Town of Rutland

Zoning Board of Appeals

Minutes: August 7, 2019

Meeting Opened: 6:30 P.M.

Attendance:

Board Members Present: Richard Surrette (Chairman), Chris Senecal (Vice Chairman), Robert Paulsen, Jacob Morris, Arthur Wells, Paul Kirrane
Board Members Absent: None
Guests: Clea Blair, Jr., Shawn Moore, Jeffrey Stillings, Norman Anderson, attendees (names unknown), Tomeca Murphy (ZBA Secretary)

Application Submissions:
None

Votes:

Motion to release the memo from KP Law as public record—Motion made by Chris Senecal, seconded by Paul Kirrane; vote unanimous at 7:55 P.M.

Motion to accept meeting minutes from January 16, 2019—Motion made by Chris Senecal, seconded by Robert Paulsen; vote unanimous at 8:07 P.M.

Motion made to close the meeting--Motion made by Arthur Wells, seconded by Chris Senecal; vote unanimous at 8:10 P.M.

Hearings:

Application for Use Variance: Rutland Plaza Inc., 79-81 Main St.

Notes:
Prior to the beginning of the hearing, Arthur Wells addressed Clea Blair Jr. regarding a prior case where he had represented a client in a case involving Mr. Blair. Arthur asked if Clea would prefer he recuse himself from this hearing and Clea said he had no issue with Art remaining on the board for this matter. Attorney George Kiritsy was unable to attend the hearing due to a scheduling conflict, so Mr. Blair presented on behalf of Rutland Plaza, Inc. They are seeking a use variance under Section 64 of the zoning bylaw. Rick Surrette stated that he believes a special permit will also be required by the Planning Board. The chairman of the Planning Board, Norm Anderson, was present in the audience and he said he agrees that a special permit will be needed. Chris Senecal stated that he believes the variance must be granted first. Clea stated that if he's not building a new structure, how would a special permit be granted? Jacob Morris stated that according to the new marijuana bylaw, a special permit is required and it is the responsibility of the person renting the space to obtain it—not Clea. Paul Kirrane stated that he did exhaustive research prior to the meeting, and found that since the current building is in the light industrial zone, the bylaw states that one can cultivate on the property, but cannot retail marijuana. Clea then provided the board with a copy of the zoning map to show that all of the surrounding area and the attached buildings are in the Town Center 2 district, but that this one particular portion of the property was put in the light industrial zone. He believes that it was an oversight in the writing of
the marijuana bylaw that his property was not included. He argued that there are several retail businesses located on the property and feels it's the best venue for a retail marijuana business. He argued that the bylaw allows for a use variance and states that being surrounded by Town Center 2 district would allow for the sale of marijuana. Paul then reiterated that the bylaw is clear that cultivation and sales can't happen in the same building and he doesn't believe that the Zoning Board of Appeals has the authority to override the bylaw. Arthur Wells agreed with this statement. Clea then read the wording of the bylaw in Section 64, B-3 and asked the board to review the bylaw arguing that they have the authority based on the shape of the property. Arthur then stated that the issue is that the wording says that a variance can't be granted when a special permit is required. Clea feels that he's essentially the primary abutter given that he owns the adjoining businesses and doesn't see anyone raising an issue over the variance being granted. Jake agreed with Clea about the location making sense, but also stated that use variances are rare and this situation is unclear on the hardship. Paul then reminded the board of a previous hearing held last year where the applicants did not have a right to change the use of a property because they couldn't prove a hardship. Rick suggested continuing the hearing to do further research and also to speak with Attorney Kiritsy. Chris asked if there is any precedence in the state of MA where uses are allowed to be changed? According to Section 64 of the bylaw, it states that the ZBA has the right to make exceptions regarding special permits. But does that allow for granting one without proof of hardship? Paul explained that the board is governed by rules even though they agree with Clea's points. Chris then asked if all three sections in Section 64 need to be met, since #3 should not apply since the application wasn't denied by the building inspector. Jake did not feel this was special permit criteria and Paul stated a permit is required. Clea stated that his hardship is that he needs to be able to market the property to potential renters and he's not the one that's required to obtain the special permit. Financially, he could construct a building only feet away in what would be considered Town Center 2 district, so how does it make sense that he can't use an existing building due to outdated zoning? Arthur suggested that Attorney Kiritsy re-do the application to make the description more general, rather than specific to marijuana. Rick agrees that if the language is changed, the use variance may be possible. Chris asked if legally the ZBA has the authority to do what is in the best interest of the town and the answer is that it's the goal, but it's not legal.

The board voted to continue the hearing to August 28, 2019 at 6:30 P.M.
Motion made to continue the hearing—Motion made by Chris Senecal, seconded by Robert Paulsen; vote unanimous at 7:53 P.M.

Public Comment:

Shawn Moore: Mr. Moore stated that although he is a member of the Planning Board, he was attending the hearing as an individual and not as a member of the board. He asked if it would be better if the renter of the space obtained the special permit first. Chris Senecal does not believe that is possible without the use variance first being issued.

Norm Anderson: Norm stated that he helped to write the marijuana bylaw, and during the process, the committee consulted with public safety officers who felt that it was a bad idea to have a marijuana business on the outskirts of town. Almost all industrially zoned land is on the outskirts of town, so that is the reason why retail sales were not included in the bylaw for light industrial zones. Art feels that the statutory language can be interpreted differently, and if the purpose was to make sure marijuana retail was not happening on the outskirts of town, then he can't see a situation where any other zoning district would be in a similar circumstance for setting precedence. As it stands now, only 1 marijuana retail store will be allowed in the town.

Planning Board recommends speaking to the Chief of Police to get his input on the proposed project. Otherwise, the PB has no other comments or concerns.
The Board of Health held a meeting on August 5, 2019 to discuss the project, but a memo on their findings was not received prior to the meeting.
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 would like to review and will discuss further at the next meeting.

Rick Surrette and Arthur Wells were appointed for new terms.

Respectfully Submitted,

Tomeca Murphy
Secretary