



Zoning Board of Adjustment Meeting  
Monday, February 6, 2017 7:00 PM  
City Hall Council Chambers

**MINUTES**  
**Approved 4/3/2017**

**Call to Order by the Chair**

Mr. 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, Carolyn Towle, James Petrin, Abigail Carman, Tracy Pope, Patrick Howe

**Absent:**

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

**II. Election of Officers**

**Motion:** To elect Mr. Hurd as Chair and Ms. Carman as Vice Chairperson.

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

**Vote:** Unanimous in favor

**III. Minutes of Previous Meetings**

- o **November 7, 2016**
- o **November 21, 2016**
- o **December 5, 2016**
- o **January 16, 2017**

**Motion:** To accept the minutes of the November 7<sup>th</sup>, November 21<sup>st</sup>, December 5<sup>th</sup> and January 16<sup>th</sup> meetings as written.

**Made by:** Ms. Carman

**Second:** Mr. Petrin

**Vote:** Unanimous in favor

**IV. Old Business**

There was no old business.

**V. New Business**

Mr. Hurd asked both of the applicants if they had any problems with any of the sitting Board members hearing their applications (he introduced the Board members). Neither applicant had any problems.

- o **(ZO 2017-00001) First United Methodist Church, Claremont NH** – seeks a Special Exception to change the use of a building from commercial to church at 38 Summer Street. Tax map 132, lot 9. Zoning District: CR-2

Mr. Hurd read the public notice and asked for an abutter roll call. Mr. McCrory read the roll.

**Planner's Report**

This application is for a change of use of the property from commercial to a church. The use requires a Special Exception under the City Center zoning. The building was originally built as a church in 1956.

The applicant's representative has consulted several times with City staff in the Planning & Development Office. The church has thirty seats in the sanctuary for worship service. There will be church-related activities and an office in the building.

As a nonresidential use, the project is subject to site plan review. However, the applicant has filed an application with the Planning Board to waive that requirement. Site-related issues will be addressed by the Planning Board.

Current zoning requires eight parking spaces for this project. The property has ten spaces available. The application contains documentation that the neighboring property is offering additional parking if it should be needed.

Mr. McCrory read from the zoning ordinance:

*The purpose of the CR2 zoning district is to maintain around the downtown core residential neighborhoods with a mix of housing types. Other uses that are compatible with and supportive of a residential setting are allowed, including lodging, institutional and educational uses.*

He stated that the church falls under the institutional category.

He referred the Board members to the Special Exception criteria that the applicant had addressed in the application. (NOTE: The copying of the application had cut off some of the responses at the bottom of the pages. Mr. McCrory said he could fill in the missing information as needed.)

Mr. Hurd asked when the church was changed to the commercial use. Mr. McCrory said the church was active until the late 1990's, then remained vacant until 2008 when the current owners purchased the property and converted it to a commercial use. (The applicant does not yet own the property.) Since the use as a church was abandoned for more than 12 consecutive months, it could no longer be considered a church.

Mr. Hurd asked if Mr. McCrory or Ms. Taylor had received a copy of an email submitted by one of the abutters and if it should be read into the record. Mr. McCrory said that they had not received it and asked Mr. Hurd to forward it to him.

Mrs. Pope said there had been a posting on "What's Up Claremont" (Facebook page) from an abutter stating that there was a Zoning Board meeting this evening and what the purpose of it was and asked for public input. She said that just before she left (for the meeting) there were seven or eight comments (on the posting). She said they were all favorable.

Mr. Hurd said that someone had put out a group message. It was from a Jean Allen. He read the message from his phone:

*“Regarding the agenda for this evening’s Zoning Board of adjustment. The First United Methodist Church of Claremont is seeking a Special Exception from the Zoning Board of adjustment to change the use of a building from commercial to a church at 38 Summer Street. I am a neighbor of this property. My husband, Jim and I are in full support of the change of use. Although the quilt shop was a wonderful neighbor for a number of years, we would also be in favor of a non-commercial owner taking over the premises and feel that the church would be a great addition to the neighborhood. I have posted this topic on ‘What’s Up Claremont’ to encourage people to attend the public hearing and because I thought it would be interesting to hear the public response on Facebook where more people are likely to take part.*

*I would have contacted you in a different way, however the Claremont website does not appear to have contact information for any of the Board members. Thank you for hearing us out. Please consider granting the Special Exception. Thank you for your service to our City. Let me know if you have any other questions. Jean Allen.”*

Mr. McCrory said this is a “double-edged sword” – having contact information on the website and not having it on the website. He said ideally these kinds of comments would be coming into the Planning and Development office. He said, however, he was glad the message made it through and that Mr. Hurd was able to read it into the record.

Mr. Howe asked how the rest of the Board members would receive the information that had been received by a single Board member as an email or a Facebook post so that everyone has the same information when they get to the meeting. Ms. Taylor said such messages should be sent to Mr. McCrory, who in turn can see to it that it is sent to the entire Board. She said any email that is received between meetings should be read into the record if it concerns a particular application.

Mr. McCrory said that the email was similar to an abutter’s testimony. Mr. Howe said the name was not on the list of abutting properties.

Mrs. Pope said she mentioned the Facebook post because of the comments that were below it. They (the comments) were all in favor of the application. Ms. Taylor said, as far as the comments, because the Board is a quasi-judicial Board, the majority of those comments should have zero impact on the Board’s consideration. The person who sends the email or posts on Facebook may well be a resident of the City, but they may not have standing in the matter.

Mr. McCrory said that social media input will need closer examination and thought. Mr. Hurd said he hoped everyone had been on the Board long enough to know what to do with such comments (abutter vs neighborhood vs someone who lives on the other side of town).

Mrs. Towle said she thought the email would be considered as public testimony.

There were no further questions for Mr. McCrory.

### **Applicant's Presentation**

Deb Snelling, church administrator for the First United Methodist Church, presented the application and answered questions from the Board. Ms. Snelling said they are currently using the United Episcopal Church as their home since they had sold their property in February 2015 (the stone church on Sullivan Street). She said the United Methodist church is a mission-oriented church and they have not been able to fulfill their mission work without a home of their own. They annually host the "UM Army", a youth organization that helps the elderly and less fortunate with home projects. This year they will be housed at the Stevens High School. They are looking forward to being back in the center of town. She said they host several church suppers each year. Roz Caplan has offered space for overflow parking if needed during her (Ms. Caplan's) off-business hours, e.g. during church suppers. They average 15 people at Sunday services, but they are hoping to grow. She said very little work needs to be done in the upstairs worship section. She anticipates no changes to the property. The dumpster that is currently on site will be removed as they won't need it. She said there will be no new exterior lighting at this time. There is a signpost on the property that they would like to use, but they will need to go to the City to learn what they can and can't do (for signage).

Mr. Howe asked why they sold the stone church. Ms. Snelling said the cost of maintaining the building was too much for the small congregation.

Mr. Howe asked if the Board approves this application, will the City lose it (the property) off the tax roll. Mr. Hurd said he would refer the question to Ms. Taylor.

The Board had no further questions for Ms. Snelling.

### **Board Discussion**

Mr. Hurd asked Ms. Taylor about churches being taxable properties. Ms. Taylor said that they have to apply to the assessor for their non-profit/tax exempt status. However, if a portion of a property owned by a non-profit is being used for something other than the traditional non-profit activities, then that portion of the property becomes taxable. Mrs. Pope gave the example of the Congregational Church – Elaini's Greek Restaurant is located on a portion of the church's property. That portion is taxable, even though it is owned by the Congregational Church.

Mr. Hurd asked if anyone wished to speak for or against the application. No one did, so Mr. Hurd declared the public hearing closed.

Mr. Hurd called for comments from the Board. There were none.

**Motion:** To grant a Special Exception in accordance with Section 22-387, Table of Uses for City Center Zoning Districts, to permit a church use in the CR-2 Zoning District at 38 Summer Street with the condition that:

1. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments. Building occupancy is not

permitted until such permits and approvals are received and necessary work has been completed to the satisfaction of the Planning and Development Department.

