



**Planning Board Meeting**  
Monday, April 25, 2016 7:00 PM  
Council Chambers, City Hall

**MINUTES**  
**Approved as written 5/9/2016**

**I. Roll Call**

**Present:** Marilyn Harris, Richard Wahrlich, Bruce Kolenda, James Short, Charlene Lovett (arrived at 7:07PM), Victor Bergeron, Marlene Jordan, David Putnam, Rois Neil Ward, Jr.

**Absent:** William Greenrose, Nicholas Koloski

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

Mr. Wahrlich asked Mr. Ward to sit in for Mr. Greenrose, and Mr. Putnam to sit in for Mayor Lovett.

**II. Review of Minutes – April 11, 2016**

**Motion:** To accept the minutes of April 11, 2016

**Made by:** Mr. Bergeron      **Second:** Mr. Short

**Vote:** Unanimous in favor

**III. Old Business**

- a. **PL 2016-00007 Jeremy Zullo, 86 Windy Hill Road:** Application for Site Plan approval to establish property maintenance and paving businesses with a 20 ft x 40 ft salt shed and a 30 ft x 60 ft maintenance garage on **Caajm Place**. Map 35, Lots 2 & 2-1. Zoning District: RR (Continued from 4/11/2016)

Mr. Wahrlich read the public notice.

**Planner's Report**

Mr. McCrory said the board had continued this application from their last meeting to await the zoning board's decision on the variance. (The applicant was not present at this meeting.) Mr. McCrory said the board could continue the application again or defer it to a later date (which would require re-warning it at the applicant's expense).

Mr. Putnam asked Mr. McCrory if Mr. McCrory finds the application is complete. Mr. McCrory recommended not having that discussion at this time.

**Motion:** To continue the hearing to May 9, 2016.

**Made by:** Mr. Short      **Second:** Mr. Putnam

**Vote:** Unanimous in favor

Mr. McCrory invited the planning board members to participate in a site visit to the subject property.  
(Mayor Lovett arrives at the meeting.)

**Motion:** For the Planning Board to attend the site visit to Caajm Road on May 2<sup>nd</sup>.  
**Made by:** Mr. Putnam                      **Second:** Mr. Ward  
**Vote:** Unanimous in favor

#### IV. New Business

- a. **PL 2016-00008 Gertrud Holl Revocable Trust, 28 Monument Hill Rd, Springfield, VT** – Application for site plan waiver for BJ Brickers Restaurant at **214 Washington Street**. Map 121, Lot 46. Zoning District: B2

Mr. Wahrlich read the public notice.

##### **Planner's Report**

Mr. McCrory stated that this property has an approved site plan and a site plan amendment from 1995. The site plan regulations state that if there won't be substantial changes to the site and there is a site plan already on file, a waiver can be requested.

The applicant is requesting just such a waiver of the requirement for site plan review. This is not an approval of a site plan, but rather a determination of whether or not site plan review is necessary.

There are provisions in the regulation for administrative waivers, but staff is deferring to the planning board.

BJ Brickers Restaurant has been closed since 2013. The Trustees of the Holl Revocable Trust would like to re-open the restaurant or make it operational for sale. There are circumstances preventing that. In 1963, the restaurant (then Idlenot) had a cross-easement with Claremont Plaza that allowed customers to pass over each other's property and to provide parking spaces for the restaurant. That easement lapsed in 2013. Thus there is a change in the amount of available parking spaces for BJ Brickers.

The applicant is applying to the zoning board for a variance to reduce the number of parking spaces that must be provided. The case is scheduled for the May 2<sup>nd</sup> meeting.

The board can approve the waiver, deny the waiver which would require the applicant to come back with a site plan application, or defer until after the zoning board makes its decision.

Mr. McCrory stated that a letter had been submitted to the board by an abutter. He ensured that everyone had a copy.

Mr. McCrory said that some photos of the site had been received by his office on behalf of the applicant. He asked the board to accept them into the record.

