

Town of Boscawen NH
ZONING BOARD OF ADJUSTMENT
Boscawen Municipal Complex
MEETING MINUTES
Tuesday, September 27, 2022 at 7:00 PM

Members attending: Roger Sanborn, Chair, Scott Maltzie, PhD, Vice-Chair, Tracy Jo Bartlett, Edward Cherian Jr., Tama Tillman.

Absent: Ann Dominguez

Staff attending: Kellee Jo Easler, Director Planning & Community Development, Kearsten O'Brien, Deputy Director of Planning & Community Development, Rose Fife, Recording Secretary

Guests: Tim Kenney Fire Chief, Alan Hardy, Donald and Lisa Sorrentino, Attorney Andrew Tine

- Call to Order at 7:00 pm
- Roll Call by Recording Secretary
- Approval of Draft Minutes – A motion to approve the November 23, 2021 Minutes as presented was made by Tracy Jo Bartlett, seconded by Scott Maltzie and passed by a unanimous vote.
- Appointment Recommendation to the ZBA – Roger Sanborn has enjoyed being Zoning Board Chair but would like to step down. He is retiring from being the Chairman, but will continue as a regular board member. He'd recommend Ed Cherian as Chair.
 - Cherian Transition – Alternate to Regular Member –A motion to designate Ed Cherian as a regular member and Tama Tillman as a voting member this evening was made by Sanborn, seconded by Maltzie and passed by a unanimous vote. A motion to make Ed Cherian the Chair was made by Roger Sanborn, seconded by Tama Tillman and passed by a unanimous vote. A motion to make Scott Maltzie the Vice Chair was made by Ed Cherian, seconded by Tracy Jo Bartlett and passed by a unanimous vote.
- Designate member for Action Items – See above.

Old Business:

- Nomination of Chair & Vice Chair for 2022-March 2023 – see above.

New Business:

- A request for an Administrative Appeal under RSA 674:33, submitted and owned by Aldea Holdings LLC, PO Box 1241, Alton NH 03303, property address of 109 High Street, Boscawen NH 03303 on Map 81D, Lot 34 located in an IND zone.

Public hearing was opened at 7:03 pm.

Kellee Jo Easler deemed application complete.

Testified: Attorney Tine, representing applicant. Owners and officers of Aldea Holdings LLC, Donald and Lisa Sorrentino. Property is 109 High Street.

Code Enforcement Officer Alan Hardy made the interpretation that this use was a rooming/lodging house. This is a single family property. The intention is to expand the use from 3 bedrooms to 9 bedrooms and still be a single family home and used as a recovery home for Sobriety or Substance Abuse recovery. It would be an organized housekeeping unit. This would still be a single family structure. No requirement, per ordinance, for the occupant to be related. This type of proposed housing is organized and structured. Sober housing is typically structured that they practice abstinence and maintain meetings and sobriety. They cook and eat together, socialize together and maintain as a home. They have a common desire to recover from substance abuse. This will enable the occupants to help each other in recovery. The State Fire Marshall's opinion is that this is a lodging or rooming house, as they see it through the Life Safety Code. Definitions applied for life safety purposes are not the same as for zoning purposes. The Life Safety Code looks towards the number of people living at a property. The applicants are willing to comply with the Life Safety Code. The question is whether this use can remain and be expanded in this industrial zone. Single family uses are conditional uses in the industrial zone and it has been approved for a 3 bedroom home. They want to expand it to a 9 bedroom. This appeal is to make sure they aren't put into the designation of boarding house/rooming house. The purpose of the appeal is to determine that this use is a single family use, not a boarding or lodging house. He provided the Board a definition of a family. Boarding/rooming house has a different definition per the town ordinance. This doesn't fit in their definition. Rooming houses are owner occupied dwelling unit without kitchen facilities. This isn't owner occupied and there are kitchen facilities. The Life Safety Code indicates that the definition of a family is defined by State, Federal and local laws. The town has a definition of family. Their secondary argument if the board doesn't feel it fits within definition of family, they are requesting relief under Federal law under the Fair Housing Act for people recovering from substance abuse. This type of housing provides greater access for those types of people as there aren't any background checks or screening, etc. This fosters under the Fair Housing Act housing for people in recovery. Under the Fair Housing Act its' reasonable and necessary. Single family use is allowed in this zone. There are no restrictions on the number of people that can live as a family. These people are deemed disabled as they are in recovery. He provided paperwork regarding the Fair Housing Act.

