



Zoning Board of Adjustment Meeting
Monday, March 7, 2016 7:00 PM
City Hall Council Chambers

MINUTES
Approved 4/4/2016

Mr. Hurd called the meeting to order at 7:00 PM.

I. Attendance/Roll Call

Present & Participating: Michael Hurd, Todd Russel, Carolyn Towle, Abigail Carman

Absent: James Petrin, Richard Collins

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

II. Minutes of Previous Meeting - February 1, 2016

Motion: To accept the minutes of the February 1, 2016 meeting as written.

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

Vote: Unanimous in favor

III. Old Business

There was no old business to discuss.

IV. New Business

Mr. Hurd offered the applicants the opportunity to request that their hearings be continued due to the absence of two regular members and the presence of a new alternate.

- A. New Business (ZO 2016-00003) Hal Wilkins, Winter Street Commons** – seeks a variance from Section 22-387, Table of Uses, of the City Zoning Ordinance, to construct two self-storage buildings at Winter Street Commons. Tax map 108, lot 71. Zoning District CR2.

Mr. Hurd read the public notice and called for the abutters' roll call. Mr. McCrory read the roll.

Mr. Wilkins said he would like to proceed with his presentation at this meeting and continue to the next meeting if "board members start throwing tomatoes". Attorney Taylor advised the board not to close the public hearing if they wanted to continue it.

Planner's Report

Mr. McCrory stated that the project is located at the former Claremont Arms property. The primary use is multi-family residential. It is located in the CR2 zone. The proposal is to convert an area formerly designated for two multi-unit buildings to self storage

units. The units would be available to the general public. This commercial use is not explicitly allowed in this district. If the storage was for the sole use of the residents on site, then it would be considered an accessory use and a variance would not be necessary. The project has been reviewed by the technical review committee. In addition to this variance, the project is subject to site plan review.

The board had no questions for Mr. McCrory.

Applicant's Presentation

Hal Wilkins of Ramsey McLaren Planning & Engineering in Westminster (VT) and Dave Thomas, the owner of DLC Investments presented the application to the board.

Mr. Wilkins said that foundations (slabs) were laid for eight buildings but only six were built. The storage units would be built on the site of the one of the old slabs (the old slabs will be removed as they are no longer useable). The exact locations have not yet been determined. The city would like to use the existing parking area for a log landing and loading area for a white pine harvest on city-owned land adjacent to the project site. There are currently abandoned cars and a boat on the site that would (hopefully) be stored inside the storage buildings. The storage buildings would have a security fence around them. The fire department will be given 360° - access to the buildings. The property across from the project site is being renovated for a commercial use. There are also a daycare and multi-unit apartment buildings in the immediate neighborhood.

There are currently six buildings housing 144 apartments and 230 parking spaces on the property. The applicant is proposing to build two 30 ft x 120 ft self storage facilities with a total of 50-60 storage units. The residents of Winter Street Commons are the "target market" for these units. The applicant would like to make a certain percentage of these units available to the public, although the exact amount is unknown at this time.

Mr. Wilkins said that the ordinance is silent on "mini-warehouses" or self-storage buildings. Guidance must come from the purpose of the district:

CR-2 city center residential II. The purpose of this 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.

The applicant's position is that this proposal is both supportive of a residential setting and compatible with it. The applicant also asserts that this is a reasonable use, even a necessity for apartment-dwellers. The property is well maintained. There are no outbuildings.

Mr. Wilkins quoted the definition of "hardship" from *Bonnita Rancourt v. City of Manchester*: "Hardship exists when ...special conditions of the land (in this situation, the absence of a permitted use for storage facilities in the City) render the use for which the variance is sought 'reasonable.'" The applicant asserts that the proposal is reasonable and

will not disturb the character of the neighborhood which is comprised of a wide variety of uses. A vegetated buffer will be maintained along the northern boundary where it abuts several residences. This variance constitutes the least possible deviation from the ordinance to permit a reasonable use of the land.

Mr. Wilkins took questions from the board.

Mr. Hurd asked Mr. Wilkins to confirm that the applicant is asserting that the hardship is due to the absence of a permitted use and not any physical characteristic of the land. Mr. Wilkins confirmed. He said there are no physical or topographic impediments to developing, but there seems to be a need for self storage.

Mr. McCrory reviewed the concept of hardship and how it has been weakened over time. He said the applicant must demonstrate that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property. The applicant must also demonstrate that the proposed use is a reasonable one. How far does the proposal deviate from the permitted and surrounding uses? He said it is no longer a case where the applicant will be unable to do anything with their land without the benefit of a variance.