**Made by:** Mr. Hurd

**Second:** Mrs. Towle

**Discussion:**

1. The specific site is an appropriate location for such a use – All agreed that this site was a church for the first 40+ years of its existence.
2. Property values in the district will not be reduced by such a use; Ms. Carman didn't think the property values would be diminished by the change
3. No nuisance or unreasonable hazard shall result; Mr. Hurd said he hoped this won't result.
4. No adverse traffic impact will result from such a use; Mr. Hurd said he didn't think it would affect traffic with such a small congregation.
5. Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use, including water, sewer and parking; Ms. Carman said the applicant noted there is City water and sewer, plenty of parking with additional as needed
6. No adverse impact on the view, light and air of any abutter will result; Mr. Hurd said there will be no change to the building, so there shouldn't be impact on these assets.
7. The use will not place a disproportional burden on the city's operational services in comparison to the anticipated tax revenue associated with the property/use in question; Ms. Carman said she didn't think it would be a burden on the City's services with the small number of people
8. Such a use would not be detrimental to the public health, safety and general welfare; Ms. Carman said it would not be detrimental to the public health or safety and would probably be a benefit to the general welfare
9. 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. Ms. Carman said it would not be in opposition with the intent of the chapter, noting that it is an institutional use.

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

- **(ZO 2017-00002) Gregory Stapleton, 54 Woodland Street** – seeks a Special Exception to establish a home occupation at 515 Winter Street. Tax map 39, lot 11. Zoning district: RR/AR

Mr. Hurd read the public notice and asked for an abutters' roll call. Mr. McCrory read the roll. Mr. Hurd noted that Donald Thompson is the owner of the property.

Mr. Petrin asked if he should step down from this application, because the applicant had done some work for him. Mr. Hurd said the applicant had probably done work for most everyone at some time or another. Mr. McCrory said that unless the applicant had promised Mr. Petrin some free plumbing in exchange for voting favorably on the

application, there shouldn't be a problem. Mr. Petrin denied that such an offer had been made and remained on the Board.

### **Planner's Report**

This is an application for a home occupation on the property at 515 Winter Street. Mr. McCrory said the applicant's business model fits into the Home Occupation "mold" very easily. He has one employee who doesn't live on the property. He has limited need for storage that be incorporated in the interior. At the applicant's current location, he is able to keep things in order or address them immediately when they are not. The applicant included a "master plan" for the property with the application. It shows a future 40 ft. x 40 ft. garage that will be permitted at a later time. The applicant wants to move his business to this property with his family.

A Special Exception is required for a home occupation in both the RR and AR zoning districts. The bulk of this use will be in the RR zone.

Mr. Hurd said he viewed this application as a home office instead of a home occupation because the occupation is not at the home. Mr. McCrory said the primary distinction is that the applicant has an employee that does not live on the property. He takes deliveries of supplies on the property. It does not meet the definition of a home office. Mr. Hurd said home occupations can take deliveries, but it is silent on employees.

Mr. McCrory said it is the Board's prerogative to make a finding that is different than that of the staff (i.e. find that this application is a home office and not a home occupation).

Ms. Taylor said she believes this is a home occupation because of the fact that he has "stock in trade" (tools, materials, supplies needed to do the job) so to speak, on the property. This is not so with a Home Office.

Mr. Hurd and Mrs. Pope both gave hypothetical examples of tradesmen who have a business with all of their tools contained within a van or truck that is parked at the home at the end of each workday. They each felt that this would not be a home occupation. Ms. Taylor disagreed because it does not fall within the definition of a Home Office.

Mrs. Pope did not feel that the Stapleton application constituted a home office because he will have a 40 ft x 40 ft structure in which will be stored his supplies and he will be getting deliveries on a regular basis.

Mr. McCrory said that several years ago, he had received a complaint about the applicant's current property on Woodland Street. Mr. Stapleton was receiving deliveries at the property, he had employees, he was doing the books on the property, and was storing materials in the garage. Mr. McCrory said that to his mind, all of these things met the criteria of a home occupation, even though he was working at other people's properties. He said the interpretation of the existing definitions has to be somewhat practical and further discussion of them is best saved for another workshop. The Board had no further questions for Mr. McCrory.

### **Applicant's Presentation**

Mr. Stapleton said he has operated his business out of its current location at 54 Woodland Street for the past 12 years with 0.23 acre and neighbors close by on either side. He said he has been working with Don Thompson on the possible purchase of 515 Winter Street with the intention of moving the trucks and inventory to that location and the possibility of building the larger garage at some point. There is already a small garage (24 ft. x 28 ft.) that would be primarily for his wife's use. The future 40 ft. x 40 ft. garage would be for his shop, vehicles, equipment, etc. He said they would work on this over the next few years.

