



Planning and Development

*Town of
Wolfeboro*

**NOTICE OF DECISION
WOLFEBORO ZONING BOARD OF ADJUSTMENT
6 June 2016
Affirmed
13 June 2016**

TM# 217-70

Case #07-V-16

**Applicant: Families in Transition/Green Mountain Realty LLC
Variance**

Families in Transition/Green Mountain LLC ("FIT") has applied for a variance to convert the third floor¹ of property located at 16-18 Lehner Street to 7 bedrooms to provide temporary housing for 5-7 families. Such a use is not defined in, and therefore is not permitted by, the Wolfeboro Zoning Ordinance.

The board held public hearings on May 3, 2016, May 10, 2016 and June 6, 2016 and received written and verbal testimony from those in favor and those opposed to the proposed facility. That testimony is incorporated, although not reiterated, herein, other than as discussed by the board during its deliberations.

After reviewing all of that testimony, the board finds and rules as follows:

1 & 2. The variance will not be contrary to the public interest and will observe the spirit of the ordinance

The criteria that the grant of the variance will not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance. To be contrary to the public interest the variance must "unduly, and in a marked degree"

¹ Office and counseling space will occupy the second floor of the property; however, these uses are permitted by the zoning ordinance and do not require a variance.



conflict with the ordinance such that it violates the ordinance's "basic zoning objectives." There are two inquiries a board should make in reaching a decision regarding this criteria:

Whether it would alter the essential character of the locality.

Whether granting the variance would threaten the public health, safety or welfare.

Although two of the board members felt that the conversion of this existing 5,000 square feet of commercial space to residential space was not consistent with the public interest and the spirit of the ordinance, particularly when the cumulative impact of all such potentially similar variances was considered, the majority of the board found that the proposed use was not contrary to the public interest and observant of the expressed purposes of the C-1 district.

The purpose of the district is "to protect the character of the existing downtown, maintaining its pedestrian scale, while promoting a healthy mix of retail, professional office, medical and residential uses within the district and promoting mixed uses on individual properties. It is intended to enable the downtown to remain a vibrant, compact commercial center, serving the needs of community residents, the region and tourists as the economic center, and to promote a complementary and diverse mix of commercial and residential uses." § 175-88.7.

Uses permitted in the district include nursing or convalescent homes, and the like; multifamily dwellings, beds and breakfasts, and inns. Uses permitted by special exception include affordable nonprofit housing for the elderly and affordable nonprofit workforce housing. See §175-91 and 92. Currently existing uses in the neighborhood, in addition to commercial uses, include multifamily dwellings, a community center, and a nonprofit child advocacy center.

The majority of the members felt that the proposed use--temporary transitional housing--is similar to the existing, and uses permitted by right and by special exception in the district and promoted the purpose of mixing uses on individual properties. It therefore would not alter the essential character of the locality. Moreover, the board noted that this space could be converted to residential space as of right if it were, for example, converted to apartments.

The majority also discussed the public health, safety and welfare. While the majority recognized the concerns expressed by some members of the public regarding the addition of seven homeless families to the area, they noted that one cannot control who moves into a neighborhood, regardless of the type of housing they may occupy. The board also noted that the FIT facilities in other locations in New Hampshire had not produced any negative impacts on the public health, safety and welfare in those communities.

For the foregoing reasons, and based on all of the evidence in the record, the majority of the board concluded that the variance will not be contrary to the public interest and will observe the spirit of the ordinance.

3. Substantial justice will be done by the granting of the variance

Perhaps the only guiding rule as to the factor of substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The New Hampshire Supreme Court has also considered whether the proposed use is consistent with the area's present use in determining whether substantial justice is done by the grant of a variance, unless the zoning ordinance was adopted specifically to alter the neighborhood.

The majority of the board found that granting variance will do substantial justice because the benefit to town at large far outweighs the minimal loss from the deviation from the zoning ordinance. The majority discussed the gain of transitional housing that the town both lacks and needs, and found that denying the variance would deprive the town of these services only at the gain of rigidly enforcing the ordinance.

Based on all of the evidence in the record, the majority of the board concluded that substantial justice would be done by the granting of the variance.

4. The values of surrounding properties will not be diminished by the granting of the variance

While one board member felt that FIT had not met its burden of demonstrating that surrounding property values will not be diminished by the grant of the requested variance, the majority of the board found that the information submitted by Mr. Norton on behalf of FIT to be compelling. That information concluded that properties adjacent to 28 of 31 of the FIT facilities elsewhere in the state had actually seen an increase in their assessed values. While the board acknowledged that many of those buildings had been dilapidated and thereafter improved by FIT, while the property at issue was already in good condition, it noted that given the existing good condition of the building and the neighborhood, the maintenance of the exterior in good condition would, at most, have a neutral impact on the value of surrounding properties.

The majority also noted that the testimony presented by local realtors was not based on any actual evidence, but instead based on national studies of properties and neighborhoods that were not comparable to this family focused transitional housing.

For the foregoing reasons, and based on all of the evidence in the record, the majority of the board concluded that surrounding property values will not be diminished by the granting of the variance.

5. Literal enforcement of the provisions of the ordinance will result in unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the

ordinance and the specific application of that ordinance to the property and the use is a reasonable one

As an initial matter, the board considered whether the property was unique in its surroundings, and a majority found that it was. The building is located 3 to 4 blocks from the local school, and within walking distance to many services. The building is 4 stories including a basement and 19,000 square feet, which is oversized for the neighborhood, if not the town, and is dominant on the lot, which is small at 11,700 square feet. Moreover, the building is unique in that no other non-municipal building in the neighborhood town has an elevator, a third floor, sprinklers, or is ADA compliant.

The majority of the board also found that there is no fair and substantial relationship between the purpose of the ordinance and the application of the ordinance to the property and that the proposed use is a reasonable one. The majority found that the restriction on temporary transitional housing was not necessary to fulfill the ordinance's underlying purpose, given that the district anticipates mixed uses; and that the proposed use is consistent with existing and permitted uses in the district, many of which allow extended stays by unrelated persons who need special care. The board noted that allowing this use in the local mix of preexisting uses, particularly given that there would be no alteration to the exterior of building and no requirement for additional services, was reasonable.

The majority of the board noted that the first two floors of the building would remain commercial, which satisfies the mixed use purpose of the district. The proposed use was not meant to be someone's permanent residence, which might "tip" the balance in the neighborhood to too much residential; but was more like an inn, dorm, or boarding house, all of which are defined in, and permitted by, the zoning ordinance.

Board Decision:

For the foregoing reasons, and based on all of the evidence in the record, the board therefore concluded that the literal enforcement of the zoning ordinance to this unique property would result in unnecessary hardship.

After much deliberation, the board voted 3 to 2 to approve the variance with the following conditions:

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation, and this notice herein shall generally be determining.
2. The first and second floor shall be restricted to nonresidential use.
3. The application, as submitted to the ZBA, may not satisfy the submittal requirements for a Site Plan Review.

4. The Notice of Decision shall be recorded at the Carroll County Registry of Deeds and the applicant shall pay all recording fees.
5. This Variance shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for a good cause.


Fred Tedeschi, Chairman

NOTE: Certain persons have the right to appeal the ZBA's decision to the superior court, or to file a motion for rehearing with the ZBA, as the case may be, within 30 days of the date the ZBA made the decision. Any person who wishes to exercise their appeal rights must do so consistent with applicable State statutes and should immediately consult with an attorney of their choosing to be sure their appeal rights are protected."