



Zoning Board of Adjustment Meeting
Monday, November 5, 2018 7:00 PM
City Hall Council Chambers

MINUTES
Approved 12/3/2018

Call to Order by the Chair

Chairman Hurd called the meeting to order at 7:00 PM and asked for a roll call.

I. Attendance/Roll Call

Present & Participating: Richard Collins, Michael Hurd, Abigail Kier, Tracy Pope, Patrick Howe, Carolyn Towle

Absent: James Petrin

City Staff: Vickie Davis, Interim City Planner

II. Minutes of Previous Meeting – 10/1/2018

Motion: To accept the minutes of October 1, 2018

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

Vote: 4 in favor; 1 abstention

Mr. Hurd appointed Mrs. Towle to sit in for Mr. Petrin for this meeting.

III. Old Business

IV. New Business

- A. (ZO2018-00011) Jose and Marcia Peraza, Hanover NH –** Application for a variance from sect. 22-387 of the City's Zoning Ordinance (*Table of Uses*) to permit creation of an employee parking lot at **25 Chestnut Street**. Tax Map 132, Lot 62. Zoning District: CR-2.

Mr. Hurd read the public notice and asked for an abutters' roll call.

Mr. Hurd read a letter for the record from abutter Carin Duford who was unable to attend the meeting. Ms. Duford was in favor of the project for a variety of reasons.

Planner's Report

The proposed lot is in the CR2 zoning district. It will serve the dermatology practice located approximately 250 feet away in the PR zone. The project has already received site plan approval from the planning board.

Applicant's Presentation

Surveyor Wayne McCutcheon represented the applicant for the project. Mr. McCutcheon distributed full-scale copies of the plans received by the board in their meeting packets. No new information was being presented on these plans.

The plan is to take down the house that's on the lot and create an employee parking lot. It would also be used as overflow patient parking, although this is not its primary purpose. There are 25 employees in the practice (full and part time). There are currently 12 parking spaces on the same lot as the practice. There will be twice that many spaces in the new parking lot. The access to the lot would be through where the back part of the house is now. There will be a paved apron for both the entrance to and the exit from the parking lot. The traffic will flow in one direction through the lot. Site plan approval was granted contingent upon the zoning board approval of the variance. The lot will be properly drained and there will be lights in the parking area.

Mrs. Kier was concerned that the residential character of the neighborhood not be impacted by the presence and use of the parking lot. To control the use of the lot, there will be signage indicating that it is a private parking lot. Caretaker Norm Sanville said that sometimes the lot at the practice is used by others outside office hours, but Dr. Peraza does not have a problem with it. Dr. Peraza would have the right to have unauthorized users towed from the new lot thereby enforcing the use of the lot as a private parking area if necessary.

Landscaping will be provided as shown on the plans at a minimum. The intent is to make it look like a park and be a place where employees can go to have their lunch.

The parking lot was laid out to preserve the mature trees on the property, particularly the butternut trees.

The board had no further questions. There were no other abutters in the room to speak to the application. Mr. Hurd closed the public hearing.

Motion: That we approve the Application for a Variance from Section 22-387 to permit a parking lot in the CR-2 Zoning District at 25 Chestnut Street (Tax Map 132, Lot 62) with the following conditions:

1. The proposed parking lot shall be constructed substantially in accordance with the information provided by the applicant in the Application for a Variance for ZBA Case No. ZO 2018-00011 and testimony during the public hearing for said case.
2. This Variance shall continue only so long as the parking lot use persists, uninterrupted, and will be void if the use is discontinued for at least twelve (12) months.
3. There shall be no future addition or expansion to the parking lot as represented in the approved site plan without first obtaining a new Variance and/or Site Plan Approval as appropriate.
4. The parking lot shall be for use by the Peraza Dermatology Group or by permission from the Owner. Use of the property as a public parking lot is not permitted.
5. This Variance shall be recorded in the chain of title.

