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MEMO

Date: November 12, 2015
To: Kane County Zoning Board of Appeals
From: Mark VanKerkhoff, AIA, Director, Zoning Enforcing Officer
Re: Appeal dated October 30, 2015, in relation to Maxxam Partners, LLC – Special Use Petition 4364

Background

The Kane County Zoning Ordinance, *Section 4.5. Appeals*, states that any person aggrieved may appeal to the ZBA to review any order, requirement, decision or determination made by the Zoning Enforcing Officer. Such an appeal was received dated October 30, 2015, in relation to Petition 4364. Per Section 4.5-2, the appeal stays all proceedings in furtherance of the action appeal from, in this case, Petition 4364. In light of this, the public hearing scheduled for Petition 4364 was cancelled and will be rescheduled and re-noticed for a later date to be determined following the resolution of the appeal.

Summary of the Appeal

The alleged aggrieved parties argue that:

1. My decision not to follow Section 5.15 of the Kane County Zoning Ordinance was not appropriate and must be reversed
2. The special use proposed in Petition 4364 is not sufficiently similar to any use defined in the Kane County Zoning Ordinance and should not be considered by the Zoning Board of Appeals

Summary of Zoning Enforcing Officer's Positions

The basis for my decision making in processing Petition 4364 is as follows:

1. Section 5.15 applies to application for permits under my duties as Zoning Enforcing Officer, not for petitions for special uses which must be processed per Section 4.8. This process falls under the duties of the Zoning Board of Appeals and the authority of the County Board per Section 4.8.
2. The Petitioner has petitioned the County Board for a special use under the Special Uses permitted in the F District – Farming, specifically Section 8.1-2 Special Uses. “*dd. Other uses similar to those permitted herein as special uses*”. I determined that the petition was complete and reasonable and scheduled it for a public hearing per Section 4.8. The ZBA may determine its own recommendation in regard to if the proposed use is similar to other uses after hearing the evidence.

Note: In 2012 and 2013, the Village of Campton Hills processed and considered a similar proposal for this property as a special use in the F District – Farming.

Zoning Enforcing Officer's comments regarding Appeal Item 1:

I did not follow Section 5.15 in respect to Petition 4364 because:

1. This section applies to applications for permits, not for petitions for special uses
2. It is permissive (MAY) rather than mandatory (SHALL)

25-5-15: INTERPRETATION OF USE LISTS:

The enforcing officer **may** allow land uses which, though not contained by name in a zoning district list of permitted or special uses, are deemed to be similar in nature and clearly compatible with the listed uses. However, such nonlisted uses shall not be approved until the **application** for such use has been reviewed by the county development department staff and a favorable report has been received by the enforcing officer. The nonlisted uses which are approved shall be added to the appropriate use list at the time of periodic updating and revision. (Ord. 79-229, § 3, 12-11-1979)

The above reflects the permit application and review process for buildings and for establishment of uses (such a new business in an existing building) per Section 4.3 Permits. Such new, nonlisted uses are later considered for text amendments through the ZBA and County Board processes per Section 4.7 Amendments.

Related Sections:

25-4-1: ZONING ENFORCING OFFICER:

There is hereby created the position of zoning enforcing officer, whose office shall be located in the county government center, and said person to be selected by the county board shall be designated as the zoning enforcing officer. It shall be his duty to administer and enforce the provisions of this ordinance, and to that end **he shall have the power to make such orders, requirements, decisions, and determinations as are necessary with respect to applications for permits** and the enforcement of this ordinance.

25-4-3: PERMITS:

25-4-3-1: PERMIT TO BE OBTAINED: A **written permit** shall be obtained from the building enforcing officer, located in the county government center, Geneva, Illinois, before starting:

- A. To establish any new use of property;
- B. To excavate for or build any foundation;
- C. To erect, construct, reconstruct, enlarge, alter or move any building or structure;
- D. To **change the use of any building, structure, or land from one classification to another;** or
- E. In the case of nonconforming uses, to change from one use to another;

25-4-3-3: APPLICATION FOR PERMIT:

Applications for the permits shall be filed in written form with the enforcing officer, shall state the legal description of the property as of public record and the name of owner and applicant and **shall describe the uses to be established** or extended, and shall give the estimated cost and such other information as may be required for the enforcement of this ordinance. Each copy of the application shall be accompanied by a dimensioned drawing of the building plot showing the location of buildings and structures, lot areas to be used, auto parking areas, and other pertinent information. All applications for permits and copies of permits issued shall be systematically kept for ready public reference by the enforcing officer.

Maxxam Partners LLC has petitioned the County Board for a special use. They have not made an application for a permit. Petition 4364 was properly processed according to Section 4.8 Special Uses.

25-4-8: SPECIAL USES:

25-4-8-1: PURPOSE:

The development and execution of this ordinance is based upon the division of the county into districts within which districts the use of land and buildings, and the bulk and location of buildings and structures in relation to the land are substantially uniform. **It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use in the particular location.** To provide for the location of special classes of uses which are deemed desirable for the public welfare within a given district or districts, but which are potentially incompatible with typical uses herein permitted within them, a classification of "special uses" is hereby established.

25-4-8-2: PUBLIC HEARING:

Uses as hereinafter enumerated, which may be proposed for classification as "special uses", shall be considered at a public hearing before the zoning board, and its report of findings of fact and recommendations shall be made to the county board following the public hearing;

Appeal Item 1 Conclusions:

1. Maxxam Partners LLC did not make an application for a permit.
2. They submitted a petition for a special use.
3. Section 5.15 applies to application for permits under my duties as Zoning Enforcing Officer, not for petitions for special uses which must be processed per Section 4.8 Special Uses
4. Petitions for special uses fall under the duties of the Zoning Board of Appeals and the authority of the County Board per Section 4.8 Special Uses
5. Petition 4364 was properly processed according to Section 4.8 Special Uses.

Zoning Enforcing Officer's comments regarding Appeal Item 2:

The Petitioner has petitioned the County Board for a special use under the Special Uses permitted in the F District – Farming, specifically “*dd. Other uses similar to those permitted herein as special uses*”. I determined that the petition was complete and reasonable and scheduled it for a public hearing per Section 4.8 Special Uses. The ZBA may determine its own recommendation in regard to if the proposed use is similar to other uses after hearing the evidence.

The petition and supporting opinions advocate that the proposed special use for a private-pay alcoholism and substance abuse treatment facility is similar to the following special uses listed for the F District and the R1 District:

- Monasteries, nunneries, religious retreats, nursing and convalescent homes, assisted living facilities, boarding schools and orphanages.
- Hospitals, general, for human beings. This may include power plants, residence for nurses and similar facilities.

The Kane County Zoning Ordinance, Article III. Rules and Definitions includes:

CONVALESCENT OR NURSING HOME: A private home for the care of the aged or infirm, or a place of rest for those suffering bodily disorders.

The petitioner also requests “reasonable accommodation” in that the proposed alcoholism and substance abuse treatment facility will provide in-patient residential treatment to persons with disabilities who are protected under the terms of the Federal Fair Housing Act.

I have reviewed the petition and supporting opinions as well as several opposing opinions submitted by an adjacent property owner and the Village of Campton Hills with assistance from the Civil Division of the Kane County State’s Attorney Office. I am of the opinion that the proposed use of a private-pay alcoholism and substance abuse treatment facility is similar enough to the other uses listed above to be considered by the Zoning Board of Appeals and the Kane County Board, subject to testimony and evidence which may be forthcoming through the public hearing and public meeting process defined in the Kane County Zoning Ordinance and by the procedures of the Kane County Board.

In addition to the opinions included in the petition, please note that the proposed special use of private-pay alcoholism and substance abuse treatment facility may additionally be considered similar to “Monasteries, nunneries, religious retreats, nursing and convalescent homes, assisted living facilities, boarding schools and orphanages”. It may be considered similar in that one of the common aspects of these institutional uses is that they all include residential facilities of various types to provide housing for staff, patients, students and/or others in the care of and/or under the umbrella of the institution. The inclusion of these various type of institutional uses on the same list suggests that it is the potential greater density of such institutional uses along with residential living units proposed to be located in the F District, along with supporting infrastructure, which requires the special use approval from the Kane County Board before such facilities may be approved as a land use and subsequently constructed. Such infrastructure includes water supply, wastewater disposal, parking and storm water management facilities.

