



Zoning Board of Adjustment Meeting
Tuesday, July 11, 2017 7:00 PM
City Hall Council Chambers

MINUTES
Approved 8/7/2017

I. Call to Order by the Chair

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

II. Attendance/Roll Call

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

Absent: James Petrin

City Staff: Michael McCrory, City Planner; Ryan McNutt (Joined at 7:10)

Mr. Hurd asked Mr. Howe to sit in for Mr. Petrin.

III. Minutes of Previous Meeting – June 13, 2017

Motion: To approve the minutes of June 13, 2017 as written.

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

Vote: Unanimous in favor

IV. Old Business

There was no old business.

V. New Business

- **(ZO 2017-00010) Raymond Mitchell, 22 Cedar Street: Application for a Special Exception to establish a homestead kitchen home occupation at 22 Cedar Street. Tax Map 82, Lot 61. Zoning District: R1**

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

Planner's Report

Mr. McCrory said that state law regulates homestead kitchens and provided the Board with the relevant statutes in their packets. The homestead kitchen is classified as a home occupation and thus requires a Special Exception. Health inspections and a food service license from the City are required. The home kitchen will be used to make jams and jellies and such.

The Board had several questions about the licensing.

Applicant's Presentation

Mr. Mitchell said that only he and his wife would be working on the business. There will be no deliveries to the house. There will be no consumers coming to the house in accordance with state law. There will be signs at the house and no selling from the house.

Supplies for the business will come from their own garden, local farms, Upper Valley Produce, and Black River Produce.

He is planning to sell his product to local coop stores, farm stands, and 100 Mile Market.

He will make whatever changes to his kitchen that are required by health inspector. He is still discussing the project with Glen (Partridge, health inspector).

Mr. Mitchell said that once the business exceeds \$10,000 in annual income, he will need a commercial kitchen off-site.

He said his kitchen is less than 20% of the square footage of the house.

There were no abutters present and no one wishing to speak to the application. Mr. Hurd closed the public hearing.

Mr. Hurd said this application was closer to a home occupation than anything else the Board had seen.

Mrs. Towle said she would have liked to have seen the design of kitchen and house floor plans. Mrs. Kier felt that was more than was needed for this proceeding – that those items will most likely be covered under the licensing process.

Mr. McCrory said no site plan is needed for this project.

Motion: To approve a special exception in accordance with Section 22-207, uses allowed by special exception, to permit a home occupation use in the R1 Zoning District at 22 Cedar Street, map 82, lot 61 with the following conditions:

1. The proposed use shall be maintained substantially in accordance with the information provided by the applicant in the Application for a Special Exception, ZBA Case No. ZO 2017-00010, and testimony during the public hearing for said case.
2. The home occupation shall have no more than two non-resident employees.
3. 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.
4. Goods produced shall be sold off-site. There shall be no on-site retail sale of stock in trade on the premises.

5. 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: Mrs. Kier **Second:** Mr. Howe

Mrs. Kier amended her motion to include the following condition:

6. The home occupation shall be in adherence with City and State requirements, licenses, and certifications.

Mr. Howe accepted the amendment.

Vote: Unanimous in favor

- **(ZO 2017-00011) Claremont Speedway, 425 Washington Street: Appealing an administrative decision that overnight camping at the racetrack is not a pre-existing nonconforming use at 282 Thrasher Road. Tax Map 71, Lot 4. Zoning District: RR**

Motion: To briefly recess the meeting for consultation with staff.

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

Vote: Unanimous in favor

The Board took a brief recess at 7:17 PM, returning at 7:28 PM.

Mr. Hurd called the meeting back to order.

Mr. Hurd read the public notice.

Mrs. Bearse read the abutters roll.

Mr. Hurd said in the spirit of disclosure that some of the abutters in this case had spoken to him about the camping prior to coming to the Board. He asked the Board and everyone present if there was a problem with him having discussed it. No one did.

Planner's Report

Mr. McCrory said that the speedway wants race teams to be able to stay overnight following races. This request was discussed in light of the variance granted earlier for seasonal camping. Mr. McCrory said he was unable to find any documentation that camping has been carried on long term. When the variance for seasonal camping was approved, it was stated that there would be no transient camping. Claremont Speedway appealed the determination in response.

Mr. McCrory instructed the Board that the purpose of this proceeding was for the Board to determine if the zoning administrator had properly interpreted the zoning ordinance or not. The Board's actions are to be limited to agreeing or disagreeing with the administrative determination. If the Board agrees with the determination, the decision stands and the overnight parking would not be allowed. If the Board determines that Mr. McCrory had made an error, then the issue would be returned to Mr. McCrory who would in turn discuss with the Speedway ways in which to make the overnight parking consistent as an accessory use with the long-term use of the property.

