated since 2001, so Rick offered to revamp them and add in the pieces created by Chris. Paul suggested adding language that not everything listed on the forms will be required of every applicant and the board agreed.

Rick wanted to discuss the possibility of violating Open Meeting Law when it comes to disseminating information via e-mail prior to a public meeting. Paul argued that there needs to be some research allowed in advance of the meetings and others agreed. After discussion and review of the Open Meeting Law, the board agreed that information could be sent via e-mail, but that any opinions were not to be expressed.

Respectfully Submitted,

Tomeca Murphy
Secretary