Made by: Mrs. Pope **Second:** Mr. Collins

Discussion on the motion: Mrs. Kier expressed concern about the words, “*or by permission from the Owner*” contained in condition 4. She said she was concerned because of the vagueness of the language and that the owner could grant permission for a wide range of things. The fact that Dr. Peraza does not object to the lot’s use by others was of concern. Mrs. Kier said there may be a difference between what Dr. Peraza feels is an appropriate use of the lot and what the neighbors feel. She felt the use of the lot by others after hours may generate more traffic than what exists with the business now. Mrs. Kier asked the board to keep in mind that this is not a use that’s allowed in a residential district and to be careful not to create a problem by allowing it.

It was agreed to amend the motion to strike the words “*or by permission from the Owner*” from condition 4. Mrs. Pope amended the motion as stated; Mr. Collins seconded the amendment.

Mrs. Pope asked if a house could be built on the lot. Mr. Hurd said no, based on the language of condition 3.

Mr. Hurd said there will be a big benefit to the public by relieving the on-street parking and congestion on Cossitt Avenue. Mrs. Pope said granting the variance would not be contrary to the public interest for that reason.

Mr. Hurd said values will be improved by removing the eyesore that’s there now.

Mrs. Pope said substantial justice would be done by removing the dilapidated house.

Mrs. Kier said she was stuck on the spirit of the ordinance, because in her opinion, the spirit of the ordinance is to provide residential use in the City Center. Mr. Hurd stated that CR-2 zone abuts the PR zone, and this represents the parking needs of the City Center. He saw it as a “win-win” by removing an eyesore and eliminating a bottleneck at the Cossitt/Broad intersection. He also felt this is a matter of catching up with the times – that when the zoning was set up to allow a doctor’s office, the need for 30+ parking spaces was not envisioned. He said it shows it’s a reasonable use. Mrs. Kier said she still did not see this as being within the spirit of the ordinance.

Mr. Hurd said the hardship is that there isn’t enough room on the office’s lot to provide for the parking that’s needed. Mrs. Kier said it may be a thriving business, but the parking lot would be in a city center residential zone. Mr. Hurd said the proposed site has been idle for a number of years – it will be cleaned up. The hardship is a resource to an overcrowded neighborhood (which can be unsafe at times).

Vote on the motion: 4 in favor; 1 opposed.

B. (ZO2018-00012) Christopher Anastaspoulos, 269 Pleasant Street – Application for a Special Exception to permit a dog boarding and training business as a Home Occupation at **269 Pleasant Street**. Tax Map 143, Lot 44. Zoning District: R1

Mr. Hurd read the public notice. He said this appeal met the 30-day deadline. The appellant granted an extension to the board so the board did not have to hold a special meeting. Hence the appeal was heard in October and not September.

Planner's Report

Ms. Davis read the following from former City Planner Mike McCrory's memorandum to the board:

REHEARING AS GRANTED BY THE ZBA

Special Notice to the ZBA

This application is a rehearing of an earlier case (ZO 2018-00005). Based on this particular case and research into how other communities address the rehearing process City staff decided to treat this rehearing as if it is a new application. The applicant was instructed to submit a new application with a concise summary of the proposed Home Occupation.

The applicant is seeking a special exception in accordance with Section 22-207, uses allowed by special exception, to permit a Home Occupation use in the R-1 Zoning District.

Primary Considerations for the Appeal

Generally, home occupations are permitted by special exception in most residential zoning districts. The Zoning Ordinance allows such a use by special exception to give the ZBA the opportunity to evaluate the level of impact a proposal has on a neighborhood.

Ms. Davis said she had two items that were new – a letter that Mr. Hurd had earlier asked her to read and a drawing of the property.

Mr. Hurd said the board could not accept the drawing or the letter at this meeting.

There was considerable discussion and confusion about this application, a site visit, and how it was to be handled. Based on Mr. McCrory's memorandum, it was agreed to hear it as a new application.

Mr. Hurd asked for an abutters' roll call. Ms. Davis read the roll. Mr. Hurd noted for the record that Bonnie Miles and Joella Merchant were present. Mr. Hurd opened the public hearing and asked the board if they wanted to continue with a site visit.

Motion: That we continue this application until December 3rd and in between now and December 3rd the Planning/Zoning Office contact us and schedule a time that's convenient for the applicant to do a site visit of his back yard and where the actual home occupation will be.

Made by: Mrs. Pope

Mr. Anastasopoulos asked to clarify that the site visit would be limited to just the training room and the back yard. Mrs. Pope agreed.

