

ZONING BOARD OF ADJUSTMENT
February 6, 2013 MEETING
DRAFT MINUTES

Board members present included Chairman Christopher Carley, Robert Harrison Jr., David Parker, Ben Kelley and James Monahan. Also present was Zoning Administrator Craig Walker, Code Administrator Michael Santa and Clerk of the Board Rose Fife.

04-13 Carlos Abrey & Amauny Mercado for Rental Concepts, LLC.: Applicant requests a Special Exception under Article 28-8-4(b), Change of Non-Conforming Use, to permit an existing interior design consulting office (Principal Use F-1) to be replaced by a barber shop (Principal Use D-1) with continuance of the current non-conforming parking all at 25 South Street in an RD Residential Downtown District.

Carlos Abrey & Amauny Mercado testified. Amauny stated that there was a tile business there and he wants to put in a barber shop instead. Craig Walker stated that it was formerly the Ideal Market and a carry-out food kitchen in the space they propose to occupy and the adjacent space was previously occupied by a vacuum repair shop. The current use is a non-conforming use in a residential district.

Carley asked what their hours of operation would be. (Monday through Thursday 9 am to 6 pm; Friday and Saturday 9 am to 7 pm; and Sunday 12 pm to 5 pm.) How many chairs will you have? (4) Parker asked if they currently ran a barbershop elsewhere. (Yes, they have a shop in Manchester.) How many customers per day do you have? (They have approximately 10 customers per day.) How many per hour? (Approximately 2 customers per hour.) Monahan asked if there was there on street parking. (Yes there is on both sides of the street.)

In favor: Sally Wuellenweber, 51 Thompson Street is in favor of the use.

In opposition: Dawn Hodges of 27 South Street. Since the comic/game place that is there now went in they are having trouble getting in and out of their driveway. Their tenants are having the same issues. They are not opposed to the barber shop, just to the parking.

Comments from Code Administration: Walker spoke regarding the parking concerns.

A letter was read into the record from Michael and Heidi Body who own 25 South Street and are in favor.

DECISION: A motion to approve the requests was made by Harrison, seconded by Kelley and passed by a unanimous vote. The Board felt that this was a reasonable use of the property.

05-13 Community Action Program: Applicant request a modification of a Special Exception previously granted under Article 28-2-4(j), Table of Principal Uses, to expand an existing child care agency from 90 children to 145 children at 67 Old Loudon Road in an RM Medium Density Residential District.

Amelia Verdrager and James Raymond of Upton & Hatfield testified. Attorney Raymond stated that they would like to increase the number of children to 145. They are a non-profit charitable organization. They have a head start program for preschoolers. They purchased the property in 1993 and received a special exception for 60 children. In 2002 they expanded the building and received a special exception for up to 90 children. There will be no further addition to the building, no physical change to the property, just an

increased enrollment. This is an RM zone and it will not create undue traffic as most are transported by C.A.P. vans. It is not a crowded site. There will be no overload to public utilities. The septic was built for 3,000 gal/day capacity. There is no change to the topography. It is already a school. The lot has direct access to an arterial road; adequate water and sewer; fire protection. The outdoor play area is enclosed and fenced. It is already buffered by a berm. It is a conforming use of the structure; a pre-existing use. It is consistent with the spirit and intent of the Ordinance. The C.A.P. had advised the Board when they had been before them for the previous Special Exception that they intended to return to request this expansion. This will be the maximum children the current building can accommodate.

In favor: Mr. Lavidier who is not in favor or in opposition. He lives 2 doors down on Portsmouth Street. He is concerned with the traffic. It is an unsafe intersection. Parker asked if there were any particular time of day that it was worse. He said it is worse on Saturday in the morning or rush hours 8 am or 5 pm.

In opposition: Joshua Annis. He is opposed to the number of variances and special exceptions that the land has been granted. The land is residential. He feels it should be kept residential. From 25 to 40% of the land is not being used as residential. Maybe it should be rezoned appropriately. (Mr. Carley explained that the request is for a Special Exception which the use is permitted in the underlying district but requires closer scrutiny)

Rebuttal: none.

Comments from Code Administration: none.

DECISION: A motion to approve the request was made by Harrison, seconded by Monahan and passed by a unanimous vote. Monahan asked if this would be the maximum they would request. Amelia Verdrager testified that essentially this would max the property out. There will be no more requests.

06-13 Concord-Merrimack County SPCA: Applicant wishes to establish an animal shelter (Commercial Kennel, Principal Use M-8) with associated activities requiring:

- 1) A Special Exception under Article 28-2-4(j), Table of Principal Uses and in compliance with Supplemental Standards Article 28-5-29, Commercial Kennels;
 - 2) And an Area Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a total lot coverage of up to 22% where a 10% maximum lot coverage is permitted;
- For property at 254 Clinton Street in an RO Residential Open Space District.

Attorney Ari Polack of Gallagher, Callahan and Gartrell testified. Also present to testify was Heather Farier of the SPCA; Jonathan Halle of Warren Street Architects and Brian Vincent of Nobis Engineering.

Attorney Polack testified that in 2008 a special exception was granted for a kennel use and a variance for the lot coverage. They also went through and received site plan approval in 2008. All have expired. The site is in the RO Zone. The use is allowed by special exception. It is a 4.75 acre site. Their existing facility is in Penacook on a small lot and dysfunctional. Currently they have 15 to 20 dogs at the facility and 15 to 20 visitors on week days. The new shelter will be larger, it will be sound proofed and the outdoor yard will be policed by staff. It will not create undue traffic. It will not burden the municipal services. It will not be out of character with what is there now, i.e. Audubon Society. The new site is better accessible. The variance is for 22% lot coverage. In 2008 they asked for up to 25%, so this request is less. The 22% is necessary to build a state of the art facility. It is also necessary for parking. There is an existing single family home on the lot that would be used for office space. They will not diminish land values.

Parker asked if there were any studies done on visibility and how it will increase the demands. Attorney Polack stated that the variance in 2008 was granted unanimously and they have limited the size of the facility.

Monahan noticed that on the plans the back of the property says 'future addition'. Attorney Polack stated that yes they would add program space for events if they can afford to do that later on. Would you be back before the Board for signage? Attorney Polack was not sure. Kelley asked if the future barn was included in the 22% calculations. Attorney Polack stated that it was.

In favor: none.

In opposition: none.

Comments from Code Administration: If the barn wasn't built within the 2 year period, they would need to return to the Board.

DECISION: For the special exception: A motion to approve the request was made by Parker, seconded by Kelley and passed by a unanimous vote. For the variance: A motion to approve was made by Harrison, seconded by Kelley and passed by a 4-1 vote with Parker in the minority.

07-13 Sally Wuellenweber and Bill Gegas: Applicant wishes to establish a child day care facility (Principal Use B-4) and requests the following:

- 1) A Special Exception under Article 28-2-4(j), Table of Principal Uses and in compliance with Supplemental Standards Article 28-5-9(a), Child Day Care Centers, As a Principal Use, except for the following request for,
- 2) A Variance to Article 28-5-9(a)(1), Child Day Care Centers, As a Principal Use, to permit driveway access to and from a local street where direct driveway access to and from a collector or arterial street is required,

For property at 60 West Street in an RD Residential Downtown District.

Philip Bradley, who has a business interest testified. Also available to testify were Sally Wuellenweber and Greg Gegas. Philip testified that the use was allowed by special exception and they feel that they meet all of the criteria. This property used to have West Street Market in it. This use is less intense. There will be 36 students based on the Department of Health & Human Services requirement for under the age of 3. The primary entrance will be changed to the rear of the building. The parking lot will be used. Nothing on the site will change. There will be no negative impacts to the neighborhood. This is week day, day time use. Only 5 days a week. It is a corner lot. It has open space area and parking. Families in the community will benefit. The building is 1,858 s.f. and it has a 3,200 s.f. parking area. The variance will allow access on a side street. The shape of the lot drives the request. This would be safe off-street parking around the corner. It is not contrary to the Spirit and Intent of the Ordinance. It benefits the public. It will not diminish the value of surrounding properties. They will be improving the building and there is ample parking.

Walker stated that they will need Minor Site Plan review. Monahan asked if it were a 2 story structure. (No, it is single story.) Does it have a kitchen facility? (There was a former deli in the back, but they will be changing that around.) Harrison asked how many children would be on site. (There will be 36 children in about an 1800 s.f. building.) How many s.f. per child does the State require? (40 s.f. per child is the requirement.)

In favor: none.

In opposition: Brad Hutton who owns the property on the corner of West and Spruce Streets. He bought the home when the store was there. 95% of the traffic for the store was stop and go. Spruce Street is only 22 feet wide. Parking on the street would be 9 feet long per car per Ordinance. How does the traffic get addressed from 7:30 am to 8 am. There is a lot of traffic during that time. The peak traffic will be at that time. The resale value of his home will be questionable. Emergency vehicles will have a hard time getting through. He figures there will be 9-10 employees there. There is room for 13 cars on the west side of Spruce Street and 15 on the opposite. Wants to know where employees are going to park. Not a good fit for the neighborhood.

Monahan asked if typically there is parking on Spruce Street now. (No, except for the houses on the upper corner as they have only 1 space in their driveway.)

Comments from Code Administration: The required number of parking spaces is 1 per 250 s.f. and there is adequate parking.

Rebuttal by Philip Bradley. The entry will be in the rear of the building. He does not expect people to park on Spruce Street. Drop off and pick up will be 20-30 cars. 7:30 to 9:30 am and 3:30 to 5:30 pm will be peak times. They will have 4-5 employees. There is sufficient parking on the property.

DECISION: For the special exception: A motion to approve the request was made by Parker, seconded by Harrison and passed by a unanimous vote. For the variance: A motion to approve the request was made by Harrison, seconded by Parker and approved by a 3-2 vote with Kelley and Monahan in the minority.

08-13 United Church of Christ Retirement Community, Inc.: Applicant wishes to redevelop a portion of their existing East Side Drive campus and expand onto an adjacent parcel and requests the following:

- 1) A Variance to Article 28-2-4(j), Table of Principal Uses, to extend the Residential Social Service Center use (Principal Use A-12) onto 175 East Side Drive, the Somes Lot, into a Residential Single-Family District where such use is not permitted,
 - 2) A Variance to Article 28-2-4(h), Multiple Principal Uses on a Single Lot, to permit more than 1 single family dwelling and more than 1 two-family dwelling on a single lot for a development that is neither a Cluster Development or a Planned Unit Development,
 - 3) Variances to Article 28-4-5(d)(3), Building Separations, to permit building separations within the Heritage Heights campus of not less than 30 feet as shown on the proposed site plan, where 40 foot building separation is required, (Plan C1.1, Dated 1/11/13, Nobis Engineering),
 - 4) A Variance to Article 28-7-2, Off-street Parking Requirements, to allow the provision of 12 parking spaces for the Somes House facility, where 26 spaces are required,
- For the properties at 149 & 175 East Side Drive in RM Residential Medium Density and RS Residential Single-Family, respectively, Districts.

This request was withdrawn.

09-13 Concord Boys and Girls Club: Applicant wishes to temporarily relocate their afterschool and summer daycare programs for 6 – 18 year olds (Community Center, Use B-14) and requests the following:

- 1) A Special Exception under Article 28-2-4(j), Table of Principal uses and in accordance with Supplemental Standards, Article 28-5-10, Community Centers,

- 2) Variances to Article 28-7-1, Access, Circulation, Parking and Loading, General Provisions, Section (a), Applicability, to maintain existing conditions and not bring the site's vehicular access, circulation, parking and loading, into compliance with current zoning ordinance requirements, For property located at 15 Shawmut Street in an RN Residential Neighborhood District.

Chris Emond, Director of Concord Boys and Girls Club testified. Their Bradley Street location is being renovated and they need to temporarily relocate. They would like to rent the space at 15 Shawmut Street. It is the former Eastman School. It is a good site as it was a school and the neighbors were use to it. The after school program kids are bussed to the site. There is a bus drop off area built in already. They will be entering by the back entrance. Parent parking lot is in the rear. Staff would be parking in the front. They will be there approximately 6 to 7 months. It is a 14,000 s.f. school. The summer time they take off site trips so they won't be there 100% of the time. The lease would be good up to December 31, 2013. He met with the neighbors to make sure he could address their concerns.

In favor: Richard Bartlett of 9 Winthrop Street and who is approximately 100 feet away from the property. He and his wife miss having the school there. They are looking forward to seeing some life come back to the property. The Boys and Girls Club is the most positive institution in the community. This is a perfect place for their temporary use.

In opposition: none.

Letters in file: One in favor from Susanne Smith Meyer of 14 Shawmut Street in favor. She would like all deliveries & pick up (trash specifically) to occur during operating hours of the facility. She would like those operations to be restricted from 8 am to 6 pm hours. She was also concerned with traffic congestion & pedestrian conflicts on Winthrop Street during drop off and pick up times. One in favor from Susan Berry of 29 Mountain Road. She is concerned with increased traffic and pedestrian safety.

Comments from Code Administration: Walker stated that if the variances are granted it is a significant waiver. This is a temporary use. The variance, if granted, could be based on a financial hardship related to the represented temporary nature of the lease. If in the future someone wanted to make it a permanent use they would need to return to the Board. Kelley asked if the Board could stipulate the allowed time that they could be there (No, Special Exceptions and Variance run with the land). Monahan asked Chris Edmond about the hours. (Summer time 7 am to 6 pm for 2 ½ months. Other months it is 10 to 6.)

DECISION: For the special exception for the temporary use: A motion to approve the request was made by Harrison, seconded by Kelley and passed by a unanimous vote. For the variance for the temporary use: A motion to approve the request with a stipulation of 1 year maximum was made by Harrison, seconded by Kelley and passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT