

**City of Keene
New Hampshire**

SPECIAL ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, April 11, 2016

5:00 PM

City Hall, 2nd Floor Committee Room

Members Present:

Louise Zerba, Chair
Stephen Bragdon, Alternate
David Curran
Josh Gorman, Alternate
Nathaniel Stout

Staff Present:

Tom Mullins, City Attorney
Rhett Lamb, Asst. City Manager
Tara Kessler, Planner

Members Absent:

Jeff Stevens, Vice-Chair
Joseph Hoppock

I. Introduction of Board Members

Chair Zerba called the meeting to order at 5:00 PM and introduced the Board Members. She noted this Special Meeting was convened due to an error in notifying the abutters for a previous meeting. Chair Zerba reported on January 4, 2016 the ZBA did grant approval for the soccer program to exist as a recreational activity (business) at 17 Washington Street. The applicant resubmitted his application for a Special Exception and notices have been sent; the application will be reheard this evening.

II. Hearings

Chair Zerba opened the public hearing with the reading of the notice. She also noted the correction to the application number as ZBA 16-13; not ZBA 16-12.

ZBA 16-13:/ Petitioner, Igor Monteiro, President of Red Devils Soccer Club, Inc., of Keene, NH, requests a Special Exception for property locate at 17 Washington St., Keene, owned by Washington Park of Keene, LLC, of 9 Old Derry Rd., Hudson, NH, which is in the Central Business District. The Petitioner is requesting a Special Exception to operate a soccer program per Section 102-482 for a recreational activity as a business.

J.R. Davis, Attorney of 28 Middle Street thanked the Board for their willingness to schedule this meeting on such short notice. Attorney Davis advised some of the notices for the previous meeting did go to the wrong addresses; he was not aware of this error until he was in front of the Planning Board. He reiterated new notices were sent and the petitioner did resubmit his application. Referring to testimony provided at the January 4, 2016 meeting Attorney Davis said

the petitioner is proposing no permanent changes to the facility other than to improve the field conditions and bring the fencing back up to standards. The fencing work on the east side of the field has already been completed. Attorney Davis addressed the parking adding at a minimum it will be the same as was associated with the Middle School. Attorney Davis reported the City Council has authorized the City Manager to enter into a License Agreement regarding the easterly access to 1) drive through the City of Keene parking lot in order to get to the easterly parking lot, and 2) to allow use of the City parking facility. Attorney Davis stated we are waiting for the license to actually be produced. Attorney Davis reported there will be a dumpster and temporary lighting on site. The temporary lighting will only be used when the field is in use. Referring to previous testimony Attorney Davis noted the maximum number of people would be approximately 50; practices would be during the week with games on the weekends. The petitioner expects to be done by 9:30 PM on week days with the maximum latest being 10:00 PM at any time. Attorney Davis addressed the conditions under which this Special Exception is being sought noting this is before the Board because it involves both indoor and outdoor use. He also noted all the access will be via Spring Street (drop-off and pick-up of students).

Chair Zerba noted Attorney Davis mentioned indoor use; she asked for clarification on whether or not there would be indoor activity. Attorney Davis clarified this proposal entails outdoor use.

There being no further questions for Attorney Davis he again thanked the Board and noted he would like to reserve the opportunity to respond if there are additional questions from the Board or the public.

Chair Zerba asked for public comments.

Bob Beauregard, of 47 Spring Street pointed out his property on the map displayed. In response to Chair Zerba Mr. Beauregard noted the City lot is 41 Spring Street, and clarified the petitioner will not be crossing on his property. Mr. Beauregard stated he has no objection to the use of the soccer field for daytime use only; he does object to nighttime use. Mr. Beauregard indicated he has a problem keeping tenants due to the noise; diesel fumes are also an issue. Mr. Beauregard also suggested the propane tanks on the site (northeasterly corner inside the fence) have not been addressed; adding he would like to hear from the Fire Department on their status. Mr. