



Zoning Board of Adjustment Meeting  
Monday, November 2, 2015 7:00 PM  
City Hall Council Chambers

**MINUTES**  
**Approved 12/7/2015**

**Call to Order by the Vice-Chair** (the chair was not present) at 7:06 PM.

**I. Attendance/Roll Call**

**Present & Participating:** Richard Collins, David Nichols, Todd Russel, Carolyn Towle, Amy Richardson

**Absent:** Michael Hurd, Daniel Worcester

**City Staff:** Michael McCrory, Interim City Planner; Jane Taylor, City Solicitor

Mr. Nichols asked Ms. Towle to sit in for Mr. Hurd.

**II. Minutes of Previous Meeting - October 5, 2015**

**Motion:** To accept the minutes as read.

**Made by:** Ms. Towle      **Second:** Mr. Petrin

**Vote:** Unanimous in favor

**III. Old Business**

After a brief discussion with Mr. McCrory, the consensus of the Board was to reverse the order of the agenda items and hear Ms. Jason's application first.

- o **(ZO 2015-00015) Sally Jason, 140 North Street** – seeking a Special Exception Permit to establish a pre-school at **140 North Street**. Tax Map 107, Lot 279. Zoning District: PR. (Cont. from 10/5/2015)

Mr. Nichols read the public notice for this hearing. He called for Mr. McCrory's report.

Mr. McCrory stated that the building at 140 North Street was once a public school. It is now privately owned commercial property currently housing a karate studio and a yoga studio. In February of this year the owner of the property went to the Planning Board seeking a waiver of a site plan amendment, which the Planning Board granted as there was not to be any substantial change to the layout of the property. A preschool was listed on the waiver application as one of the proposed uses for the building (in addition to the karate and yoga studios and possible future office space on the second floor). The preschool was included as one of the three principal uses of the property in the review of the waiver application by the Planning Board.

Mr. McCrory went to say that public and private schools are allowed by right in the PR zoning district in which this property is located. However, preschools fall under "childcare facilities" (in the eyes of zoning and statutes) and childcare facilities require a special exception permit in the PR

zone. The owner of the property and Ms. Jason are present at this hearing to obtain the permit. In working with the applicant and the Planning Board, staff made the determination that the proposed use was not substantially different from the historic use of the property.

The Board received a letter from abutters, Earl and Valderese Gregoire, residents at 137 North Street, Apt. 2, who were unable to attend the hearing. Mr. Nichols read the letter for the record. The Gregoires are happy to see the building being used by children of all ages and have no objections to the pre-school.

### **Public Hearing Opened**

Mr. McCrory read the abutters roll. Mr. Nichols opened the public hearing and asked if any abutters were present. The applicant was present.

Ms. Jason stated that she thinks Claremont is in need of quality pre-school. She stressed that the pre-school is not a daycare. The school is open from 6:30 AM to 5:30 PM. The martial arts studio clients arrive shortly before 5:00 PM, so there is very little overlap of the two businesses. The preschool parents drop the kids off or pick them up; the karate studio parents stay with the kids, so she said parking has not been a problem so far. She said the location is a safe place for children and hoped the board would allow the business to stay.

Ms. Richardson asked for curriculum information so the Board could feel certain that the use is in fact a school. Ms. Jason described a typical day's schedule.

Mr. Collins asked how many children would be in the school. Ms. Jason said she is licensed for 16 children. She currently has 5 full time children and one part time.

Ms. Towle said she had been at the site at 5:00 and had found it hard to get in and out and find a place to park. Ms. Jason said her business uses the parking on the left side of the building and Mr. Sartwell uses the left side. When she left at 5:05 this afternoon there were six or seven spaces available on her side of the building. Ms. Towle asked if the building is completely sprinkled. Ms. Jason said yes, they had passed their fire inspection.

Mr. Russel asked where the daycare was located inside the building. Ms. Jason said it is in the first room on the left inside the front door. She said they occupy about a fourth of the first floor.

There were no further questions from the board to the applicant.

### **Public Hearing Closed**

Mr. Nichols asked if there were any abutters present that wished to speak. No one responded. Mr. Nichols closed the public hearing.

Mr. Russel expressed concern about parking for the dojo based on prior observations when the dojo was at 101 Mulberry Street. Mr. McCrory urged caution in comparing the two without knowing how similar or different the programs are at the two locations. He said the Planning Board had waived review of these site concerns when they waived the site plan approval.

Mr. Russel also wanted to know if the building fit-up complied with ADA requirements for a preschool. Mr. McCrory said he didn't know if there is a difference in requirements for a school

vs. a daycare. Attorney Taylor said the preschool had received a state license which requires compliance with all of the building and life safety codes.

**Motion:** To grant a special exception permit in accordance with Section 22-387, Table of Uses for City Center Zoning District, to allow a child day care facility at 140 North Street with the following conditions:

1. The applicant shall maintain all necessary licenses and meet all applicable state and federal laws and regulations for a child care facility.

**Made by:** Mr. Russel                      **Second:** Mr. Petrin

**Discussion on the motion:**

Mr. Russel said the site was formerly a school, so it is appropriate for a pre-school. He said he didn't think that the property values would be reduced by the preschool and that having the building back in use is great. He said there were no abutters complaining about it being a nuisance and the Planning Board didn't think so either.

Ms. Towle said there wouldn't be any adverse affect on the light and air of the abutters.

Mr. Russel said the facility is appropriate for the use (being a former school) and the applicant has all the necessary licenses. There won't be any more impact to City services than if the preschool was in another building in the City. He said it is better for the City to have the building occupied and that the use is not detrimental to the public health, safety or welfare. He said the use is definitely in harmony with the purpose and intent of the ordinance.

**Vote on the motion:** Unanimous in favor.

- o **(ZO 2015-00014) Michael & Elizabeth Lemieux, 519 Jarvis Hill Road** – seek to appeal an administrative decision requiring a Special Exception Permit for a gravel pit/quarry operation and an Earth Excavation Permit at **149 Alden Road**. Tax Map 182, Lot 3. Zoning district: RR. (Cont. from 10/5/2015)

Mr. Nichols read the public notice.

**Motion:** To go into recess for the purpose of consultation with legal council.

**Made by:** Ms. Towle                      **Second:** Mr. Collins

**Vote:** Unanimous in favor

The Board returned to the hearing. Mr. Nichols said that the Board had continued the application at the October 5<sup>th</sup> meeting to allow the applicant and abutters time to gather more information to bring to the Board.

Mr. McCrory gave a brief summary of events to date. In June, complaints were received regarding the property at 149 Alden Road, specifically placement of weight scales, operations on the property, what permits the City had. The staff made a site visit, researched the records and consulted with the owner. In August the City sent a letter outlining violations of City code occurring on the property. The owner was informed of the information collected and the basis of the determination by the zoning administrator. The owner was directed to obtain a zoning special

exception permit from the zoning board for gravel extraction and rock crushing and an earth excavation permit from the Planning Board. The owner is appealing those two determinations and the Board is being asked if the zoning administrator made an appropriate determination that these permits were necessary.

Part of the discussion thus far has been about grandfathering of the use of the site. There was substantial discussion at the September regarding the use of the property and how it is affecting abutters. Those discussions are summarized in the September meeting minutes. The City was unable to find any substantial evidence of grandfathering. The only evidence mentioning the gravel pit in the City records were minutes of April 1995 for the subdivision that creates the lot on which the gravel pit now sits. The applicant's agent (in 1995) indicated that the owner had not used the gravel pit for several years previous. There is also a deed reference to gravel extraction in 1995.

### **Public Hearing (Re-) Opened**

The abutters roll was not read as this was a continued hearing. Abutters were present in the audience. Mr. Lemieux was also present.

Mr. Nichols read a letter from Mr. Lemieux addressed to Michael Hurd requesting a continuance of the November ZBA meeting until December to allow more time for collection of information. Mr. McCrory stated that this request had been emailed directly to Mr. McCrory's Claremont email address late on Friday afternoon. As Mr. McCrory is not in the Claremont office on Fridays, he did not see the email until the following Monday morning. There was insufficient time to notify abutters of the request.

Mr. McCrory stated that there was no clear guidance on how the Board should proceed, but he said there was nothing to preclude the Board from hearing testimony at this time.

Mr. Nichols invited Mr. Lemieux to address the Board. Mr. Lemieux stated that he had met two weeks ago with Mr. McCrory at the pit and had explained to Mr. McCrory that he (Mr. Lemieux) was engaging surveyors and engineers to survey the property and had hoped to have the survey ready for this meeting. He is still waiting for the plans to be completed. Mr. Nichols asked if this was relevant to the appeal. Mr. Lemieux asserted that it was. Ms. Towle said she was still unclear as to how the map is relevant to the appeal. Mr. Lemieux said he is hoping that the map will show what areas of the pit were open when he bought it (in 1995). He said he also had abutters that would testify on his behalf. Mr. Russel asked about blasting. Mr. Lemieux said he is having the archived blasting records researched.

Mr. Nichols stated that in his opinion, Mr. Lemieux had not presented any evidence to the Board indicating that the pit was grandfathered. Mr. Lemieux disagreed and listed several points of information that been presented to the Board to support his claim. Ms. Towle stated that the Board had no evidence in front of them.

Ms. Towle asked if the Board could hear from the abutters that were present before the Board made its decision. Attorney Taylor said she recommended that the Board hear from anyone that wished to speak before the Board makes its decision. The Board agreed. Mr. McCrory read the abutters' roll. Mr. McCrory mentioned a deeded well from the 1995 subdivision plan that belongs to Jeff Andrews. Mr. Andrews was not on the butters' roll.

Arthur Bastion stepped to the podium. Mr. Bastion said he is not an abutter, but he lives only 75 feet across the road from abutter, Rock Allard. He said the pit operations affect him as well as other people on the road, even though they are not abutters. He said he wanted to be able to address the Board like any abutter. He said he has lived on his property for 43 years. Before that he lived at the Cook's property. He said he has known the area since he was a child. He said the crusher, the equipment that runs daily all day long, and the beeping noise as vehicles back up all affect the value of his property. Mr. Bastion said the third time that blasting took place, he was standing on his deck and watched rocks clear the pine trees behind Mr. Allard's house and land in the corn field in front of him. He used his hands to indicate the size of the rocks. Mr. Bastion watched five workers from the blasting company pick up rocks for 45 minutes to an hour following the blast. Mr. Bastion estimated that the field is 150-200 yards from the blast site. He expressed concern for the safety of the people in the neighborhood.

Mr. Russel asked Mr. Bastion if prior owners had done blasting at the pit, to which Mr. Bastion replied no. Mr. Bastion said in his opinion there is no more gravel left at the pit and that's why Mr. Lemieux has resorted to blasting.

Mr. Bastion asserted that Mr. Lemieux had burned construction refuse and buried materials on the property. He said he is a retired police chief and his opinion such activities are illegal.

Mr. Nichols asked Mr. Bastion if he had any knowledge of the pit not being used for a few years to which Mr. Bastion replied yes, but he had no evidence to support his claim.

Mr. Andrews said that he didn't think the hearing should be continued. He said it was common knowledge that there was a small pit there in the past, but that it had grown a lot in the past couple of years. He said there is equipment there now for which no provisions had been made. He said his well is very close to the gravel pit. He said he didn't think the waterline from the well would have been left untouched if the intent was to turn the gravel pit into a commercial operation (when the subdivision was done in 1995).

Abutter Jacqueline Cook said that when she bought her property sixteen years ago the gravel pit was not visible from her property. It is now visible. She owns fifty acres and keeps horses. The horses are traumatized by the blasting. The rocks from the blasting land in her pastures. She feels it is not safe for her animals. She was opposed to continuing the hearing. She said the activities at the pit had increased in intensity in the four years since she retired to her property. She also said the noise of the trucks hitting the bridge near her house is "deafening". The trucks are not covered and leave small rocks by the side of the road and on her lawn when they go by. She was concerned with not knowing how close to her land the operation could come.

Gary Herbert, 16 Springfarm Road, stepped to the podium. He said there is evidence of grandfathering (or not) to be found in Concord, though he did not specify the nature of the evidence. He said the state's definition of a gravel operation says that a gravel operation ceases at bedrock. He said beyond that, it's a quarry – and that's not grandfathered. The gravel operation was a farm pit. He said when he first moved to Claremont (11 or 12 years ago) he had asked Mr. Lemieux for some gravel to fill in a low spot on his lawn. Mr. Lemieux told him he no more gravel left, only sand. He said Mr. Lemieux should be asked to stop activities in the quarry.



think it should be delayed any further. Mr. Nichols felt that the applicant created his own hardship; that he had purchased the property without evidence of its grandfathered status and had failed to produce evidence of grandfathering. He felt granting the variance would be contrary to the public interest.

Attorney Taylor clarified that the Board needed to decide whether or not to continue the hearing; and that this is an appeal, not a variance. After that the Board needs to decide whether to uphold or overturn the zoning administrator's decision.

Ms. Richards felt that the Board should continue the hearing. She felt the Board should conduct a site visit to get a better understanding of the case. Ms. Towle said the case has nothing to do with aerial photos or surveys, but rather what the zoning administrator found.

Mr. Russel said he felt the survey, engineer's report and the blasting records may be relevant to the grandfathering issue. He said he didn't need any more information on whether or not the pit has expanded. He said he wanted time to think about all of the information that the Board had already received. He was ambivalent about closing the hearing, but was definite that he wasn't ready to make a decision.

**Motion:** To re-open the public hearing and continue the application until December 7<sup>th</sup>.

**Made by:** Mr. Russel                    **Second:** Mr. Collins

**Vote:** Russel, Petrin, and Collins in favor; Towle and Nichols vote nay. Motion to continue carries.

**IV. New Business**

- None.

**V. Communications**

- None.

**VI. Other Business**

- None.

**VII. Adjournment**

**Motion:** To adjourn the meeting

**Made by:** Mr. Russel                    **Second:** Mr. Petrin

**Vote:** Unanimous in favor

Respectfully submitted,  
*deForest Bearse*