**Motion:** To accept the photos into the record.

**Made by:** Mr. Bergeron

**Second:** Ms. Jordan

**Vote:** Unanimous in favor

Mr. Wahrlich asked if the board should refrain from making a decision in light of the application pending before the zoning board. Mr. McCrory said that was up to the board – they could if they chose to.

Mr. Putnam asked if the application were not in front of the zoning board, would a site plan be necessary. Mr. McCrory said the record is not entirely clear. Certain key points were left unsaid in the minutes and in the approval itself. He said there is an approved site plan from 1995, but it does not speak directly about the parking conditions. The 1963 agreement is not mentioned. The 1995 plan was for a 10 ft x 30 ft addition to the building. The plan was approved and the addition was constructed. The proposal now is to occupy the building without changing anything on the site.

Mr. McCrory read to the board the text of Article VII of the Site Plan Regulations regarding waivers:

*Article VII: - Waiver procedure.*

*A. Applications for site plan review may be waived by the zoning officer for 1) a change of use where there is to be no addition to the gross building area and the additional impact is believed to be minimal; or 2) the filling of areas of one-fourth (1/4) acre or less; or 3) building additions where the additional floor area totals less than ten (10) percent of the existing gross area and the additional impact is believed to be minimal. (Amended, 11-14-88; Amended, 8-14-00)*

*B. The planning board may waive provisions of these regulations provided that the planning board has determined that such waiver of any requirements will not affect the purpose and intent of these regulations and will be consistent with the master plan.*

*C. The planning board may waive formal submission of a site plan or the requirement that the site plan be prepared by a licensed surveyor at the time of Preliminary Review if:*

*1. A proposed addition is less than twenty-five (25) percent of original floor area of building or one thousand (1,000) square feet, whichever is less, or;*

2. *A proposed change in use is minor or there is an existing site plan on file.*

Mayor Lovett said the board should hear what the parties present have to say as there appears to be a difference of opinion regarding the state of the current site plan. She said a major change would impact the board's decision. Mr. Putnam and Mr. Wahrlich concurred.

### **Applicant's Presentation**

Ms. Holl drew the board's attention to Article VII(C) (2) where it states, "or there is an existing site plan on file". She said, "We have an existing site plan on file." She said this building has always been a restaurant; that Brickers did not change the number of seats nor did they sell off any of their land. She said she had witnessed Plaza customers crossing her property just before she had come to the board meeting. The Plaza dumpsters are on her property. She said there is now a restaurant in the Plaza (Domino's Pizza) that hadn't been allowed under the easement. The State took some of their property by eminent domain to widen Washington Street – she said her mother "never signed the paper", but the State took the land anyway. She stated that she is unable to re-open the restaurant because of events that happened that were not of her doing – she has not changed anything. She disagreed with the abutter's assertion that there has been a major change to the site.

Mayor Lovett asked if there had been any changes to the site plan that the board had in their packets with the application and that is currently on file. Ms. Holl said no, there haven't been any.

Mr. Putnam asked how many parking spaces the easement provided. Ms. Holl said she didn't know. Mr. Putnam said that parking is required of every business in order to open and that there doesn't seem to be enough parking now. Ms. Holl said that that was why she was seeking this waiver. Mr. Putnam asked where she would put the cars if the abutter doesn't want them on his property. Ms. Holl said she would move the dumpsters off her property. (She then said if the Plaza would be business-like their dumpsters could stay and they could continue to cross her property and use her parking, as they are now doing.) She would ask traffic to go only in one direction (because there isn't room for a turn-around) with a new curb cut at the eastern end of the lot. She also said it would be confusing to the public (if she is limited to using just her property).

Ms. Harris asked how many parking spaces she has on her own lot. She did not know. Ms. Harris said Ms. Holl needs 25 spaces for a 100-seat restaurant. Ms. Holl said she could get parking off-site. She said the former Staples building is "wide open" and that Rockingham Electric closes at 5PM and they don't have signs up that say "No Parking".

Mr. Wahrlich said that in order for the board to grant a waiver, they would need to have an idea of what is available for parking spaces and what the traffic flow would be. He said he would not be comfortable granting a waiver without knowing these things.

Ms. Holl asked, "On what legal grounds are you denying me?" Mr. Wahrlich said he wasn't denying the application, but he wanted more information. Mr. Putnam said if the waiver is denied, she would have to come back with a site plan, and he asked what that might look like.

It was suggested that Ms. Holl close off the cross easement and use it for parking. She said there is nowhere to turn around and feared that customers would get confused, not knowing where to go.

Mr. Wahrlich said that's why the board needs more information. Ms. Holl said, "If we don't get the parking, we're going to have to tear down the building. Is that what Claremont wants?" Mayor Lovett said no, of course not. She said the purpose of this hearing is to determine if a new site plan is required - that the parking issue is for the zoning board. She said the board needs to focus on the fact that there is a site plan on file and that there have been no major changes to the foot print. This is a different issue than the parking issue. She recommended that the board continue the hearing until the zoning board has completed their process, but she also wanted to hear from both parties.

Mr. Putnam said that the board cannot determine if the 1995 site plan included parking from the abutter.

#### **Abutter Presentation**

Attorney Paul Bauer, representing Claremont Plaza Associates, offered copies of Google Earth photos of the site to the board.

**Motion:** To accept the Google Earth photos.

**Made by:** Mr. Putnam                      **Second:** Ms. Jordan

**Vote:** Unanimous in favor

Attorney Bauer distributed the copies to the board.

Mr. Bauer said that, as stated in their letter dated April 22, 2016, Claremont Plaza Associates (CPA) is strongly opposed to the waiver for BJ Brickers. He said that pursuant to Article VII, site plan waivers are permissible only where the change of use is minor and the additional impact is minimal. He said that is not the case in this instance. He acknowledged that a waiver may be granted if there is a site plan on file, but that plan does not account for the significant changes that have occurred relative to the parking for the restaurant. The significant changes include the loss of property by eminent domain (for which Brickers was compensated) and the expiration of the easement for use of CPA's parking area. Mr. Bauer asserted that CPA needs all of its parking spaces for its tenants and their clientele and will not be renewing the easement. He said that Brickers cannot comply with the parking requirements and is proposing to resolve the issue by using CPA's private property

without permission or compensation. He drew attention to the aerial photo of the Plaza and Brickers and showed what he presumed to be the extent of the Bricker property, “where the pavement color is different”.

Mr. Bauer said that BJ Bricker’s plan would have a major impact on CPA. He said it would impact their private land ownership and conflict with CPA’s rights as a private property owner. He said it would impact CPA’s tenants who pay taxes, maintenance and insurance for use of the parking lot. It would impact the leases of CPA tenants as tenants have exclusive rights to the use of this parking area. It would place an undue burden on CPA, because CPA would have to constantly monitor the lot and tow away trespassers. He said the application should be denied outright because there will be more than a minimal impact making a waiver inappropriate. Continuing the hearing will further cost CPA because their council has to travel from Manchester to attend the meeting. He asked that the board deny the request that evening. He said a site plan could be submitted if the zoning board grants the variance.

Mayor Lovett asked what was meant by “others’ in Mr. Bauer’s sentence, “...BJ Bricker’s plan is to satisfy its parking needs by having restaurant customers utilize the privately-owned parking area owned by **others**.....” Mr. Bauer said he meant other near-by lots.

Ms. Harris asked if Brickers actually owned more land than just where the pavement is a darker color in the photo, to the west of the building. Mr. Putnam said the tax map shows a much larger area outlined as Bricker property – it goes to the boundary line of Arrowhead Motors. Mr. Bauer said he wasn’t certain about the boundary lines.

Mr. Putnam said he is a business owner in Claremont and that he and his neighbors share parking and customers. They have learned that it is to their mutual benefit. He asked if this wouldn’t be the case with Brickers and CPA. Mr. Bauer said possibly it might, but said Brickers needs 25 spaces for customers, plus more space for their employees, dumpsters, etc. He said this is not an “insignificant use of the parking spaces.” He added that parking for restaurant customers is longer-termed than store shoppers. (Mr. McCrory said that the parking requirements include employee parking.) Mr. Bauer added, “If there are in fact 100 seats in the restaurant.”

Mayor Lovett again recommended that the board continue until the zoning board has made its decision.

Mr. Wahrlich said he has lived in Claremont for a long time and the only time he sees that parking lot full is on the Fourth of July when people are parked there to watch the fireworks. He asked if it is a need for the parking spaces or a problem in negotiations. Mr. Bauer said his client needs the spaces for their tenants and their clientele and they are not interested in renewing the easement. He added that the area of the parking lot closest to Brickers is small and if it is filled with Brickers customers, Plaza customers would have to walk all the way from the far side of the

lot to get where they are going. He said CPA is not obligated to renew the lease or provide parking for others to use.

Mr. Kolenda said he has lived in Claremont all his life and he and his wife often dined at the restaurant and then gone over to the Plaza to do some shopping. He said it is sad that these businesses cannot get along. He said he had never seen the parking lot being even close to being full.

Mr. Putnam stated the same. He said even the aerial photo shows the lot only 10% occupied.

Ms. Harris asked Mr. Bauer to tell his client that the board respects their right to use their private property as they see fit, but that she agrees with what has been said. Having a vibrant community and restaurant should be the goal and everyone should work together. She said the restaurant might be sold to something that might compete with the Plaza instead of being something that would be a benefit to it.

Mr. Bauer said his client is not looking to shut down the restaurant, but he can't be forced into a new easement either. He said if it is determined that the building couldn't be used as a restaurant, there are other uses to which it could be put –uses that might require less parking.

Mr. Bergeron asked if the cross easement could be shut down. Mr. McCrory said this had been discussed with the fire department as to how it could be shut down to everyday traffic, but still be accessible for emergency vehicles. Mr. Bergeron thought that if that area was shut down to through traffic and the dumpsters were removed, then it could be used for parking.

Mr. Putnam said he was in favor of continuing this discussion until after the zoning board has made their decision.

Mr. Ward asked if there is access to the Bricker property via the red light. Mr. McCrory said no, the only access is the curb cut to the west of the building.

Mayor Lovett pointed out that if the Bricker property is closed off, the Plaza spaces nearest the west end of the Plaza will be compromised.

Mr. Putnam said he was disgusted that the parties cannot come together to create an agreement where both can co-exist as they did for so long in the past.

Ms. Holl said she has called the abutter and he had offered her \$150,000 for the property. She said that was very hard for the trustees to take.

There was no more discussion.

**Motion:** To continue the hearing to May 9<sup>th</sup>.

**Made by:** Mr. Kolenda

**Second:** Mayor Lovett

**Vote:** Unanimous in favor

Mr. Wahrlich said the board will need to see how the parking would be laid out.

**V. Reports from Boards and Commissions**

Mr. McCrory said the Master Plan survey was finalized today and is ready to go. Mr. Putnam urged everyone to complete the survey. It will be circulating for 2-3 weeks. It will be available online through Survey Monkey and in paper form.

**VI. Other**

Mayor Lovett asked that the minutes of the April 11<sup>th</sup> meeting reflect a substantial discussion by the board regarding ownership of Caajm Road.

Mr. McCrory urged all board members to consider attending the OEP Spring Planning & Zoning Conference on June 4<sup>th</sup>. Registration forms are available through the P & D Department and the City pays the fee for attendees.

**VII. Correspondence**

**VIII. Adjournment**

**Motion:** To adjourn the meeting

**Made by:** Ms. Jordan **Second:** Mr. Short

**Vote:** Unanimous in favor

The meeting adjourned at 8:16 PM.

**Respectfully submitted,**  
*deForest Bearse*