Ms. Davis asked the board to consider choosing a date at this meeting so as to avoid having to notice the site visit.

Mr. Anastaspoulos spoke at length about how he is at a disadvantage with requiring a site visit and continuing the hearing to yet another meeting based on which board members show up for the site visit and the next meeting. He also stated that the delays are costing him thousands of dollars.

The board agreed to a site visit on Saturday, November 24th at 1:00 PM.

Mr. Anastaspoulos said he is continuing to have dogs on his property, but not for profit. He is a foster home for two local shelters. He volunteers his services to friends so he can “continue with my technique” so the dogs can get adopted. He said there is “zero ordinance for three dogs or less and zero ordinance for a fence requirement”. He repeated that he is not getting paid. Mr. Hurd said as long as he wasn’t getting paid, it was a moot point, that he was no different than anyone else having three dogs. Mr. Howe said he didn’t agree – that Mr. Anastaspoulos was still running a business whether he was getting paid or not.

Joella Merchant, abutter, asked if the abutters would be notified in advance. Mr. Hurd said the applicant is the only one who is typically notified, because this is a continuance for him. He said abutters are welcome to attend the site visit.

Mrs. Miles, abutter, asked when the fence would go up. Mr. Hurd said that would be decided at the December 3rd meeting.

Mr. Anastaspoulos asked for a copy of the abutter’s letter.

C. (ZO2018-00013) TwinState MakerSpaces Inc, Lebanon NH – Application for a Special Exception to permit a 32 SF sign at **46 Main Street**. Tax Map 119, Lot 348-1. Zoning District: MU

Mr. Hurd read the public notice and asked for an abutters’ roll call. No abutters were present.

Planner’s Report

The board relied on Mr. McCrory’s memorandum.

Applicant’s Presentation

Josh Bushueff, Director of the TwinState MakerSpaces, presented the application. Mr. Hurd asked Mr. Bushueff to explain the makerspace. Mr. Bushueff said it’s like a fitness center, but with tools.

The sign is made of aluminum and would be mounted a couple of inches away from the building. He said they are considering mounting some LED lighting between the sign and the wall. It would provide a contrast, making the sign visible at night. There are no plans for spotlighting on it.

Because this property is in the Historic District, the sign will need approval from the Historic District Commission.

There were no other questions from the board and no questions from the public, so Mr. Hurd closed the public hearing.

Motion: To grant the variance for the 32 SF sign for the building. The size of the building versus what's allowed scale-wise

Made by: Mr. Hurd

Mr. Hurd then made a second motion.

Motion: I make a motion that we grant the variance. The proposed use shall be maintained in accordance with the information provided by the applicant in the Application for a Special Exception, ZBA Case No. ZO 2018-00013, and testimony during the public hearing for said case. The applicant shall obtain a Certificate of Appropriateness from the HDC.

Made by: Mr. Hurd

Mrs. Pope pointed out that the application was for a special exception. Mr. Hurd said he saw that.

Mr. Hurd said that with other signs in town...Mrs. Pope asked for a second to the motion.

Second on the motion: Mrs. Kier

Mr. Hurd said the City's sign ordinance "isn't necessarily efficient in all cases", something that Mr. McCrory had been working on before he left. He said the HDC would determine if the sign is in the appropriate location. He said it's not a nuisance or a hazard; no traffic impacts. Mrs. Pope agreed to both of these assertions.

Mrs. Pope said the criteria addressing adequate and appropriate facilities had nothing to do with a sign. She said no adverse impact on the view, light and air of any abutter would result. The use would not place a disproportional burden on the city's operational services because it's a sign. Such a use would not be detrimental to the public health, safety and general welfare. The specific use is in harmony with the general purpose and intent of this chapter and shall be in accordance with the general or specific rules contained in this chapter.

Vote on the motion: Unanimous in favor

V. Communications

A. Latest issue of *Town and City* magazine

VI. Other Business

A. Patrick Howe will be in Florida until May of 2019.

VII. Adjournment

Motion: To adjourn the meeting

Made by: Mr. Collins **Second:** Mrs. Pope

Vote: Unanimous in favor

Respectfully submitted,

deForest Bearse