



Office of
The Zoning Board of Appeals
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RECEIVED
 FEB 24 2022
 TOWN OF TOWNSEND
 TOWN CLERK

William Cadogan, Chairman

David Chenelle, Clerk

Darlene Sodano, Vice Chair

David Funaiolo, Associate Member

Sean Pearson, Member
 Craig Stevens, Associate Member

Victoria Janicki, Member
 Jason Murray, Associate Member

Zoning Board of Appeals Minutes

December 8, 2021, at 5:30 PM

VIRTUAL MEETING

VIA: ZOOM PER GOVERNOR'S ORDER SUSPENDING CERTAIN PROVISIONS
 OF THE OPEN MEETING LAW, G.L. c. 30A, § 20†

And "Act relative to extending certain Provisions of the Open Meeting Law, G.L. c. 30A, Section 20" signed by
 the Governor on June 16, 2021.

PUBLIC ACCESS ZOOM MEETING LINK: Join Zoom Meeting

All are welcome to attend.

<https://us02web.zoom.us/j/89426055431?pwd=Y1ZSVVZtSU5c3JmT0Vwck1aUjNIUT09>

Meeting ID: 894 2605 5431 Passcode: 690173

1 PRELIMINARIES: votes may be taken.

- 1.1 Call the meeting to order and roll call. David Chenelle made a motion to call the meeting to order at 5:30pm. Darlene Sodano seconded. A roll call vote was taken as follows: YES – Darlene Sodano (DS), David Chenelle (DC), Sean Pearson (SP), Vicky Janicki (VJ), Bill Cadogan (BC). The motion carried 5-0. Board Members present: Bill Cadogan, David Chenelle, Darlene Sodano, Sean Pearson, Vicky Janicki, David Funaiolo, Assoc. Member. Others present: Hartley Pleshaw, TCAM, Elizabeth Faxon, ZBA Admin.,
- 1.2 Chairman's additions or deletions. Board members generally noted some of the warrant articles on the December 14, 2021, Special Town meeting warrant.
- 1.3 Approval of Minutes 11-17-2021. Deferred to the next Board meeting.

† On June 16, 2021, the Governor signed the "Act relative to extending certain Provisions of the Open Meeting Law, G.L. c. 30A, Section 20" until April 1, 2022, at which time the extension will be repealed. Public bodies may therefore continue to conduct their meeting in accordance with the Order Suspending the Open Meeting law and may continue to have remote meetings in full. Public bodies are relieved from the requirement that they conduct their meetings in a public place that is open and physically accessible to the public; provided, however, that all public bodies shall ensure public access to deliberations through adequate, alternative means, which include (but are not limited to) telephone, internet or satellite enabled audio or video conferencing or other technology that enables the public to clearly follow the proceedings of the public body while they are occurring. The Order also allows remote participation by all members of a public body; and waives the requirements that a quorum and the chair be physically present at the meeting location.

2 PUBLIC HEARINGS AND APPOINTMENTS: votes may be taken.

- 2.1 5:45 pm Public Hearing** – on the application of **William G. Schulze** for a Special Permit under Zoning Bylaw §§145-18, 145-40 and 145-65. The proposal is to construct an addition to McNabb Pharmacy be used as a compounding lab within 6 inches of the side yard lot line on the west side of a pre-existing non-conforming lot at **233 Main Street** (Assessor's Map 51, Block 97, Lot 0). DCD Zoning District.

Darlene Sodano made a motion to open the public hearing on the petition of William Schulze for 233 Main St. McNabb Pharmacy at 5:45 pm. David Chenelle seconded. A roll call vote was taken as follows; YES – DS, SP, VJ, DC, BC. The motion carried 5-0-0.

Present: William Schulze, representing the Applicant, Karen McNabb, Applicant.

Darlene Sodano stated previous professional relationship with the contractor and the Property owner and stated she had no personal conflict of interest in the petition before the Board.

After the public hearing was opened, it was noted that the Applicant was present on the Zoom screen, however, was experiencing connectivity technical difficulties and did not have a working microphone.

The public hearing discussion was delayed for several minutes.

Chairman Cadogan stated he was familiar with a special permit granting for residential pre-existing non-conforming lots but is not certain that a special permit can be granted under these circumstances for a commercial property. He stated that a variance may also be required for this petition. He asked if the Applicant had considered merging the two adjacent lots under the under the same ownership. He heard that this would create a substantial financial hardship due to septic and fire safety code compliance.

David Chenelle noted that the proposal will result in a change in the side yard setback of the building from 6' to six inches which is increasing the nonconformity of the pre-existing non-conforming lot. Mr. Schulze corrected this measurement to be 2.5 feet setback currently and proposing a 6 inch side yard setback with the addition of the pharmacy.

Mr. Schulze acknowledged the close proximity of the two buildings with the addition of the proposed compounding lab and noted that wall board would be fire coded and well as cement coated on the outside to address fire safety.

Discussion ensued as to the applicability of granting a special permit to increase the non-conformity on a pre-existing non-conforming commercial lot without a variance. The Board considered case law and court decisions and agreed that evaluating this petition under the criteria of a special permit would provide the most reasonable action in this unique circumstance.

After reviewing the plot plan and the measurements of the proposal, and hearing the testimony of the Applicant and Mr. Schulze, the Board recorded the following findings under the special permit criteria:

- a.) Adequacy of the site in terms of the proposed use. No issues. It's slightly increasing the encroachment to the side yard setback.
- b.) Suitability of the site for the proposed use. No issues.
- c.) Impact on traffic flow and safety. Negligible.
- d.) Impact on neighborhood visual character including views and vistas. This change will have little visual impact.
- d.) Adequacy of sewerage disposal and source of water and drainage. No impact was noted the Board of Health referral comment returned was that the current sewerage disposal system is adequate.
- f.) Adequacy of public utilities and other public services. Acceptable as is.
- g.) Impact on ground water and surface water quality and other environmental and natural resource considerations. No change in impervious surface and no negligible impact.

DC read the mandatory referrals into the record. Gary Shepard submitted a letter of support.

D. Sodano made a motion that due to the proposed characteristics of the site that the proposed use will not have adverse effects which over balance it's beneficial effects on either the neighborhood or the Town. D. Chenelle seconded the motion. A roll call vote was taken as follows; YES – DS, SP, VJ, DC, BC. The motion carried 5-0-0.

D. Chenelle made a motion to approve the application of William G. Schulze on behalf of the McNabb family Trust for the construction of a compounding lab in conformance with the submitted plans and drawings. S. Pearson seconded. A roll call vote was taken as follows; YES – DS, SP, VJ, DC, BC. The motion carried 5-0-0.

D. Chenelle made a motion to authorize the Chairman William Cadogan to sign this "Decision" on behalf of all of the Board Members participating in the vote. S. Pearson seconded. A roll call vote was taken as follows; YES – DS, SP, VJ, DC, BC. The motion carried 5-0-0.

ADJOURN: votes may be taken. Next Zoning Board of Appeals remotely held public meeting scheduled for Wednesday, January 12, 2022, At 5:30 pm. D. Chenelle made a motion to adjourn the meeting at 6:45pm. V. Janicki seconded. A roll call vote was taken as follows; YES – DS, SP, VJ, DC, BC. The motion carried 5-0-0.

Respectfully submitted,

Elizabeth Faxon

ZBA Administrator

Approved on: February 23, 2022

Items on file:

1. ZBA Application for Special permit by William Schulze for 233 Main Street McNabb Pharmacy.
2. Draft 11-17-2021 Zoning Board of Appeals minutes.