

TOWN OF WENHAM

Zoning Board of Appeals
April 6, 2015
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 held on Wednesday, APRIL 6, 2015 at 7:30 PM in the Burnham Hall.

With a quorum present, Mr. Feeherry called the meeting to order at 7:33 PM

Board Members Present: Jeremy Coffey, Anthony Feeherry, Shaun Hutchinson, & Associate Member Chris Vance
Also present: Emilie Cademartori, Coordinator; Catherine Tinsley, Minutes Secretary
Present but not participating was Town Counsel Paul Weaver (arrived at approximately 8:41 PM)

Public Information:

Video Recorded by Cross Keys

Agenda

Minutes- March 11, 2015; March 25, 2015

Documents:

- Cross Keys: Letter dated April 3, 2015, Paul Holtzman, Krokidas & Bluestein

Continued Hearing

Location: 76 Topsfield Road (Map 25 Lot 17)

Applicant: Benjamin Tymann on behalf of Lawrence Miller & Allison and Dennis Maguire

Nature of hearing: An Appeal filed, pursuant MGL c 40A, ss. 8 & 15, of the Zoning

Enforcement Officer's September 11, 2014 decision granting reasonable accommodation under the federal Fair Housing and Americans with Disabilities Acts, to 110, Inc. allowing the operation of the Cross Keys Retreat at 76 Topsfield Road.

Present for Applicant: Attorney Benjamin Tymann, with Dr. Lawrence Miller & Allison and Dennis Maguire

Present for Building Inspector: Attorney Mark Bobrowski (partial), and Charles Brett, Building Inspector

Present for Cross Keys: Attorney Benjamin Fierro; Attorney Paul Holtzman, Krokida's Bluestein

The ZBA observed that Cross Keys and the applicant have been in mediation and were ordered by the Judge not to disclose any information. Mr. Tymann stated his clients were not satisfied with the progress in mediation.

The ZBA noted that Cross Keys has not filed, to date, the 2014 financial report to the ZBA as requested. Attorney Holtzman questioned the relevance of this information to the proceeding, suggesting it has no relevance and therefore does not need to be provided. The ZBA renewed its request for Cross Keys' financials.

The ZBA denied Attorney Tymann the opportunity to give an overview summary, citing they had all the information before them.

Mr. Feeherry reviewed the decision before the Zoning Board is to overturn, or affirm the September 11, 2014 decision of the Building Inspector to grant Cross Keys a Reasonable Accommodation.

A Reasonable Accommodation prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability. One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. [What is

Approved 5.13.15

the source of this quoted language? Query whether we want to include such a statement, unless cited, in the minutes.]

Mr. Feeherry went on to say that the Town's bylaw provides a way for a non-exempt educational use to come before Zoning Board of Appeals for a Special Permit, but the process in this case was not followed and did not come to the Zoning Board by application, but by appeal.

Mr. Feeherry talked about possible conditions to add to the Building Inspector's decision which included memorializing Cross Keys prior declarations as to its operations, including, inter alia, that there would be a security plan, privacy landscaping to protect abutters, limitations on the number of guests, limitations on the hours of (outside) operations, and no signage. It was noted the Building Inspector imposed a limit of 14 guests.

The ZBA acknowledged a letter, dated July 11, 2014, from Cross Keys outlining the full curriculum, but nothing about landscaping, fencing, staffing.

Mr. Feeherry repeated his concern that guests are accepted into the program after only 4 days sober without any medical clearance that the person is a suitable guest for the Cross Keys program

Attorney Holtzman was recognized by the Board and reiterated that the guests at Cross Keys are considered disabled and come under the Disabilities Act and have a right to housing of their choice, absent of the finding of specific problems or errors, conditions would not be lawful under the Fair Housing Act. Attorney Holtzman stated that Cross Keys has been in operation for a year and with no factual predicate for conditions had arisen.

Mr. Feeherry responded the intent is to memorialize what Cross Keys has already represented to the ZBA they would do related to security, privacy landscaping, signage, and hours of operations.

Attorney Tymann was recognized to respond. He opined the clear language of fundamental alteration is unreasonable. Attorney Tymann stated the correct thing to do is to send the Building Inspector's decision back and have Cross Keys "do this the right way and submit an application for a Special Permit to allow experts to weigh in on the matter." [are we sure this is an exact quote? If not, I would remove the quotation marks]

Mr. Coffey reviewed procedurally the events that began in October of 2013 with Cross Keys having a discussion with some of the Town Officials, which did not involve the ZBA, but resulted in a decision in December of 2013 that Cross Keys could use the property as intended with additional fire protection.

In of April 2014, Cross Keys opened for business without notification to the abutters

In May 2014, the public responded to Cross Keys having a Drug and Alcohol rehabilitation business

In May and June 2014, hearings before the Board of Selectmen were held regarding Cross Keys. Later in June 2014, the Building Inspector issued a letter to Cross Keys instructing it to appear before the ZBA for a determination of the applicability of the Dover Amendment to its proposed operations. .

On July 2, 2014 a Cease and Desist order was issued by the Building Inspector, with its effect stayed until the ZBA was able to make a decision

Cross Keys sued the Town citing the right to be there under the Dover Amendment. The ZBA determined the Dover Amendment did not apply. Cross Keys again engaged with town officials other than the ZBA, and the

Building Inspector then issued a letter granting Cross Keys a "reasonable accommodation" without any input from the ZBA, effectively negating the ZBA's decision that Cross Keys did not qualify for protection under the Dover Amendment.

Mr. Coffey questioned if this was the process that Town wants to set as a precedent for applicants with controversial zoning requests to follow, particularly in light of the number of other high profile matters presently pending before the ZBA or rumored to be in process.

The ZBA concurred the process was of concern, but acknowledged they would be making the same decision.

A lengthy discussion ensued with a review of the process, and the information submitted including case laws.

Mr. Feeherry observed that regardless of the process, he was leaning toward adding conditions/restrictions as would be imposed on any other similar application to the Town.

The ZBA determined that the conditions Cross Keys represented it would adhere to earlier in the process should be included in any grant of a Reasonable Accommodation.

Approved 5.13.15

The ZBA asked that Attorney Tymann and the Attorneys for Cross Keys submit to the Board their respective positions as to what would be appropriate, in their opinion, to be included in a decision from the ZBA denying the Applicant's petition (and upholding the Building Inspector's decision), in Word format, within the next 14 days.

Attorney Tymann agreed to the request. Attorneys Holtzman and Attorney Fierro agreed to discuss the matter with their client. .

Mr. Coffey moved, and it was seconded, the ZBA uphold the decision (reasonable accommodation) of the BI, subject to memorializing a number of elements of approval based on prior submissions and representations by Cross Keys as to, inter alia, security, landscaping, screening, signage, operations and possibly limits on the number of guests in the facility and/or keeping before the ZBA the jurisdiction to review the propriety of and compliance with such elements of approval. The motion carried unanimously.

Mr. Coffey moved, and it was seconded, the hearing on the appeal of the Building Inspector's grant or a "reasonable accommodation" as to Cross Keys' operations at 76 Topsfield Road be continued to April 29, 2015 to be held in the Bessie Buker School Multi-purpose Room at 7 PM. The motion carried unanimously.

Board to Sign Decision - 41 Cherry Street

Location: 41 Cherry Street (Map 18 Lot 25) – Request for Variance Section 5.1 Dimensional Requirements- Frontage

Applicant: Adam Ricci on behalf of owner Jack Pedra

Nature of request: Variance from the minimum frontage requirement of 170 feet on an existing non-conforming lot for a proposed new residence to be built at 41 Cherry Street.

The Board signed the decision to grant the frontage variance as requested conditioned on substantial conformance to the plan set dated February 15, 2015 and grading as described.

Administrative Items

- Minutes - March 11, 2015 & March 25, 2015

Mr. Coffey moved and it was seconded, to approve the meeting minutes of the March 11, 2015 and March 25, 2015 as edited. The motion carried unanimously.

- Maple Woods – Update

The Architectural review will be on the April 15, 2015 agenda

- Upcoming ZBA Meeting Dates:

April 15, 2015 7:00 PM @ Wenham Town Hall

April 29, 2015 7:00 PM @ Buker School

Adjournment

Mr. Coffey moved to adjourn at 9:15 PM and it was unanimous to do so.

Respectfully submitted by

Catherine Tinsley

4.15.15