

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
November 17, 2011**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; Joseph Beneski, Member; Eric Levitt, Member; John Olivieri, Jr., Member; Carol Zimmerman, Associate Member; Joseph Urbanski, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:07 p.m.

Roll called. Bills signed. Mr. Foster advised that in accordance with the Open Meeting Law he was announcing publicly that he, as well as the secretary, were making audio recordings of the meeting.

RPI Blueberry LLC hearing, 1-8 Cicero Drive, 1-5, & 7 Blueberry Drive:

Mr. Foster opened the RPI Blueberry LLC hearing at 7:15 and read aloud the legal ad. Atty. Robert Schafer was present. Atty. Schafer advised that the petitioner was in the process of purchasing the property from the current owner which is, Blueberry Estates LLC and as part of that process they did some due diligence and when they reviewed the Special Permit. They noticed there were specific references to a prior owner, Randjay Corporation. They were also provided with information that the restriction on the age occupancy of the development which reads as both occupants must be over 55 years of age was being applied as if only one occupant was over 55. He noted that this is what had been indicated to him by Town officials. He advised that there were two parts of the application. One was to substitute the prospective new owner for the name of the owner in the Special Permit at present, and the other part was to clear up the inconsistency between the Permit and what they had been told was the practice in regards to the occupancy of the units.

Mr. Foster felt that tonight's hearing was to address three things. The first was because the property was being sold they needed to continue the existing Special Permit as is or modified to the new owner. The second was to substitute the names RPI Blueberry LLC not only in the two places noted but throughout the entire Permit and to notify the Board of Selectmen of this change. The third item was to address the issue of the age restriction. Mr. Foster noted that he was the one who suggested that they do that, not to give away the age restriction but that they bring the age restriction that applies to

Blueberry Estates into compliance with the Federal Fair Housing Law and make it align with what they already do with their age restricted 40B's.

Mr. Foster then read the November 17, 2011, letter from the Planning Board. They had no recommendation on the petition. The November 10, 2011, letter from the Board of Health stated that if the petition was approved it should be subject to having a Title V inspection on the entire property. The November 8, 2011, letter from the Town Administrator indicated that the Board of Selectmen had no comment on the petition. Mr. Foster also read an email that he had received from John Carchio. He suggested that board members reject the proposed petition to change the age requirement.

Mr. Foster said that their goal is really to extend the existing, as modified, Special Permit that now applies to Blueberry Estates to the new owners; to notify the Board of Selectmen of the change of ownership which is stipulated in the existing Special Permit; and to address the issue of a slight modification to the age restriction. This is in no way intended to permit children to be there, and they will work together to craft words to make sure that is true. The existing age restriction is that both people that live in the apartments must be 55 or older. The age restriction that they have used in all of their other age restricted 40B units in Town is that one of the two spouses or partners must be 55 or older. For example, this would allow a 55 year old man to have a 54 or 53 year old wife. He understood that a number of years ago there had been a problem where Randjay let a number of underage people rent, and when there was a complaint it came to the Zoning Board and they resolved it. He believed that they had required that new people conform to the age restriction but they did allow existing underage people living there to stay.

Mr. Foster then asked if Board members had any comments or questions. Mr. Beneski stated that they were asking for two clauses to have the name replaced but there were actually several places in the Permit where the name would have to be changed. He noted that two units were allowed to have under age residents provided that the residents were employed by Randjay. Mr. Foster assumed that this was for maintenance staff. Ms. Sherri Colucci advised that she had been involved when that was written and that was the purpose of it. Mr. Foster asked how the new owners planned on handling that. Atty. Schafer advised that it was not their intent to change the character of the complex as it stands. They would utilize those units for maintenance or management personnel if necessary. Mr. Foster asked if they were not being used for that purpose would they rent them to someone under 55. Atty. Schafer replied that it was their understanding from the Permit if those units are not being used for the purpose of maintenance or management personnel then they would have to be rented to someone over the age of 55.

One resident asked what the benefit of reducing the age restriction was. Mr. Foster replied that they weren't changing it but changing it from two residents being 55 to one resident being 55. Ms. Colucci didn't understand why they wanted this change. Mr. Foster responded that they did not want to change it but simply align the age restriction with the other units in Town and with what the Federal Government says.

It was questioned what would happen if a 55 year old man moved in with a younger wife with three children. Would that be allowed? Mr. Beneski replied that they couldn't do that and that was an issue for management. Another resident noted that she has lived there for six years but she does not even have a contract. Where could she get copies of these documents? Mr. Foster noted that she should ask the management to provide those copies but that would not be up to the Zoning Board. The Town Clerk could provide a copy of the Special Permit as well as the Town bylaws. Atty. Schafer noted that the Special Permit specifically indicates that there can be no more than two residents to a unit so the scenario of three children would not be possible.

It was asked if someone 55 got married to someone under 55 would it be management's responsibility to evict them. Mr. Foster said that when they previously dealt with that issue, they did allow the underage people to stay. However, it could go on a case by case basis or there could also be some type of a restriction within the Permit.

It was asked what would happen if a resident became ill and needed a caregiver. What would happen in that case? Mr. Olivieri then asked if there was any way they could limit the underage person to a spouse. Mr. Foster said that they might want to consider how to handle these types of situations on a case by case basis. There could be a restriction in the Special Permit that states anytime an underage person is to move in, it would require a hearing with the Zoning Board. Atty. Schafer said that they hear the concerns but they would prefer the change, and they think there are also benefits to changing the age restriction for just one of the residents. As far as handling this on a case by case basis, they would not want to add to the administrative tasks of people working for the Town. They have the responsibility to enforce the rules of the Town and if they don't do that, they can be held accountable. Mr. Foster noted that although addressing issues on a case by case basis was a good idea, they would also have to realize the cost factor as well as the time that would be involved. He then asked if they would consider waiving their request for the one under age resident. Att. Schafer said that although they appreciate the effort they would waive their request. Mr. Foster then asked if anyone present had any issues with the change of name or ownership. One resident did express a concern that they had not received notification of the hearing. Mr. Foster replied that for clarification the Zoning Board did send out notification to the owners of abutting properties. As they are not owners of the property, this was a concern for management.

Mr. Olivieri made the motion, seconded by Mr. Levitt, to close the hearing. The **vote** was **unanimous for**.

Mr. Olivieri then made the motion, seconded by Mr. Levitt, to approve the name change throughout the existing Special Permit contingent upon the sale of the property, and to continue the Special Permit as amended. The **vote** was **unanimous for**.

Mr. Curtis made the motion, seconded by Mr. Levitt, to authorize Mr. Foster to write a memo to the Board of Selectmen stating that this change will take effect upon the transfer of the property. The **vote** was **unanimous for**.

The hearing closed at 8:20.

Mr. Curtis made the motion, seconded by Mr. Levitt, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 8:21.