Town of Winchester

Zoning Board of Adjustment

Minutes

9-14-23

Meeting opened: 7:00 pm

Members Present: Jason Cardinale (V. Chair), Colby Ebbighausen, Lou Fox (Chair), Becky Roy, Neal Stetson (Alternate), Margaret Sharra (Alternate). Bill McGrath is absent.

Public Present: Liam Clancey (Applicant), Mark Tigan, Michael Stephens, John Stephens (applicant), Justin Pelkey, Kevin Peters.

Evan O’Connor is present as the Land Use Administrator

**First order of business:**  The board reviews the minutes of 7-13-23 for approval.

The board decides to push the minutes review to the next meeting.

**Second order of Business:** The board reviews for acceptance an application submitted by Kennedy Estate LLC for a Special Exception to construct 3 guest cabins relating to Article XXII, Table of Permitted Uses, of the Zoning ordinance for property at 398 S. Scofield Mountain Road, map 4 lot 25.

**J. Cardinale moves to accept the application as complete, B. Roy Seconds, all in favor.**

M. Sharra notes the input given to the board by Mark Tigan and states it will be addressed after testimony by the applicant.

The chair indicates he is going to sit an alternate. N. Stetson indicates that he works for the applicant and therefore has a conflict of interest. M. Sharra states that her husband works for the applicant but does not see that as a conflict of interest. The chair agrees and sits M. Sharra as acting alternate.

**L. Fox moves to open the public hearing, J. Cardinale seconds. All in favor.**

Liam Clancey addresses the board. L. Clancey is the owner of Kennedy Estate LLC, which is a legal entity in ownership of the property being addressed by this application. L. Clancey is looking to add 3 guest cabins as a way to expand the company, to be used as personal guest cabins and potentially to be rented as short-term lodging. This would be a method to generate revenue for Kennedy Estate LLC.

L. Clancey goes over a general overview of his plan. The proposed cabins are in a beautiful location, will not be disruptive to neighbors, and is intended as a luxury retreat. The original intent was to host larger events, but the scope has been revised to be just cabins as in the application. The property will be used only for lodging. The intent is to future proof the lodging amenities to be in the future allowed for rentals.

L. Fox asks if the main property located next to the proposed cabin property is for personal use only.

L. Clancey answers that yes there are no functions being hosted at the main property, and no plans to do so in the future.

L. Fox asks the applicant to walk the board through the points on his application.

L. Clancey goes over the Special Exception merit questions:

A) The proposed use shall be permitted in the district because it represents no burden to the road, neighbors, or surrounding countryside. Each cabin has an occupancy of 2 persons. The cabins will be used for personal use in the short term, the special exception for lodging is to future proof the concept so it can eventually be rented to select persons.

J. Cardinale notes that the occupancy probably equals out to 3 additional cars on the road per day.

B. Roy states that the property must be used for this purpose within 2 years, or the special exception expires.

M. Sharra corrects this statement saying that it must be built within those two years, not necessarily rented.

L. Clancey states that the property, if approved, will be used as personal property for the time being. There is no immediate plan for rentals. There is no capacity for events so that should not be an aspect considered in this application. The application is purely for future proof, conceptual.

Each cabin has an interior space of 480 Sqft, and an exterior rooftop deck area of 160 Sqft.

B) The specific site is an appropriate location for such use because it will be constructed well within the confines of the property, 500 feet from the nearest neighbor. No line of sight.

C) The use as developed will not adversely affect the adjacent area as it is located well within the boundary of the property. The closest lot is also owned by Kennedy Estate. Over 1000 feet away from any other property.

L. Fox expresses concern about the applicant being an absentee owner not aware of guest activities. It is stated that no large events or parties can be held.

L. Clancey states that he will hold the property to an extremely high standard. He intends the property to be used as a mindfulness retreat for artists, and it will not be used for parties or large groups, each cabin will be spaced from the other and will not be for multi-party groups. The applicant is incredibly sensitive to the surrounding community and intends to price the property as such it attracts the ‘correct’ sort of guests.

D) There will be no nuisance or serious hazard to vehicles or pedestrians due to the small size of accommodations and the limited number of units. Possible that the property will be marketed to artists and be used as an art installation. Will increase the company and by extension the town’s profile. There will be no weddings, parties, gatherings etc. no disruption/negative impact.

E) Adequate and appropriate facilities will be provided for the proper operation and use as it will be functional year-round, up to code, and have all utilities.

B. Roy questions how far away the cabins will be from each other, and if they will be serviced by separate septic systems.

L. Clancey answers that the space will be determined by cost, however, the cabins are not to be communal, each is for separate guests.

M. Sharra requests photos of the current Kennedy Estate building, as that would be helpful to the board. The concept of container houses can be hard to grasp.

