



Zoning Board of Adjustment Meeting
Tuesday, June 13, 2017 7:00 PM
City Hall Council Chambers

MINUTES
Approved 7/11/2017

I. Roll Call

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

Absent:

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

II. Review Public Meeting Minutes from 5/1/2017

Motion: To accept the minutes of 5/1/2017

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

Vote: Unanimous in favor

III. Old Business

None.

Motion: To recess the meeting for a consultation with legal counsel.

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

Vote: Unanimous in favor

The board agreed to take the last two cases first.

IV. New Business – (Moved to the bottom of the agenda)

- a. **(ZO 2017-00007) GBRB Investments LLC, 210 Washington Street:** Appealing a Notice of Violation for keeping a storage container at **1 Princeton Street**. Tax Map 121, Lot 44. Zoning District: R1

- b. **(Variance 1) (ZO 2017-00008) Frank Barrett Jr, White River Junction, VT:** Requesting a variance from sect. 22-389 of the City Zoning Ordinance (Table of Dimensional Regulations) to permit expansion of the existing building footprint within the required front setback on property owned by **200 Broad St Realty LLC** at **200 Broad Street**. Tax Map 132, Lot 83. Zoning District: PR

Mr. Hurd read the public notice and asked for an abutters' roll call. Mr. McCrory read the roll. Mr. Hurd noted for the record that no abutters were present.

Mr. McCrory suggested that the board hear both cases simultaneously. Mr. Hurd agreed and read the 2nd public notice. Each case will be voted on separately.

- c. **(Variance 2) (ZO 2017-00009) Frank Barrett Jr, White River Junction, VT:**
Requesting a variance from sect. 22-533 of the City Zoning Ordinance (Table) to waive the off-street parking requirement for property owned by **200 Broad St Realty LLC** at **200 Broad Street**. Tax Map 132, Lot 83. Zoning District: PR

Planner's Report

(Variance 1) The existing building is within the front setback (25 ft) on the Broad Street side. The applicant proposes expanding on the side of the building (removing the existing garage) as shown in the plans. The expansion will be within the front setback as well.

The applicant has provided abundant information for the board, and, in Mr. McCrory's opinion, has demonstrated that the property has a unique topography. The back of the lot drops off; the lower level is not developable because of wetlands, which makes the property somewhat unique to its context.

(Variance 2) The dentist office has been in existence since 1986. The original site plan showed some off-street parking, but some of it never came to fruition. The applicants are proposing to use some of the parking space for the expansion, some for handicap parking, and then rely on on-street parking and the municipal parking lot for the required parking. The use of on-street and municipal parking has been the standard practice for the dental office. There have been no known issues.

Mr. Hurd said the addition will be no closer to the front than the existing building. He asked what the margin of error is on the property depth – is it enough to allow the front setback to be reduced. Mr. McCrory said the board has to either go on the information provided (which indicates that the lot is just over 100 feet deep) or ask the applicant to confirm the actual depth of the lot with a detailed survey.

Mrs. Kier asked Mr. McCrory if any of the other similar-sized businesses on that side of Broad Street have parking variances. Mr. McCrory did not know.

There were no further questions for Mr. McCrory.

Applicant's Presentation

Frank Barrett Jr, architect, presented the application. Nancy Wilmot, office administrator for the dental practice, was also present. Mr. Barrett said that one of the goals of this project is to get the building to be ADA compliant (access, interior space, restrooms, operatories, etc.)

The garage is not worth saving. The house was built in the 1950's. The addition is designed to set back from the main building so as not to detract from the main

building. It will be in the same architectural style (Colonial Revival) as the house. The architectural renderings will be done if the variances are granted and before they go for site plan approval.

Mr. Barrett confirmed that there is a very steep embankment in the back of the lot with wetlands at the base. The bank consists of very loose soil that would be destabilized if the trees were cut or if it were dug into. Almost half of the lot is not usable. If the bank weren't there, the variance would not be needed. The dental practice has been at this location since 1986 with no difficulties with/for parking, staff, traffic, pedestrians, etc. It has been a good fit for the district.

The actual location of the top of the bank on the south end of the lot needs to be verified.

It is unclear if the wetlands at the base of the slope are jurisdictional (requiring a DES permit to work in) or not.

The addition will extend approximately 9 – 10 feet beyond the south wall of the garage.

Ms. Wilmot said that since the teachers and staff of the high school now have off-street parking, and since dental practice is the only business on Broad Street in that area, on-street parking for the dental practice is not a problem. They also do not need a high number of spaces at any single time because they don't have that many providers in the practice. Ms. Wilmot said the clients actually prefer to park on Broad Street so they don't have to back up to either enter or exit the lot. She said it is rare to have anyone actually park on site.

