

Exhibit C

JUL 27 2001
U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

JUL 26 2 35 PM '01

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Planned Parenthood of Northern
New England, and 24 Penacook Street, LLC,
Plaintiff(s)

v.

Civil No. 01-64-M

City of Manchester, New Hampshire,
Defendant

ORDER

A pretrial conference was held on July 25, 2001. Lucy Hodder, Esq., and Carrie Flaxman, Esq. (by telephone), appeared on behalf of Planned Parenthood of Northern New England. Michael Mortimer, Esq., appeared on behalf of 24 Penacook Street, LLC. Daniel Muller, Esq., appeared on behalf of the City of Manchester. Richard McNamara, Esq., and Richard Fredette, Esq., appeared on behalf of proposed interveners Howe, Riley & Howe. Stephen Queeney, Esq., appeared on behalf of proposed interveners Barbara Hagan and Kathleen Souza.

The parties understand that trial on the merits will be limited to issues directly related to whether the building permit at issue in this case was revoked by the City defendant for constitutionally impermissible reasons. It appears that the case

may be mooted in the near term due to Plaintiff's (24 Penacook Street's) completion of construction. The City, however, claims (or seems to claim) that the building permit not only authorizes construction in accordance with the approved plans, consistent with the extant variance, but also serves to authorize use of the property in a manner that exceeds the scope permitted by the variance. While that argument seems facially implausible, if correct, then perhaps completion of construction will not serve to moot this particular case. (But see, 15 Peter J. Loughlin NEW HAMPSHIRE PRACTICE: LAND USE, PLANNING AND ZONING, 2d Ed., § 7.05 (explaining use of the "cease and desist order" as an enforcement mechanism routinely used to address violations of zoning regulations or conditions, such as use beyond the scope authorized by a variance). Plaintiff shall advise the court when construction is completed, and, if construction is completed before trial on the merits, the parties will be expected to address the mootness issue.

Trial will commence at 9:00 a.m. on October 15, 2001, and will conclude on or before October 18, 2001. The parties estimate that evidence presentation should require no more than two days.

The parties are experiencing no difficulties related to discovery. Discovery shall be conducted by agreement, and shall close on September 28, 2001. The parties do not require expert disclosure dates, and will endeavor to agree on the content of any opinion testimony, as needed.

Trial exhibits shall be premarked and filed on or before October 8, 2001. Witness lists (firm will call) shall be exchanged and filed on or before October 8, 2001. The parties shall, in good faith, stipulate to all material uncontested facts, with a view toward eliminating testimony related to uncontested matters.

The court declines to exercise supplemental jurisdiction over plaintiffs' state law zoning claims as the legitimate federal issue presented by this case (the constitutionality of the City's revocation of plaintiff's building permit) can be considered and resolved without the need to wade into various local zoning ordinance interpretations relative to whether prospective uses to which the property in question may or may not be put under the extant variance would or would not be consistent with that variance. See, e.g. Raskiewicz v. Town of New Boston, 754 F.2d 38, 44 (1st Cir. 1985); Creative Environments, Inc. v.

Easterbrook, 680 F.2d 822, 833 (1st Cir. 1982); Chipland Enterprises v. City of Lebanon, 712 F.2d 1524, 1527 (1st Cir. 1983). (Of course, local officials may not interpret or apply zoning restrictions or variances in an unconstitutional manner, but that claim has yet to arise - this case concerns only the revocation of an issued building permit, not what potential uses are or are not permitted under the existing variance.)

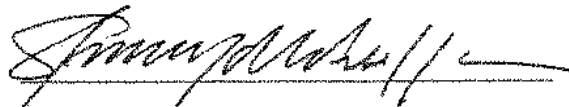
As discussed during the pretrial conference, the proposed interveners' interests lie in precluding use of the property that exceeds the scope authorized by the variance. Intervenors do not object to a limited so-called "general practice" medical use of the property pursuant to the variance, as they envision such a use. But they anticipate that the owner's lessee will actually use the property in a manner that they apparently believe will be either inconsistent with or in excess of a permitted medical use. Given those circumstances, the proposed intervenors do not have any cognizable interest in the principal issue in this case, i.e. whether plaintiffs' constitutional rights were violated by the City when it revoked the issued building permit (which, by judicial admission on the City's part, permitted construction consistent with the City's

(and the interveners') own vision of a permitted medical use under the extant variance). Accordingly, the motions to intervene in this case, although previously tentatively granted pending further order of the court, are now denied.

CONCLUSION

The pending motions to intervene (documents no. 5 and 18), which were tentatively granted by oral order subject to further order of the court, are hereby denied. The court declines to exercise supplemental jurisdiction over plaintiffs' state law zoning claims, and those claims are dismissed without prejudice to refiling in state court (Counts IV (state zoning claim albeit cast in constitutional terms), V, and VI)). Trial on the merits will commence on October 15, 2001, at 9:00 a.m.

SO ORDERED.



Steven J. McAuliffe

United States District Judge

Date: July 26, 2001

cc: Lucy C. Hodder, Esq.
Roger Evans, Esq.
~~Robert E. Murphy, Jr., Esq.~~
Daniel D. Muller, Jr., Esq.
Stephen F. Queeney, Esq.
Richard B. McNamara, Esq.