Roger Sanborn asked how many of these houses they owned. Mr. Sorrento stated that they only have this one. Roger Sanborn asked if they had ever done this type of thing before. Mr. Sorrento stated that they had not. He also explained that there is a house lead who is a resident and an assistant to assist the house lead. Roger Sanborn asked if they are they clients. Mr. Sorrentino said they were also in recovery. They do not allow anyone to be a lead that hasn't been sober for a year. Mr. Maltzie asked if it was listed as Park Place. Mr. Maltzie showed the property. Mr. Sanborn asked how many acres the home was on. Mr. Sorrentino said the home was on less than an acre. Mr. Maltzie asked if they were not going to expand the building just renovating the interior. Mr. Sorrentino said they are not expanding. Ed Cherian said noted that they testified the building was not owner occupied. He asked how someone become a member of the household. Mr. Sorrento explained that no rent is paid just participation fees. They fill out an intake form. The house lead and owners make a decision if the person would fit within the unit. Mr. Sanborn asked where the funds are from that support this type home. Mr. Sorrentino explained that people

come out of a rehab facility and aren't financially viable, so they sponsor them. The truss place across the street have been hiring the occupants as well as the Dollar General and now they can go to Market Basket for jobs. Attorney Tine explained that most family members help support their family members. Mr. Sorrentino explained that they can also apply for CAAP benefits as well. Ed Cherian noted that the letter from the Fire Marshall approved a variance for a lodging and rooming house in accordance with the Life Safety Code. Attorney Tine explained that they do not take issue with it as it applies to the Life Safety Code. The Life Safety Code says a rooming house isn't a 1 or 2 family dwelling. It's irrelevant as to what the State Fire Marshall calls the building. This town doesn't follow the State Fire Marshall's statement. Attorney Tine said the statute provides for sober recovery homes. It allows the State Fire Marshall to give a variance for sprinklers if certain criteria are met.

Chief Kenney took issue with some of Attorney Tine's Statements. This Zoning Board cannot call a 9 story hotel a single family dwelling. The State will make it mandatory that it is sprinkled as a hotel regardless of what the Zoning Ordinance states. The town of Boscawen cannot adhere to the laws of the State of NH. If his office says it has to meet that requirement, it has to meet that requirement. The State Fire Marshall says it is a Rooming/Boarding House. The Fire Code are the law and they can say what the building is. State law overrides the Town of Boscawen Ordinance. If the State says it needs a sprinkler system, it needs a sprinkler system. Much discussion regarding the determination of what the building would be considered and if it would be sprinkled and what the State of NH law states. Attorney Tine explained he wasn't challenging the State Fire Marshall's determination. Chief Kenney noted that their application was submitted after it went before the Zoning Board. Mr. Sorrentino asked what the intent was of the Life Safety Code. What would be the requirement if it was a single family home? Mr. Sorrentino stated that this house was safer than any other single family home in town. They have met the State requirements, now they are before this Board.

Ed Cherian noted that if it looks like a boarding house, it probably is. He asked why they didn't ask for a variance for a substance abuse recovery use in that area. The town hosts several of these types of facilities. He's asking why they didn't request a variance. Attorney Tine said they aren't looking for a battle just for the definition of the ordinance to be applied. Ed Cherian felt that the definition of a family is broad. You have tenants that pay fees, and the State of NH views it as a rooming/boarding house. It's hard for the Board to see it as a single family home. Attorney Tine asked if the intent of the Board will follow what the state says. Ed Cherian explained that the Code is interpretive. Somethings are gray. This is a gray area as to whether this is an institution or home or a business or a home. Mr. Maltzie asked what a variance for this property looked like if they submitted a variance vs. this request. Ed Cherian noted that if they would say it is a boarding house and it isn't an allowed use in the Ind zone, the board grants those on a regular basis. It wouldn't be an unusual type of variance.

Kellee Jo Easler gave some history and 28 High Street used to have a rooming house. The town, historically, looks to the Fire Chief, the Code Officer, and the Building Inspector. They received a submission for a septic design for 9 rooms for a lodging facility. Chuck Bodien, who used to be a fire captain in Franklin, weighed in on this. They have met with the applicant. It fit the criteria of a rooming house. There is a single family home in town that a woman rents out rooms. If she

had 4 bedrooms or more they are renting, it is a rooming house. Historically, that is how the town has looked at it.

Mr. Maltzie asked if the waiver was for the sprinkler system from the Fire Code. (Correct.) It sounds to him that it is much of a paperwork two step than anything. Attorney Tine explained that a variance has much more difficult criteria to meet. He feels that the town has to follow this per their definitions. Ed Cherian noted it is already a mixed use area and may have been given a larger latitude. They still can apply for a variance. Attorney Tine explained that it is a more costly endeavor to request a variance and they feel that the request in front of the board is a matter of right. Mr. Sorrentino explained that their main concern if they relinquish their rights in front of this board, and then do what the board is suggesting, the board could very easily vote to not approve the variance and he has no recourse at that point.

Kellee Jo Easler reminded the board that this is an appeal from an Administrative Decision that it was a rooming house. The Board's job is to decide if Alan Hardy was correct in his interpretation. If the Board decides Alan Hardy did not interpret the ordinance correctly, then the Board will have to decide how to place categorize this use. Kellee Jo Easler noted that typically they need to decide it. The applicant could apply for a variance any time and the town tried to encourage them to do so. The applicant will still need Site Plan Review. Ed Cherian explained that the Board could not render a decision tonight as an option as well.

Tama Tillman is looking at the floor plan and they have 3 or 4 kitchens. Mr. Sorrentino testified there this is only 2 kitchens. That floor plan was done by his HVAC technician. Scott Maltzie asked if the blue highlighted material was from the Zoning Ordinance. Kellee Jo Easler said yes. She also noted that if they are getting money for living there it's a Rooming House. Scott Maltzie asked how the fee structure works. Mr. Sorrentino testified that it is a weekly participation fee. Roger Sanborn asked how much that fee was. Mr. Sorrentino explained that it is \$225.00 per dual occupancy room and \$300 a week for a single bedroom. They purchase their own food. Attorney Tine explained they utilize the whole house. Mr. Sorrentino stated that there are no locks on doors. They all use common rooms. He isn't charging fees for laundry, etc. Scott Maltzie asked if there was laundry on site. Ed Cherian asked if there were state requirements for this. Mr. Sorrentino said there is. Attorney Tine explained that this is a voluntary program and there are no requirements but Mr. Sorrentino still applied for a state license. Mr. Sorrentino stated that the State required an application and the State approved it. They need this to be on the State list for sober houses. They have receive core approval to be on the State list of sober living homes. Attorney Tine explained that it is a volunteer thing. Tracy Jo Bartlett asked if there were people living there now. Mr. Sorrentino stated that there is one person there now. Tracy Jo Bartlett noted that if they have 9 bedrooms, how many are double? How many people can be there? Mr. Sorrentino stated that he will never have over 14 people. Ms. Tillman noted that even if it was a boarding house, eating together is pretty normal. Attorney Tine asked the Board to look at their definitions. There is no personal services being sold. Ed Cherian stated it is lodging and/or meals. Scott Maltzie can see both interpretations between parties is in conflict. It looks like a duck, walks like a duck, acts like a duck, it's a duck. This seems like a duck. If they decide this is a rooming house, what changes and what needs to happen. Ed Cherian explained that the Board needs to make a finding that the Code Officer is correct or incorrect. If incorrect, the Board can then

investigate different relief. If they find the Code Officer is accurate, the applicant doesn't lose any rights to apply for a variance and an appeal.

Roger Sanborn noted that they testified that there are up to 14 people on 1 acre of land. What happens when the residents wander on other people's land? Mr. Sorrentino stated that the residents are some of the best behaved residents in town. He went on to explain that residents have location software installed because they are obligated to go to 5 meetings per week and cannot leave the house without supervision unless gainfully employed. They only get to stay there if they go to multiple meetings, are gainfully employed, and are well behaved. Ms. Tillman felt that question was off point. She does think they shouldn't consider this as a single family home and feels they need a variance.

Ed Cherian asked if there were any other questions. Seeing none, the public portion was closed. Kellee Jo Easler reminded the Board that they needed to come up with a finding of facts if they make a decisions.

No abutters were noted in the audience.

Any questions from any abutters opposed or in favor. None.

Closed at 7:43 pm public hearing.

Roger Sanborn would like the hearing to be continued. Ed Cherian asked if they wanted to hear from Counsel or is there more information from the applicant that can be helpful. Scott Maltzie doesn't think Counsel would be helpful. He'd like to make a decision tonight. They have been supportive of this type of use in the past. Scot Maltzie is worried about them setting precedents. Ed Cherian felt there were some legal points raised and none of the Board members are attorneys. Maybe given Roger Sanborn's concerns, they should meet with Counsel in nonpublic session prior to the next meeting. Kellee Jo Easler said correct and that they also have a case for next month. Attorney Tine interjected that they want a decision tonight if possible.