The applicant pulls pictures for the board, inspected by both the board and the public.

L. Fox asks the public if any abutters would like to speak on the matter.

Mark Tigan, abutter, addresses the board. M. Tigan makes clear that there is no issue in M. Sharra sitting on the board, doesn’t see a conflict. The initial concern is the process of this application. That this would indicate a change in the surrounding area. M. Tigan believes that the application is incomplete. He received the complete application in full earlier today. It is stated that it is concerning that so much has changed in this application. Was manufactured housing is now lodging.

M. Sharra addresses what discrepancies were in the process. There were errors in the initial application, it was submitted on a variance form instead of a special exception. The timeframe of the updated application being public was 4 days before the hearing. The initial abutter notice had a typo, “lot 5” not “lot 25”. Abutters were notified in time correctly. The intent was the same, it just was inputted on the wrong sheet. It is fair to address these discrepancies, however it is implied that the application still has merit. The verbiage of manufactured housing was in error, the intent was always lodging, there has been no change in the intent of the application.

B. Roy states the project didn’t change; it was just the paperwork that needed correction.

LUA O’Connor clarifies that the board has both the original application and the revised application.

M. Tigan states that the change from variance to special exception was not given enough time and should follow the same time restrictions as a new application. The address is unclear. The site plan has changed. Recommends that the hearing be delayed to another date due to the question of proper procedure.

M. Sharra clarifies that it is Scofield Mountain, not S. Scofield Mountain, as is correct on the updated application. The street number was unclear, but it is irrelevant as the property in question is an empty lot, has no street number.

L. Clancey clarifies that the correct address can be confusing to discern, however it is the empty lot that is in question, is on Scofield Mountain Road.

J. Cardinale clarifies that the special exception in from of the board has the correct address, map/lot, and ordinance in question.

It is determined by the board that these are correct on the revised application.

B. Roy asks if the cabins will be accessed through the driveway on the main Kennedy estate lot.

L. Clancey answers yes.

C. Ebbighausen asks when the updated application was publicly available.

M. Sharra answers that it was posted Monday, 4 days before the hearing, however, not much changed with the application intent.

B. Roy suggests that the hearing be postponed due to the confusing nature of the application.

J. Cardinale suggests that it would give the applicant time to address some of the questions brought to the hearing.

M. Tigan suggests that container houses are a grey area. They could be considered mobile homes, if not they are uncontrolled by ordinances.

M. Sharra states they cannot be considered mobile homes as they do not have wheels and are on permanent foundation. This is a metal home. Homes can be straw, concrete, glass, metal etc. as long as codes are met.

C. Ebbighausen states that they meet all building specifications to be considered permanent housing/ cabin.

M. Tigan states that permanence doesn’t factor in. Also stated is that in the original application it is stated that it will be for friends and family. M. Tigan questions that if they are intended for friends and family, why are they placed so far away from the main residence and nearer to neighbors.

L. Clancey states that the reasoning behind the location is to take advantage of the beauty within this lot, and is placed at the height of the property, in order to maximize the beauty of the cabins. This location is the one that makes the most sense for the property. The goal behind the application is to eventually generate income, there is no deception intended, it is meant to future proof the property.

L. Fox states that there are a lot of unknowns within this application. Hard for board to make a decision based on unknowns.

L. Clancey states he would be happy to revise the application, doesn’t want the reason for the application to fail to be solely because of the subletting aspect. Happy to omit subletting from the application.

L. Fox states that everybody would be better served if the application was cleaned up and pushed to a later date. Doesn’t want issues from this application. L. Fox states that Mr. Tigan brings up interesting points about access in his letter to the board.

L. Clancey states that the no trespassing signs were not to deter fair use of the greater property, just to deter access of the parts of the property under construction.

M. Tigan states that the unknowns are worrying. M. Tigan brings up the topic of paper roads, Barber Road specifically requires access as that is a town road.

M. Sharra states that Barber Road does not fall onto Mr. Clancey’s property, this is an error of the map.

LUA O’Connor states that the map was pulled from google maps, which is not always correct in their naming system or road placement, not an official town map.

L. Fox states that the application should be cleaned up and pushed to a later date.

J. Cardinale states that no information has been unavailable.

M. Sharra asks if the board is satisfied with the revised application, suggests it should possibly be pushed to another night.

L. Fox suggests allowing more information to be gathered and the matter be pushed to another night. L. Fox clarifies that he is not asking for a change in the application, just a better idea of the entire plan.

J. Cardinale clarifies that the Revised application was available on Monday.

B. Roy states that abutter notices were sent out at the correct time, however, the application on file at that time was not the revised application, which is a concern.

Kevin Peters, abutter, addresses the board. K. Peters states that he got in contact with Mr. Clancey before the meeting. K. Peters asks the board if Mr. Clancey can revise the use to omit rentals within the current application. It is stated that these are not mobile homes in any sense. The main Kennedy Estate house Is made of containers. It is asked how a double container cabin would be defined. K. Peters voices that there is worry that if someone bought this lot after approval was given, would they also abide by these peace and tranquility claims given by the applicant.

L. Fox clarifies that the board does not look at applicants, they look at the property specifically. L. Fox expresses concerns about challenges to the application’s validity and completeness, and just wants to make sure everything is properly done.

L. Clancey answers that the property could be sold but they would still have to abide by the conditions of the approval.

B Roy asks if the board should hear the application at a later date due to the questions about timely notice.

J. Pelkey, abutter, addresses the board, states that it is difficult to see the plans.

L. Clancey states that the location is through the main gates and up the hill.

The board is in agreement that there wasn’t appropriate notice on the revised application.

The applicant is informed by the board to come back with answers to specific questions, that his information was good the timing was the main issue.

**J. Cardinale moves to postpone the public hearing to Thursday, September 28th, 2023.L. Fox Seconds. All in favor. 8:18 PM.**

**Third Order of Business:** The board reviews for acceptance an application submitted by John Stephens requesting a Variance to subdivide map 15 lot 21, 85 Old Swanzey Rd, to be used for his son’s house, relating to Article XXI, N.

**C. Ebbighausen moves to accept the application as complete. L. Fox seconds. All in favor.**

**J. Cardinale moves to open the public hearing. L. Fox seconds. All in favor. 8:24 PM.**

John & Michael Stephens Addresses the board. J. Stephens wants to subdivide his 6-acre lot into two 3 acre lots, one with frontage on a class 6 road, to give the second lot to his son, M. Stephens. The issue is that the new property possesses frontage only on a class 6 road.

M. Sharra asks if there is any class 5 frontage on the new lot.

M. Stephens answers that the lot starts after the driveway of the old lot, which is where the class 5 road ends.

M. Sharra asks where the road is plowed to.

M. Stephens answers that they plow to right after the driveway.

The board decides that the select board and the planning board would both have to give approval for this to happen. The board and the Stephens discuss the specific needs of the driveway placement and specifics of where the current structures are placed on the lot.

M. Sharra asks if the new lot would be buildable.

J. Stephens states that it would be buildable.

L. Fox asks J. Stephens to go over his application with the board.

J. Stephens notes that there is a cemetery on the lot, and that it is maintained.

J. Stephens reviews the Variance application. 1) Granting of the variance will not be contrary to the public interest because it is the last lot on the public road, no abutters object.

2) The spirit of the ordinance is observed because the 6-acre lot would be split into two 3 acre lots, and there would be no need for additional town maintenance.

3) By granting the variance substantial justice will be done because M. Stephens would take the lot and have his own house.

4) the value of surrounding properties is not diminished because there would be a new house put on the lot, the only neighbors being J. Stephens and his brother in-law. Mitchell sand and gravel is located behind the lot as an abutter.

5) Literal enforcement if the provisions of the ordinance would result in unnecessary hardship; owing to special conditions of the property that distinguish it from other properties in the area, because: a) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: it is needed to access a piece of land that does not have 200 ft of town maintained road frontage, but would not require the town to do any additional maintenance. B) the proposed use is a reasonable one because M. Stephens would be able to move his family into the town where he was raised and would be raising his daughter there.

B. Roy notes that despite approval, the highway department could shut down the project due to driveway approval.

M. Sharra notes that the Stephens would have to go to the planning board for a subdivision.

M. Sharra notes that there is a specific waver to obtain a building permit for a class 6 road.

The board agrees that the lot is buildable.

M. Sharra notes that the Stephens should seek approval from Barry Kellom (Fire Chief), Dale Gray (Highway Department), the Select Board, and the Planning Board before they hire a surveyor to apply for subdivision.

**J. Cardinale moves to close the public hearing. B. Roy seconds. All in favor**

The board agrees that the subdivision makes sense, meets conditions of variance, assuming all proper channels are gone through, there should not be any issues. Agrees with all criteria.

**M. Sharra moves to approve the variance, contingent upon obtaining written approval from the fire chief and highway department. L. Fox seconds. All in favor.**

**Fourth order of business:** LUA O’Connor announces to the board the housing workshop being held on Thursday 9/22/2023, to get input from the community, and invites all board members to attend.

**J. Cardinale moves to adjourn. M. Sharra seconds. All in favor 8:53 PM**

Minutes respectfully submitted by:

Evan O’Connor, LUA

Minutes approved by the board on:

Minutes signed by:

Lou Fox, Chair