Ms. Carman asked about signage. Mr. Stapleton said there would be no signs.

Ms. Carman asked if he would need to store any hazardous chemicals on the property. Mr. Stapleton said he uses PVC glues and primers, all contained.

The Board had no further questions for Mr. Stapleton.

### **Board Discussion**

Mr. Hurd asked if there was anyone from the public that would like to speak. There was no one, so Mr. Hurd closed the public hearing.

Ms. Carman asked Mr. McCrory about any possible regulations pertaining to storage of chemicals on site. Mr. McCrory could not think of any beyond having the MSD sheets on hand and said there would not be industrial-size volumes on the property.

Mr. McCrory said the future garage will have to be addressed at a later date as it exceeds the limits for a home occupation. Mr. Stapleton will need to file for a variance for it. (20% of the gross floor area of the residence is the standard. The property must also maintain its residential character.) He said he believed Mr. Stapleton was aware of this.

The Board had no more questions for Mr. McCrory.

**Motion:** To grant a Special Exception in accordance with Section 22-167, uses allowed by Special Exception, to permit a home occupation use at 515 Winter Street in the RR Zoning District with the following conditions of approval:

1. The home occupation shall have no more than two non-resident employees.
2. The home occupation shall remain subordinate to the residential use and operated by the property owner, for whom the subject property is his primary residence.
3. Materials, equipment, or stock in trade shall be stored inside a building or stored off-site on a parcel appropriately zoned for such storage.
4. The area utilized for the home occupation, not including parking, shall occupy no more than 20 percent of the residential building or the equivalent area in an accessory building.

**Made by:** Ms. Carman

**Second:** Mr. Petrin

**Discussion on the Motion:**

1. The specific site is an appropriate location for such a use; Mr. Hurd said the site is rather remote. He said there are similar businesses closer to the center of town on the same road with the same kind of impact.
2. Property values in the district will not be reduced by such a use;
3. No nuisance or unreasonable hazard shall result;
4. No adverse traffic impact will result from such a use; Mr. Collins said the traffic should not be impacted.
5. Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use, including water, sewer and parking;
6. No adverse impact on the view, light and air of any abutter will result; Mr. Hurd said there are no changes proposed to the property that will result in any adverse impacts to these.
7. The use will not place a disproportional burden on the city's operational services in comparison to the anticipated tax revenue associated with the property/use in question; There are no City services to this property. No adverse impacts or burdens to the City.
8. Such a use would not be detrimental to the public health, safety and general welfare; and
9. 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

**VI. Communications**

There were no communications.

**VII. Other Business**

Mrs. Pope asked Mr. McCrory if a letter had been written to Mr. Gates (map 129, lot 66) from the City asking him to remove his deck. Mr. McCrory said he had not. Ms. Taylor said she did not know if anyone had followed up.

Mrs. Pope asked if anyone had followed up on the Leo Roy case on Washington Street. Mr. Hurd said he was allowed a year from completion of permits. Board members said that the crusher had been removed, but everything else is unchanged. Mr. McCrory said he had nothing to report on either of these cases.

Mrs. Pope asked, when an alternate is appointed to sit on a case, when the next meeting comes and the minutes are voted on, is the alternate not allowed to vote on those minutes? Mr. McCrory said, "It depends on whether you have been appointed to fill a vacancy. If, at the subsequent meeting, all five members show up, they would be voting on the minutes." Ms. Taylor said, "Alternates only vote when they are appointed to fill a seat." As to abstaining from voting on the minutes of a meeting at which a member was absent, Ms. Taylor said there is no requirement to abstain. It is

usually done merely as a courtesy, but it's not necessary. There is an assumption that regular members will bring themselves up to speed if they miss a meeting and if there is an application that has been continued. Ms. Taylor said that alternates are certainly allowed to comment on minutes of meetings where the alternate has participated (for example if the alternate's input is incorrectly recorded) and bring it to the attention of the Chair. They just cannot vote on them.

o **Work Session: Rules of Procedure**

To be continued ...

**VIII. Adjournment**

**Motion:** To adjourn the meeting

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

**Vote:** Unanimous in favor

The meeting adjourned at 8:00 PM.

**Respectfully submitted,**

*de Forest Bearse*