



Zoning Board of Adjustment Meeting
Monday, January 6, 2020 7:00 PM
City Hall Council Chambers

MINUTES
Approved 2/3/2020

Mr. Hurd called the meeting to order at 7:03 PM and asked for a roll call.

I. Attendance/Roll Call

Present & Participating: Michael Hurd, Carolyn Towle, Abigail Kier, Tracy Pope

Absent: Richard Collins, James Petrin, Patrick Howe, Michael Lemieux

City Staff: D. Scott Osgood, City Planner

Mr. Hurd appointed Mrs. Towle to sit in for Mr. Collins.

II. Minutes of Previous Meeting – December 2, 2020

Motion: To approve the minutes from the December 2nd meeting

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

Vote: 1 abstention, 3 in favor

III. Old Business

There was no old business to discuss.

IV. New Business

- A. (ZO 2019-00017) Leanna LeBarron, 124 Washington Street** – Application for a variance from sections 22-562(b)(1)(a) & (b) of the City of Claremont Zoning Ordinance to permit sale of sexually oriented products in the CB2 zoning district and within 200 feet of property used for single or multifamily residence at 124 Washington Street. Tax Map 108, Lot 111. Zoning District: CB2

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

Planner's Report

Mr. Osgood read from his staff report:

I. *Project Description*

The applicant is asking for a variance to permit a sexually oriented business within an existing retail business. The Zoning District is CB-II, which does not allow this use.

II. *Application Completeness*

Upon review of the Request for a Variance and supporting materials, it is the determination of City staff that the application meets the submission requirements of the City Code.

III. **Primary Consideration for a Variance**

Zoning

The applicants place of business is in the CB-II district. Section 22-562 states that Sexually Oriented businesses are allowed only in the Business II district.

The applicant borders the B-2 district on the North, and is one lot separated from the B-2 District.

The lot is also close to the City Center Residential districts, separated by one lot and the Rural Residential district by two lots.

The ordinance requires that no sexually oriented businesses be within 200 ft of: public or private schools, child day care agencies, public recreational fields, trails, religious institutions, hospitals, nursing homes, shelter care facilities.

Staff review found two (2) private residences within the 200 ft radius.

The applicant requested this use in a conversation with the prior City Planner in 2016. The Planner informed the applicant that the use was not allowed in the requested zoning district, and was informed in a letter that they have the right to appeal the decision on the Zoning Board.

Information Provided:

- *City Planner Staff report (4 pages)*
- *Application for a Variance cover Sheet (2 sided)*
- *Responses to the five (5) criteria for a Variance (2 pages)*
- *Abutters, owner's agent and professionals list (3 pages)*
- *Division 5 Section 22-561 Sexually Oriented Businesses – Claremont City Zoning Ordinance (2 pages)*
- *Memo from City Planner providing the applicant information, dated Nov 19, 2019*
- *iGIS map with 200 ft buffer*
- *Chart with lots within the 200 ft buffer (residential homes highlighted)*
- *Two iGIS map with different scales*
- *Memo from prior City Planner dated Oct. 21, 2016 regarding the current request.*
- *RSA Chapter 571-B "Exposing Minors to Harmful Material's" current 1977*

Need for Additional Information

- *It is the discretion of the ZBA to request more information from the applicant to further support the Variance request. The burden of proof is upon the applicant to demonstrate the proposal meets the Variance criteria.*

Appropriateness

- *The ZBA must make a determination that a variance request for a sexually oriented business meets the requirements of a variance.*
- *The proposed development is a non-residential district that is not specifically allowed for the requested use.*

Staff Review

No City Staff review was held.

Mr. Hurd asked to confirm that the building at 102 Washington Street (Map 108, Lot 109) is vacant. Mr. Osgood said that it was and said he understood that the building was going to be demolished.

Mrs. Pope asked if the applicant's lack of an appeal of the Planner's decision in 2016 (that the proposed use was not allowed) meant they could not come back to the board now with the same request. Mr. Hurd said the fact that the applicant did not appeal the Planner's decision is immaterial because "it wasn't an official hearing. It's an opinion of the City Planner". Mr. Hurd said the applicant could appeal the Planner's opinion, which is what he felt the applicant was doing with this application.

Mrs. Pope asked, then why is the board hearing it as a variance and not as an appeal. Mr. Hurd said because there had not been a denial and that the variance is a form of appeal.

Mrs. Kier asked Mr. Osgood if he was aware of the owner's plans for the lot at 102 Washington following demolition of the house. Mr. Osgood said he didn't know.

Applicant's Presentation

Ms. LeBarron contested the use of the term "sexual". She said she refers to the merchandise as "adult toys" and that what people do with the merchandise is a personal choice.

Ms. LeBarron said she lives in Reading, Vermont and has a store in Springfield (VT) that sells "adult toys". She claims that her customers are asking if she can make them available at the Claremont store as well. She said she has told them she didn't know and is applying to the board now to get that answer. Ms. LeBarron said she has been in business for 13 years, and that the business has gotten progressively bigger in that time. She claimed she had never been told she could not sell "adult toys". She said she had been told that she wasn't in the "mapping for it, but they could definitely talk about it in the future."

Ms. LeBarron said she also owns the Bounce House (on Pleasant Street), which she and her son (who was also present at the hearing) described as family-friendly.

Ms. LeBarron said they would use a section of the store about 5 ft x 7 ft to sell the adult merchandise. Customers will have to be 21 years or older. There will be a sign on the door stating that entry is only for those 21 and older. Customers who enter will be carded at the entrance. There are security cameras in all parts of the store. There are locks on all of the cabinets. The adult toys will be kept in locked cabinets. This merchandise will be kept in the section of the store that has no windows. (Ms. LeBarron said the application will have to be amended to reflect this change.) The board had no further questions for the applicant.

Mr. Hurd said there was a store like this one across the street where Auto Zone is now (*Sunrise and Silver*). He said the business was in a building like a house with a 5-unit apartment building right next to it. It eventually moved to other locations. Mr. Hurd wanted to make the point that this type of business was not new to Claremont.

Mr. Hurd said Ms. LeBarron had left the most important criteria – unnecessary hardship - blank on her application. He said, “There’s no way that it meets the standard hardship.” He said, “In my opinion this was something that was pre-existing before.”

Mrs. Towle said she wanted to see a layout, a floor plan.

Mrs. Pope suggested continuing the hearing so Ms. LeBarron could construct the floor plan and to have a conversation about showing the hardship

Motion: To continue, to allow the applicant to finish the application and to bring pictures of the store the way it is now; “what you’re planning on doing; bring a piece of paper – you don’t have to go to an architect and have it all - here’s the building, here’s the door; this is what we want to do, this is where we want it to be; and to that idea.”

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

Vote: Unanimous in favor

Mr. Osgood asked for clarification of what the board was asking for – a floor plan and photographs? Mr. Hurd said those were for people who had never been in the store when it was a tuxedo shop, a jewelry store and a bridal shop.

Mr. Osgood said the next meeting will be on February 3rd. Information for the packet must be available by Monday, the 27th or Tuesday, the 28th.

V. Communications

There were no communications for the board.

VI. Other Business

Mr. Hurd introduced the board members to Ed Morris, the new City Manager, who was attending the meeting. Mr. Hurd thanked Mr. Morris for attending.

Signs for LaValley Building Supply

Mr. Osgood read the following memo:

A concern was raised by a Zoning Board member as to a sign permitted at LaValley Building Supply on 155 Pleasant St.

As noted on the attached pictures, a new wall was recently placed at the south end of the lot on Pleasant St. An existing free-standing sign was removed. The total area of the previous sign was 93 sf.

Two new signs were to be installed on a new wall. The new wall is 41 ft long, and 12 ft tall.

- A banner style sign with dimensions of 14 ft by 1ft 4 in or 18.62 sf*
- A rectangular sign under the other new sign with dimensions of 10 ft long and 5 ft tall, or 50 SF.*

This is a total of 68 .62 Sf for the new signs.

This new signage has 18.62 less area than the previous signs.

I researched the time frame that LaValley Building Supply has owned the parcel.

The business moved in in 1989. The business district was R1 as near as I could see with a 16-sf area allowed for signs. A variance would have been necessary for this sign. I did not find information on this variance.

Since the new sign was installed posters have been put up occasionally. These are 8 ft by 1ft 9 in, at 14 sf, and the other is 6 ft by 2 ft at 12 sf. With the one on the sign permit at 50 ft, it is 40 sf in size. The banner sign is 40 sf, with the total signage area at 84.62. This area does not meet the signage area of the previous sign of 93 sf.

The consensus of the board was that the business has too many signs without benefit of a variance to allow them all. There was also discussion about the wall that's being used to hang various smaller signs – that it might be considered in its entirety as an allowable sign – like a billboard, which would be considerable bigger than what has been permitted. Mr. Hurd said the record could show that only a certain amount of the wall could be used for signage. Mr. Osgood said that was how it was presented when they came to him for a permit to replace an earlier sign. He agreed, however, that the permit needs further definition to prevent using the entire wall for signage (by anyone) in the future. Mr. Osgood will continue to look into the matter.

VII. Adjournment

Motion: To adjourn the meeting

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

Vote: Unanimous in favor

The meeting adjourned at 7:50 PM.

Respectfully submitted,

deForest Bearse