

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

NOVEMBER 27, 2007

Reconvened From

NOVEMBER 20, 2007

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Thomas Grasso

EXCUSED: Henry Sanders

ALSO PRESENT: Lucy Tillman, Chief Planner

I. PUBLIC HEARINGS

8) Petition of **Cross Roads House, Inc., owner**, for property located at **600 Lafayette Road** wherein the following are requested: 1) a Variance from Article IV, Section 10-401(A)(1)(c) is requested to allow homeless shelter uses currently in three buildings (to be removed) to be relocated on the lot in one new building, 2) Variances from Article III, Section 10-304(A) and Section 10-304(C)(2) are requested to construct an irregular shaped two story 10,843 sf homeless shelter with: a) a 23.6'± left side yard for the building and 20.2'± for the loading area stairs where 30' is the minimum required, and b) a 19.6'± rear yard where 50' is the minimum required to the rear property line and 100' is required to the residentially zoned property line; and, 3) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) is requested to allow parking to be located within the required 40' front yard and landscaped area. Said property is shown on Assessor Plan 243 as Lot 2A and lies within the General Business district. Case # 11-8. *(This petition was continued from the November 20, 2007 meeting.)*

Ms. Eaton stepped down for this petition.

SPEAKING IN FAVOR OF THE PETITION

Attorney Lawrence Gormley outlined the history of the property, noting that Crossroads had been serving the needs of the community to house the homeless population for some 20 years. The proposed changes would enable them to more fully satisfy current community needs. The specifics of the project include improvements in health and safety, fire safety, ingress and egress, and handicap access. All will be brought up to code. This will also allow them to provide better core facilities to residents. The new building would more efficiently provide for cooking and feeding people and improve living conditions. There would be more educational counseling areas to ease the transition to a better life.

Attorney Gormley indicated the site design on page 3 of their submittal. The site was favorable to Crossroads because of access to transportation, employment and services. They considered other sites but were unable to find any that would adequately address the myriad needs of this population. He noted the need to maintain some sort of structure during construction. They would demolish two rear buildings, leaving the front building and one other to allow continuance of services. Once construction was completed, they would demolish the front building so that only one of the current buildings will remain.

Referring to page 4 of their submission, Attorney Gormley noted that, while they will be reducing the number of beds from 108 to 96, consolidation will allow them to maximize their footage and deliver their services more efficiently. He indicated on the site plan that had been submitted to the Board the new building, the building in the front that would temporarily remain and Building B which would remain throughout. He pointed out where the parking would be located. He stated that the need for their request was dictated by the physical limitations of the site and the need to retain one building while building the new ones. Compliance with the setbacks would interfere with access flow within and access to Lafayette Road. While the master plan calls for parking in the rear, one of the benefits of the design is that parking would be in the front, similar to abutting properties and allowing for increased supervision of activity by staff and police.

Addressing the criteria for the use variance, Attorney Gormley stated that denial would result in unnecessary hardship. They were extending a nonconforming use within the same setting. He noted that some of the functions performed by Crossroads were permitted by the Zoning Ordinance, such as a hotel, daycare, offices. There was no use designated for a homeless shelter. They were simply taking this amalgam that was technically not permitted and moving functions within the site. He stated that the special conditions of the property included the size and triangular shape of the lot, which allowed only a limited building envelope. Access to the site was limited to the existing Lafayette Road entrance. In addition, the property was bounded by apartment and commercial entities. He stated that the nonconformity will be less intense due to the reduction in beds. The variance was only necessary because the ordinance prohibits extension of a nonconforming use into any other part of the lot. Prohibiting movement of the uses to another part of the land interfered with their reasonable use of the property.

Attorney Gormley stated that that there was no fair and substantial relationship between the ordinance and the restriction on the property. The restriction was to limit expansion of nonconforming uses. As noted, some of component uses were allowed. Moving operations to the most reasonable location on the lot will, technically be reducing the impact of any use. There would be no injury to the public or private rights of others. He stated that the use would be identical, but the functioning of the property, access, parking and safety would be improved. He distributed documents from both abutters signifying their approval for the proposed changes.

Addressing the criteria for granting the variances for the setbacks, Attorney Gormley stated that the variances were needed to enable the proposed use given the special conditions of a triangular lot where access was limited. Their approach required that the building be placed as far as possible to the rear. They will remove the shed and outbuildings which are currently closer to the lot line than the new building will be. They will also create dense landscaping between their building and the apartment building to the rear. He stated that the building cannot be placed anywhere on the site that would not be within 100' of a residential zone. There was no other reasonable method to achieve the

benefit sought, with “reasonable” being the key. The size, shape, location of the site and the Lafayette Road access set the flow and parking locations. Considering these factors, without the variances, they cannot reasonably locate a building of the necessary size.

Addressing the parking variance, Attorney Gormley stated that the same factors previously cited result in special conditions requiring a variance for parking. The on-site spaces would be increased by 3 and 5 already exist within the setback. Adequate parking for staff and visitors was a necessity and access and flow prohibit any other location. He stated that, with an overall use that had been in place for 20 years, there would be no diminution in property values. Inadequate access and parking had been reconfigured. It would not be contrary to the ordinance to continue to provide a valuable public benefit. Justice would be served by continuing a use on a less intensive basis and the setbacks do not infringe on the light, air, or space of abutters.

In response to a question from Mr. Jousse, Attorney Gormley stated that Building A currently was for administrative and family transitional uses. Building B was family transitional, emergency shelter and a shared kitchen.

Mr. Jousse asked if they had tried to locate the new building within the setbacks. By moving it northeast with a little bit of reconfiguration, it could be placed within the setbacks.

Mr. Eric Weinreib reviewed all the options they had considered and why they had to reject them, stating that this configuration was the best for setbacks, flow and function. The lot was also a two unit condominium complex and there was a condominium line that runs through it, with Operation Blessing sharing the lot. They would have to reconfigure that line to remove the building from the setbacks. Other factors were the ledge outcropping on the site and the need for an interior turnaround for vehicles.

When Mr. Jousse asked if the project would be affected by the reconfiguration of the Route One Bypass, Mr. Weinreib stated that the reconfiguration calls for an intersection by the Bowl-A-Rama. The pavement line and ramp he had indicated in his plans may be eliminated, but the reconfiguration was still in the planning stages so another criteria in their design was to not put a building up close to a new roadway system.

Mr. Parrott cited the dimensions of the project in relationship to the size of the lot and asked why they were not asking for a coverage variance.

Mr. Weinreib stated that maximum structure coverage was 30% and with the total lot area, because it was one single lot with two units on it, maximum structure coverage on it can be up to 23,900 s.f. Mr. Parrott asked if that included Operation Blessing and Mr. Weinreib responded, “yes.” The current existing structure coverage was 13,000 s.f. and they were going to be bringing that up to 15,900 s.f. so they were a little over half of the structure coverage allowance.

Mr. Parrott asked what the legal status was of the line between them and Operation Blessing specifically as related to a property line. Mr. Weinreib stated it was a legal condominium. Mr. Parrott asked what that meant. If it didn’t pertain to lot coverage or setbacks, what did it pertain to?

Attorney Gormley stated that it was their understanding and belief that this lot could be looked at as one unit and that how the owners considered the lot was a separate issue.

Mr. Parrott stated that his specific question was that they always apply lot line coverages to the lot and this says on the plan, “Unit A area 46,506” and Mr. Weinreib indicated that Operation Blessing would not be amenable to moving the line and that raised the question in his mind as to what the line meant.

When Chairman LeBlanc stated that Ms. Tillman could answer the question, Mr. Parrott stated he wanted the applicant’s perspective as well on what the legal status was of the line shown on the plan between the two condominium. He also asked that Attorney Gormley address what convertible land was.

Attorney Gormley stated it was his understanding that this was a lot that had been divided into two units, but the lot had not been subdivided. It was still one lot.

When Mr. Parrott stated that didn’t answer his question, Ms. Tillman responded that the City considers this one lot with two condominiums and it had been such for close to 20 years. It had gone through site review as two condominiums on one lot, with one common area. They had never received, nor requested a subdivision. It was never considered as two separate lots. For setbacks and building coverage purposes, the City recognizes the exterior lot lines.

Mr. Parrott stated he didn’t understand the significance of the line at all, if that was the case.

Mr. Weinreib stated that the condominium line was a line of ownership. The land was commonly owned, but what each did in their own area was their own, like condominiums in one building, where each had rights in their own particular area. They mutually exist.

Mr. Parrott asked if it was then his understanding that this line would be shown on the deed and description.

Mr. Weinreib stated it was in the deed and description. Also convertible area means they might build something else in that area. It may be converted to something else. This was a condominium term.

Mr. Parrott stated that one of the items they were supposed to see on plans was dimensions on the parking, but he couldn’t find those.

Mr. Weinreib stated that, while the parking stalls were not dimensioned on the plan, they were designed to the minimum City specified size.

A brief discussion followed on the travel aisle and the turnaround, which would be one-way.

Mr. LeMay stated that Mr. Weinreib had told Mr. Parrott with respect to the line he had mentioned that the building had to stay back 3’ from that line. Yet, as indicated in the discussion with Mr. Parrott, they were using their total area computationally as one lot to compute building coverage. They seemed to be trying to have it both ways.

Mr. Weinreib stated they could have met the open space requirement on their individual area, but the direction in which the Planning Department sent them was to look at the entire lot for coverage.

Chairman LeBlanc asked what the proposed dense landscape buffer was going to be.

Mr. Terrence Parker stated that that it would be a buffer between Lafayette Road and future parking. There would be trees and shrubs, graded so it would be slightly mounded and an infiltration basin on the other side of the mound to take care of storm water. The lawn area would serve as a snow area.

Chairman LeBlanc asked about the buffer at the back of the new building and Mr. Parker stated it would be like a dense hedge. The landscaping would be looked at during the site review process.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Jay Krupp stated he lived on Greenleaf Avenue. He felt the property was not suited for the current use, never mind making it more nonconforming. He felt they could sell the existing property and find an appropriate site. He outlined his concerns with the dangers posed by the residents and felt they were not adequately screened. He worried about the risk to children in the area and suggested the petitioner present the results of a study of alternatives, which could include multiple sites. He stated that the surrounding properties generate taxes for the community, which was not the case here. He outlined other concerns which were included in the copies of his statement he presented for the record.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Gormley stated that it was necessary to point out that the gentleman who had spoken in opposition objected to density, parking and usage of the facility. These would all be improved by the changes under this plan. He noted that Crossroads existed at this location prior to the abutter's presence in the neighborhood. He called on the director to speak to the steps taken in attempting to identify alternative sites.

Mr. Christopher Sterndale stated that the picture painted in the local media regarding residents was misleading. He outlined the steps taken in the screening of residents, including checking with the Police Department. Regarding alternate sites, he stated that the residents rely on public transportation or walk to services and the location was ideal for access. They had explored other opportunities, such as the armory, but had received opposition from the neighborhood.

When Mr. Jousse asked if the variances weren't granted, they would still stay there, Mr. Sterndale stated they would have to. The community would not want to not have them around. Their ability to provide the necessary services would, however, deteriorate.

In response to a question from Mr. Parrott regarding the fencing on the south and west sides, Mr. Sterndale stated they would work with the Housing Authority who owned the property on the west side. They would encourage the Portsmouth Housing Authority to retain the fence. They had also talked about landscaping with the Bournival Jeep dealership, on the other side.

Mr. Krupp stated he was not opposed to the homeless shelter. He just thought they were trying to do more than the property could provide. He reiterated his ideas.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the petition as presented and advertised, which was seconded for discussion by Mr. Grasso.

Mr. Witham stated that wherever they went, they would require a variance as the use was not specifically mentioned in the ordinance. He agreed with the petitioners that the facility provided a very valuable service to those who need it. He felt that uses that were allowed in the ordinance, for instance a hotel use, were not too different from the transitional housing they provide.

He was comfortable with the setback requests, which were acceptable on a triangular lot with car dealerships on two sides and a dense housing development on the other. There had been some confusion about the condominium aspect. He noted he lived on one lot with lines dividing their lawns, although everyone owns everything. Regarding parking, some of the parking existed now and he felt that their request was reasonable, noting that the parking for the car dealerships was much closer to the property line. The lot shape restricted the area that could be worked with. Concerning the abutter's comments about satellite locations, it sounded like Crossroads had made an effort to look. He noted that, if a place couldn't be found for a children's museum, it would be hard to find an alternative for a homeless shelter.

Addressing the criteria, he stated that the plans would not be contrary to the public interest considering the past use and the nature of the abutters. For the use variance, they were simply continuing a previous use. The reasonable use of the property would be interfered with if they were told they could not bring their buildings up to code, rebuild or renovate, and improve the property. The use was not identified in the zoning so a relationship was hard to identify and the Board had to use their own judgment. They were not dealing with a General Residence A situation and, if a hotel could exist in this situation, this type of use could also.

Mr. Witham stated that the public or private rights of others would not be infringed upon. While the abutter raised some concerns, he didn't think the variances as to setbacks and parking would injure any rights. Given the history, neither would the use variance. For the setbacks, the special conditions of the lot were the 70' setback set for the front, the triangular shape, and the two uses on the lot. It was necessary to keep some buildings while building another one and have parking and an adequate flow of traffic. The benefit sought could not be achieved another way. The applicant did a good job of explaining why the placement had to be as it was. He stated that it was in the spirit of the ordinance to not let the property, by trying to improve itself, lose its use. Regarding the setbacks, the spirit of the ordinance applied to light and air protection and there would be no adverse effect on the car dealerships or, with the landscape buffers, to the housing development. He stated that there was no injustice to abutters that would outweigh the benefit to the applicant in granting the petition. He didn't see any diminution in the value to surrounding properties and two of the direct abutters had provided letters of support.

Mr. Grasso agreed with the maker of the motion regarding the use variance and the one for parking. He had a problem with the setback variance. They were going from 108 beds down to 96, but the building footprint was increasing. He felt it could be less nonconforming. He would not support a motion to grant all three variances.

Mr. Jousse stated that, although he had a problem with the reduction in the number of occupants, he would support the motion. Crossroads would be a better neighbor than others that could be there.

Chairman LeBlanc stated that the addition of landscaping will enhance the entire area and the building being set back further from the road was an advantage in terms of the spirit of the ordinance and property values.

Mr. LeMay noted that this was a phased process where issues could be addressed.

Ms. Tillman stated they would be addressed through the site review plan and the associated bonding.

The motion to grant the petition as presented and advertised was passed by a vote of 6 to 1, with Mr. Grasso voting against the motion.

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9) Petition of **Two Girls Realty LLC, owner**, for property located at **261 South Street** wherein a Special Exception is requested as allowed in Article IV, Section 10-401(A)(1)(d) to restore prior use of the property as conducted by the businesses that were there in recent years, South Street & Vine and South Street Market. What will be sold are food items typically found in the previous business such as milk, bread, eggs, cheese, wine, soft drinks, newspapers, dry goods, canned goods and some prepared foods with no food cooked or prepared to order. There will be no seating and the primary purpose is to reestablish a neighborhood market, which has occupied that space for the better part of the past century. Said property is shown on Assessor Plan 111 as Lot 34-2 and lies within the General Residence B and Historic A districts. *(This petition was continued from the November 20, 2007 meeting.)*

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernard W. Pelech stating that this was the fourth application for this property in the past 9 months, outlined the recent past history. Where the building will no longer be used for catering, the Planning Department felt this proposed use was more conforming than the previous one so what they were requesting that evening was a Special Exception. He stated that this use was allowed to go into this building as long as the other requirements for granting a Special Exception were met.

He stated there would be no danger from toxic materials or from fire. This was basically a convenience store, presenting no potential fire or exposure hazard. There would be no detriment to property values or change in the essential character of the neighborhood due to the location or scale of the building. The building was not changing. He stated that the neighbors in the past had welcomed having a place to congregate. There would be no creation of a traffic or safety hazard or increase in traffic as much of the business would be walk-up business. There would be no demand on the schools, for fire protection, or waste disposal. There were no changes to the physical exterior of the building so there would be no increase in storm water runoff. The owners had canvassed neighbors and received overwhelming support.

Mr. Steve Sanger read and handed out a petition of support which had received 95 signatures in favor out of 125 residential buildings in a ¼ mile radius.

In response to questions from the Board, Mr. Sanger stated that no foods would be prepared to order. They would be all the same and prepared in advance. He confirmed that the entire building would be used for the store.

Mr. Grasso asked Ms. Tillman why they were coming for a special exception versus a variance.

Ms. Tillman stated that it had been determined in a meeting with the applicants, the Planning Director and the City Attorney, that this use would be equally, or less, nonconforming, so it qualifies for a special exception rather than a variance.

The following neighbors spoke in support of the project, stating they felt it was the right use for the building and they would like to have a store such as this in their neighborhood: Ms. Susan Alex, of 50 Mt. Vernon Street; Molly and Milly, of 64 Mt. Vernon Street; Ms. MaryLou McElwain of 259 South Street; and a neighbor at 120 Ridges Court.

**DECISION OF THE BOARD**

Ms. Eaton made a motion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Ms. Eaton stated that, historically, this was a convenience store and the proposed special exception would just reestablish a use that had expired. There would be no change in historic traffic patterns and no traffic back-up created. There were easy parking and access. She stated that there would be no change in the demand on municipal services and no physical changes that would affect storm water runoff. There would be no detriment to property values as evidenced by the support of abutters and nearby residents.

Mr. Parrott stated that this had long been a successful location for this type of store and all the residents seemed to agree.

Mr. Grasso asked if hours of operation were under their purview.

Chairman LeBlanc said they were and asked the attorney to address this.

Attorney Pelech stated the hours of operation would be 7:00 a.m. to 7:00 p.m., seven days a week.

The motion to grant the petition as presented and advertised, with the hours of operation from 7:00 am. to 7:00 p.m., seven days a week was passed by a unanimous vote of 7 to 0.

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III. ADJOURNMENT.

The motion was made, seconded and passed to adjourn the meeting at 8:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary