



**Planning Board Meeting**  
Monday, March 11, 2013  
Council Chambers, City Hall at 7:00 pm

**MINUTES**  
**Approved 3.25.13**

**I. Roll Call**

**Present:** Bruce Kolenda, Peter Guillette, Andy Austin, Richard Wahrlich, James Neilsen IV, William Greenrose, Ruben Ramirez, James Short (alt), Ken Harlow (alt)

**Absent:** Rusty Fowler, Victor Bergeron

**City Staff:** Michael McCrory, Interim City Planner

Ken Harlow will sit in for Rusty Fowler.

**II. Review of Minutes February 25, 2013**

**Motion:** to approve minutes from February 25, 2013

**Made By:** Mr. Kolenda      **Second:** Mr. Harlow

**Vote:** Unanimous [2  
Abstentions: Mr. Greenrose, Mr.  
Ramirez]

**III. Old Business**

- City Center Project – Zoning Ordinance Review Continued

Chair Guillette read the City Center Zoning Amendment Report to the City Council aloud for the viewing public.

**Motion:** approve the amendment report and pass on to City Council.

**Made By:** Bruce Kolenda      **Second:** Ruben Ramirez      **Vote:** Unanimous

**IV. Old Business**

- **(PB2013-0002) Desmond & Kelly Willey, Windsor, VT.** Request for amended site plan review under Appendix C of the City Code. Property Location: **314 Washington Street**, Tax Map 133, Lot 6, Zoning District B-2.

Continuation from the February 25<sup>th</sup> meeting.

The applicant proposes change of use at the subject property from principal retail use with adjacent office to a 72-seat restaurant with drive-through and adjacent office space. The amended site plan indicates modifications to accommodate sufficient parking and circulation for the proposed use. The plans denote building setback lines in accordance to the zoning ordinance. The proposed plan will remove a portion of structure to meet setbacks. The propane

tanks will be moved back onto the property and parking has been noted. The historic wash bays (2) will have new uses (storage).

Chair Guillette stated the Traffic Study should be completed by the end of June. The Traffic Committee discussed turning regulations and there has been a misconception by the board. The board should look at every application and make decisions according to where the site is located. The state of NH determines if there is a double-yellow or a double double-yellow line. The traffic committee looks at restricting left hand turns only where there is a double double-yellow line. The Planning Board can determine restricted turning based on the site. Mayor Neilsen, IV stated that a representative from the Traffic Advisory Committee would come speak to the board with any future concerns. Mr. Greenrose reiterated that the Traffic Advisory Committee would notify the board with any concerns or statements on an application.

Mr. Austin clarified that they tabled the meeting because there was previous agreement not to allow any additional left hand turns on Washington Street. Mr. Greenrose asked what will happen if the study comes back stating that there should be no left hand turns. Mr. McCrory stated the study is advisory and they are recommendations. Review should be on a case by case basis. Mr. Austin stated the board should plan on more traffic in the future. Mayor Neilsen, IV reiterated that the planning board could put a condition to re-look at the traffic conditions at this site in X amount of years.

### **Open Public Hearing**

Applicant, Desmond Willey, was present at the meeting. He reminded the board that it would be a problem to turn traffic into Market Basket or McDonalds. Stephen Pernaw, traffic engineer with Pernaw & Co., was present at the meeting. Mr. Pernaw is a P.E. and P.T.O.E. There are several traffic signals along the corridor and the signal to the east is very helpful. Mr. Pernaw gave a presentation for the board. The Moody Ave area has the highest traffic count. The hourly rate of flow is the key focus. The highest count is approximately between 4PM-5PM. If you prohibit left hand turns, traffic is forced into the areas with higher accident rates. The proposed use will generate an estimated 32 trips during peak hours. Right turns out would be straight forward. From a capacity standpoint, the site can handle the small amount of traffic. Mr. Pernaw advised eliminating the hedges to aid in visibility. Traffic will go to the most convenient locations per Mr. Willey. Mr. Ramirez asked if this was a national franchise.

### **Close Public Hearing**

Mr. Greenrose likes that there can be a caveat about re-addressing down the line even though currently it meets requirements.

Chair Guillette stated there is really no competition directly across the site. At this point, there is no reason to require a right hand turn only. However, it would be advisable to reserve the right to review this decision in 3 years.

This will be a regular restaurant and not fast food. There will be a drive-through.

**Motion:** to accept the request for an amended site plan review under Appendix C of the City Code with the following conditions subsequent: (1) The applicant shall obtain and receive approval for all necessary permits as determined by the Local, State, and Federal governments, (2) The applicant shall obtain and receive approval for all necessary permits as determined by

the City of Claremont Planning and Development Department, (3) Prior to issuance of a Certificate of Occupancy, the owner/applicant shall notify the Zoning Administrator and Building Inspector that the project is ready for final inspection. Completion of the project shall be in substantial compliance with the plans submitted for review and all conditions of approval, (4) Site Plans are valid for two (2) years from the date of approval. If a certificate of occupancy has not been issued before the two-year deadline, the site plan is no longer valid and must be recertified through the Planning Board, and (5) Two (2) mylars in a form suitable for recording at the Sullivan county Registry of Deeds must be provided and Site Specific Conditions: (1) All building permits applied for from the Planning and Development Department will be reviewed under the Building/Fire Codes in place at time of application regardless of the date of this approval, (2) The applicant shall discontinue use of the existing on-site water supply well. If the on-site well is put into use, the applicant shall notify the Planning and Development Department and obtain all necessary public water supply permits from NH Department of Environmental Services, (3) The applicant shall obtain a sign permit from the Zoning Administrator in accordance with the City Code, and (4) ~~the applicant shall prepare and submit a traffic safety study five (5) years after issuance of a Certificate of Occupancy.~~

**Made By:** Mr. Greenrose                      **Second:** Mr. Ramirez                      **Vote:** Unanimous

Mr. Wahrlich is concerned about the cost to the applicant. Mr. Neilsen, IV agrees. It is an unknown if there will be an issue in 5 years.

Mr. McCrory stated that if there is no need to keep the condition from the board, then eliminate the condition. But if there is even a possibility, the condition should remain.

**Motion:** to drop site specific condition (4): the applicant shall prepare and submit a traffic safety study five (5) years after issuance of a Certificate of Occupancy.

**Made By:** Mr. Wahrlich                      **Second:** Mr. Greenrose                      **Vote:** Unanimous

## V. New Business

- **(PB2013-0003) BPOE Claremont Lodge #879, Claremont**, Request for site plan review under Appendix C of the City Code. Property Location: **54 Summer Street**, Tax Map 131, Lot 58, Zoning District B-2.

The Owner/Applicant, BPOE, operates the subject property with the principal use, the Elk's Lodge, and accessory commercial use of the second building on the property. Historically, the second building has been leased to businesses including a real estate office and similar uses. BPOE plans to change the use of the second building to a retail store. The change in use for the second building necessitates site plan approval from the Planning Board. The application indicates the proposed retail use will be a gun shop operating 6 days per week with 2 employees.

**Motion:** to accept the application as complete.

**Made By:** Mr. Austin                      **Second:** Mr. Kolenda                      **Vote:** Unanimous

The parking spaces in the front of the building are in the right-of-way. If there is no easement one must be provided. The plan shows no parking in the front of the building. The retail use requires 5 spaces; the Elks Lodge is grandfathered from the parking requirements. When there are events on the site there is an agreement to use neighboring lots or on-street parking. There

may be some overlap between the Elks Lodge and retail because it is open 6 days a week. The plan shows one ADA space, 2 are required.

Staff comments on this application were integrated in the conditions of approval.

Mr. Kolenda inquired about proximity to the high school. Mr. McCrory stated that the Chief of Police did not know of any federal or state law prohibiting a gun shop in proximity to a school. In sensitivity to the proximity the school district was notified. Dr. McGoodwin appreciated the contact and that he would notify the principal of the high school.

Mr. Ramirez asked where the additional ADA parking space would be. Mr. McCrory stated that the location for a second space is still in progress.

Recommended conditions: to place a fence between the commercial and residential property and add posted signs to identify appropriate circulation would be beneficial. This would include the addition of an ADA parking space.

### **Open Public Hearing**

Tony and Judy Depadova, abutters, were present and do not oppose the operation. They would appreciate a new privacy fence.

Donna Montenegro, abutter, was present. She appreciates new business but is concerned about children in this area. Washington Street would be a better site. While the Elks need a tenant, she questions their morals and intent. A friend has informed her that a gun shop cannot be within 1000 feet of a school.

Ernest Montenegro, abutter, was present. He has a problem with Cumberland Farms traffic 24 hours a day and while the gun shop does not get this much traffic, perception is everything. It would have been a smarter decision to put this shop on Washington Street. While he understands the security will be there, it doesn't seem to be the thing to put in a struggling residential area. IT seems like this is a done deal as Mr. Belisle is already working in the space.

Chair Guillette confirmed this is not a done deal.

### **Close Public Hearing**

Mr. Greenrose asked if there would be a test range in the building. Mr. Mark Limoges stated there would be no test range. Ammunition will be on site. All ATF rules are required to be met for the shop to open.

Mr. Greenrose would like clarification on the distance to a school. Mr. Limoges stated there is an enhancement of the law for a gun free school zone (1000 feet). This does not apply to an FFL (federal firearms license) business which the gun shop would be. Mr. McCrory has the gun free school notice for the record. Mr. McCrory confirmed that as long as security measures are followed and there is approval from the ATF, the Chief of Police is not concerned. Mr. Austin asked for security requirements. Mr. Limoges stated doors and windows will be barred. Handguns will be in locked cases and rifle on the wall out of reach from customers. ADT will be monitoring 24/7 and security cameras will be inside and outside of the building.

Donna Montenegro stated she called the high school principal and he was not aware. Mr. Sprague mentioned the safe school zone. Mr. McCrory read the general information from the Gun Free School Zone Notice for the benefit of the public.

Mr. Kolenda does not have a concern about a gun shop but the location seems inappropriate as the intersection is a gathering spot for teenagers and middle school children.

Mr. McCrory stated the site plan is for retail; the gun shop falls under the retail umbrella.

Mr. Kolenda stated if this is the case, the application must be looked at as a retail use and not a gun shop (as this is an accepted use). Mr. McCrory stated the concern about public safety is relevant to the site.

There are other prohibitions in the downtown (e.g. second-hand stores) but this was not conditioned to gun shops. The conditions are written to solidify safety for this use.

Mayor Neilsen, IV stated they can consider the safety issue but the technical review staff takes no issue. He is also concerned about coming in with a site plan and just because someone doesn't like the business it doesn't mean it doesn't fit conditions. This cannot be based on emotion.

Mr. Kolenda disagrees as this is not a safe location. Mr. McCrory stated there is an opportunity for someone to leave the store unknowingly breaking federal law. It would be the shops responsibility to ensure federal laws are met (unless the customer falls under one of the exemptions).

Mr. Limoges stated that there are regulations to even purchase a gun. The crime lab/crime center needs to approve the sale.

Adam Dumont, citizen, understands the concern and need for safety. The board mentioned that the police are more of an upscale presence in the area because of the populace. This is beneficial for having the gun shop in an area with higher police presence. It might also assist in security of Cumberland Farms because of enhanced lighting and security. If the applicant is just here for the site plan, that is essential.

Mr. Montenegro stated the dynamic is interesting between residential owners versus commercial. The gun shop could move, but residents cannot leave so easily.

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department for staff review and approval prior to preparation of final mylars.

**Made By:** Mr. Greenrose

**Second:** Mr. Wahrlich

**Vote:** Mr. Wahrlich - yes, Mr. Greenrose - yes, Mr. Ramirez - no, Mr. Kolenda - no, Chair Guillette - yes, Mr. Austin - No, Mayor Neilsen - yes, Mr. Harlow - no

The board discussed having an even number of members and a split vote as 2 regular members were absent and Mr. Bergeron is a council representative so Mr. Harlow filled in for Mr. Fowler making the number of members sitting for this hearing an even number.

Mr. Wahrlich stated it is clear the board is making an emotional vote because the board does not like what is going in there and at that point are they suppose to recuse themselves from voting. This could open the board up for a law suit. Chair Guillette stated if someone wants to vote against the application they have every right to do so. Based on the application, requirements are met.

Mr. Greenrose stated that it is like the left-turn application. Personally, he would not like to see them, but rationally the facts show it is not a hindrance.

Mayor Neilsen, IV, stated that while the majority wouldn't like it there personally, he asks the board to look at the site plan regulations/permits to regulate if it cannot go there. There is nothing in the City Center that states this is a prohibited use. He has asked for a voice vote again to see if the board is locked 50/50. Mr. Austin stated his position isn't necessarily his own opinion but he represents the constituency of the city. He suspects that if he walks down Pleasant Street and asks citizens about the gun shop at the Elks, they will be pretty hostile about it and he would rather not go that route. This is a safety issue and not emotional. Mr. Kolenda stated this is more of a safety issue versus personal. Being this close to any school is wrong. But if the only thing the board can vote on is the letter of the law, and this is acceptable, then he would change his vote. Mayor Neilsen, IV stated proof would be needed to prove unsafe. But if anything ever happened the board would feel terrible. Chair Guillette stated the Chief of Police and school district were not present and this says something about the application. He has called for a second voice vote and if there is a tie, the application will be tabled.

**Motion:** Mr. Austin would like to table the application

**Made By:** Mr. Austin

**Second:** No Second

Mr. McCrory would like to see what the statutory background is on the matter of a split vote with an even number of members.

Mr. Ramirez stated the chair has the option to call for a recount. Chair Guillette wanted to assure everyone was on agreement for a revote; if it comes out tied the application will be tabled until the next meeting.

Chair Guillette read the role call:

Mr. Wahrlich - yes, Mr. Greenrose - yes, Mr. Ramirez - no, Mr. Kolenda - yes, Chair Guillette - yes, Mr. Austin - no, Mayor Neilsen - yes, Mr. Harlow - no

The motion carries with a 5:3 in favor of the application.

Mr. McCrory will look into the tied vote for the future.

## **VI. Adjournment**

**Motion:** to Adjourn

**Made By:** Mr. Greenrose    **Second:** Mr. Ramirez    **Vote:** Unanimous

Meeting adjourned at 9:30PM

Minutes Respectfully Submitted by Kelly LeBlanc