There is no opportunity in this proceeding for the Board to make stipulations or set conditions.

Mr. McCrory then read an email from Fire Chief, Rick Bergeron, who stated that the Department had responded to 6 calls to the property in the last 14 years, none of which were related in any way to overnight parking.

Mr. McCrory stated that Police Chief, Mark Chase, said he saw no problem with the practice of overnight parking. He said he had witnessed overnight parking at the site in the 1980's when he himself worked there.

Mr. McCrory said he had reviewed the minutes of the Licensing Board for the past several years and found no indication that they had any intent to regulate overnight parking, although it had been discussed several times in the past three years. There was discussion about whether the licensing Board had the authority to regulate camping.

There were no other questions for Mr. McCrory.

Applicant's Presentation

Anthony DiPadova, attorney representing the Speedway, presented the application. He introduced James Ambrose and Phil Hayes, co-owners of the Speedway, who were in attendance.

Mr. DiPadova referred to the overnight camping as an historic practice for the benefit of the racecar drivers. It is for safety reasons, as many of the drivers travel long distances and race late into the night. They need to be able to sleep at the track before moving on in the morning.

Mr. DiPadova said the following:

- The racetrack has been operating in this location since 1947, well before the zoning ordinance was in existence
- The City and Mr. McCrory have stated that the racetrack is a pre-existing, nonconforming use
- As such, it is allowed to continue even though it may not comply with current zoning
- Camping on site for race teams has never been prohibited by City Council or the licensing Board at any time until last year
- The City has always had direct knowledge that this has been going on
- The police department has witnessed this camping for many years; if there was a problem or beyond their authority, it should have been brought to the attention of the racetrack, and it was not
- The ace operations have always included overnight parking for race teams
- Some teams stay the night of the race, others arrive the night before the race
- Overnight parking or camping has been taking place for well over 40 years, well before the zoning ordinance went into effect

- Pre-existing nonconforming uses are protected by NH RSA 674.19 and the NH Constitution
- They are also protected by 22-113 of the Claremont Zoning Ordinance
- Overnight parking is integral to the racetrack operations
- Pre-existing nonconforming uses cannot subsequently be restricted
- The City concedes that the racetrack is a pre-existing nonconforming use and thus is allowed
- Any operations incidental to that are also allowed as long as it's nothing new since zoning was adopted
- Overnight camping has been in existence as long as the racetrack, 70 years
- Some teams may arrive on Thursday for a Friday race; some stay the night after
- Prior to the current owners, there was never a licensing requirement
- The licensing Board sets certain parameters; abutters are invited to participate; they input into when the gates open and close; when the first practice runs can start on a Friday or a Saturday
- The issue of overnight camping came up; the licensing Board wasn't sure it was within their purview and "punted it" to the Zoning Board
- If the use is determined to be pre-existing nonconforming, set conditions on the overnight parking would fall to the licensing Board (e.g. what time they can come in, what time they have to leave on certain days, etc.)
- The seasonal camping is separate and distinct from overnight parking
- Seasonal camping will take place in another part of the property
- No amenities are provided for the overnight parking – no water, no electricity, no fire rings, etc. – just the parking lot
- The variance cannot take away this pre-existing use – to do so would be to violate state law and the state constitution

Scott Hinkley stated that he had been associated with the speedway since he was in grade school in various capacities. He remembers camping by the race teams as far back as the 1970's. He said campers include race teams, their families, and fans and it has never been a problem.

Mrs. Pope asked why the fans were staying at the track when there are so many other places they could be staying.

Mr. Hurd asked what was the maximum number of campers there at a time. Mr. Hinkley said 7 or 8.

Ernie Boudreau, lifelong resident of Claremont, said he had been affiliated with the racetrack for 50 years and there has never been a problem with the overnight camping; it had always been allowed. He said he had not seen more than 10 campers at a time; the group is small and quiet; they stay overnight and leave in the morning. He, too, had witnessed this practice prior to 1970.

Mrs. Pope said that when the variance was approved for the seasonal camping, the applicants had said there would not be any overnight parking or transient camping, hence the discussion tonight.

Jim Ambrose, co-owner, said he had been there since the 60's; people had always been able to stay in the parking lot after the races; there had never been a huge amount of people; this had been done for more than 50 years; it had always been done. He said there would not be transients in the new campground. He said the first year they owned the speedway, it was not a problem; the second year it became a problem to someone; and the police were called. They were then referred to the Planning and Development Department. He said they just want to let people to do what has been done for 50 years.