Ms. Taylor stated that while the concept of hardship may have changed, the Rancourt case was decided under a prior law, so it was a different standard and it may not be applicable to this application. Under the old statute, "reasonableness" wasn't a factor. However, although reasonableness is a factor now, it does not eliminate other criteria.

Mr. Russel stated that the applicant is arguing that the hardship will be borne by the residents of Winter Street Commons and not the owner of the property. But if these buildings were to be used by the residents only, a variance would not be necessary at all.

Mr. Thomas said that the commercial zone abuts/goes through his property. To make this project economically feasible so it can be available to the tenants, the public must be included. He predicts the buildings will serve the residents of the neighborhood. He said he cannot build it for the sole use of the tenants.

Ms. Carman asked if there would be additional security measures (beyond the use of fencing) and signage/advertising. Mr. Thomas said the units will be lit with downcast lighting and only a single sign like the "Winter Street Commons" sign would be erected. The units will be accessible 24/7 with individualized codes. Entries/exits could be monitored.

Mr. Russel had concerns about the 24/7 access and its effect on the residents. Mr. Thomas agreed that this issue could be addressed. It could be closed during "quiet hours".

Mr. Hurd and Mrs. Towle said they were "stuck" on the hardship issue. Mr. Hurd maintained that the hardship must be something "in your property", special conditions of your property. He said the special condition of this property is not that there is a lack

of storage in the city of Claremont. He said there are already 2-3 other storage businesses in the immediate area. He said the reasonableness is a matter of opinion.

Motion: To continue to the next meeting.

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

Vote: Consensus

Motion: To take a five-minute recess.

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

Vote: Consensus

Mrs. Towle complimented the applicants on the quality of their application and presentation.

Mr. Hurd called the meeting back to order at 7:49 PM.

- B. (ZO 2016-00004) Laurie Picard, 165 A Sugar River Drive – seeking a Special Exception permit to establish a daycare at 165 A Sugar River Drive. Tax map 159, lot 1. Zoning District: RR**

Mr. Hurd read the public notice and called for the abutters' roll call. Mrs. Towle informed the board that the applicants are her neighbors and Mr. Picard picks up her trash. Mr. Hurd, Mr. Russel and the applicants said they had no problem with Mrs. Towle participating in the hearing. The applicants did not have any objection to being heard by the board members present. Mr. McCrory read the abutters roll.

Planner's Report

Mr. McCrory said this property is the former site of *Gary's Disposal*. A variance had been approved for a home occupation to convert to a commercial use (trash collecting/recycling). Site approval had been granted. The property has since been sold to the Picards (with the variance in place) who operate their own trash removal and recycling operation.

This proposal is to use a portion of the residence as a daycare facility, which requires a special exception permit. The board must review the application using the special exception criteria.

Applicant's Presentation

Mrs. Picard handed out six pictures of the property to the board members. The pictures show the parents' access to the property; the parking area; the children's play area; the back side of the house; and portions of some of the outbuildings.

Motion: To accept the pictures

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

Vote: Unanimous in favor

Mr. Hurd expressed concern with the two businesses located on one property – would there be a conflict or any special provisions to be made to accommodate the safety of

the daycare? Mrs. Picard said that she has been inspected and approved by the state with no issues. Mr. Picard said he is a one-man operation so it is only his truck going in and out of the property. He said there is no need for the parents to have to back up anywhere on the property because of the location of the entrances and ease of visibility on the property. He said his business is on the left side of the yard and Mrs. Picard's is on the right side. He said these two businesses have been co-operating for ten years on a smaller property without mishap.

Mrs. Picard said the entire house is used for the daycare, minus her husband's office. The daycare operates from 7AM to 5PM. They both said there would be no signs for either business.

Mrs. Picard submitted to the board copies of:

- Health Officer Inspection Report for Child Care Programs (approved 3/2/2016)
- Life Safety Compliance Report/Inspection of Child Care Program for Compliance with Saf-C 6000, "State Fire Code" (approved 3/7/2016)
- Application for Child Care Residential Program/Residential Child Care Program License

Mr. Hurd asked if the conditions on the previous variance had been met. Mr. McCrory said that he could do a site visit to take a look.

Mrs. Towle said the license application shows the daycare hours to be 5AM to 5PM. Mrs. Picard said she had changed her hours, but had forgotten to change the form.

Attorney Taylor asked Mrs. Picard if she was living on the property since Mrs. Picard had said they were using 100% of the house (minus Mr. Picard's office) for the daycare. Mrs. Picard said they are living in the house as well.

The property has a 1500-gal septic tank with a leach field and is served by city water. Mr. Picard said the septic system is big enough for the proposed daycare.

Mrs. Carman asked about the play area – would it be fenced? Mr. Picard said only on the back area.

There were no further questions from the board.

Mr. Hurd closed the public hearing. The board turned to discussing the application.

Mr. Russel said it's a one-man operation (the trash removal business); there is a lot more room than what they had before, it doesn't seem to over-burden the Dept. of Health (they have had that inspection); they've had the fire inspection. The only concern he said he had was with the traffic flow (trucks and kids), but it seems like they have a plan for that. Mrs. Towle said the licensing has already been processed.

Motion: That we grant a special exception in accordance with section 22-172, Child Care Facilities, to allow the Picards to have a daycare use on the property at 165 Sugar River Drive with the following conditions:

1. This special exception is only effective as long as the property owner maintains a license pursuant to RSA 170-E, Child Day Care Licensing.
2. The applicant shall obtain and receive other permits and approvals as determined by the Local, State and Federal governments.

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

Discussion on the Motion:

Mr. Hurd said they have an oversize lot; they have an ideal entrance and exit set-up – no one will be backing into the road; and they won't be creating any adverse traffic conditions.

Mr. Russel said they won't decrease the property values because the Picards won't be putting up any signs.

Mr. Hurd said they won't be burdening municipal services because they only have city water. He said there won't be any exterior changes except for the playground area, so it won't affect light, air quality – no adverse impact.

Mr. Russel said that according to the license, the maximum number of children will be nine – nine sets of parents coming and going from the property should not be a problem.

Vote on the motion: Unanimous in favor

- C. (ZO 2016-00005) Rexford Houdyshel, 6 Birchwood Road** – seeks a variance from Section 22-209, R-1 Yards, of the City Zoning Ordinance, to construct a two-car garage within the front setback at 6 Birchwood Road. Tax map 155, lot 38. Zoning District: R1

Mr. Hurd read the public notice and called for the abutters' roll. Mr. McCrory read the abutters' roll.

Planner's Report

The applicant is looking to expand from a one-bay to a two-bay garage on a small lot with a single family residence. Mr. McCrory said he had reviewed the site with the applicant and had reviewed the topography and layout of the building and concluded that this is a reasonable proposal – to extend the garage so it encroaches on the front setback by up to four feet. The property is a little peculiar because Birchwood crosses over his property and the edge of the right of way is different from his property boundary. The edge of the right of way to his house is what's being measured. Birchwood is a low traffic volume road – except for a vacant lot, his house is the last one on the road. It is almost like a private driveway. The orientation of the house, the lay of the land and the dimensions he is proposing is not an over-development of the lot. The application provides a great deal of detail.

Applicant's Presentation

Mr. Houdyshel said his proposal is the cleanest and will look the best. He said it won't affect anyone except maybe the snowplow driver who backs into the driveway to turn around.

The board had no further questions for the applicant. Mr. Hurd closed the public hearing. The board turned to discussing the application.

Mr. Hurd drew attention to the site plan submitted by the applicant which shows the location of the house and garage; the topography of the lot and the location of the right of way.

Attorney Taylor said this lot is part of a subdivision from the late 1940s. Some of the roads in it were accepted by the City, some were not. Birchwood Road was accepted in 1987 – surface width of twenty feet, right of way width of thirty feet.

Motion: That we grant a variance from section 22-209, yard requirements, to expand an existing garage with a front yard setback on 6 Birchwood Road with the following conditions:

1. The applicant shall obtain and receive approval for all necessary permits as determined by the City of Claremont Planning and Development Department. 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. This variance shall be recorded in the chain of title.

Made by: Mr. Russel **Second:** Ms. Carman

Discussion on the motion:

Mr. Russel said Birchwood is a dead-end road and this won't affect anybody. He said the spirit of the ordinance is so that people aren't building and encroaching on other people's property. Mr. Hurd said this won't affect the roadway or surrounding values because this is the last property on the road. He said the unnecessary hardship comes from the topography of the property and where the house was originally built. It is a reasonable use. Mrs. Towle said it maintains the value of surrounding properties.

Vote on the motion: Unanimous in favor

Ms. Carman was sitting in for Mr. Collins.

V. Communications

There were no communications for the board.

VI. Other Business

Mr. Hurd said there has been a request to move the date of the April meeting to the following Monday (April 11th) due to conflicting schedules. Mr. McCrory said he would poll the board members to see who can attend. Mrs. Towle said she couldn't as she has another meeting that night.

VII. Adjournment

Motion: To adjourn the meeting

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

Vote: Unanimous in favor

The meeting adjourned at 8:40 PM.

Respectfully submitted,

deForest Bearse