Tama Tillman feels that this should be considered a rooming/boarding house. She doesn't see it as a single family home. She knows that the town is very supportive of recovery homes and a variance would be the way to go safely and legally.

Ed Cherian said the applicant is requesting a decision tonight. They can discuss it. He'd prefer to hear from Counsel.

DECISION:

A motion to accept the Code Enforce Officer's letter regarding this case, was made by Scott Maltzie, and seconded by Tama Tillman.

Ed Cherian reminded the Board that they need explicit findings if it were to pass. The first finding he noted was that the State Fire Marshall's letter indicates a variance granted on the statement that they consider it a rooming/boarding house. The second is the letter from chief Kenney and the Boscawen Fire Department which amplifies those findings that the project is subject to all other

State Fire Codes. The third is the site plan review application packet. They don't have the entire package dated July 5, 2022. Chuck Bodien, Life Safety Officer's letter dated July 8th, which was hand written, says it would be classified as a rooming house subject to 26.1 of the Life Safety Code, which Ed Cherian read it into the record. They need a professional architect and engineer. The letter from Code Enforcement Officer Alan Hardy dated July 22, 2022, finding that the use is classified as a Rooming House. The subject property is located in an industrial zone, which under Article 4 of the Use Regulations says a boarding/rooming house is not an allowed use in an industrial zone. The Code Enforcement Officer made a determination based on the State Fire Chief and the Boscawen Fire's letters. Kellee Joe Easler wanted to clarify that Alan Hardy was correct in his determination. Ed Cherian said correct.

Tracy Jo Bartlett asked for clarification. The July 22, 2022 letter states they propose to operate a 9 *person* sober living home. Then on the record they testify that the maximum people would be 14 people. Tama Tillman thought it should say 9 *rooms*, not 9 *persons*. Kellee Jo Easler said it was a typing error.

Roger Sanborn would like to get more information from legal counsel. There are questions that need to be answered. Scott Maltzie asked Kellee Jo Easler if the applicant were to apply for a variance would they be able to start that process tomorrow. Kellee Jo Easler said that was correct. Kearsten O'Brien gave the next deadline date of October 13, 2022. Scott Maltzie confirmed that they could be on next month's agenda with a variance application.

Scott Maltzie asked if the attorney would give further clarification on the ADA piece and the definition in the Ordinance. Ed Cherian wasn't sure Counsel will be able to advise them on the life safety aspects. Scott Maltzie felt that it is more the zoning definition in this case. He agrees that within the Statute it could be classified differently in two different places. Do they believe that this definition for a rooming house applies to this case? Kellee Jo Easler can only give the Board information on what the town has done historically. Scott Maltzie doesn't see an advantage to go back to legal counsel at this point. Ed Cherian sees it both ways. Tama Tillman doesn't want to delay the applicant.

Scott Maltzie noted that they can Table the motion. Kellee Jo Easler said they can *withdraw* the motion. Scott Maltzie withdrew his motion and Tillman withdrew her second.

Kellee Joe Easler wanted a determination if Alan Hardy was incorrect in his determination.

Public hearing reopened at 8:02 pm to hear from the applicant.

Mr. Sorrentino stated that it's fully within the Board's authority to approve their accommodation. He understands that the building inspector and Fire Chief Kenney feel that it is a rooming/boarding house. The Building Code is also for safety as well as the Life Safety Code. The house is 100% up to approval for building code and State Fire Safety code. It's fully within their right as a Zoning Board to approve this accommodation. He's asking the Board to give them the accommodation.

Tracy Jo Bartlett asked Kellee Jo Easler if this building was being taxed. She asked if their fees were helping with their recovery. Mr. Sorrentino testified that it is paying for their home. Tracy Jo Bartlett asked if the lead person pays as well. Mr. Sorrentino stated that they did.

Public hearing was closed at 8:05 pm.

A **motion** to uphold Alan Hardy's determination was made by Scott Maltzie and seconded by Tillman. The findings were discussed above. The Board is denying the Administrative appeal of the Code Enforcement Officer's finding. Motion passed by a unanimous vote.

Mr. Maltzie wanted to be sure the applicant knew the Town welcomed this type of project.

Other Business

Next Meeting:

- October 25, 2022

Kellee Jo Easler wanted the Board to know that there is training before the next meeting.

A **motion** to adjourn was made by Roger Sanborn, seconded by Ed Cherian and passed by a unanimous vote.

*Respectfully Submitted by
Rose Fife, Recording Secretary*