Mrs. Towle asked what time the drivers are paid out. She said it used to be cash paid late at night after the race. Mr. Ambrose said the checks are now printed the next morning and they go in the mail.

Mr. Dipadova asked if he could submit letters of evidence to the Board. Mr. Hurd said no, because all submissions must be received by the Board in advance of the hearing.

Mrs. Kier asked if there is any legal issue with city documents? If something is a preexisting nonconforming use, does it get recorded? Mr. McCrory said no, it's more about evidence provided to support a claim of pre-existence. The absence of documentation means it is up to the Board to make that determination. It is up to the appellant to prove their case.

Abutters

Rebecca Ford said she didn't remember camping in the past, although her job at the track was in a location where the parking lot was not readily visible. She said she was tired of the speedway "getting everything they want; they don't follow stipulations". She asked if the camping will expand if you allow it?

There was much discussion about what happens if the Board overturns Mr. McCrory's decision – whether abutters can participate; enforcement; how it would relate to current zoning. Ultimately Mr. Hurd advised the abutters to write their concerns in a letter to Mr. McCrory.

Chuck Egbert said this will just be a stepping stone to transient camping for entertainment. He said he had found many fire rings with burnout tires after races. He said he did recall campers staying in the parking lot overnight, but only in the last five years. He said he had seen evidence of fires and had called the fire department about it.

Grace Horvath said there had not been overnight camping since 1985.

Don Thompson, representing Rose Maley, said he didn't know if overnight parking had been happening since before the 1970's, but he felt that licensing determinations supersede everything.

Mr. McCrory said zoning and licensing are side by side functions.

Mr. McNutt said the licensing Board did not take up overnight parking at their meeting on February 3rd because it was not within the Board's purview. The licensing Board is an activity permitting Board, not a use-determining Board. The underlying zoning question would actually inform and overrule the licensing Board.

At 8:38 PM, the Mrs. Towle asked for a 5-minute break.

Motion: To take a 5-minute break.

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

Vote: Unanimous in favor

Mr. Hurd called the meeting back to order at 8:48 PM.

Bucky Demurs said he had been racing at Claremont Speedway for 30 years. He said he always remembered campers – that it was a convenience and courtesy for the racers. He said he remembered there were no more than 10-15 units in the back row of the parking lot.

Reverdy Ford said he has lived (near the track) for 38 years and never remember 15 campers. When go-carts were racing, there was one camper for the person running it – prior to that, he remembers no more than 1 or 2 campers at a time; it was not a common occurrence. Mr. Ford asked that if you break the rules or law or guidelines how does that make them legal afterwards, after a duration of time. If it was never legal, why is it grandfathered? He said he didn't remember any campers before Dennis Fleury owned the racetrack.

Mr. Hurd disagreed.

Mr. Ford asked what happens to the grandfathering when there is a lapse in the use?

Mr. McCrory said the pre-existing nonconforming use ceases after 12 consecutive months. However, the overnight parking is considered an accessory use. He would have to look at the primary use first.

No one else asked to speak. Mr. Hurd closed public hearing.

Mr. McCrory said that everything in his staff memo stands. The complaints have come only in the last few years, but there is no data available from the police. He instructed the Board that when considering this appeal, he asked that they focus on the request by Mr. Dipadova, and the zoning determination based on that request.

Mrs. Pope said fire chief's letter didn't mention 5 years ago that Chuck Egbert had called the fire department to the speedway and they had responded.

Mr. McCrory said that response reports may be different from site visits – that this wasn't a call out.

There were no other questions for Mr. McCrory.

Motion: To overturn the administrative decision.

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

Both sides have said there was overnight parking at the site.

Vote: Unanimous in favor

Everyone was instructed to work with Mr. McCrory moving forward.

- o **(ZO 2017-00012) Real Property Options LLC, 31 Pleasant Street: Application for a variance from Sect. 22-389 of the City Zoning Ordinance to permit a 3rd residential unit at 14 Spruce Avenue. Tax Map 119, Lot 316. Zoning District: CR2**

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

Planner's Report

Mr. McCrory said there are 20+ years of tax cards showing this property is a duplex, but there are indications, reports and complaints that this has been a multi-family – three, four, maybe five units at a time - over the years. Those units have been illegal. From a zoning perspective, we have been counting that duplex as the legal use for the property and that is how we have been advising people going forward. Up to now there has been no action to go beyond the duplex legally. This application does that. The applicant seeks to add one more unit to make it a three-family.

The property is located in the CR2 zoning district which requires 5000 SF per dwelling unit. The duplex complies with that requirement (lot size is 10019 SF). Adding a 3rd unit will reduce the density to 3400 SF per unit on this lot. Thus, the variance seeks to reduce the required density.

The applicant is not seeking to use the illegal units without permission. The properties on either side of this one are both 4-unit buildings, so the context is reasonable. The new unit will be required to meet fire safety regulations and building codes.

Alan Croteau, agent for the property owner, offered to submit photos of the property to the Board, but Mr. Hurd would not allow it.

Mr. Hurd said a site visit should happen. Mr. Croteau could submit additional information before the next meeting. Everyone agreed to schedule a site visit.

Mr. Croteau said the previous owner had 4 units in the building. When the current owner took it over in foreclosure, he discovered it was supposed to be a duplex.

There is a unit on the first floor (unit A – 2 bedrooms; 1570 SF); a unit on the second floor (unit B – 5 bedrooms; 1548 SF) with a studio apartment (348 SF) behind it. Mr. Croteau said he wants the studio as the third unit. He said there's enough space for the parking and the dumpster. There are tenants currently living in the two units.

Mr. Croteau said the owner wants to make improvements to the property.

Mr. McCrory said the parking standard for residential uses is based on the number of units, not bedrooms (in place since 2013).

Mrs. Towle asked about egress for the studio apartment. Mr. Croteau said it is already in place.

Mr. Croteau acknowledged that this property has an absentee owner, but a local manager.

The garage may be turned into a coin-op laundry for the tenants.

The Board had no other questions for the applicant.

Motion: To continue the public hearing to the August 7th, 2017 meeting with a site visit in between

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

Vote: Unanimous in favor

- **(ZO 2017-00013) Frank Barrett, White River Junction VT: Application for a variance from Sect. 22-387.1 of the City Zoning Ordinance to permit residential units on the 1st floor in the MU zoning district at 54 Pleasant Street. Tax Map 120, Lot 85. Zoning District: MU**

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

Planner's Report

Mr. McCrory said that the City Center zoning strives to keep the commercial facades along the streets in the downtown, and so prohibits residential development on the first floor on those particular streets. However, this proposal would retain the commercial façade in the front of the building (facing Pleasant Street) while creating residential dwelling units in the rear of the building. The building at 54 Pleasant Street is over 200 feet deep- it is deeper than any of the other buildings on this street – and has the room to accommodate both uses.

The Board had no questions for Mr. McCrory.

Applicants presentation

Frank J. Barrett Jr., architect for the project, presented the application. He said the property has been condemned by the City due to fire safety and building code violations. The structure of the building, however, is very good. The electrical and mechanical systems are completely “shot”. The applicant, Kevin Lacasse, would like to gut the building completely, back to the steel frame and basic floor platforms and rebuild. He is proposing to put residential units back in on the 2nd and 3rd floors, though reconfigured to accommodate more units. He is proposing to keep the store fronts on Pleasant Street – keep it exactly as it is now – provide community and manager office space, and have 6 handicap accessible dwelling units with outdoor space, a new access and landscaping in

the rear on the ground floor. Mr. Barrett said the estimated project cost is \$4M. There will be a mix of studios and 1- and 2-bedroom units – 32 units altogether.

Mr. Lacasse was not certain whether the manager would be living on site or just have office hours.

Mr. Lacasse said he needed enough dwelling units to support the project – hence the need for the ground floor units.

Currently there are 26 units in the building. He would be increasing that number by 8 units.

There has been no maintenance on the building since the 80's when the 2nd and 3rd floors were converted to apartments. The 1st floor will have accessible units. At present, there is no demand for the commercial space.

There is presently an entrance to the apartments from Pleasant Street – it will remain. It's inconspicuous. An elevator won't be needed because of the 6 accessible units on ground floor.

Because of the funding, this will be an affordable housing project. Tenants must income-qualify and will be screened.

Mr. Lacasse will not be pursuing tax credits through the city.

Robert Tatro, who owns 66 Pleasant Street, said he was on the City Center steering committee that addressed the issue of residents on the ground floor. Only two members of the committee wanted residential uses on ground floor. The idea of front/back wasn't addressed – only the frontage on Pleasant Street. He said this project will enhance the area and allow other owners to do similar projects.

Gary Trottier, who owns the Union Block and is president of the Heart of Claremont said that while he is concerned with historic district, the City needs to gain population in the city center. He said he is very excited about this venture and hoped it will be approved. He was also on the city center steering committee and remembered the discussion about residential uses on the ground floor. However, he said, 1st floor spaces have failed in the past few years.

The Board had no questions for the applicant.

Motion: To approve a variance from Section 22-387.1, Table of Uses – Residential Uses in the MU Zoning District, to permit six street-level dwelling units at 54 Pleasant Street (Map 120, Lot 85) with the following conditions:

1. The Owner shall abide by information provided in the Variance Application for ZBA Case No. ZO 2017-00013 and testimony during the public hearing for said case.
2. This variance shall be recorded in the chain of title.

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

Discussion: Mr. Hurd said the uniqueness of this building; the need to move forward, not increasing burden on the city; bringing in taxes; keeping commercial in front; helps surrounding values; would do substantial justice; a condemned building being brought back; life back to downtown – all were contributing factor to approving this variance application.

Vote: Unanimous in favor

- **(ZO 2017-00014) Frank Barrett, White River Junction VT: Application for a variance from Sect. 22-533 of the City Zoning Ordinance to modify the parking requirements for 54 Pleasant Street. Tax Map 120, Lot 85. Zoning District: MU**

Mr. Hurd read the public notice. He did not ask for the abutters roll to be read again.

Planner's Report

Mr. McCrory said that no attention had been paid to the parking for this building over time. For 32 units, 48 parking spaces are required (1.5 spaces per unit). The applicant is asking to reduce the requirement to one space per unit. Mr. McCrory's research into parking usage in the city center showed 0.7 vehicles per dwelling unit (in downtown using 2015 census data). Downtown apartments have a lower parking demand so reducing the requirement to 1 space per unit makes sense. The City is working with the applicant on where the spaces will be.

Applicant's Presentation

Mr. Barrett talked about the different parking strategies used by the larger municipalities in the area.

Mr. Lacasse said that he had been required to make provision for additional parking off site when he developed the Latchis Theater property, but he has never had to use it. The parking on site behind the building has been sufficient.

Mr. Trottier said he has asked for the past for 40 years for parking for the Union Block. He said the City would not help because the City didn't want residential downtown believing that they're low income residents. He said attitudes about residential development downtown has to change. He said he told the city manager that if he helps Mr. Lacasse, he has to help everyone in the downtown.

Mr. McNutt said he believes in bringing people back to downtown; they demand things and business comes. Increasing foot traffic downtown always benefits. Parking is always a challenge, but collaborating with owners succeeds and talking about what's possible. He wanted to assure the Zoning Board that he's committed to revitalization of Pleasant Street. He doesn't think parking will be the problem. He heavily supports one space per unit for all buildings with potential of mixed use. The City is in favor of this. There are multiple options available to resolve the parking issue. This isn't just about Mr. Lacasse – this is about the entire downtown.

Mr. Taro said he was originally opposed to the proposal, but he met with Mr. McNutt, Mr. McCrory and Nancy Merrill and came away in favor of it.

George Lapan, commander of legion post 29, an abutting property, said he is encouraged by new development, but the legion is an older group and he is concerned that if city starts designating parking for that parking lot the older members will be required to walk too far. The legion has always shared the lot and its members need parking close to their building. He asked that no parking spaces be assigned to anyone. He said their maximum parking needs are from noon on plus evenings for events. He said they need spaces along their boundary.

Mrs. Kier asked Mr. Lacasse to specify where the spaces will come from. Mr. Lacasse said there are 15 spaces on the Goddard block lot; 17 other spaces are still being figured out.

Mr. Hurd closed the public hearing when there were no more questions or comments.

Motion: To approve seeking a variance from Section 22-533, Off-Street Parking Table, to reduce the required number of parking spaces from 1.5 per dwelling unit to 1 per dwelling unit at 54 Pleasant Street with the following conditions:

1. The Owner shall abide by information provided in the Variance Application for ZBA Case No. ZO 2017-00014 and testimony during the public hearing for said case.
2. This Variance is void without demonstrated long-term parking arrangements at a ratio of one (1) space per dwelling unit. The Applicant shall provide executed copies of all off-site parking agreements to the Planning and Development Department demonstrating long-term parking for the property.
3. This variance shall be recorded in the chain of title.

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

Discussion: Uniqueness of the situation; trying to bring Claremont back; in the public interest; won't be all low-income people; research on how much parking is actually used in that area; will help surrounding property values; conditions prevent variance from being contrary to the public interest; reasonable request based on research - were all cited as reasons for approving the variance.

Vote: Unanimous in favor

VI. Communications

VII. Other Business

- o **Fraud policy to be signed by all Board members**

VIII. Adjournment

Motion: To adjourn the meeting

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

Vote: Unanimous in favor

The meeting adjourned at 10:40 PM.

Respectfully submitted,

deForest Bearse