The case for the appeal states that the Village of Campton Hills supports their opinions and their appeal. The appeal included the letter to me from the Village’s attorney dated October 23, 2015. Additionally, the Village has passed *Resolution 15-18 - A Resolution Opposing Maxxam Partners, LLC Petition to the Kane County for a Special Use*.

In 2012 and 2013, the Village of Campton Hills processed and considered a similar special use for this property as a special use in the F District – Farming. While the proposed annexation and special use was defeated by one vote at the final Village Board meeting, the proposed special use was processed and was the subject of multiple public hearings and the final vote as a special use.

The above is relevant to this appeal because the Village of Campton Hills adopted the Kane County Zoning Ordinance after the Village incorporated, and a letter to me from the Village attorney dated October 23, 2015, was included in the documents submitted for this appeal.

1/11/13
VILLAGE OF CAMPTON HILLS

SPECIAL USE ORDINANCE
TO ALLOW FOR A HOSPITAL RELATED FACILITY
(ALCOHOL AND SUBSTANCE ABUSE TREATMENT FACILITY)

WHEREAS, The Glenwood School, an Illinois not-for-profit corporation ("Owner"); KIVA Recovery, LLC, an Illinois limited liability company ("Operator"); and KIVA Real Estate Investments, LLC, an Illinois limited liability company, ("Purchaser") (collectively, Owner, Operator and Purchaser shall be referred to as "Petitioners" and Operator and Purchaser shall be referred to as "KIVA") have applied for a special use permit to allow for the operation of an alcohol and substance abuse treatment facility at the property legally described in Exhibit "A" attached hereto and a part hereof and commonly known as the Glenwood School for Boys, with the street address of 41W400 Silver Glen Road, St. Charles, Illinois (the "Subject Property"); and
WHEREAS, the Subject Property is located within the "F" Farming District of the Village;
and

WHEREAS, pursuant to the Zoning Ordinance, property within the "F" Farming District may be used for a "nursing and convalescent home," "assisted living facility," and "group home" upon issuance of special use permits therefor; and

WHEREAS, pursuant to Section 8.1-2(dd) of the Zoning Ordinance, "other uses similar to those permitted [by the Zoning Ordinance] as special uses" are allowed in the "F" Farming District upon issuance of a special use therefor; and

WHEREAS, the Village Zoning Officer has determined that the proposed use of the Subject Property for the operation of an alcohol and substance abuse treatment facility is similar to the uses of nursing and convalescent home, "assisted living facility," and "group home"; and

WHEREAS, the Plan Commission, pursuant to notice published and given in accordance with the law, held public hearings on said request and at said public hearings heard the testimony of the Petitioners, experts employed by Petitioner, neighboring owners and residents and testimony of numerous other persons; and

WHEREAS, the Plan Commission has made findings and unanimously has recommended the approval of a special use, to allow for a hospital related facility which is an alcohol and substance abuse treatment facility including housing for patients and staff on the premises subject to restrictions and conditions.

The above ordinance represents the culmination of a more than 6 month process and many public hearings and meetings. The Village is questioning the County staff's processing a petition for a similar use under the same ordinance language.

Appeal Item 2 Conclusions:

- 1. The Petitioner has petitioned the County Board for a special use under the Special Uses permitted in the F District – Farming, specifically “*dd. Other uses similar to those permitted herein as special uses*”.**
- 2. I determined that the petition was complete and reasonable and scheduled it for a public hearing per Section 4.8 Special Uses.**
- 3. The ZBA may determine its own recommendation in regard to if the proposed use is similar to other uses after hearing the evidence.**
- 4. In 2012 and 2013, the Village of Campton Hills processed and considered a similar proposal for this property as a special use in the F District – Farming.**