Ms. Wilmot said there are currently 3-4 spaces on the site. This is proposed to be reduced to one handicap space. Mr. Hurd said he thought there is really only room for two spaces on the lot.

There were no further questions from the board. There were no abutters present, so Mr. Hurd closed the public hearing.

(Variance 1) Motion: To grant the variance from section 22-380, setbacks, with the appropriate staff recommendations for approval which are:

1. The proposed structure shall be constructed substantially in accordance with the information provided by the applicant in the Application for a Variance for ZBA Case No. ZO 2017-00008 and testimony during the public hearing for said case.
2. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments. No work is permitted to commence until such permits, or appropriate statements of compliance with Local, State and Federal regulations, are submitted and approved by the Planning and Development Department.
3. This variance shall be recorded in the chain of title.

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

Discussion on the motion:

Mr. Hurd said the setback is no further than what's existing.

Mr. Hurd said the neighboring property values won't be affected by this project, "because we are not over-building on the lot size."

Mr. Hurd said the usable portion of the lot is a very "small portion of the real estate."

Mrs. Towle said the public interest "is certainly answered because of the ADA requirements; it's been a long time coming and needed at that site."

Mrs. Pope said it is in the spirit of the ordinance.

Mrs. Kier said, "As long as they go with keeping with the character of the existing building – the aesthetic of the neighborhood, that it doesn't threaten the character of the neighborhood, or the health, safety or welfare of people around."

Mrs. Pope said it won't diminish the value of surrounding properties.

Mr. Hurd said it will add to the tax base.

Mrs. Kier said that due to the topography of the lot there is nowhere to develop the lot without violating the setbacks somewhere.

Vote on the motion: Unanimous in favor

Mr. Hurd noted that the site plan showed that 200 Broad Street is responsible for winter maintenance of what appears to be the City's access to Monadnock Park. Mr. McCrory said there used to be parking there, but it no longer applies.

(Variance 2) Motion: To grant the variance from sect. 22-533 to waive off-street parking with the conditions of approval as follow:

1. The Owner shall abide by information provided in the Variance Application for ZBA Case No. ZO 2017-00009 and testimony during the public hearing for said case.
2. The on-street parking associated with the dental office use will occur during regular business hours. All dental office staff and patrons using public parking spaces shall abide by the City Code and applicable parking ordinances.
3. The use at the subject property is permitted one (1) off-street handicap space on the property and the requirement for eight (8) standard parking spaces is waived. The parking requirements for the property shall be reviewed if there is future expansion of use or change of use.
4. This variance shall be recorded in the chain of title.

Made by: Mrs. Towle **Second:** Mrs. Kier

Discussion on the motion:

Mr. Hurd said the uniqueness of the property doesn't allow the applicants to put in 9 parking spaces.

Mr. Hurd said it won't hurt surrounding property values because it's something they are already doing. The school used to do it. Across the street uses the fronts for public parking during the day. There are City codes and ordinances that govern the use of on-street parking that the clients will have to abide by.

Mrs. Towle said she was fine with it.

Vote on the motion: Unanimous in favor

(ZO 2017-00007) GBRB Investments LLC, 210 Washington Street: Appealing a Notice of Violation for keeping a storage container at **1 Princeton Street**. Tax Map 121, Lot 44. Zoning District: R1

Mr. Hurd read the public notice and asked for an abutters' roll call. Mr. McCrory read the roll. It was noted that a number of abutters were present.

Planner's Report

Mr. McCrory said the City has observed a box trailer, which the City defines as a storage container, on the subject property and asked for it to be removed. The City brought enforcement as a Notice of Violation. The appellant said it would not be removed, so the City issued a second Notice of Violation on May 9th. The second notice is the basis of the appeal. The process and timeline are outlined in the staff report. A definition of "storage container" is provided in the report as well. Storage units are prohibited on residential property.

Box trailers are usually used for transport of goods, but this trailer is not being moved (based on Mr. McCrory's drive-by observations) and is being used for storage. It was first observed in October. It has been on the site for more than 6 months.

The Planning and Development Department has received more complaints about this situation than any other specific property. A summary of the complaints was provided to the board in the back of the staff memo.

Abatement of the violation requires removal of the trailer from the residential property onto a commercial or industrial property.

Mr. Hurd asked if any portion of the 1 Princeton Street lot is in the commercial zoning district. According to the zoning map, the R1 district extends approximately 20-30 feet into the Arrowhead property. So, the 1 Princeton Street lot and the intervening Koloski lot are in the R1 zone.

Appellant's Presentation

Mr. Limoges, owner of the property, said he doesn't consider it a storage container. He said it is road-worthy, it is registered, it has wheels. He contends that it is a storage trailer. There are "some things in there". He said Mr. McCrory had explained the process to him and that he could "take it here" if he didn't agree with it and that's what he decided to do.

Mrs. Pope read the definition of storage container, which includes trailers such as his that were designed for another use. Mr. Limoges said his trailer is no different than the truck driver who brings his trailer home every night and leaves again in the morning. Mrs. Pope said yes, but that trailer is not there permanently. Mr. Limoges said his didn't need to be. He could move it regularly if needed. He hasn't moved it before now because he knew the neighbors were upset and he didn't want to upset them further.

Mr. Howe asked for the exact location of the trailer on the lot. Someone from the audience provided a photo to Mr. McCrory. Mr. Limoges said he had offered to move the trailer behind the house, but Mr. McCrory didn't want him to do that.

Motion: To accept the photos

Made by: Mr. Hurd **Second:** Mrs. Kier

Mr. Limoges said he had never been made aware of the complaints. He said none of the neighbors had "come forward or said anything". He said the City never told him about the complaints or what the complaints were. "We heard grumbling, but we didn't get a formal complaint or anything." He said he asked who made the complaints and what the complaints were, but he "got no information".

Mr. McCrory said he and Mr. Limoges had a discussion in October about the trailer and at that time Mr. Limoges had asked about the complaints. The complaints that are referred to in the staff report are from February/March. They were received after the Notice of Violation had been issued.

Mr. McCrory said the October Notice addressed both the trailer and unregistered vehicles. The unregistered vehicles were removed from the property following the first Notice of Violation. The 2nd Notice (issued in November) was amended to remove reference to them.

Mr. Limoges had nothing further to add and the board had no more questions for him.

Mr. Hurd asked Mr. Koloski if he would like to speak.

Mr. Koloski, City Councilor for Ward 3, is an abutter to 1 Princeton Street, he owns 3-5 Princeton, and another parcel of land that separates Arrowhead Motors from 1 Princeton Street. Mr. Koloski said he wasn't a "fan of the trailer being there". He said there used to be a row of bushes there that DPW removed. The trailer came after their removal. He said he received a packet of complaints on March 6th/7th, which he turned over to the City. He said there were a few more that "trickled in

after that”. He had a packet of 19 complaints. Fifteen of the complaints reference the trailer.

Mr. Koloski said that Mr. Limoges had once approached him with an offer to purchase Mr. Koloski’s property with the intent of expanding the dealership at some point in the future.

Mr. Koloski said the trailer “leads to something else, leads to something else, etc.” He said there are “a bunch of tires underneath it. It is jammed full of tires. There is a mower deck in front of it.”

Mr. Koloski said he is not one of the complainants in the packet, that he has tried to stay neutral in this and turn the complaints over to the City. He repeated, however, that he wasn’t a fan of the trailer being there and that if the board allows this trailer to remain, other people will do the same, which he did not believe was in the City’s vision. He said one of the neighbors had talked about doing the same thing in their yard. “One leads to them all over.” He said he wouldn’t have any issue with it being on the dealership property. It just doesn’t belong in a residential neighborhood. He said this is a dead-end street neighborhood and everyone must drive by this trailer every day when going to or from their homes. Mr. Koloski offered to give the complaint packet to the board. He said he hoped the board would give everyone present a chance to speak.

Mr. Hurd said everyone will have a chance to speak, but asked that people not repeat themselves. Mrs. Towle said Mr. McCrory had done an excellent job summarizing the complaints, and didn’t feel the board needed to take the packet at this point.

Doris Murgatroy, abutter across the street, said she has lived in the neighborhood for 40 years. She wants the neighborhood to stay residential. She has to look at the trailer every day. She said it wasn’t what she considers “a beauty mark”. She would like it removed.

Denis Desilets owns property that abuts 1 Princeton, but doesn’t live there. He said he agrees with Mr. Koloski, that if this trailer is allowed, there will be others. He said it is an eyesore and if he lived there he would have spoken to Mr. Limoges a long time ago. He said he wouldn’t want to be looking at it every day from his window.

Dick Muratroy, 13 Moody Avenue, said the trailer blocks site line somewhat when turning from Princeton onto Moody. He repeated what Doris had said about it being an eyesore and having to look at it every day. He would like to see the trailer removed.

Rita Ploof, Cornell Street, said she agreed with previous testimony and feared that if the trailer remains, Mr. Limoges will start moving cars from the dealership to that lot as well.

Seth Prew, Cornell Street, said he is a bus driver and goes up and down that route constantly. “Safety is one of our big things.” He said a child on that property that

lives there ran out from behind the trailer chasing a ball into the street. He said the trailer is “a huge safety hazard.”

Jeff Chase, resident in the neighborhood since 1978 (Dartmouth Street), said it is a nice neighborhood and the trailer is an eyesore. He would like the City to enforce its regulations and remove the trailer.

Elizabeth Miller, Yale Street, said everyone in the neighborhood takes good care of their property and the site of the trailer is discouraging. She said “there is not a possibility” that Mr. Limoges or Mr. Belisle did not know about their complaints because she said they had complained numerous times directly and it has done “absolutely nothing”.

Carol Shepherd, Cornell Street, said she sees the trailer on every trip in and out of the neighborhood. There are homes for sale in the neighborhood, it is a quiet, family-oriented neighborhood with kids. She said visibility onto Princeton will be blocked in the winter when there are snowbanks in addition to the trailer. She said the City removed the bushes for a reason, and now there is a trailer there instead. She asked the board to uphold the regulations and have it removed.

Mr. Prew asked for clarification of the proceedings. Attorney Taylor stated: “The administrative decision is the Notice of Violation which included a requirement to ‘fix’ the violation, that violation being a violation of zoning ordinance. That’s the decision that’s being appealed. So, the decision for the board to make is whether or not the ‘administrative officer’, as it’s defined, which in this case, was Mike at signing regarding the zoning violation, whether or not that was a correct decision applying the zoning ordinance. ... If you disagree and say that his decision was in error, it goes back to staff. If you agree, then the Notice of Violation essentially becomes enforceable.”

Mr. Hurd closed the public hearing as there were no more comments from the public or from staff.

Mr. Howe thanked the public for attending the meeting and participating in the proceeding. He acknowledged that this can be difficult to do when the person against whom one is complaining is in the room at the time.

Mr. Hurd called for a motion to affirm or reverse the decision.

Motion: To affirm the staff determination in this case.

Made by: Mrs. Kier **Second:** Mrs. Towle

Discussion on the motion: Mrs. Kier said, “I think it’s pretty standard when you are looking at what the City code storage container’s defined as and with the complaints and what the City has itself seen, I think this would fall under that category. And in falling into the category I feel the staff did follow the proper procedures with that. In trying to get in touch with the property owner multiple

times to rectify the situation, so I do believe they had the correct determination with this.

Mrs. Towle said the fact that it's zoned residential is a big carrot in that whole decision process. Absolutely."

Mr. Hurd said, "I think this is a great case of how things have changed over time. I think rules and regulations from 20 years ago to today...have everything ... what's acceptable ... it's not ... the clarification of what it is..." He asked if other board members had anything to add.

Mrs. Pope said she agreed with Mrs. Kier, with the number of times the City reached out to the property owner and tried to work it out. And from the testimony that came from the property owner himself when he was asked how many times it had been moved off the lot, and he said it hadn't. She felt that was very telling. She said she felt the City is standing by what the zoning code as of this moment how the definitions read and what the rules are. She felt the City made the correct decision.

There were no other comments from the board.

Mr. Hurd called for the vote. It was two in favor, two opposed. Mr. Hurd had not voted.

Mr. Hurd said, "Unfortunately I'm going to have to say that I have to agree with the new 2013 ordinance that the City did it correctly. Until the applicant can prove different to the ... what the City has under section 22-1, I think it's a cut and dry ... and I ... I still think that there's other issues but where it's a one-on-one case basis only ... hopefully we don't see the other 50 of them that are in town."

Vote on the motion: 3 in favor, 2 opposed.

V. Correspondence

Town and City magazine was received.

VI. Other

Mrs. Kier asked what the process is for requesting an ordinance be reviewed for updating. Ms. Taylor said it is a planning board function. One can file a petition as well. Mrs. Kier said she was interested in the parking ordinance with regard to the 200 Broad Street application and parking for businesses in that area.

Mr. Hurd announced that Ms. Taylor is retiring June 30th and will no longer be attending the ZBA meetings. The board wished her well and said she would be missed.

Mrs. Towle said she would like to see the applicants fill out the applications. Ms. Taylor said that regardless of the nature of the appeal, it is the applicant's burden of proof to convince the board that they are right. If they don't complete their application, that is part of their carrying their burden of proof. It is up to the board to determine if an incomplete application satisfies the

burden of proof. The board can continue a hearing or deny without prejudice. Mr. McCrory said he routinely assists applicants in filling out their applications. He also provides guidance documents and materials for their reference and assistance.

VII. Adjournment

Motion: To adjourn the meeting.

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

Vote: Unanimous in favor

The meeting adjourned at 8:32 PM.

Respectfully submitted,

deForest Bearse