

ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, July 2, 2017 – 7:00 PM
1 Grove Street, Peterborough, New Hampshire

Board Present: Loretta Laurenitis, Peggy Leedberg, Dario Carrara, Sharon Monahan, Peter LaRoche and Seth Chatfield

Staff Present: Laura Norton, Office of Community Development and Tim Herlihy, Code Officer

Called the meeting to order at 7:00 PM by Chair Carrara. “Good evening,” he said, “welcome to the stated July meeting of the Zoning Board of Adjustment.” He then introduced the Members and Staff.

Chair Carrara read the only case for the night:

Case No. 1247 Mason Parker requests a special exception to relocate his café to a location as a change to a legal nonconforming use as regulated by the zoning ordinance in Article VI, Section 245-30A. The property is located at 166 Hancock Road, Parcel No. R008-021-000, in the Rural District.

With no changes or corrections to the notice Chair Carrara asked Mr. Parker to proceed. Ms. Laurenitis recused herself and a motion was made/seconded (LaRoche/Chatfield) to appoint alternate Sharon Monahan to sit with all in favor.

Mason Parker stood and introduced himself and told the Members. His coffee roasting and café business is currently located at Noone Falls in South Peterborough. He said, “the owners are creating condominiums and selling the units. They approached me, but I am not financially able to purchase my space. There will be no lease renewal and I will be in a month to month rental situation.” He went on to tell the Members, “I began looking in December and came across 166 Hancock Road. The property was listed as ‘commercial/office’ and had been an orthodontic business. The building suited our needs and I began to pursue the option.”

Mr. Parker told the Members that the lot had well water and municipal sewer and that there would be no real changes at all. He noted that this would be a positive impact to the Town, as there was no café in the north end of town serving customers from South

Meadow School, Con-Val High School, the Vose Farm Road Business Complex, and Monadnock Community Hospital.

Mr. Parker noted that the building had not been residential for quite some time, there was adequate parking, “and it is quite suitable for us. We hope to be up and running this fall when school starts. That is about it.”

Ms. Leedberg asked for clarification on why Mr. Parker was requesting a Special Exception and not a Variance. Chair Carrara explained that Article VI Section 245-30A states that a legal nonconforming use may be replaced with another nonconforming use by Special Exception. He added, “there was a business already there and there will be a business replacing it, so it is a Special Exception. If there were radical changes, that would be a different story” he said.

Chair Carrara confirmed there would not be any drastic alterations to the building and asked about parking. Mr. Parker noted that there were about 15 existing parking spots. It was noted that the parking requirements for retail were one space per thousand square feet. Mr. Herlihy said, “so that would be seven spaces, and two would be the minimum.” “What is the square footage of the building?” asked Chair Carrara. Mr. Parker replied, “about 3000 square feet.” There was a brief discussion on how the square footage would be used, including references to a patron eating space (“a lot of what we do is take out. That is what we do” said Mr. Parker), the kitchen, and the coffee roasting area. Chair Carrara replied, “seems adequate to me.” With no other questions for the Members, Chair Carrara opened the hearing to the public.

Elizabeth Kenny introduced herself as a resident of 28 Colonial Square. Referring to the criteria for a Special Exception (specifically 5. Process (b)), “when a proposed use will create negative effects on abutters or other parties, compensatory actions must be taken to lessen the negative consequences of the proposal.” She noted, “I say this based on discussions about the current locations and reports of a very putrid smell occurring when roasting.” Mibs Pell of 22 Colonial Square interjected, “it is a very acrid smell, like burning tires.” Ms. Kenny added, “and as a residential neighborhood we are even closer (abutters) than those at Noone Falls.”

Terry Kilvert introduced herself as a resident at 47 Colonial Square and told the Members, “we are right across the street.” She turned to Mr. Parker and asked, “have you ever been on the other end of the smoke?” Chair Carrara redirected the conversation by noting all questions must be directed through the Chairman of the Board. Ms. Kilvert went on to say, “we are the ones in direct response to the odor and we would like Mr. Parker to consider locations [for the facility] other than residential.

Many of the residents of Colonial Square are retired and are home all day. I have been to his place, it is a nice place, but it is going to impact us.”

Chair Carrara noted the roasting operation and the café and asked, “how much [what percent] is café and how much is roasting?” Mr. Parker replied, “well over 70% is café, I would even say close to 80%.” Mr. Chatfield interjection, “what are your hours of operation?” Mr. Parker replied, “7:00AM to 4:00PM Monday through Saturday, closed on Sunday.”

Ms. Pell asked, “what percent of the building is used for roasting?” Mr. Parker replied, “about 15, maybe 20% will be devoted to house roasting.” “And do you sell your coffee in a retail setting in other places?” asked Mr. Chatfield. “I do” replied Mr. Parker. Mr. Chatfield clarified “but for yourself no other businesses, not another label”? “Correct” replied Mr. Parker. Mr. Chatfield noted, “so technically roasting is not a separate business, it is just part of your business.”

Joe Ierna introduced himself as a resident of 55 Colonial Square. He said, “we are closest to the street and closest to the business, and I am delighted at the possibility of having a coffee shop nearby.” He noted that other coffee shops are in the Downtown area, but nothing is in their area, “and we could use it. People can enjoy coffee or cappuccino in the mornings and have meetings or social get-togethers. I hope you approve it.”

Lisa Acher introduced herself as a resident of 27 Colonial Square. She noted her condominium was also in direct line with the building and had concerns about the traffic (“202 is extremely busy at times”) and smell. “Otherwise I have no problem” she said.

Ms. Kilvert asked if there was any way to redirect the odor. Polly Carll introduced herself as a resident of 46 Colonial Square and noted, “it is an acrid, burnt and unpleasant smell, you can’t miss it.” Looking to Mr. Parker she added “I enjoy your coffee, but the roasting has a bad smell.” She then asked if there was any way to filter the odor.

Karen Hatcher introduced herself and voiced her support for the business. “I work in the Vose Farm Road Business Complex and it would be lovely to have an option closer to us” she said.

Ms. Monahan asked about the filtering suggestion and a brief discussion followed. Mr. Parker concluded, “while there are systems available it would not be without

significant cost to me.” “Prohibitive?” asked one of the members, with Mr. Parker replying, “for me, yes.”

Mr. LaRoche asked about the hours of roasting. Mr. Parker replied, “typically I roast two days a week for 4-5 hours each day. It is very flexible.” Ms. Monahan asked if the roasting hours were consistent with Mr. Parker replying “When I want to, when I need to. I am the roaster. I make that call and I can adjust... For example, the Hancock Inn recently called to say they were out of coffee so I roasted some and brought it over. We roast a lot in the winter (around Christmas) when people are out the least.” He concluded, “I am very flexible and am willing to work with the neighbors.”

Mr. Ierna told the Members he enjoyed the roasting smell. He explained, “I love it. To me it is an aroma. It’s like walking into a bakery. It is a personal, subjective thing. You like it, or you don’t.” Mr. Parker agreed, and noted the subjectivity of the aroma.

With no other comments or concerns, Chair Carrara closed the public hearing and a motion was made/seconded (Chatfield/LaRoche) to move to deliberation with all in favor.

Deliberation:

Chair Carrara reviewed the Deliberation Statement and suggested they begin with a straw poll. “As the Chair, I will go first” he said, adding, “I have heard the concerns and I do not see a good enough reason to deny the application.”

Mr. Chatfield agreed, noting “I would have to say the same.” Ms. Monahan interjected that she had a question and cited *Criteria #5 Process (b)* which read, “when a proposed use will create negative effects on abutters or other parties, including the Town, then compensatory actions must be taken to lessen the negative consequences of the proposal.” She noted, “negative consequences are smells, noise, and lighting; nuances that affect abutters” and asked, “can we put conditions on his hours of roasting and/or no roasting on weekends?” Mr. LaRoche reiterated the subjectivity of the aroma and did not feel conditions were indicated and noted he was for approval of the Special Exception. After confirming the proposed location was back some ways away from the road with ample parking, Ms. Leedberg noted, “I’m not seeing any major issue with it.” A brief discussion about the subjectivity of an odor and potential impacts to a neighborhood followed.

Ms. Monahan reiterated that she’d heard enough testimony that she felt conditions were indicated. Chair Carrara replied, “I am personally very reluctant to impose any conditions.” Ms. Monahan reiterated that she was not sure how many residents were

retired and home all day, but the proposal would mean a change for the Colonial Square neighborhood. “It is a much more residential area than their current location” she said.

Chair Carrara noted that a previous complaint about the coffee shop from an abutter at their current location had cited several air quality issues which were unfounded. He then suggested that Mr. Parker maintain open communication and work with his neighbors. “I have known you for several years and I am confident you will do your best for them,” he said.

A motion was made/seconded (LaRoche/Chatfield) to approve a special exception to relocate the Parker House Café to a location as a change to a legal nonconforming use as regulated by the zoning ordinance in Article VI, Section 245-30 A. The motion carried, with Chair Carrara, Mr. LaRoche, Ms. Leedberg and Mr. Chatfield in favor, and Ms. Monahan opposed.

Board Meeting:

Chair Carrara introduced Ms. Hatcher as the Board’s new Selectboard Liaison. Ms. Hatcher noted she was also the Liaison to the Economic Development Authority (EDA), Recreation Department, Agriculture Commission, and Master Plan Steering Committee as well as the Selectboard Liaison to the ConVal School Board. Ms. Hatcher told the Members, “I am learning so much, it has been very good, and I am happy to be here.”

Before the approval of Minutes, the Members had a brief discussion about when and how the Town Attorney is to be contacted. Chair Carrara explained Mr. Throop’s role as the Director of Community Development and its support of Town Boards and Committees. “We do not want a lot of circular communication” he said, adding, “questions and concerns should go through me. I will summarize them and give them to Peter [Throop] to send along to John [Ratigan] who will get back to us and I will come back to the Board with full answers. [Then] if it feels like we need a meeting with John [Ratigan], we set up a meeting.” Ms. Laurenitis noted her desire to communicate directly with the Town Attorney *without* the middle man. Ms. Monahan questioned Mr. Throop’s role in the process. She noted her concern about a potential conflict of interest with him being the Director of Community Development. Chair Carrara told the Members, “the ZBA and the Planning Board are his thing.” Mr. Herlihy interjected, “Peter is the Liaison for the Planning Board and I am the Liaison for the Zoning Board.” Chair Carrara asked, “are you concerned with Peter being involved?” Ms. Monahan replied that she was noting the Zoning Board and the Planning Boards

were comparing apples and oranges. Chair Carrara re-reviewed the duties of the Office of Community Development's Director and noted, "I have never seen a conflict there."

Minutes:

The Members reviewed and discussed Zoning Board Minutes dating back to December of 2017.

A motion was made/seconded (LaRoche/Leedberg) to approve the Minutes of June 11, 2018 as amended with all in favor.

A motion was made/seconded (LaRoche/Leedberg) to approve the Minutes of June 4, 2018 as amended with all in favor.

A motion was made/seconded (LaRoche/Leedberg) to approve the Minutes of March 5, 2018 as amended with all in favor.

A motion was made/seconded (Chatfield/LaRoche) to approve the Minutes of February 5, 2018 as amended with all in favor.

A motion was made/seconded (Leedberg/LaRoche) to approve the Minutes of October 16, 2017 as amended with all in favor.

Ms. Monahan noted for the record, a Staff Report from the Office of Community Development was not received and the appeal request [written by Attorney Tom Hanna] had changed between October 2nd and October 16th. Mr. Chatfield challenged whether such a statement was necessary with Ms. Monahan noting she felt it was.

Ms. Laurenitis noted her concern that an appropriate vote was not taken, and the Decision did not qualify an approval or denial. Chair Carrara briefly described the outcome of the appeal, noting the appeal was upheld by the Board with the Board maintaining the most restrictive part of the zoning regulation applied. The General Residence District allows a maximum 25% lot coverage for dwellings and accessory buildings. The performance standards in the GPOZ, Chapter 245, section 14, E, modify and reduce the maximum allowable impervious surface area to 20% of the land area. The standards in the TNOD-I, Chapter 245, section 15.3, E, 6, also modify the maximum allowable impervious surface area to 35% of the lot. Both the TNOD I and the GPOZ modify the underlying General Residence District. According to Chapter 245, section 2, the most restrictive regulation, or that imposing the highest standard, shall control. Therefore, the maximum impervious lot coverage is **20%**. "And I had already determined that" Chair Carrara said.

A motion was made/seconded (Chatfield/LaRoche) to approve the Minutes of October 2, 1017 as amended with all in favor.

Code Officer Herlihy suggested to move the approval of minutes to the first item on the agenda when the Members are fresh, the meeting is memorable, and approval is timely. Ms. Monahan suggested the draft minutes get sent out to the members ahead of their packets each month, so the Members have ample time to review them and make notes.

Ms. Laurenitis again noted her concern with what appeared to be a lack of a vote on the appeal (“it doesn’t really say whether the appeal was granted or not, the Decision does not say granted or denied” she said). Chair Carrara noted he was reluctant to significantly change the Minutes.

A motion was made/seconded (Leedberg/LaRoche) to approve the Minutes of October 16, 2017 with corrections as noted with all in favor but Ms. Laurenitis, who abstained.

Next Meeting: August 6, 2018 at 7:00 PM

The meeting adjourned at 8:40 PM

Respectfully submitted,

Laura Norton

Administrative Assistant

NOTICE OF DECISION

Case Number 1247

July 2, 2018

You are hereby notified that the request of Mason Parker, for a **Special Exception** to Chapter 245, Article IV, Section 30 (A) of the Zoning Ordinance, to allow the change of a legal non-conforming use to a Cafe, on property located at 166 Hancock Road, parcel number R008-021-100, in the Rural District, is hereby **GRANTED**.

In **granting** the special exception, the Board finds that:

The general special exception criteria of Location, Activity type and mix, Visual consequences, Access and Process have been satisfied.

Signed,

Dario Carrara, Chair