

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: FEBRUARY 20, 2013

CASE NO.: 2/20/2013-1

APPLICANT: WOODHAVEN LIMITED PARTNERSHIP, C/O MASTROCOLA
MANAGEMENT
1725 REVERE BEACH PARKWAY
W MEDFORD MA 02156

LOCATION: 136 HARVEY ROAD; 28-29; I-II

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
NEIL DUNN, CLERK

REQUEST: VARIANCE TO ALLOW A RELIGIOUS FACILITY IN THE INDUSTRIAL-II
DISTRICT WHERE OTHERWISE NOT LISTED AS A PERMITTED USE IN THE
TABLE OF USES, SECTION 2.2.

PRESENTATION: Chair J. Smith announced to the applicant their ability , since only four out of the five Board
members were present, to postpone their case until the following month or until a full
complement of the Board was available. The applicant chose to proceed with their case.
Case No. 2/20/2013-1 was read into the record with four previous cases listed.

JAMES SMITH: Who will be presenting?

PATRICIA PANCIOCCO: Good evening, Mr. Chairman. My name is Patricia Panciocco. I'm here on behalf of
Woodhaven Development. I'm here to present a request for a variance from Article 2.2, which is the Use
Table in the Londonderry zoning ordinance. We're requesting a variance to allow some vacant space within
the two buildings that are located on this site to be used as office space in one building and for Sunday
assembling of the membership of the Church who is using the office space in building A at two different
services, one proposed at nine o'clock in the morning and the other at approximately eleven o'clock in the
morning. To give the Board an overview of the site, I've got a little handout that I prepared [see Exhibit "A"].
The two buildings that we're going to be speaking about this evening are building 136A and 136B. So I'll refer
to them as building A and building B. The building A is the office space building and building B will be the area
where the membership will gather once a week. On the second page of my handout, I've given you a picture
of the property. This is building A; it's got the 136. The address is 136 Harvey Road. The second photograph
is building B. And the last page of the handout is a view looking, I guess skyward down and it gives you a
general sense of the size of the units within the building. I highlighted the two units that the Church hopes to
occupy if this variance is granted. So to restate, the property is located at 136 Harvey Road. The two buildings

46 that are shown on the first page of the handout are built into a hill in a step-like fashion, running with the
47 topography of the site, the back of the building on the upside of the slope. The property is located in the
48 Industrial-II zone, for which a 1997 subdivision approval was issued by the Londonderry Planning Board. The
49 notes on that subdivision plan allocated 1389 parking spaces to building A and B for the tenants to use on the
50 property. There is no on street parking here. Samples of uses allowed in the Industrial-II zone are professional
51 office, public facilities, service establishments, warehouses, and wholesale businesses. A lot of those are
52 accompanied with heavy truck traffic. The client's proposed use is for a tenant by the name of My Life Church.
53 We have representatives of the Church here this evening, should the Board have any specific questions it
54 would like to ask of them and my client, the property owner, is also here to answer any questions the Board
55 may have. My Life Church plans to lease and occupy unit A 105 for office space while using the space available
56 in the unit B building as a place to assemble on Sunday for the two church services. When they applied for a
57 building permit to do some minor interior renovations to the property not too long ago, the building permit
58 was refused on the basis that they were a religious facility or looking to operate a religious facility. I'm not
59 sure of the specifics of that, but the permit was denied based on the fact that religious facilities are not a
60 permitted use within the Industrial-II zone. The facts of this case intersect at the juncture of Federal law and
61 local zoning law. And for that reason, there's certain aspects of the Federal law that must be considered by
62 the Board when deliberating on the case. The name of that Federal law is the Religious Land Use and
63 Institutionalized Persons Act, or RLUIPA. And as I said, we'll call it RLUIPA throughout tonight, because it's a
64 pretty long name. RLUIPA was adopted in 2000 and it provides enhanced First Amendment protections for
65 religious uses. And it protects them from "overly burdensome land use regulations," as read from the text.
66 RLUIPA is intended to ensure that religious groups are treated equal to non-religious groups and encourages
67 the government to alleviate those burdens and promote nondiscriminatory policies. When courts have
68 applied RLUIPA, they've done so broadly and in favor of religious assemblies and institutions from substantial
69 burdens that may arise through strict application of land use regulations. The exercise of religion, whether or
70 not central to a system of particular beliefs, includes the use of buildings, the conversion of real property, as
71 well as leasing real property by a religious entity for the purpose of assembly. When considering whether
72 RLUIPA applies, you have to first think about whether the land use regulation that is being imposed is
73 substantially burdensome. The U.S. Supreme Court has said that whether a regulation is substantially
74 burdensome is a very fact-intensive analysis and requires the applicant to show it's more than a mere
75 inconvenience. However, the government must demonstrate if they're looking to further impose that
76 regulation, that the regulation furthers what they refer to as a compelling government interest, which is an
77 interest that benefits the public of the highest order and endangers the paramount interests of the
78 government furthered by that particular regulation. And that there is no less restrictive means to accomplish
79 that goal other than strictly applying that particular regulation as written. Desire to enforce zoning generally
80 does not rise to the level of paramount interest. We all recognize that zoning does need to be applied
81 generally, but in the context of religious exercise, RLUIPA says that's not enough. To meet the least restrictive
82 means test, the government must show there are absolutely no alternatives available to mitigate the burden
83 imposed upon the person looking to exercise religious freedoms. The variance with conditions often meets
84 the requirement of a lesser restrictive means. The other goal of RLUIPA is, I believe I touched upon earlier, is
85 to apply land use regulations in a manner that imposes an equally...an evenhanded application of the
86 regulation to religious groups as well as non-religious groups, which arises out of the equal protection clause.
87 In this particular case, we have a set of facts that tend to suggest that this restriction is being applied more
88 harshly to this particular applicant. So how does this fit within the variance criteria? And this is an overview.
89 When we go through the five points, I'll touch upon this again. In 2008, but in the context of the
90 Telecommunications Act, which I'm sure the Board is familiar with, the New Hampshire Supreme Court, in

91 Daniels v the Town of Londonderry, explained that the preemptive Federal legislation of the
92 Telecommunications Act, imposes a gloss over the deliberative process the Board will engage in regarding the
93 variance criteria. The integration of those two tests, the substantial burden test required under RLUIPA and
94 the five points of law to qualify for a variance requires consideration and when you look at the variance
95 criteria, you have to remain mindful of the goal of RLUIPA. This necessarily requires the Board think more
96 broadly and take a more inclusive view of the unnecessary hardship standard in particular when examining the
97 suitability or the uniqueness of a particular site for which the use is being requested. In this case, the tenant
98 hopes to occupy two spaces on the site owned by Woodhaven. Part of that space is for an office, which is a
99 permitted use. The space being used for meetings only on Sunday is an accessory use. It's one day a week for
100 about half the day, when most of the other tenants who occupy this site aren't present. The space itself is
101 particularly suitable for this particular tenant because it's close to all the major highways, 293, 93, Route 28,
102 and not far from Route 101. It offers adequate, in fact, excess off street parking and presents a real
103 opportunity for this tenant. So to go to the variance application, the client's proposed use of these units does
104 not propose any external changes to the building, although the building permit was requested for minor
105 interior changes. The tenant has also met with the Town of Londonderry's Fire Department to confirm
106 compliance with the Life Safety Code and to make sure that it would not be overburdening the property or
107 exceeding occupancy limits. My understanding is, other than a couple additional smoke detectors, the Fire
108 Chief had no issue at all with the proposed use as far as the number of people this tenant proposes to have
109 within the building at any one time. Also worth mentioning is that Table 1 to Article 3.10 of the zoning
110 ordinance which relates to parking, it confirms that the parking requirements for religious facilities as defined
111 by your ordinance is the same as public facilities which is a permitted use in this zoning district. So we're not
112 concerned at all that the parking is insufficient here and that's one of the desirable attributes of the site to the
113 client is that there is adequate parking and they won't be taking someone else's parking or parking on the
114 street. One other point, though, that was brought out in the variance application is, and we would like to
115 make this clear, is that we do not feel that the proposed occupancy of this particular property by this tenant
116 falls within the definition of religious facilities as defined by the ordinance, which reads "Building or buildings
117 used for public worship by a congregation. Includes churches, synagogues, temples, mosques, and other
118 places of worship." While my client will make part time use, one day a week, of one of the units they hope to
119 lease, they are not constructing any type of religious building anywhere on the property. There will be no
120 exterior changes to the buildings. For this reason, our position is that the Sunday gatherings for which relief is
121 being requested is more akin to an accessory use to the office space, much the same as that enjoyed by other
122 tenants on this particular property who are non-religious groups or non-religious tenants. So I can go right
123 into the five points of law if you're ready?

124
125 JAMES SMITH: Yeah.

