

TOWN OF WENHAM

Zoning Board of Appeals
Meeting of September 3, 2014
Burnham Hall, Wenham Museum, 132 Main Street

Pursuant to the Open Meeting Law, M.G.L. Chapter 30 A, §18-25, written notice posted by the Town Clerk delivered to all Board members, a meeting of the Zoning Board of Appeals (ZBA) was on September 3, 2014 at 7:00 PM in Burnham Hall.

With a quorum present, the meeting was called to order at 7:00 PM.

ZBA Members Present: Jeremy Coffey, Anthony Feeherry, Timothy Mansfield, and Associate Shaun Hutchinson
Also present: Emilie Cademartori, Coordinator; Attorney Mark Bobrowski, Special Counsel for the Town; Charlie Brett, Building Inspector; Catherine Tinsley, Minutes Secretary

Officials present not participating: Selectman Catherine Harrison; David Geikie, Chair Planning Board; Paul Weaver, Town Counsel

Mr. Feeherry announced the meeting was being video /audio recorded by the applicant. At the request of Mr. Feeherry, Attorney Fierro agreed to provide the Town with a copy of the hearing videos to be included in the records.

Public Information:

Meeting Agenda

Letter: Attorney Tymann / Dr Miller dated September 3, 2014

Letter: Krokidas Bluestein dated September 2, 2014

Miscellaneous emails from public

Email: Department of Public Health: Cross Keys does not require licensing at this time

Applicant's Video recording of meeting

Continued Public Hearing for 76 Topsfield Road (Map 25 Lot 17) Applicant: 110, Inc. Cross Keys Retreat Appeal filed pursuant to MGL c 40A ss 8 & 15 of the Zoning Enforcement Officer's July 2, 2014 cease and desist order and decision that the operation of Cross Keys Retreat at 76 Topsfield Road is non-compliant with Town of Wenham Zoning Bylaw allowable uses in a Residential zoning district.

Present: Cross Keys Co-founders David Ray and Ari Nikolaou

Applicant Legal Counsel: Attorney Ben Fierro, Lynch & Fierro, and Attorney Paul Holtzman, Krokidas & Bluestein

Vote: Mr. Mansfield moved to reopen the public portion of the hearing and it was unanimous to do so.

ZBA members Feeherry and Mansfield each completed a site visit on August 30, 2014 at Cross Keys facility and talked to the co-founder. There were no deliberations. Mr. Feeherry also stated he stopped at Dr. Miller's home and walked around the back yard; he was on the property for about ten minutes.

Mr. Coffey spoke with the Board about questions he had since the last hearing:

- Why are some group meetings off site? The Board was informed that four nights a week the guests attend as a group, Alcohol Anonymous (AA) meetings as a way to have exposure to public meetings.
- Why changes were done to the Cross Keys web site, noting Attorney Tymann's letter suggested these changes made the description more fitting for the Dover Amendment. The Board was informed that changes were made to accurately describe what takes place, noting no new pages or paragraphs were added. It was also noted the Department of Public Health opined that specific language not be used by Cross Keys.
- Who developed the curriculum and what are that person's credentials. The cofounders developed the "peer to peer" curriculum based on the founders combined experiences and knowledge. Mr. Ray reviewed his college degrees holding a Bachelor's Degree in Religious Study and Masters Degree in Christian Apologetics.
- Do the clients have to be of any particular faith? Mr. Nikolaou indicated no requirements.
- Is Cross Keys seeking any religious exemption under Dover? Atty Fierro answered no religious claims, only education and the Fair Housing, ADA compliance etc. Atty Holtzman added that case law supports that the teaching of "moral values" has been deemed education. (Bible speaks)

Mr. Feeherry reiterated his view that there are no clear case law examples that fit this situation. Atty Holtzman disagreed claiming that there has been multiple consistent decision regarding addiction and rehabilitation from addiction as being covered by the Dover exemption.

Mr. Feeherry brought up some concerns / questions he had after his site visit including that the guests talk about what they went through before the program. He observed these fears, troubles, anxieties are being brought to “the back yards of the neighbors” on Topsfield Road, noting that Cross Keys is a two to four week initial program compared to the second stage of Number Sixteen in Wakefield. Cross Keys responded that the difference is the approach. The first Four weeks include an emersion into steps 1-7 of the 12 Step Program; Steps 8-12 are continued at Number Sixteen with the intention of what is learned would be applied the rest of one’s life.

Mr. Feeherry went on to question if there is a different program for each type of addiction e.g. alcohol, or liquor and was told there is not. He expressed concern about setting precedence.

Mr. Mansfield commented that the Zoning Board has a significant burden to protect the residents of Wenham through zoning regulations, variances, and special permits. The Dover Amendment is used to exempt zoning for specific reasons religion/education. Each situation is taken under consideration by the Board; there is no precedence as there have been other similar cases in Town. Mr. Mansfield asked Town Counsel Paul Weaver if the other group homes in Town were considered Dover exempt uses and Mr. Weaver confirmed that yes both the current three are as was a prior home that is no longer being operated. Mr. Coffey noted that even if Cross Keys were approved, it does not automatically approve future similar uses.

Mr. Feeherry opened the floor to comments from Wenham residents.

Lisa Terranova, Maple Street, applauded those who have gone through the Cross Keys process for what they have achieved, saying no matter what decisions are made, sobriety is the most important. She referenced Cross Keys’ statement that they are not affiliated with AA but teach the AA process. After doing her own research, she opined the tradition of anonymity of AA is being broken with attending the public controversy, and further questioned copyright issues of using AA “Big Book”.

Vote: Mr. Mansfield moved to close the public hearing and it was unanimous to do so.

The Board deliberated and talked in length regarding their decision. The burden of proof was on the applicant to whom that Cross Keys is allowed to operate in a residential area under the Dover Amendment. It was noted the Board must be unanimous in their decision and a written decision would be issued. The Board focused on determining if education is more than 50% of the residential, spiritual, and rehabilitation programming and is the primary use. The Board agreed the Case Law did not provide them with any insight or help in making a determination. The Board considered the definitions of education and primary and considered similar venues called retreats, noting Cross Keys is not referred to as a school and those attending are called guests, not students. The Board talked about the syllabus, the curriculum, and the schedule including the consideration that this is peer-to-peer interaction and if education continues out of the “classroom” as the predominate activity. The Board agreed to hear the opinion of Shaun Hutchinson, who confirmed he attended for each hearing and had reviewed all the material. He concluded that education was more than 50% but questioned if 50% is enough to be considered predominant. Attorney Bobrowski observed that case law says primary or dominant, not predominant.

The Building Inspector talked about the difference of a Special Permit to exempt something otherwise not exempt such as a commercial operation, adding the applicant could apply for a Special Permit.

There was a side discussion with Special Town Counsel regarding the process and timing from the August 1, 2014 date as the submittal of the appeal.

Vote: Mr. Feeherry moved, and it was seconded, to uphold the Building Inspector’s Cease and Desist Order and decision to deny the Dover Amendment approval, but that the effect be stayed for 90 days beyond the date of the filing/recorded with the Town Clerk, but not more than 114 days from August 1, 2014 and nothing prohibit the applicant to request a special permit from the Zoning Board of Appeals as a non exempt educational use, and that a written decision be completed by September 29, 2014 to provide the Board’s decision to Judge Young. The motion carried by majority vote with Mr. Mansfield voting in the negative.

Approved 11.5.14

Project updates

Ms. Cademartori reported no updates at this time.

Review minutes - August 6, 21, 27, 2014

The minutes were held; no action was taken.

The next meeting of the ZBA is Wednesday, September 24, 2014 at 7:30 PM

Mr. Mansfield moved to adjourn at 8:28 PM and it was unanimous to do so.

Respectfully submitted by

Catherine Tinsley

9.10.14