

Zoning Board of Appeals Special meeting July 14, 2009

Those in attendance: Suzanne Smiley, Chair; Ray Purington, Bill Burnham, Tupper Brown, Alyn Hastings, Bonnie Welcome, Clerk

6:00pm

Meeting called to order

Discussion of the special permit hearing of Tuesday July 14th regarding the petition filed by Alden Booth and Elisabeth Greenough to refer to the business as a single entity and to modify the existing hours to operate 7 days a week from 7am to midnight.

Chairwoman Smiley has searched M.G.L. but has not yet found a definition of the word 'open'. Case law may be needed to clarify this.

Chairwoman Smiley clarified the 8 guidelines the ZBA follows when making decisions on a special permit. Continued discussion of the original special permit application and findings. One of the biggest concerns is the effect on neighborhood character. How does a business operate in a residential/agricultural zone and coexist with abutters.

Chairwoman Smiley noted that any member of the ZBA can make a motion at any time. Discussion continued with Ray Purington stating his concerns for the Applicants request for modification of their hours to operate as their business is not in the Village Commercial district and the effects this would have on the residents in the center of town. He understands the need for the business to have private functions, holiday parties, etc... and feels 6 days a week is enough time for the business to operate and offers some flexibility to hold private functions.

Discussion ensued regarding which 6 days a week the business should be open. Neither Chairwoman Smiley, or Alyn Hastings were comfortable in choosing which 6 days of the week that would be. They felt we had no basis to dictate that and it was the business owners choice. Bill Burnham felt the board should specify which 6 days of the week the business was allowed to be open.

Ray Purington stated the suggestion that was made during the public hearing regarding a 'neighborhood steering committee' was a good idea and that perhaps it would alleviate some of the problems between the abutters and the business.

Continued discussion of reaching a compromise between the Applicant's request and the concerns of the neighbors. Possibly allow 7 days a week with Monday and Tuesday until 9pm and one late night until 12:00am. Ray Purington is against the business being open until midnight in a residential area. Suzanne Smiley stated there is a history of a store and/or business for many years in that location, and the most recent owner would close by approximately 8pm and also there was not as many cars, people, etc

Alyn Hastings stated that Mr. Tomasi did state in the public hearing that the noise wasn't every night, it was only a few times. She feels Friday and Saturday night until midnight is reasonable for the business to operate.

Suzanne Smiley discussed the Applicant's intent as stated in the public hearing to continue with their current hours but wants the flexibility to be open additional days for private functions. She said the ZBA could write conditions such as allowing the business to remain open for 30 minutes past 11pm for cleanup, etc which could help the Applicant's so they don't feel in violation if they are in their building after 11pm.

Ray Purington is still not in favor of the business being open 7 days a week.

Suzanne Smiley stated it was her desire to make this situation work for both the business and the neighbors to coexist.

Bill Burnham motioned to allow the petitioners to be open on Monday & Tuesday until 9pm, and retain the 11pm closing time Wednesday thru Sunday with an additional half hour for clean up time. Ray Purington seconded the motion.

Discussion continued regarding Tracy Rogers' letter to Mr. Booth dated April 16, 2009 (copy attached) and Town Counsels' opinion on the definition of 'open'. ZBA members concurred this is a matter for attorneys to define.

Bill Burnham made a motion to amend the original motion to allow the business to be open Monday and Tuesday until 9pm, 11pm the rest of the week and eliminate the time limitations for cleanup. Seconded by Alyn Hastings. All in favor. Aye. No abstentions. No opposed. Unanimous.

Discussion continued regarding closing at 9pm versus 10pm. Ray Purington stated this allows the business to operate the full 7 days a week. There was no guarantee there would be the desire to be a 7 day a week operation, staff may enjoy a day or two off and there may be no events.

Bill Burnham stated the other option was to close on Monday and allow 6 days a week, Tuesday through Sunday until 11pm.

Chairwoman Smiley read the motion on the table.

The original motion as amended made by Bill Burnham, seconded by Ray Purington is withdrawn by both parties.

Continued discussion of Applicant's business hours. Ray Purington discussed being a neighbor versus an abutter. He reiterated no more than 6 days a week, not past 11pm.

Alyn Hastings asked if there could be more compromise in that proposal as it seemed to favor one side more than the other.

Suzanne Smiley referenced the Applicant's letter dated April 10, 2009 that was read by Mr. Booth during the public hearing that requests the business be open up to 7 days a week, with no intention of expanding public hours to these days, but for financial stability to use these extra days for private dinners or receptions.

Citing the community needs and neighborhood character, Ray Purington made a motion granting the modification to the previous issued special permit to allow the business to operate no more than 6 days per week, 7am to 11pm. Seconded by Bill Burnham.

Discussion of our intent not to limit clean up or prep time. Which day should private parties be held, Mondays or Tuesdays.

All in favor. Aye. No abstentions. No opposed. Unanimous. Suzanne Smiley – Aye. Alyn Hastings – Aye. Bill Burnham – Aye. Ray Purington – Aye

Alyn Hastings made a motion to allow the business to at all approved hours as a restaurant and store. Seconded by Ray Purington. Any discussion. No. All in favor – Aye. Opposed – No. Any abstentions. No. Unanimous. Suzanne Smiley – Aye. Alyn Hastings – Aye. Bill Burnham – Aye. Ray Purington – Aye.

Chairwoman Smiley thanked everyone for their participation.

8:00pm

The next meeting will be August 11, 2009 at 7:00pm.

Motion to adjourn by Alyn Hastings. Seconded by Suzanne Smiley.