126
127 PATRICIA PANCIOCCO: Our position is this is not contrary to the public interest. The public interest is served
128 in the Industrial-II zone by providing areas away from residential areas that are more intensively developed,
129 where businesses can engage in industrial-type uses of property and not risk offending their neighbors as
130 much. Also where heavy trucks can come and go during the week to pick up and deliver products. Religious
131 facilities within the Town of Londonderry are permitted in more moderately populated areas and
132 thoroughfares, not within densely populated residential areas, but in the agriculture and commercial zones,
133 you can build a church. Also where traffic is managed better. The applicant is requesting it be allowed to use
134 approximately 3,500 square feet of the total amount of space being used which is located within the unit B
135 building for Sunday worship at two different points during the morning when these businesses are not usually

136 open and there's no deliveries and pickups by heavy duty trucks. This is not inconsistent with the public
137 interest because the offensive character of industrial uses that could offend residential development and
138 buildings does not exist in Sunday in the industrial area. In addition, the other tenants who occupy the
139 building are not present on Sunday morning and it frees up all the parking space. So it almost allows a use of
140 the property during a period of time when the existing tenants are not there. So for that reason, we don't feel
141 allowing this unit B unit, the unit within building B, I should say, to be used for Sunday services. The spirit of
142 the ordinance is observed because there's no threat to the health, safety, or welfare of the public presented
143 by the proposed use. Similar to the public interest prong, it allows the tenant to hold membership meetings
144 on Sunday in the morning that's incidental and subordinate to the weekday use of the office. More
145 importantly, because the meetings of the other tenants that they hold on a regular basis, whether for
146 networking, educational reasons, or sales meetings, whatever those may be, by the RLUIPA protections that
147 are afforded the tenant, it allows them to be put on an even plane with other tenants in the area so that they
148 can make a part time use of the additional space for religious exercise. For this reason, we don't feel it
149 violates the spirit and intent of the ordinance and we feel that RLUIPA prevents a, perhaps, discriminatory
150 application of this restriction to this particular tenant. Substantial justice would be done by granting this
151 variance. This prong requires that the loss to the applicant not be greater than the gain to the public. It raises
152 the question as to what will the public gain by disallowing this applicant's part time use of part of the space in
153 building B. I might suggest to you that the public really gains nothing. The applicant, to the contrary, would
154 lose the benefit of leasing this location and all the benefits that it brings to their particular group. Granting
155 this relief would be just and put the tenant on an equal footing with other tenants in the buildings presently.
156 The values in the general area of both buildings will not be diminished. Office use is permitted, so that's a
157 given and the people who occupy other units on this site hold meetings on a regular basis. The meetings that
158 this proposed tenant would hold are really no different. They will be inside, there will be no changes to the
159 building, it's for religious exercise, and they will not be doing anything that's offensive to any of the abutting
160 property owners. So there cannot be any diminution of the values. The last prong is the hardship prong. And
161 strict application of this particular zoning restriction to this particular tenant does impose a substantial
162 hardship here, not only on the tenant, but also on the property owner who would very much like to lease this
163 space to this particular tenant. In *Ryder v Town of Londonderry*, where this Board granted three variances to
164 Omnipoint, the New Hampshire Supreme Court issued an opinion and said that the telecommunications act
165 needed to be applied more broadly and kept in the background when, in particular, when a Zoning Board
166 considers the hardship prong of the variance test. The Court held that local land use law would be prevented
167 when the very purpose of the Federal law was frustrated by the hardship prong. And in this case, would have
168 prevented the installation of a much needed completion of a cell tower circuit to encourage
169 telecommunications and fill that gap. In the context of this particular case, the property subject to this
170 application has been identified by this particular tenant as existing in a convenient location for all of its
171 membership, it serves all of its needs, it provides parking, office, across the parking lot in the other building,
172 and it makes this site particularly unique for this particular tenant and in this case, although the variance test
173 requires a uniqueness factor for the property itself, similar to the case, the Omnipoint case, the Court has said
174 that standard should relax and yield to the Federal law in light of its purpose. In addition and in the context to
175 RLUIPA, granting the requested relief will put this tenant on an equal footing with all the other tenants and
176 further the purposes of this Federal statute. No fair and substantial relationship exists between the general
177 public purpose of the ordinance and the tenant's use of the property. The ordinance establishes a zoning
178 district where manufacturing and industrial uses are encouraged. Those areas and those uses are inconsistent
179 with residential uses. And those uses are safely located there, insulated from abutter concerns. Those
180 activities take place in the industrial zone on this site during the work week. The applicant is proposing

181 assemblies only on Sundays when those uses are generally not operating and there's no demand for parking.
182 For this reason, we don't feel as though there's any fair and substantial relationship between this particular
183 restriction and the proposed use by the tenant. The proposed use is reasonable. The proposed use is religious
184 exercise and assembly, protected by the First Amendment and is presumed to be reasonable. And that's all I
185 have and I ask that if the Board, during its deliberations, could make findings of fact so that we're clear as to
186 the Board's decision on each of those prongs. Thank you. And I do have members of the Church, I think I
187 mentioned, and the property owner here to answer questions.

188
189 JAMES SMITH: Okay. Thank you. The Board. Questions?

190
191 NEIL DUNN: If I may ask Richard, Richard we're giving a variance to a lessee, I mean, I know it's actually
192 supposedly through the property owner, but it's for a leased space.

193
194 RICHARD CANUEL: Well, you know, the variance goes to the property owner. It's the property owner that's
195 making the application.

196
197 NEIL DUNN: Well, that's one of my concerns and we're talking about a lessee here trying to get the variance
198 for something that is...

199
200 RICHARD CANUEL: That's correct. But the application was made by the property owner, so...

201
202 NEIL DUNN: Okay. Yeah. But it goes forever. Mr. Chairman, if I may? You're referring to RLUIPA in one
203 breath, saying that we can't discriminate against churches because of common use or similar uses or whatever
204 and then in another part, you're saying that it's really not a church, so I'm a little bit confused there. You're
205 trying to play the RLUIPA thing and then say, well, it's really not a church, it's an office with only part time
206 assembly. So could you help clarify that for me?

207
208 PATRICIA PANCIOTTO: The tenant that would like to lease this space is...a church is not necessarily the
209 physical structure. It's an assembly of people who exercise religious freedoms together. The right to exercise
210 those religious freedoms are protected by RLUIPA. Did that answer your question?

211
212 NEIL DUNN: Okay, so if we have one component of it is an office, a business part of the Church or the...if you
213 will...

214
215 PATRICIA PANCIOTTO: Right.

216
217 NEIL DUNN: ...and building B is gonna be the gathering place to share their thoughts or whatever, but you
218 were still saying that you weren't considering that a church. You were...so we should let people assemble
219 anywhere they want anytime they want and in argument of freedom of religious gathering? I mean...

220
221 PATRICIA PANCIOTTO: Well first of all, I'm arguing that it doesn't fit the definition in your ordinance, which
222 religious facilities is what the definition is and it's a building or buildings. This is a group of people. Freedom
223 of assembly is distinguished from the physical structure of a church. I suspect, although I wasn't around when
224 they drafted the ordinance, that the exclusion in the industrial zone was to prevent somebody from

225 construction a church in the industrial zone as opposed to gathering together as a group to occupy a building
226 and exercise their First Amendment rights.

227
228 NEIL DUNN: Right. And my understanding was they didn't want churches in industrial zones because of
229 safety, because...you mentioned, the large trucks, a lot of activity going on and on and when you're
230 assembling with all kinds of families and stuff, it's a little bit more hazardous in that zone...

231
232 PATRICIA PANCIOTTO: Mm-hmm.

233
234 NEIL DUNN: ...than all the other zones where we do allow it. And that's the reason we have stated that that's
235 why we prefer not to have them there. The total number of parking spots that are allocated to the office
236 space that's being leased and the building A and B?

237
238 PATRICIA PANCIOTTO: On the approved subdivision plan, there's 139 spaces dedicated to building A and
239 building B. That's all I can speak to specifically. Under your parking regulations, the presumption is that three
240 people will arrive in each car. Now, I did speak with the tenant and they can talk to you some more about this
241 if you would like them to. They can only fit 120 chairs inside unit B. That would use 40 spaces and there's 130
242 spaces available for the two buildings and that would only be on Sunday morning. And if I could just mention
243 one other thing on the point you brought up before that on the church. The construction of a church and not
244 being allowed in the industrial zone; I guess what I'd like to mention is that when one constructs a church or a
245 synagogue or any other type of religious building, it tends to be used more frequently than a few hours on a
246 Sunday morning. Otherwise, it probably wouldn't be worth building the church. But they held lots of other
247 things there during the week, which is all the more reason not to allow one to be constructed in the industrial
248 zone, to your point. But in this case, this gathering that is being proposed by the tenant is only on Sunday
249 mornings.

250
251 NEIL DUNN: And if the meeting was to exceed 120 people, they would close the doors and...?

252
253 PATRICIA PANCIOTTO: Well, they can only fit 120 chairs in that particular space within the unit within building
254 B.

255
256 NEIL DUNN: Richard, a place of assembly with over 100 people has some different requirements, I believe,
257 than...and she spoke to the Fire Department approving it. I thought we had...is that building suitable for over
258 100...assembly of over 100 people?

259
260 RICHARD CANUEL: Well, that's part of the concern. The building was approved for office use. The parking
261 requirement for office is one space per 200 square feet. If you look at this as a religious facility, our parking
262 requirements is one space per three seats, so it's considerably more. If we're talking about 139 spaces total
263 approved for that site, based on the occupancy load that comes from the building code for an assembly use,
264 the parking requirement would far exceed 139 spaces.

265
266 NEIL DUNN: I wasn't really...I was talking more to the electrical, the mechanical, the fire protection of the
267 place of assembly.

269 RICHARD CANUEL: I haven't been to that building to do an inspection and I haven't spoken to our Fire
270 Department about that space either, but I'm assuming if he's been through and he's taken a look at it...
271
272 PATRICIA PANCIOCCO: Mm-hmm.
273
274 RICHARD CANUEL: ...on the basis of being an assembly use, provided there's adequate existing, fire
275 extinguishers, sprinklers, exit signs and things of that nature, I'm sure they're certainly qualified.
276
277 NEIL DUNN: But in regards to the wiring methods and so forth? They get increased when you got to a space
278 of...
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280 RICHARD CANUEL: Say that again?
281
282 NEIL DUNN: When you go to...doesn't the electrical requirement change when you get into an occupancy of
283 other 100 people with the MC cable and different types of....?
284
285 RICHARD CANUEL: Yeah, you're talking about the type of wiring and things like that. If they were to build a
286 building there to accommodate an assembly use, if there are more than 100 occupants, than the wiring
287 methods definitely change. Whereas in an office building, as you say, they're allowed romex or what's known
288 as MC cable in the building. If they were to build that building, utilize it for an assembly of more than 100
289 persons, then they'd be required to use what's known as MC cable which is an armored cable. You're correct.
290
291 JAY HOOLEY: So, Richard, if I understand, if we took the place of worship out of it, if we were doing assembly
292 for the local realtor's association, just to pick a different purpose, and they intended to have weekly meetings,
293 gathering 120-odd folks, we would be looking at the same issues for this space?
294
295 RICHARD CANUEL: Well, we would and we would not.
296
297 JAY HOOLEY: Okay, could you...?
298
299 RICHARD CANUEL: Simply being, if someone has a conference or a meeting room as part of their office use...
300
301 JAY HOOLEY: Right.
302
303 RICHARD CANUEL: ...that's an accessory use to that office use used by people who are employed at the
304 building, people who are there on a daily basis and not necessarily the general public. And that's part of the
305 concern for restricting religious facilities from the industrial zones, is you don't want the general public where
306 there's heavy truck traffic, where's there heavy industrial processes taking place. Whereas it's different if it's
307 someone with an office use who has that meeting room as an accessory to their business.
308
309 NEIL DUNN: But again, if it was built as a meeting room to hold over 100 people, it would have these other
310 safety precautions and other building codes and I think that's more troublesome to me with the anniversary of
311 some of these nightclubs and other crazy things going on. That was more my point.
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313 LARRY O'SULLIVAN: The rest of the week, can I ask, what is the use of the larger space?

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PATRICIA PANCIOCCO: The rest of the week?

LARRY O'SULLIVAN: You said Sunday mornings, 10 or 11 and...

NEIL DUNN: Nine.

LARRY O'SULLIVAN: ...nine?

PATRICIA PANCIOCCO: Yes.

LARRY O'SULLIVAN: Other than that, what's the use for that...?

PATRICIA PANCIOCCO: During the week, you don't...This is a representative of the Church and he met with the Fire Chief, so I'd like to have...

JAMES SMITH: Okay...get his name and address?

JOSEPH CYR: Hi I'm Joe and...

JAMES SMITH: The whole name.

JOSEPH CYR: Joseph Cyr, Pastor, Life Church.

JAMES SMITH: And what's your address?

JOSEPH CYR: My home address is 28 Swan Avenue, Bedford, NH. And uses for the rest of the week?

LARRY O'SULLIVAN: Mm-hmm.

JOSEPH CYR: We would other...probably some other meetings in there. Mostly at night and then office space would be the primary use for the week.

LARRY O'SULLIVAN: Okay, so we have two spaces. One of them is gonna be your office space.

JOSEPH CYR: Yup.

LARRY O'SULLIVAN: The other one's going to be a meeting space. Okay? All I'm concerned with is the meeting space. What else are going to do with it other than nine o'clock and 11 o'clock on Sunday morning?

JOSEPH CYR: Right. Yeah.

ABIGAIL CYR: Right now...

JAMES SMITH: Okay, could you approach the mic and again....

359 JOSEPH CYR: Sorry.

360

361 JAMES SMITH: You have to identify yourself, name and address.

362

363 ABIGAIL CYR: Sure. I'm Abigail Cyr and I'm also...Joe and I co-pastor Life Church. Same address, 28 Swan
364 Avenue, Bedford, NH. And just to give you a little bit of background. We currently rent space from the Regal
365 Theater in Hooksett, so we're used to functioning primarily on a Sunday morning in a space and then a lot of
366 our activities take place within homes and other places, so we're not even accustomed to having a space 24-7.
367 But as far as large group meetings, it would be Sunday mornings and then the space the rest of the time would
368 be empty as are a lot of church buildings, you know, their general assembly space is normally vacant other
369 than when they're having their worship times. Yeah, we will have worship practice, but again, that would be a
370 small group of maybe a dozen people.

371

372 LARRY O'SULLIVAN: So that wouldn't necessarily be in the larger space.

373

374 ABIGAIL CYR: That would be in the larger space because that's where the sound system would be and the
375 stage and the microphones and such. So worship practice would be in there. But any other kind of small
376 group meetings that might take place, like such as board meetings and things like that would probably be
377 hosted in the office space, because that would be more of an office situation.

378

379 LARRY O'SULLIVAN: Can I ask how many members?

380

381 ABIGAIL CYR: We have approximately 150 members and the thought being that with having the two service
382 times, we would probably have approximately 75 in each.

383

384 LARRY O'SULLIVAN: Have you spoken with any of the other tenants at the [indistinct]?

385

386 ABIGAIL CYR: I believe that Ron, who is the building manager, has spoken with them and he can attest to that.

387

388 RON MASTROCOLA: Hello, my name is Ron Mastrocola. I live at 4 Sparhawk Circle in Stoneham, Mass. I'm
389 representing Woodhaven here today. I have spoken with seven out of the other ten tenants that are at the
390 property. None of those tenants have any objection to hosting this type of use at the building. Their only
391 concern was whether or not there would be conflict in parking for their space and we've been able to assure
392 them that there wouldn't be because they do not have activity on Sundays, where would be the primary use
393 for this space. And if they did, there's still ample parking at the property to accommodate them. So beyond
394 that parking concern, they had no other issues.

395

396 LARRY O'SULLIVAN: Can I ask what type of businesses there are?

397

398 RON MASTROCOLA: Primarily office users. There are some computer users, there's a travel company, there's
399 Tree Care Industry Association. Primarily office use. In fact, all office use.

400

401 LARRY O'SULLIVAN: Thank you.

402

403 JAMES SMITH: I have a question for Richard. Since this is a possible place of assembly, would there be
404 requirements for separation rated walls?
405

406 RICHARD CANUEL: Well then again, that's something separate from the zoning issue. But yeah, there
407 certainly would be that requirement, the separation of uses. I don't have the building code in front of me, but
408 there certainly is a difference in the wall ratings that would be required between an assembly use and an
409 office use as opposed to an office and an office.
410

411 LARRY O'SULLIVAN: Okay, so what you're saying is they're gonna have to modify the walls in order to...for
412 sounds...?
413

414 RICHARD CANUEL: They may have to. Like I said, I have not been in the building, so I cannot say. That
415 wouldn't be fair.
416

417 LARRY O'SULLIVAN: Are you aware that we have about twelve or fifteen different zones in town and that in
418 half of those zones, we allow churches or places of assembly? Fully half of them. That's gotta be three
419 quarters of the rental space in town. And this one in an industrial zone. I'm kind of missing why you would
420 want to be there. Frankly, it makes no sense to me.
421

422 ABIGAIL CYR: Well, I think, for us too, we're not a traditional church in the sense that we were looking for a
423 traditional space. But honestly, it fit our budget, it's a great location as far as the accessibility. As our lawyer
424 mentioned, the accessibility is great for people and as far as where our congregation is located in the different
425 places they live, it's very centrally located and honestly, I think we were excited to venture out. We
426 started...our Church began in Bedford and then we've relocated to Hooksett and we've heard very positive
427 things about Londonderry and we thought this could be a really great fit for us. So I think a lot of it was
428 budget, convenience, and the fact that we're very comfortable being in a space that isn't a typical religious
429 space.
430

431 NEIL DUNN: And if it does turn out that...if the variance was to pass and you did have to put more money, I'm
432 not sure if it would be you or the landlord, into bringing it up to code because now it is a place of assembly.
433

434 ABIGAIL CYR: When we met with the Fire Marshall, when he walked through, we had a very positive meeting
435 with him and the occupancy that we would be allowed far exceeds what we would be comfortable putting in
436 there as far as our seating. And the suggestions that he gave us that we knew we would need to...you know, it
437 was basically...I think it was, what? Just a few...a couple of the horns and making sure that the fire alarm
438 systems were the ones that were visual and that made noise and had the lights in the bathrooms and things
439 like that. So he let us know all of those things and we evaluated that cost and it still seemed like it would be a
440 very wise decision for us. Something that could be positive, not only for our congregation, but our heart is
441 always whatever community we're part of, to really be an active, positive, encouraging presence in that
442 community.
443

444 JAMES SMITH: Okay, I think part of what I'm realizing; you've gone through the Life Safety Code with the Fire
445 Marshall. You haven't really looked at the building code with the Building Inspector. And I think that's going
446 to be more costly or could be more costly than what the Fire Marshall...
447

448 ABIGAIL CYR: Right. And we'll...

449

450 JAMES SMITH: Because just to give you a little background, Neil brought up the fact of the electrical code. It
451 has certain wiring requirements. If you look at that particular article, what it says is if you have fire rated
452 walls, you have to have a certain wiring type which is much more stringent than what is typically in that type
453 of an occupancy anyways. So it's kind of like a series of events. You do this, triggers this, which triggers this.
454 So if you go to a place of assembly, once you go over 100, then the building code starts kicking in, which then
455 kicks in the electrical code and I think there are some costs there that you're probably not aware of which may
456 or may not be within your budget. I don't know. I'm just laying that out just so you're aware of those. So
457 even if you got the variance, once you got into those issues, you may find that it's still not gonna work. But
458 that's a whole other issue.

459

460 RICHARD CANUEL: But, you know, in all fairness, we didn't even get to that point of the discussion, simply
461 because it being a variance issue. So we didn't get into the building construction portion of it.

462

463 LARRY O'SULLIVAN: Can I ask if there's public worship done on this...during your nine and 11 o'clock meetings
464 or assemblies?

465

466 ABIGAIL CYR: How would you define "public worship"? Like, what are you...

467

468 LARRY O'SULLIVAN: I don't know. You just gave me a description a minute ago of training or reviewing
469 worship with the stage and the practice.

470

471 ABIGAIL CYR: Right. So I can share with you what our typical Sunday gathering would look like. It's a very
472 casual setting. We serve coffee, bottled waters, people come in. It's a very welcoming environment and we
473 start off with...we have a live band and so we sing and that would be, you know, what's considered a worship
474 or a song time of singing together, congregation singing. And then either my husband Joe or myself share a
475 very practical message of encouragement for people and real...just practical, for everyday life. So that pretty
476 much sums up what we do.

477

478 LARRY O'SULLIVAN: Okay, so that's not worshipping? Is that not a worship gathering?

479

480 ABIGAIL CYR: No, it is a worship gathering.

481

482 LARRY O'SULLIVAN: Okay. Because the spirit of the ordinance, it said "building or buildings used for public
483 worship" where a congregation is. This is not. It doesn't meet the definition. So you just said that it is. So, I'm
484 a little confused about that one. But if we're talking about a building as opposed to what you're doing in the
485 building...Okay. Next question.

486

487 JAMES SMITH: I think that's what I'm getting at.

488

489 ABIGAIL CYR: Mm-hmm.

490

491 JAMES SMITH: You're trying to make a distinction between a religious building...

492

493 PATRICIA PANCIOTTO: Yes.
494
495 JAMES SMITH: ...and a religious...
496
497 ABIGAIL CYR: Service.
498
499 JAMES SMITH: Activity.
500
501 PATRICIA PANCIOTTO: Yes.
502
503 ABIGAIL CYR: Yes.
504
505 PATRICIA PANCIOTTO: Yes. This is free exercise versus a building. Doing a site plan for a building. Building
506 something that is used more frequently during the week. This is basically a place for them to meet near their
507 office.
508
509 NEIL DUNN: That's why I brought up the safety concerns.
510
511 PATRICIA PANCIOTTO: Mm-hmm.
512
513 NEIL DUNN: For me, that once you get into these larger numbers, that maybe this isn't an appropriate space.
514
515 PATRICIA PANCIOTTO: Understood.
516
517 NEIL DUNN: And the safety is the biggest concern in my point of view typically.
518
519 PATRICIA PANCIOTTO: Understood and I don't think I've heard any objection to complying with safety
520 regulations. I'm not sure they'd have it any other way.
521
522 JAMES SMITH: Well the only point I was trying to raise was the potential cost.
523
524 PATRICIA PANCIOTTO: Yup.
525
526 JAMES SMITH: Which may or may not be...
527
528 PATRICIA PANCIOTTO: Thank you.
529
530 JAMES SMITH: ...acceptable. Any other questions? Okay, at this point, we'll open it up to the general public.
531 Anybody in support of this? Please approach a mic and identify yourself and give us your address.
532
533 TOM DUFFY: Hello, my name is Tom Duffy. I work for Prudential Verani Realty as a commercial agent. I
534 represent the owner of the property. I live at 10 Cahill Lane in Nottingham, NH. I wanted to point out a
535 couple of things. I was in attendance when the Fire Marshall walked through the building and when we
536 discussed what the various criteria were he was using for the assembly. One of the things, he measured the
537 door, the double doors as they open and the width of the doors, so that egress could pass at a certain rate

538 should there be an emergency. He found that to be acceptable. He found the distances from the doors to the
539 actual assembly areas to be acceptable. The space has four means of egress out of a 3,000 square foot space.
540 The distances from the doors were all acceptable. And one thing that hasn't come up which may affect, with
541 respect to the code, Mr. Smith, you were a Code Enforcement Officer, I think, prior to Mr. Canuel, and the
542 building is sprinklered. It's on Town water and sewer and it's sprinklered. And I remember having this issue
543 on the firewall issue specifically at another space on Rockingham Road where we ran into the separation of an
544 assembly area from a non-assembly office area and where fire walls would be included unless there were less
545 than 'x' number of people. Perhaps that number is 100, I don't remember the specifics of it. But the second
546 aspect that would allow it would be that the building is sprinklered. That that makes a difference in terms of
547 'do we need fire walls or not?' Now, I don't practice codes every day. I don't know it, but I would probably
548 refer back to Richard and the code to see if the sprinkler issue would make a difference specifically to your
549 concern, Jim, which is on the expense, assuming a variance is allowed, the expense of converting that to bring
550 it up to code because I realize the necessity that you would want to protect the general safety of anybody
551 that's using the space.

552
553 JAMES SMITH: Okay. I was just trying to raise the issue. I wasn't saying you had to or hadn't. I'm just saying
554 that issue had not been evaluated and I was just trying to make sure you and your client was aware that the
555 potential for that was there. I'm not saying one way or the...

556
557 TOM DUFFY: I think Mr. Dunn was also concerned about the safety of the people that were using it and I'm
558 addressing that as well...

559
560 JAMES SMITH: Yeah.

561
562 TOM DUFFY: ...by mentioning that the building is sprinklered and on water and sewer. That's all I got. Thank
563 you.

564
565 JAMES SMITH: Anyone else? Any other comments, Richard, or...?

566
567 RICHARD CANUEL: Well, I think as a point of clarification or more of a counterpoint, I guess, I sent a
568 memorandum to the Board as part of your correspondence for this case that might be beneficial for the
569 record.

570
571 JAMES SMITH: Are you aware of that? I mean, you...

572
573 PATRICIA PANCIOTTO: Well, I saw it a few minutes ago. I did read through it. I need to get a copy later.
574 That's okay.

575
576 NEIL DUNN: Richard, while they're digging into that, if maybe you could help me with this lease aspect of it.
577 Can we tie it to the lease if we gave a variance?

578
579 RICHARD CANUEL: Well, the Board can place that as a condition if they so choose.

580
581 NEIL DUNN: Do you think it would be traceable or...?
582

583 RICHARD CANUEL: That the variance would sunset when the space was vacated. I'm sure you could do that.
584 Sure.

585
586 PATRICIA PANCIOCCO: Yes.

587
588 LARRY O'SULLIVAN: Or that the space is vacated, the use was changed? But the point of the matter is still
589 going to be...Richard, if we had this facility that we had only on Friday nights and Saturday nights where we
590 had 200 people come in and I had a bartender and bottles, what we would call that? Would that still be a
591 facility or would that be a bar at this point?

592
593 RICHARD CANUEL: Well, it would still be an assembly use.

594
595 LARRY O'SULLIVAN: It's an assembled use...

596
597 RICHARD CANUEL: Sure.

598
599 LARRY O'SULLIVAN: Assembly use.

600
601 RICHARD CANUEL: Yup.

602
603 LARRY O'SULLIVAN: Okay.

604
605 RICHARD CANUEL: And if you wanna classify that as a restaurant or a lounge, again, those are assembly type
606 uses that our ordinance does not permit in the Industrial-I or Industrial-II zones.

607
608 LARRY O'SULLIVAN: Okay, so how is that interpreted in your opinion as our restriction against this? Or our
609 exclusion of this use, this type of use, in that area? Traffic, safety...

610
611 RICHARD CANUEL: Yeah.

612
613 LARRY O'SULLIVAN: ...public welfare.

614
615 RICHARD CANUEL: That's why I say I think it may be beneficial to read that memo into the record. Just for the
616 general public.

617
618 NEIL DUNN: Neil, you want to do the honors?

619
620 [The Board took a five minute break].

621
622 Clerk Dunn read exhibit "B" into the record, i.e.:

623
624 "To: Mr. James T. Smith, Chair, Zoning Board of Adjustment

625
626 From: Richard G. Canuel, Senior Building Inspector/Zoning Administrator

627

628 Date: February 12, 2013

629
630 Subject: Woodhaven Limited Partnership Variance request, 136 Harvey Rd. (IND-II)

631
632 My purpose for writing the Board is to provide some rationale for the decision that resulted in
633 this variance request.

634
635 It has been argued by the applicant's legal counsel that it is unlawful for the town to restrict
636 occupancy of a place of worship at the subject location, claiming that the provisions of the
637 Religious Land Use and Institutionalized Persons Act (RLUIPA) prohibits municipal discrimination
638 of religious institutions.

639
640 The law does prohibit municipalities from restricting religious uses through zoning. However,
641 simply because a use is religious in nature, it is not afforded a right to establish occupancy
642 wherever it chooses. The law states that municipalities cannot unreasonably restrict religious
643 uses through land use regulation that treats them differently from how it regulates other
644 similar assembly uses.

645
646 In the interest of "public safety", our ordinance guides development to provide for the most
647 beneficial relationship of land uses. We do not allow other assembly uses (i.e. Conference
648 Center, Restaurant, Movie Theater, etc.) in the Industrial zones with the intent of discouraging
649 the general public from areas with heavy track traffic, and industrial manufacturing.

650
651 Although it is understood that offices may include a conference/meeting facility as part of their
652 use, "assembly" is not the primary use, and the facility is utilized by those employed there, and
653 not the general public. If the church wished to locate their business office at the Hilltop site,
654 they are allowed by the ordinance to do so. However, Sunday assembly services at that location
655 is a different matter.

656
657 As the Zoning Administrator I cannot apply a discretionary interpretation of the ordinance,
658 whether I agree or disagree. I am sure the Board is well aware that as our ordinance is written,
659 in the Table of Permitted Uses, if a use is not listed as being permitted in a particular zone then
660 that use is considered prohibited.

661
662 Whether the federal law preempts our zoning ordinance in this case, it must be determined if
663 the provisions of the ordinance impose a substantial burden on religious exercise. Does our
664 ordinance treat religious assemblies the same as non-religious assembly uses?

665
666 In examining our ordinance, among the 12 primary zoning districts, Religious Facilities are
667 allowed in 6 of those districts as well as the 2 Overlay Districts (Rt 102 POD, Rt 28 POD). By
668 comparison, Commercial Recreation (which includes Indoor Theaters), is permitted in only 4 of
669 the primary zoning districts, and excluded from the two Industrial zones.

671 Other similar “assembly” uses; Community Center, Conference/Convention Center, Hotels,
672 Membership Club, Restaurant, as listed in the ordinance are all excluded from the Industrial I
673 and Industrial II zoning districts.

674
675 Considering that Religious Facilities are allowed in a wider range of zoning districts than any
676 other use that involves public gathering, and with all similar uses excluded from the Industrial
677 zones, any claim of “discrimination” is questionable.

678
679 Applying the provisions of our zoning ordinance, I have denied the applicant a building permit
680 to renovate the existing office space for use as a church on the basis that Religious Facilities are
681 not allowed in the Industrial II zone where this property is located.

682
683 It is the purview of the Board to determine if the provisions of the RLUIPA supersede our
684 municipal ordinance. Otherwise, the applicant has the burden of persuading the Board on all
685 five of the variance criteria.”

686
687 JAMES SMITH: Okay.

688
689 LARRY O'SULLIVAN: Okay, so you pretty much are addressing the things that I was questioning. Why we
690 would...just a plain assembly, really. We're not really...I mean, how are we differentiating religious and a
691 different kind of assembly is really what the question is.

692
693 RICHARD CANUEL: I can't see how we are. And if we were, we would be in violation of the Religious Land Use
694 Act. So I think our ordinance is clearly fair in that it does allow religious facilities as an assembly use in those
695 where we allow all other typical public gatherings. Theaters, restaurants, those sort of things. So I don't think
696 our ordinance is necessarily overly restrictive and burdensome to religious facilities in particular.

697
698 JAMES SMITH: Okay. Any rebuttal?

699
700 PATRICIA PANCIOTTO: With all due respect, I think a religious assembly is different than a religious facility and
701 an assembly can be a smaller number of people. There are no restrictions at all on the other occupants in that
702 building on the number of people either. This is really incidental and subordinate because of the limited
703 nature of the use to the office use in unit A. And the applicant is willing to entertain reasonable restrictions,
704 but as they've said, this is best suited to their needs. To go to a commercial district or to require that they
705 construct a church building to be able to be in this general area is really not reasonable because it's far more
706 costly to go to other places, as you've mentioned, where a religious facility is permitted to gather. And that's
707 one of the driving forces here, aside from the location of this particular...this space near the major highways.
708 They clearly understand that they have to comply with the building codes as far as the number of people who
709 may assemble. But why they're assembling really shouldn't matter. And that's really the point.

710
711 LARRY O'SULLIVAN: Well that's why we have classifications, though. That's why. I mean, the use is really
712 what the issue is.

713
714 PATRICIA PANCIOTTO: But the use...but see this is where the Federal Act comes into play.

716 LARRY O'SULLIVAN: No it isn't because what we're talking about is assembly. We don't care whether it's a bar
717 or if it's a religious facility. That's what we're talking about. We have 100 people who are coming here on
718 occasion. I mean, it's kind of frustrating for me to have...we've gone through churches in town that have
719 become other things. We've had buildings that have done...have gone from what you would like to be able to
720 describe as a hall to a religious facility to something else. All those things are totally permissible in 75% of
721 town. The significant difference to me is that this is more a dollar oriented thing than it is anything else. So
722 it's a matter of expense. This is less expensive. This is less expensive to do than to go to Crossroads Mall and
723 take five of those contingent or connected buildings or units and turn them into a gathering space because it's
724 allowed there.

725
726 PATRICIA PANCIOTTO: It's location that's the primary force here, too. Closer to...

727
728 LARRY O'SULLIVAN: The airport?

729
730 PATRICIA PANCIOTTO: ...Route 28 and the airport and 293. Areas in North Londonderry. Close to those major
731 State roads. If you think about it another way, this particular tenant was previously located in Hooksett and
732 Bedford before that, which are in that area of the state. So that's really the primary reason why they would
733 like to be in that location.

734
735 JAY HOOLEY: If I could, and I have the general thought but I have to get it out. To take the religious occupancy
736 out of it, the building owner is the Woodhaven Limited Partnership?

737
738 PATRICIA PANCIOTTO: Yes.

739
740 JAY HOOLEY: Okay. And to look at this in a rather strict sense, what is the special condition of this property
741 distinguishing it from the others that creates the hardship for them to use it as an office building, which is
742 what it's built as?

743
744 PATRICIA PANCIOTTO: Well, and that's where the...I went through that whole explanation...

745
746 JAY HOOLEY: Yeah, but I guess that....

747
748 PATRICIA PANCIOTTO: ...about the hardship standard and the literal application and RLUIPA requiring that the
749 zoning test yield to the Federal law. And that's right in that case that I...

750
751 JAY HOOLEY: Right. Okay, so I think...

752
753 PATRICIA PANCIOTTO: ...cited too.

754
755 JAY HOOLEY: You're indicating probably, if viewed in that strict sense and we took the religious aspect out of
756 it, this does not meet that portion?

757
758 PATRICIA PANCIOTTO: I haven't thought it through, but perhaps not.

760 JAY HOOLEY: Okay. And that said, then applying the same set of rules that we would, and I'm using
761 "assembly" meaning where you're gonna have more than 100 people gathered in one space where getting
762 them out of there safely in the event of an emergency, if we are applying the exact same standards that we
763 would to any other occupancy where that was going to happen, you were gonna put more than 100 people
764 gathered all at once, you wanna have enough parking...

765 PATRICIA PANCIOTTO: Mm-hmm.

766
767
768 JAY HOOLEY: ...you want them to be able to get in, get out, you don't wanna have a conflict with the other
769 traffic and you wanna make sure that all the buildings, life safety requirements are met. No more, no less for
770 this than any other.

771 PATRICIA PANCIOTTO: Absolutely.

772
773
774 JAY HOOLEY: I don't know...that's what I'm trying to get my head around.

775 PATRICIA PANCIOTTO: Mm-hmm.

776
777
778 JAY HOOLEY: Are we treating them differently at all? Or would we not allow to go through that list, a movie
779 theater, a restaurant, a conference center, et cetera, in this location either. And if the answer is no, we
780 wouldn't allow that either, then I don't know that we're really overly restricting them. We're applying the
781 same general concept of safety.

782
783 PATRICIA PANCIOTTO: A conference center, a movie theater, and things of that nature are a far larger
784 gathering and a lot of them are admission based. You don't know how many people are gonna show up.

785
786 JAY HOOLEY: Yup.

787
788 PATRICIA PANCIOTTO: This is a very defined group of people and they're fine with limitations imposed by Life
789 Safety Codes, building codes, on the number of people that can assemble at one given time.

790
791 JAY HOOLEY: Okay. And if there were a limitation on when that could occur so that there is not a conflict with
792 all the other traffic, that it was only going to be Sunday, just to pick a...that the actual assembly, not the office
793 part at all...

794 PATRICIA PANCIOTTO: Yeah.

795
796
797 JAY HOOLEY: ...because that's standard there, but the assembly piece, so that we were certain it was not
798 going to conflict.

799
800 PATRICIA PANCIOTTO: As long as it was limited so it does not conflict because it has to. There's no question.

801
802 JAY HOOLEY: In other words, Monday through Friday, all those spaces are probably taken up and you couldn't
803 get these folks in.

804

805 PATRICIA PANCIOCCO: Correct.

806

807 JAY HOOLEY: Right, so you'd be limited, in my mind, one of the things that we would stipulate here is that,
808 and I hope it goes that well, but someday you'll expand because you wanna do Tuesday and Wednesday night
809 services because you got that many parishioners, I don't know if that's the term to use, probably not gonna
810 work because you have that conflict.

811

812 PATRICIA PANCIOCCO: Correct, and if that...

813

814 JAY HOOLEY: And these are just my thoughts as I'm...

815

816 PATRICIA PANCIOCCO: And if it came up, they would either have to come back to the Board or go somewhere
817 else.

818

819 JAY HOOLEY: Okay.

820

821 PATRICIA PANCIOCCO: Absolutely. Saturday, if they were to expand, would Saturday be reasonable? You
822 had mentioned just now Monday through Friday. Monday through Friday is clearly an issue.

823

824 JAY HOOLEY: Right.

825

826 PATRICIA PANCIOCCO: With the parking. Yes.

827

828 JAY HOOLEY: Yeah, I don't know whether even the rest of the Board agrees with my general thoughts on this,
829 but...

830

831 PATRICIA PANCIOCCO: Okay, it's a question that's been raised.

832

833 JAY HOOLEY: But yeah, and certainly something we'll discuss.

834

835 PATRICIA PANCIOCCO: Yeah.

836

837 NEIL DUNN: If I may, Mr. Chairman, number two, spirit of the ordinance, I'm kind of concerned about the
838 other tenants. Supposing that we're talking Saturdays now and their business is open on Saturdays and if they
839 did happen to open for Sunday hours, I mean more and more people are staying open more and more hours...

840

841 PATRICIA PANCIOCCO: Mm-hmm.

842

843 NEIL DUNN: Where do we draw the line that we protect the rest of the tenants, because proportionally, you
844 were taking more parking spots than would be allowed per tenant, if you will, or would be normally set aside,
845 if I was renting there, that maybe at some point, you're gonna impose on my livelihood or my business. And
846 how do we control that, I guess? I'm trying to get a handle on that.

847

848 RON MASTROCOLA: The tenants at the property are primarily Monday through Friday, nine to five users.
849 There's virtually one, maybe two tenants that occasionally have a need to come on a weekend because they
850 are a 24/7 service type of company, okay? And those that do have a need to come to the property during
851 those times only would come with one or two people. So it's not like they have a heavy use or a heavy
852 demand for parking anyway. But the property virtually does not function off hours on weekends.

853
854 NEIL DUNN: But the property is allowed...the rental space is allowed for manufacturing. It could be allowed
855 for other uses, other tenants that would want to come in, and there's where my concern is, that are we
856 maintaining that spirit if we're giving a larger proportion of the common property...I know it's not because it's
857 owned by one person, but the tenants are all being served fairly id they start butting heads over hours of
858 operation and they want to be open Sunday and their business can't run because the parking lot's so full. I
859 guess going forward...

860
861 RON MASTROCOLA: I would argue that...

862
863 NEIL DUNN: Maybe not now, but going forward, I'm trying to look out for the spirit and the intent.

864
865 RON MASTROCOLA: Yeah, I would argue just the opposite here. If you wanna talk about being treated fairly,
866 this group is going to be occupying the space a fraction of the amount of time that the other tenants are
867 occupying the space. So, if anybody had concerns or issues, it would be this group that could argue that they
868 aren't being treated fairly for the percentage of use that they're occupying the property. They're talking about
869 a few hours a week.

870
871 NEIL DUNN: No, but the codes and the regs are enough parking for everybody all the time, not for...and we're
872 working off the fact that we're saying most of the time on a Sunday, there's not gonna be too many other
873 tenants. But I'm still looking at preserving that and maintaining the parking spaces for every possible use
874 going a little bit more forward...

875
876 RON MASTROCOLA: Your argument is...

877
878 NEIL DUNN:and I'm just saying that it's because they have...if they needed all the parking spots at one
879 time, we're not gonna let anybody else do their business there? I mean, that would be up to you, I guess, as
880 the landlord or whoever the landlord is, but to us, from the zoning and looking for a zoning thing, we're still
881 looking out for the benefit of everybody in that rental spot or every tenant in that area. So...

882
883 RON MASTROCOLA: But you're making a presumption that there could be the possibility that on a Sunday, the
884 property could be at full capacity aside from this group. And that virtually is not true. It just isn't true. It's not
885 that type of property. The tenants that occupy that property occupy the space from Monday to Friday, nine to
886 five users. They have occasional need to come on a Sunday, one or two of the tenants, in a very limited way,
887 so to argue that they may be displaced from parking if they needed to come to the property just isn't true. It
888 just isn't true. The amount of parking that's gonna be required from this group on a Sunday is probably 30 or
889 40 spots per service. It's a very limited amount of parking that's required for this group during a service on
890 Sunday. And if they wanted to have another service during an off time of the weekend, maybe a Saturday
891 night, again, it's during the non-use period of the property and the requirement for parking during that period

892 of time would be much the same; 30, maybe 40 cars. So it's not displacing any other user at the property at
893 all.

894

895 NEIL DUNN: Currently, yeah. I agree currently it might not be, but...

896

897 RON MASTROCOLA: Well, to allow a manufacturing type of use at the property, we wouldn't allow it. It's not
898 that type of property. I don't know if you're familiar with the property...

899

900 NEIL DUNN: I'm very familiar with the property. I go...

901

902 RON MASTROCOLA: It's an office park.

903

904 NEIL DUNN: Yeah.

905

906 RON MASTROCOLA: It's not a manufacturing facility. It's not the type of property that would have anything
907 other than an office type of user. That's the type of user it is. That's the makeup of the property. That's the
908 appeal of the property.

909

910 NEIL DUNN: And to us going by and looking at it as an office space, we don't typically look at it as being a
911 place of assembly, either, so that's what I'm saying, things change and I'm trying to accommodate that. And
912 you're saying don't consider everybody else, but that's our job here is to consider...

913

914 RON MASTROCOLA: No, no, I didn't say that. I didn't say don't consider everybody else.

915

916 NEIL DUNN: Well, I mean...

917

918 RON MASTROCOLA: What I'm saying is the impact to the others at the property is not going to be
919 burdensome to them. It's during the off use of those other tenants.

920

921 PATRICIA PANCIOCCO: I guess I'd like to suggest that the relationship is between the Town and the property
922 owner and the tenant is one step removed. So if there's inadequate parking, I guess Ron would hear from the
923 tenant before the Town would.

924

925 NEIL DUNN: Absolutely . Absolutely he would.

926

927 JAMES SMITH: I still have a hard time understanding your interpretation of the definition.

928

929 PATRICIA PANCIOCCO: Of?

930

931 JAMES SMITH: Of a religious facility.

932

933 PATRICIA PANCIOCCO: It's a...

934

935 JAMES SMITH: You're trying to attribute it...that it's a building. And what I...I just went over it quickly. What I
936 get out of it; it says "Building or buildings *used* for...". So once you use a building, which in this case, is what
937 you're trying to do with this, that turns it into a religious facility. That would be my interpretation.
938

939 LARRY O'SULLIVAN: But everything isn't really hanging on that, is it?
940

941 JAMES SMITH: No, I'm just saying, but...
942

943 LARRY O'SULLIVAN: This is one item. I think...
944

945 PATRICIA PANCIOTTO: Well, the variance...
946

947 JAMES SMITH: But again, I think the way Richard's letter brought out the fact that this type of use is more
948 widely permitted within our zoning scheme than a lot of the similar places of assembly. I think, in my mind,
949 proves that the Town isn't trying to discriminate against this type of use and I think we're more than liberal
950 enough in the permitted locations for these uses.
951

952 PATRICIA PANCIOTTO: Putting that aside, what we're asking for is relief from the zoning ordinance to allow
953 this group to meet as a religious group, modest group, in this location. And why they're meeting should not
954 really matter. They have an office space that they're renting and they're paying for the other space and it's
955 where they gather. And they bring in other members on off hours. The reason why they're meeting, whether
956 it's religious or non-religious should not matter.
957

958 JAMES SMITH: Well I think that's the point. If it doesn't matter, then that act doesn't really kick in because...
959

960 PATRICIA PANCIOTTO: It should not matter in the context of the Federal law. In other words, the Federal law
961 is meant to promote even application to all gatherings for whatever purpose, whether they're religious or
962 non-religious.
963

964 JAMES SMITH: And I think the Town is meeting that requirement. Okay. Any other comments? If not, I'm
965 gonna close the public hearing and the Board will take this under consideration.
966

967 PATRICIA PANCIOTTO: Thank you.
968

969 JOSEPH CYR: Thank you.
970

971 DELIBERATIONS:
972

973 JAMES SMITH: Okay. What's the pleasure of the Board?
974

975 LARRY O'SULLIVAN: You know, everybody who brings up the Daniels vs. Londonderry case, I don't know if
976 they know what the outcome of that actually was but all the court did during that thing is they reaffirmed the
977 decision was correct in the way we interpreted an umbrella, a shadowing type of an effect of a Federal law.
978 That's all. There still is no tower there, by the way. That tower is not built. The ground has not been cut,
979 there's nothing there. What was that, eight years ago? Nine years ago, that thing?

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NEIL DUNN: Seems like only yesterday.

LARRY O'SULLIVAN: I suspect we see a lot of that. But...

NEIL DUNN: I'm still having issues with a variance that goes with the building forever, maybe we could restrict it or not...

LARRY O'SULLIVAN: Of course we can.

NEIL DUNN: ...for a lessee.

LARRY O'SULLIVAN: Why not? Absolutely .

NEIL DUNN: What I'm not...I guess maybe that shouldn't be the bigger thing because we can control that. I guess if we step through the five points...Granting the variance would not be contrary to the public interest.

JAY HOOLEY: If you limited it to the off time, weekends only...

NEIL DUNN: Yeah?

JAY HOOLEY: ...when you don't have the remainder of the majority of traffic in that area, I think you can...

LARRY O'SULLIVAN: How many trucks go through there? I drive there at least five times each weekend, back and forth. I can't tell you one time when I haven't stopped for a wide turning Stonyfield Yogurt truck, UPS truck, some of the oxygen trucks that go up there. These people have got to be kidding. If they would bring a family into that neck of the woods, you could imagine cars turning into that while all those trucks are going back and forth. They go through Sundays, they go through there Saturdays, they go through there every hour of the day and the night. So I can't imagine how long this would last. I mean, if they sat there, the potential tenants sat there and watched what was going on around there, they'd book out of there in a heartbeat. So I saw we grant the thing, let them try it out and good luck to them. But if they run over any kids, it's not us because heaven knows it's not a good place for a public gathering. I mean, if we have safety in mind, how could we not separate, which we have done, we've separated industrial and office uses specifically for a reason. Because we have concerns that people are going to get injured or hurt that...traffic accidents will happen, and they wanna do this right in the middle of an industrial zone. I gotta tell you, the realtors have a hell of a job in this town selling this stuff. I know the market's hard, but you gotta be thinking twice about trying to something like a gathering of families, I suspect, in an industrial zone. God knows what people think. You know, we try to do our best to separate this stuff. The Planning Board, our Town Master Plan, all indicate that those are things that we find important. And now we wanna...let's put a bar there, too. Right next to it.

JAMES SMITH: Well, let's...

LARRY O'SULLIVAN: Because frankly, the way she was describing it, we could have a gathering place after a gathering place over there. You know, either it means something or it doesn't. To me, it means something that we have an industrial zone and this is a non-industrial use. Totally and completely whacko. Other than

025 that...it's cheap. There's a place called the Station Firehouse...I'm sorry, Station, that was down in Rhode
026 Island.

027
028 JAMES SMITH: Well, that's a...

029
030 LARRY O'SULLIVAN: It wasn't meant to be what it turned into.

031
032 JAMES SMITH: That's a whole different story. That's way off. I think I still have a hard time trying to believe
033 that the way our zoning is set up, that we are discriminating to the level that this Federal law would be
034 offended. I think we permit this use in the majority of the zones. We specifically prohibit similar types of
035 places of assembly in this zone. So I don't think we're doing any kind of discrimination based upon a religious
036 freedom worship. That's the way I feel. Any comments?

037
038 NEIL DUNN: So what...?

039
040 LARRY O'SULLIVAN: Let's go through the five points.

041
042 NEIL DUNN: Yeah, and the five points I guess is where I was looking where you'd hang your hat on that then,
043 Jim.

044
045 JAMES SMITH: Okay. Okay, the first point, the variance will not be contrary to the public interest.

046
047 NEIL DUNN: And I think Saturday and Sunday it won't be, but if it was [indistinct] other days but that they
048 agreed that they would take restrictions on that, I mean that's why we have Industrial-II is because of that
049 public interest and the type of possible tenants. Maybe they're not all manufacturing now we're doing it but if
050 the building were to change hands and it could be all those heavy industries would be allowed and that's what
051 the public interest part is there.

052
053 LARRY O'SULLIVAN: It is even just a complex though, Neil, it's where it is. It's smack in the middle of an
054 industrial zone. And it has industrial uses. It isn't this particular park. And as I mentioned, we have, between
055 Fed Ex, the liquor stores, the distribution centers, the oxygen tank places, there's a lot of semi-trailer trucks
056 going through there. Lots of them. Stonyfield, the power company...

057
058 NEIL DUNN: So we're stating then...you're feeling that it would not be...it would be contrary to the public...

059
060 LARRY O'SULLIVAN: That is contrary to the public interest.

061
062 NEIL DUNN: The spirit of the ordinance would or would not be observed, number two.

063
064 JAMES SMITH: Well, in the written part here, it says similar uses, but I think what they're referring to is the
065 fact that in some of the places, they may have a conference room or something of that nature. Clearly, it's not
066 a use where they're inviting the general public into the building, so I don't think there is a similar use in these
067 other buildings.

069 JAY HOOLEY: There is some difference with, to me, in this, with a very limited operation, than the restaurant,
070 movie theater, et cetera, with probably seven days a week, you know, 12, 14, whatever it is, hours a day. That
071 is certainly a very different...when looking at other assembly uses.
072

073 JAMES SMITH: But still it's open to the...while it's a defined group, it is still the general public.
074

075 LARRY O'SULLIVAN: It's a growing group, right? Growing congregation?
076

077 JAMES SMITH: Yeah. Which...Any other comments on spirit of the ordinance?
078

079 LARRY O'SULLIVAN: I think Richard read the spirit of the ordinance in his letter, or he wrote it in his letter.
080

081 JAMES SMITH: Substantial justice is done.
082

083 JAY HOOLEY: Well, for the building owner, I think it would get them a tenant. For the religious organization, it
084 would certainly give them a space to operate. The question becomes, is substantial justice done regarding
085 getting in and out of there safely and I think there are a couple concerns regarding other tenants, but...
086

087 LARRY O'SULLIVAN: Another part of this is in her description here, or the description, that we're
088 discriminating against religious organizations. You know, the people who are at those meeting spaces and
089 offices now are all adults. I don't see any of them being...I probably should have asked the question whether
090 they were actually families with children before I suspected or make any interpretations. But I would think
091 that there would be. And...
092

093 JAMES SMITH: I think that's a reasonable presumption.
094

095 LARRY O'SULLIVAN: I think that's reasonable as well. So the significant difference is there are going to be
096 adults...or a significant difference, anyway, will be that there are adults that work there currently. And they're
097 the ones that go to the meetings and the spaces that are being used now for organizational meetings. So I
098 think there's a significant difference in the population of who would be attending versus who works there. I
099 don't see how it's gonna...
100

101 JAY HOOLEY: Diminish property.
102

103 LARRY O'SULLIVAN: ...diminish any property values.
104

105 NEIL DUNN: Nope.
106

107 LARRY O'SULLIVAN: But it would not be substantial justice? Are you still stuck on that one?
108

109 JAMES SMITH: Yeah. I'm also looking at number five. The second part of that argument, on this it talks about
110 the aviation museum.
111

112 LARRY O'SULLIVAN: What's that supposed to be, like in the neighborhood or...?
113

114 JAMES SMITH: Yeah.
115
116 LARRY O'SULLIVAN: That's not even in the neighborhood.
117
118 JAY HOOLEY: Yeah, that's pretty close by. The aviation museum is right down around the corner from...within
119 a quarter, half mile at most.
120
121 JAMES SMITH: But I'm not sure that was established...
122
123 LARRY O'SULLIVAN: We're talking about an office park up there.
124
125 JAMES SMITH: ...under our zoning.
126
127 JAY HOOLEY: Yup.
128
129 LARRY O'SULLIVAN: That's not in the same office park.
130
131 JAY HOOLEY: No, not in the same office park.
132
133 JAMES SMITH: Yeah, but it wasn't subject to the...it was...
134
135 LARRY O'SULLIVAN: That was a building that was converted anyway, right?
136
137 JAMES SMITH: I know, but I mean, it wasn't subject to our zoning regulations.
138
139 LARRY O'SULLIVAN: It's part of the airport stuff?
140
141 JAY HOOLEY: Oh.
142
143 JAMES SMITH: I believe so.
144
145 LARRY O'SULLIVAN: Or the city of Manchester.
146
147 JAMES SMITH: Yeah. Okay.
148
149 LARRY O'SULLIVAN: So, talk about an incompatible use, right? How about we talk about the...well, I suspect
150 that we stick with the number 5, talk about the substantial relationship between the purposes of the
151 ordinance and the application to the property. You can do anything you want in the way of offices there. So
152 the thing that is the issue is going to be the use as an assembly. For whatever purpose they wanna use it for.
153
154 JAMES SMITH: Any other questions? Comments? Would somebody like to make a motion?
155
156 LARRY O'SULLIVAN: Do you want a trial balloon motion or...? There's only four of us. Did you offer the
157 applicant the opportunity, by the way?
158

159 JAMES SMITH: I mentioned that before the meeting started to both representatives [of the cases on the
160 agenda].
161
162 LARRY O'SULLIVAN: Okay, do you want a trial balloon or do you want an actual...?
163
164 JAMES SMITH: Yeah.
165
166 LARRY O'SULLIVAN: Let's do the trial balloon. Mr. Chairman, I'd like to make a motion that we grant case one
167 with the restriction that the Sunday assembly be between eight and one exclusively and that all other zoning
168 requirements need to be made prior to the first meetings, I guess.
169
170 NEIL DUNN: Zoning or building code?
171
172 LARRY O'SULLIVAN: Both.
173
174 NEIL DUNN: Okay.
175
176 LARRY O'SULLIVAN: Zoning and building code. So we're limiting it...
177
178 JAYE TROTTIER: Prior to...?
179
180 LARRY O'SULLIVAN: First meetings. There's no other Planning Board interference or...reason to have the
181 Planning Board involved with this, right? So there's not like a site review or anything, so...
182
183 RICHARD CANUEL: Yes, there would be.
184
185 LARRY O'SULLIVAN: There is? Why?
186
187 RICHARD CANUEL: Because it's a change of use. It would require site plan review by the Planning Board.
188
189 LARRY O'SULLIVAN: Okay. Then I'd like to add then to my motion that we put a time restriction on it of 18
190 months after Planning Board approval it expires.
191
192 JAY HOOLEY: Larry, did you want to...
193
194 LARRY O'SULLIVAN: Without the substantial work being done to the facility.
195
196 JAY HOOLEY: Did you want to add that the variance expire with the occupancy of this particular tenant?
197
198 LARRY O'SULLIVAN: Good idea. And that the variance expire with the change of use of that address.
199
200 JAMES SMITH: Or the vacancy of...
201
202 LARRY O'SULLIVAN: Or the vacancy by the tenant?
203

204 JAMES SMITH: By this tenant.
205
206 JAY HOOLEY: By that tenant.
207
208 LARRY O'SULLIVAN: By this tenant. Okay, that's even better.
209
210 JAMES SMITH: Yeah. Do we have a second?
211
212 LARRY O'SULLIVAN: Do you want to read it back?
213
214 [Laughter]
215
216 LARRY O'SULLIVAN: Or shall I try it again? That's my trial balloon.
217
218 JAY HOOLEY: I will second that.
219
220 JAMES SMITH: Okay. We have a motion and a second. All those in favor of the mo...?
221
222 JAY HOOLEY: Do you want any further discussion?
223
224 JAMES SMITH: Well, okay. Any further discussion?
225
226 JAY HOOLEY: No? Okay.
227
228 JAMES SMITH: Any further comments?
229
230 LARRY O'SULLIVAN: Okay, I was throwing it up as a trial balloon with the purpose and intent, I guess, of this is
231 to see how strongly you felt about safety issues on a Sunday morning specifically. Because that is probably the
232 least intense time on that road, but it's not like there's no traffic there, that there's no deliveries there, that
233 you don't have UPS going up and Fed Ex going up and Stonyfield going, you know, 18 wheelers going left and
234 right all over that road. So it was my trial balloon with the intent to see if you have an argument or if anybody
235 has any concerns that the timeframe, more than anything else, was the safest possible time to do the type of
236 things that they're trying to do. And limiting it to that.
237
238 JAMES SMITH: You know, I think one of the things that supports this is the fact that it is...the access road to
239 this complex is a U-shaped road...
240
241 LARRY O'SULLIVAN: Mm-hmm.
242
243 JAMES SMITH: ...and it doesn't, how would you say, induce any thru traffic in to that location, other than the
244 ones going to that particular site. I mean, you have a road around in front of it, the complex. But the actual...
245 what I'm looking at is this road here...
246
247 LARRY O'SULLIVAN: There's a big U-turn.
248

249 JAMES SMITH: It...
250
251 LARRY O'SULLIVAN: That's where people make their U-turns. Because there's no other place. You can't back
252 park anywhere. So I what see there happening all the time is trucks going in one end and coming out the
253 other.
254
255 JAMES SMITH: Yeah, but the only trucks going to that...up through here would be those going to that
256 complex.
257
258 LARRY O'SULLIVAN: Okay.
259
260 JAMES SMITH: At least, I...because I would think anybody who's coming to the complex down in here, they're
261 gonna be going either this way or this way. If they get to this point and realize they gotta go back here and
262 make that circuit, that means they've made a mistake. In other words, you've got traffic...and again, I'm
263 looking at this sketch here. The main traffic flow, if they're going around the airport complex, would be
264 coming up to this intersection and make a right turn and follow it around or they continue straight ahead.
265 You've got a three building complex in there. The only traffic in and out of that thing, I would imagine, would
266 be those going to those particular buildings. Now, on the other side of the coin, the people attending these
267 services would be coming into that complex and they would be parking around that building and that's where
268 they'd be exiting their vehicles. I can't see them...they wouldn't be down on Grenier Field Road. So...
269
270 LARRY O'SULLIVAN: It didn't look like there was 130 spaces [indistinct].
271
272 JAMES SMITH: Oh, there is.
273
274 LARRY O'SULLIVAN: Alright.
275
276 JAMES SMITH: Whether there's 130 right around that one particular building, because there is parking on
277 both sides of building 136A, 136B, and in fact, it's double parking lot. They're parking in front of the building
278 and on the other side of that lot. I'm not sure how many parking spaces are...in fact, there's more parking
279 down here. So I would presume if you're going to go to this part of the building, you're gonna be more than
280 likely parking between the two buildings. Because again, this whole site is on the side of a hill.
281
282 LARRY O'SULLIVAN: Mm-hmm. I've been up there.
283
284 JAMES SMITH: If you're parking in the upper lot, I doubt very much if you're gonna walk down to make an
285 entrance in that lower part of that building. The only place you're gonna park is right in here. So as far as
286 small children and stuff, getting out on Grenier Field Road, I don't think that's too much of a likelihood. Any
287 other comments?
288
289 LARRY O'SULLIVAN: So we're going with eight to one, was it? On Sunday? Nothing to discourage mixed use,
290 huh?
291
292 JAMES SMITH: Yeah. Any other comments or discussion about the motion?
293

294 LARRY O'SULLIVAN: Yeah, I'd like to make a comment. It didn't matter to me whether this is a religious facility
295 or not, by the way. But if they're willing to meet at the least intense times of traffic on that road, it would
296 make me feel more comfortable.
297
298 JAMES SMITH: Okay, I'm gonna ask a question of the applicant. Would eight to one be sufficient for your
299 needs as far as religious use?
300
301 LARRY O'SULLIVAN: Assembly use.
302
303 JAMES SMITH: Assembly use.
304
305 ABIGAIL CYR: I think if we had...
306
307 JAY HOOLEY: You could...you wanna mic?
308
309 ABIGAIL CYR: If we were...
310
311 JAMES SMITH: Wanna go to one of the mics, please?
312
313 ABIGAIL CYR: I think it would be acceptable because those will be...I mean those are definitely the primary
314 times, but if we were to grow, we would, you know, Saturday night would be a good option. Or if we were
315 going to do anything on an evening. Which again, we would be choosing hours which were not the business
316 hours that they rest of the tenants were using or that there was intensive traffic on those roads. So evenings
317 and weekends would be our preference.
318
319 LARRY O'SULLIVAN: You've got a motion and a second on the floor.
320
321 JAMES SMITH: Okay. Thank you.
322
323 LARRY O'SULLIVAN: So in other words, I'm not willing to withdraw my motion.
324
325 JAMES SMITH: Okay. So we either have to vote it up or down.
326
327 LARRY O'SULLIVAN: Do you want to withdraw your second?
328
329 JAY HOOLEY: Did you wish to amend it?
330
331 LARRY O'SULLIVAN: No. I don't. Withdraw your second. Let's try another one.
332
333 JAY HOOLEY: Okay...
334
335 LARRY O'SULLIVAN: This is a...
336
337 JAY HOOLEY: I'll withdraw my second.
338

339 JAMES SMITH: Okay, so that motion dies because we lost the second. Now...
340
341 LARRY O'SULLIVAN: Somebody else give it a try.
342
343 JAMES SMITH: Somebody else want to make an attempt at a motion? Since you withdrew your second,
344 you're the next candidate. [Laughter]. We only have so many choices.
345
346 JAY HOOLEY: Okay. Before I get to that, I will say I don't know that the evening...that was kind of the
347 discussion earlier that when you start to bring that into play, then I really start to see a conflict.
348
349 JAMES SMITH: Yeah.
350
351 JAY HOOLEY: That doing this only on the weekends when the remainder of the local operations were not
352 functioning did differentiate it, for me, from other assemblies such as a restaurant, et cetera.
353
354 JAMES SMITH: Okay.
355
356 JAY HOOLEY: Exactly one o'clock, I don't know that that...so...
357
358 JAMES SMITH: I think I would be willing to go along with the whole...
359
360 JAY HOOLEY: Weekend?
361
362 JAMES SMITH: ...Sunday day or...
363
364 JAY HOOLEY: Okay.
365
366 JAMES SMITH: I think part of the problem, when you start including Saturday, now we're starting to
367 incrementally grow.
368
369 JAY HOOLEY: Yeah, you may have more business use up there as well, too.
370
371 JAMES SMITH: The initial presentation specifically dwelt on the Sunday.
372
373 JAY HOOLEY: Okay. I'll give it a shot. I'll make a motion to approve case number 2/20/2013-1, for
374 Woodhaven Limited Partnership, with the following restrictions: that it be restricted to Sunday assembly or
375 worship use only...and I apologize, I'm gonna need a little help here on that. There were one too many.
376
377 JAMES SMITH: Well, you wanted one...Planning Board approval.
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379 JAY HOOLEY: That it's conditional upon Planning Board approval, which would happen anyway.
380
381 JAMES SMITH: In compliance with all...
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383 JAY HOOLEY: And that the...

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JAMES SMITH: Compliance with building codes and Life Safety Codes.

JAY HOOLEY:section of the building in question be brought up to building code and fire code for this type of occupancy, assembly.

JAMES SMITH: Yeah.

LARRY O'SULLIVAN: Can you put a time limit on it?

JAMES SMITH: And...

JAY HOOLEY: And that all work be completed prior to the first use and that occur within 18 months...

LARRY O'SULLIVAN: Of Planning Board approval.

JAY HOOLEY: ...of Planning Board approval.

JAMES SMITH: And the variance would expire upon...

JAY HOOLEY: And the variance shall expire with the termination of the lease of this occupant.

JAMES SMITH: Do we have a second?

[No response]

JAY HOOLEY: I think you can declare that one dead.

NEIL DUNN: No, I guess I'll second it. Sure.

JAMES SMITH: Okay. Neil seconds that. Any discussion?

LARRY O'SULLIVAN: Sure. So we figured that it met the spirit of the ordinance after all, huh?

NEIL DUNN: No, I'm just seconding the motion.

LARRY O'SULLIVAN: And that it was in the public interest and that substantial justice would be done and that there is no fair and substantial relationship between the general public purposes of the ordinance and this particular property. I still have problems with that. That was...

JAMES SMITH: Any other discussion?

NEIL DUNN: I'm good.

JAMES SMITH: Okay, all those in favor of the motion?

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JAY HOOLEY: Aye.

JAMES SMITH: All those opposed?

NEIL DUNN: Aye.

LARRY O'SULLIVAN: Nay.

JAMES SMITH: Aye. So that motion fails.

RESULT: THE MOTION TO GRANT CASE NO. 2/20/2013-1 FAILED, 1-3-0.

RESPECTFULLY SUBMITTED.



NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED MARCH 20, 2013 WITH A MOTION MADE BY LARRY O'SULLIVAN SECONDED BY JAY HOOLEY AND APPROVED 5-0-0.