



Zoning Board of Adjustment Meeting
Tuesday, September 6, 2016, 7:00 PM
City Hall Council Chambers

MINUTES
Approved 10/3/2016

The meeting came to order at 7:00 PM

I. Attendance/Roll Call

Present & Participating: Richard Collins, Carolyn Towle, James Petrin, Abigail Carman, Tracy Pope

Absent: Michael Hurd, Todd Russel

City Staff: Michael McCrory, City Planner

Mr. Petrin nominated Carolyn Towle to chair the meeting, seconded by Mrs. Pope. All were in favor. Mrs. Towle assumed the chair.

II. Minutes of Previous Meeting August 1, 2016

Correction: Mr. Petrin did not recuse himself from the Gertrud Holl hearing.

Motion: To accept the minutes.

Made by: Ms. Carman **Second:** Mrs. Pope

Vote: Unanimous in favor

Mrs. Towle asked Mrs. Pope to sit in for Mr. Hurd and Ms. Carman to sit in for Mr. Russel.

III. Old Business

- A. (ZO 2016-00011) Gertrud Holl Revocable Trust, 28 Monument Hill, Springfield, VT-** seeks a variance from Section 22-533 of the City Zoning Ordinance to reduce the required number of parking spaces for a restaurant at **214 Washington Street**. Tax map 121, lot 46. Zoning District B2. (Cont. from 8/1/2016)

Planner's Presentation

The Board received a letter from the applicant, Michael Holl, in their meeting packets requesting a change to his variance request. A response letter from an abutter was received after the packets had been mailed and was distributed to the Board at this hearing. Based on new survey data, the variance request has changed from 22 to 20 parking spaces in anticipation of changes that may be requested when the plan goes through site plan review. Restaurant occupancy would remain at 100 seats. 25 spaces are required. It has been determined that the 5-ft setback requirement is not necessary.

Applicant's Presentation

Michael Holl said he owns and operates the Black Rock Café in Springfield (VT). He said the parking at the Café is limited as well and he has seen customers leave when they could not find a place to park. He said the Brickers Restaurant operated for twenty years in cooperation with the Plaza and there were no problems.

The Board had no questions for Mr. Holl.

Tom Dombroski, licensed surveyor and Claremont resident since 1973 said he had worked with department heads in creating the site layout.

He also said he had many memories of eating at the restaurant followed by shopping at the plaza. He said it was unfortunate that the two parties could no longer cooperate.

The Board had no questions for Mr. Dombroski.

Public Hearing

Attorney Paul Bauer, representing abutter Claremont Associates, spoke about the timing of applicant submissions and abutter responses. He said he is responding to applicant submissions in a timely manner.

Motion: To allow Mr. Bauer to read his (August 30th) letter into the record.

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

Vote: Unanimous in favor

Claremont Associates objects to granting a variance from the required number of parking spaces for fear that the patrons and employees of the restaurant will attempt to use the Plaza parking area.

Claremont Associates also objects to the interpretation of “contiguous and interconnected” and thus relief of the 5-ft setback requirement.

Claremont Associates objects to a 4-ft fence between the properties as they feel it will block visibility of the Plaza. They suggest a metal guard rail instead.

Lastly, Claremont Associates voiced concern that the proposed new curb cut has not yet been approved and that the site is too narrow to facilitate traffic and deliveries.

Mr. Bauer addressed the five variance criteria, repeating the points made at the hearing in April. He repeated that the variance should not be granted.

The Board had no questions for Mr. Bauer.

There were no other comments or questions from the public.

Mrs. Towle closed the public hearing.

Board's Discussion

Ms. Carman asked if there is a standard width for the traffic circulation lane, as it appears to vary on the plan. Mr. McCrory said the plan had been viewed by department heads and the Traffic Advisory Committee who came to accept the design that is before the Board at this hearing.

Mrs. Pope said that in her opinion the lapse of the 50-year lease constitutes an unnecessary hardship. Mr. McCrory said the application calls on variance criterion #5b as the most appropriate for this property (special circumstances). Not only did the easement lapse, but the State took the front of the lot to widen the road – neither action was taken by Brickers.

Ms. Carman said she was stuck on the need for the number of parking spaces as there is no evidence that the restaurant would be a viable business with a number of seats that would negate the need for the variance. Mr. McCrory said that Ms. Holl had communicated to him that 100 seats are necessary for a restaurant of this type.

Mrs. Pope asked Mr. Holl to comment on the restaurant at 80 seats vs 100 seats. Mr. Holl said the restaurant used to have 145 seats, and that was then reduced to the 100 seats. He said it may not be profitable at 80 seats. It is profitable at 100 seats. He said he is talking to other property owners to see if he can get off-site parking for the employees. Mr. McCrory said the Board could condition the variance that off-site parking be provided for the employees.

Motion: That we (the board) approve the variance to section 22-533, Required Off-Street Parking Spaces, to allow the applicant to have twenty parking spaces with the following conditions:

1. This variance eliminates the parking requirements of Section 22-533, Required Off-Street Parking Spaces, in the Claremont City Code for 214 Washington Street (Map 121, Lot 46).
2. Any change in use or expansion of use will require zoning and Site Plan review. The property owner shall consult with the Zoning Administrator regarding change in use or expansion of use prior to commencing said change.
3. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments. This includes:
 - a. Waiver from Site Plan Review or Site Plan Approval from the Claremont Planning Board.
 - b. Building, life safety, and occupancy permits as determined by Local, State or Federal agencies.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.
4. This variance shall be recorded in the chain of title.

5. If a fence is put up along the property line, that it be as requested in the abutter's letter (the guard rail).

Made by: Mrs. Pope **Second:** Ms. Carman

Discussion on the motion:

The Board chose not to make off-site employee parking a condition of the approval.

Variance Criteria

1. **Granting the variance would not be contrary to the public interest because:** Mrs. Pope said a lot of people miss this restaurant. It has been a part of Claremont for a long time. The public will welcome its opening up again. Ms. Carman said it will add to the tax base which is in the public interest. A successful business is good for the economy of the Town.
2. **The spirit of the ordinance would be observed because:** Mrs. Pope said it is a grandfathered lot that has been there for so many years; this is a restaurant like many others in the neighborhood. Ms. Carman said the property is in a business district; it makes sense.
3. **Granting the variance would do substantial justice because:** Mrs. Pope said it's an empty building just sitting there; Claremont needs the development. Ms. Carman said it is important for the Board to protect the abutter's interest and require a fence between the property so as not to allow infringement of the Plaza's rights.
4. **For the following reasons, the values of the surrounding properties would not be diminished:** Ms. Carman said she didn't think it will hurt the value of surrounding values; the more people going in and out the better.
5. **Unnecessary Hardship**
 - B. **The criteria in subparagraph (A) having not been established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The property cannot be used in strict conformance with the ordinance because:** Ms. Carman said that the property sustained losses not of its own making, thereby making it impossible to comply with a strict application of the zoning ordinance; it may be possible to find another use for the property, but its original use is not unreasonable

The consensus of the Board was that the application met all five of the variance criteria.

Roll Call Vote:

Carman – Aye

Pope – Aye

Towle – Aye

Petrin – Aye

Collins - Aye

- C. **(ZO 2016-00015) Claremont Speedway LLC, 425 Washington St** – seeks a variance from Sect.22-166, RR District Permitted Uses, of the City Zoning Ordinance, to permit development of a seasonal campground as a second principal use at **282 Thrasher Road**. Tax map 71, lot 4. Zoning district: R1. (Cont. from 8/1/2016)

Mrs. Towle asked the applicant if they were comfortable with the Board moving forward with their application at this meeting. Mr. Uchida said they would like to proceed and thanked Mrs. Towle for asking.

Planner's Presentation

Mr. McCrory confirmed that the Board had received all of the latest information from the applicant's team. He then said the June 20th application packet contained a memo from Mr. Pernaw regarding the traffic study, but that the original traffic study had not been submitted with the application. The traffic study had been submitted to City staff prior to submission of the variance application. The applicant would like the study to be incorporated into the record.

Motion: To accept the Traffic Study into the record.

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

Vote: Unanimous in favor

Mr. McCrory said he did not have a final staff report with conditions of approval for the Board tonight. He said the board needed to consider the creation of this campground on its own, regardless of whatever else is on the property. (The campground will be considered in the context of the race track during site plan review.) Even so, the Board has heard consistently that there is some relationship between the existing use and the proposed use – some find it beneficial, others find it detrimental.

Mr. McCrory advised the Board that they did not need to make a decision about the application tonight, that they could close the hearing if they felt they had sufficient information, and hold a deliberative session at a later date.

Mr. McCrory said he had letters from the DPW regarding water supplies and from the Fire Department regarding campfires.

Motion: To have Mr. McCrory read both letters into the record.

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

Vote: Unanimous in favor.

Mr. McCrory read a letter from Vic St. Pierre, assistant director, stating that the City can supply water to the campground. The letter from the Fire Chief said he found no hazards posted to either the campground or the racetrack by campfires. Any possible problems can be adequately covered by on-site safety rules and procedures. He said DES apparently does not regulate smoke from campground campfires.

Applicant's Presentation

Mr. Uchida, attorney for the applicant, said the applicant is willing to have the variance conditioned on the campground using the public water supply to address concerns about impacts to private wells. Lot coverage calculations have been completed to assure the project would be under the 30% limit. Coverage will be 19.2% counting all of the impervious surfaces. The main entrance to the property has been slightly shifted to improve visibility. He said the prevailing winds are from the north-northwest which would send campfire smoke up and over and away from the residents on Thrasher Road, well above the residents. A revised set of campground rules had been submitted, but the changes were not substantive. He reminded the Board that the Pernaw memo refers to the original traffic study for 200 campsites. That number has been reduced to 149 and the information updated. He said the team has addressed all of the impacts that the campground may have, both independently and in combination with the racetrack.

The Board had no questions for Mr. Uchida at this time.

Steve Pernaw, traffic engineer, said the original traffic study and the later addendum, addressed both uses integrated together.

He said the location of the driveway has been shifted slightly based on input from the public and the Board. There will now be 500 feet of sight distance looking left and right from the new location and from both sides approaching the new location. The stopping distance for 30 mph is 200 feet, so 500 feet is more than enough. He said the driveway is now in the ideal location.

The Board had no questions for Mr. Pernaw at this time.

Mr. Uchida said that was all the new information they had to present at this hearing.

Mrs. Pope asked Mr. Ambrose if he felt there is a need for this campground as there are several others in the area. Mr. Ambrose said yes, as the other campgrounds are now old with outdated facilities. This campground will have the newer amenities campers require.

Mrs. Towle opened the meeting up for public comment.

Tom Dombroski, Claremont resident, said the campground would be a benefit to the City. He said he thought it would bring in new businesses and help others already here.

Reverdy Ford, Thrasher Road resident, said he didn't think the campground would be allowed if it was the only use of the property as it is in a residential zone. He said the race track makes noise about 20 hours a week. He feels the campground will add 160 hours of noise for six months of the year – population, noise, traffic will be added to the neighborhood. He said currently the neighborhood is very quiet all the time, except for Wednesdays and Fridays – no noise, very little traffic, very peaceful. He feels the campground will be detrimental to the neighborhood. It will add 300 people to the neighborhood. He asked what happens if the sites can't be filled seasonally? Will they come back and ask to change it to transient camping? He said it was wrong to add two

nonconformances and modify the land to fit them. He objected to Board members telling the public how campgrounds are run. He felt the traffic study gave no information on when it was done in relation to track activity or weather conditions. He said he had a problem with the integrity of the property owners and that there is a lack of trust.

Rebecca Ford asked that it be in writing that a manager will be living onsite. She wanted to know how many acres the race track uses, how many acres the campground would use, and what's unusable. She wants to know how much acreage for the campground will be reported to DES – does the campground fit properly on whatever acreage they claim. She feels this represents a large, dramatic expansion that will use all of the remaining usable land on the site. She said it is not in the public interest and it is not in the spirit of the ordinance. She wanted assurance that racing equipment left at the campground will be put away between races. She said Tammy Bergeron's testimony (that property values will not be affected) was based solely on Ms. Bergeron's opinion. She asked that the application speak to winter camping, which currently it does not. She said she did not see how the campground will "foster the success of the race track". She did not see how impacts to the neighborhood have been minimized. She asked how the variance would be enforced if it is granted. She asked if the application needed to be revised to reflect the information that has been submitted.

Don Thompson took issue with the manner in which abutters were being treated. There was a slight verbal altercation between Mr. Thompson and Mrs. Towle.

He said he had a letter he wanted to submit to the Board.

Motion: To accept the letter.

Made by: Ms. Carman **Second:** Mrs. Pope

Vote:

Mr. McCrory read the letter to the Board. It was addressed to Mr. Thompson from Jeff Flynn, Broker, NH & VT. He claimed that the proposed campground would have a very detrimental effect on the property values in the neighborhood and claimed it would constitute "spot zoning". Mr. McCrory defined spot zoning to the Board and how it could be construed in cases of use variances.

Heather McNamara urged the Board to remember that the proposal would take place in a residential area.

Grace Horvath said she is still concerned about the water and that there is no guarantee that they will use City water. She was also concerned about septic waste leaching into the water. She wanted to know if the race cars would be worked on at the campground. She wanted to know where the deer fencing would be. She wanted a list of other campgrounds that also have race tracks. She believes house values will go down.

Mr. McCrory attempted to answer the question about the fencing – there is some, but there are gaps. Mrs. Towle asked how it was relevant to the variance. Mr. McCrory said

it speaks in general to the question of public safety, but the details are more the purview of the Planning Board.

Mr. Egburt asked how many vehicles would be going in and out of the campground every day? He said he was also concerned about pedestrian safety on Thrasher Road. He, too, said there will be a decrease in their home values if it is allowed. He asked about traffic impacts from special events at the race track or campground and their effect on the neighborhood. He said the quiet of the neighborhood would be destroyed by the campground, especially during the summer when all the RV air conditioners will be running. This will affect the quality of life as well as home values. He didn't think it was fair that the neighborhood should be damaged because the race track is not economically viable. He said the race track should be discontinued and the land used for residential development.

Ms. Carman said that the traffic study predicts 41 trips -27 arrivals and 14 departures at the peak PM hour on a typical weekday when fully occupied; Fridays, the campground is expected to generate 73 trips, 46 arrivals and 27 departures during the arrival peak hour for the race track (6-7PM).

Mrs. Towle closed the public session and asked the applicant to respond.

Mr. Pernaw said the traffic study is dated November, but the data collection occurred in August 2015. Intersection data was collected on August 14th, a Friday night, during a race-day event. He repeated the data that Ms. Carman had quoted earlier – 41 trips at peak PM hour if the campground is fully occupied – some days may be higher than others. 62% of the vehicles will head to and from the east. He stated an order of magnitude of +200 if the campground is fully occupied.

Mr. Halle held up a map of the entire property to speak to the fencing question. The blue line shows the existing fence. The yellow line shows the proposed fence. It will enclose the race track entirely. The red lines are 10-ft. screen fencing which are placed for sound reflectance. The orange line shows deer fencing is for safety at the top of the hill for the campers. There are breaks in the fence on the east side (conservation land) and on the west where the gravel pit is.

Mr. Uchida said the applicants would come back to the Board if they needed to convert to a transient campground. He said they would accept a condition to have a manager on site at all times and he said there are abundant means of enforcing the variance available to the City. He gave his interpretation of spot zoning and explained why a variance is not spot zoning. He said car repairs will not be allowed in the campground. He said that the letter from Jeff Flynn, the broker, is really a comment on the race track and nothing about the campground.

Ms. Carman asked if the lot coverage calculation was based on the entire property or just the campground. Mr. Uchida said the lot coverage calculation addresses all of the structures on the property based on the question raised by the Board chair. The land area used by each the two uses separately has not been formally delineated. He said a very rough estimate would be 35-40% for just the campground.

Mr. Ford said the noise fencing has to be as close to the source of the noise as possible to be effective – not 1,000 feet away, and said it should not be a hard surface. Where they are proposing to position it, it will only reflect the road noise back on the residents instead of diverting the noise from the property away from the residents.

Mr. Thompson said there is a relationship between the race track and the campground. He said the definition of hardship is that the property can't be used without the variance. If there is a relationship between the track and the campground, it's already being used as a track, so it would fail the definition.

Mr. Egbert said no one had addressed his concern about pedestrian safety on Thrasher Road.

Mrs. Towle closed the public session.

Mr. Uchida said it is customary for the applicant to address the five criteria at this point, but he said he would defer to the Board's wishes.

The Board looked to Mr. McCrory for guidance on their next steps. The Board discussed the various options. The consensus of the Board was that they had enough information to make a decision, but that they wanted time to organize it before deciding. Mrs. Towle affirmed that the public hearing was closed.

Motion: To move the Board's deliberation to the October 3rd ZBA meeting.

Made by: Ms. Carman **Second:** Mrs. Pope

Vote: Carman, Pope and Collins voted in favor of the motion; Mrs. Towle and Mr. Petrin voted against it. The motion carries.

IV. New Business

- A. **(ZO 2016-00016) Bonita Miles, 14 Monarch Lane** – seeks a variance to establish a second dwelling unit on the property owned by Diamontina Rego at **14 Olympus Place**. Tax map 145, lot 13. Zoning districts: R1 & AR.

Ms. Carman said that Ms. Miles was her real estate agent when purchasing her home and offered to step down if any of the Board members felt there would be a conflict of interest. No one had a problem with Ms. Carman participating.

Planner's Presentation

The application requires two variances – one from permitted uses to allow a second principal dwelling on the parcel, and the second from the density requirements to allow the second unit on a lot that is only big enough for one.

At present there is single mobile home on the property. It is in the AR zone portion of the property. The front 200 feet of the lot is in the R1 zone. The total area of the lot is 5.9 acres. There are many small lots in the immediate neighborhood.

Mr. McCrory read the abutters list. Mrs. Towle opened the public hearing. No abutters were present.

Applicant's Presentation

Mrs. Miles said that her mother lives in the mobile home. She and her husband would like to build a house at the top of the hill to keep an eye on her mother. She said her father's ashes are buried at the top of the hill and that there is a monument in his name there. She said her mother's ashes will be buried there as well. She and her husband spend a lot of time there working the land and plan to retire there. She called it her family homestead. Mrs. Miles did not know what type of house will be built. An onsite well will be required.

The Board had no further questions.

Motion: To approve the application for a variance from Section 22-146, Permitted Uses, to permit construction of a second residence at 14 Olympus Place, map 145, lot 13 with the following conditions:

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 2016-00016 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: Mrs. Pope **Second:** Mr. Petrin

Discussion on the motion:

1. **Would granting the variance be in accord with the public interest?**
Ms. Carman said it would not be contrary to the public interest as no one attended the hearing to speak against it. The Miles lot at 5.9 acres is much less crowded than the abutting lots.
2. **Would granting the variance be consistent to the spirit of the ordinance?**
Ms. Carman said it would be within the spirit of the ordinance because there are no safety concerns and no overcrowding will result.
3. **Would granting the variance, as requested, do substantial justice?**
Ms. Carman said this will add tax revenue for the City making it a positive.
4. **Does the proposed use maintain the value of surrounding properties?**
Ms. Carman said because there won't be any overcrowding, it won't have a negative effect on property values.

5. **Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?**

The Applicant has demonstrated that the proposed use is a reasonable one.

Ms. Carman felt this was the appropriate criterion for this case. She felt it has been clearly demonstrated that this is a reasonable use. Mrs. Miles' family is there; she will be living there. She didn't feel there would be any commercial use of the land.

The rest of the Board members agreed with Ms. Carman's reasoning. The consensus of the Board was that the five criteria had been met.

Roll call vote on the motion:

Collins – aye

Petrin – aye

Towle – aye

Carman – aye

Pope - aye

Motion: To approve the Application for a Variance from Section 22-151, Maximum Residential Density, to permit a residential density not to exceed two dwelling units at 14 Olympus Place (Map 145, Lot 13).

1. The proposed residential density shall be maintained accordance with the information provided by the applicant in the Application for a Variance for ZBA Case No. ZO 2016-00016 and testimony during the public hearing for said case.
2. This variance shall be recorded in the chain of title.

Made by: Mrs. Pope

Second: Ms. Carman

Discussion on the motion:

1. **Would granting the Variance be in accord with the public interest?**
Mr. Collins said he didn't see how this would hurt the public in any way. No one was present to contest it.
2. **Would granting the Variance be consistent to the spirit of the ordinance?**
Mr. Collins said there was no one present to contest the application.
3. **Would granting the variance, as requested, do substantial justice?** Mr. Collins said he didn't see that there would be any harm done to anyone by granting the variance.
4. **Does the proposed use maintain the value of surrounding properties?**
The consensus of the Board was that because there wouldn't be any overcrowding, no one's property values would suffer.

5. **Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?**
B. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:

The consensus of the Board was that the Miles lot is 5.9 acres whereas all of the other lots are smaller.

The consensus of the Board was that all of the criteria had been met.

Roll call vote on the motion:

Collins – aye

Petrin – aye

Towle – aye

Carman – aye

Pope - aye

V. Communications

VI. Other Business

Mr. McCrory said the Planning & Development Department will accept materials for applications that have been warned up until 10 days before the meeting. Whatever is received by the 10-day deadline, is sent to the Board in the Board’s packets, one week before the meetin. Anything received after the deadline, will be hand delivered to the Board at the meeting. Information from abutters will not be held to the same deadline.

The member discussed with Mr. McCrory ideas on how to get the packets to them sooner. Mrs. Towle asked if the packets could be delivered to members’ homes like Council packets are.

Mrs. Towle asked that Board members be notified as early as possible about training conferences so members can plan ahead. She also repeated her request for in-house training for the Board. She repeated that training is paramount. She also said it is paramount that Board members attend meetings consistently. She said it puts a strain on other members when they have to fill in for members who are absent.

VII. Adjournment

Motion: To adjourn the meeting.

Made by: Mr. Petrin Second: Ms. Carman

Vote: Unanimous in favor

The meeting adjourned at 10:35 PM.

Respectfully submitted,

de Forest Bearse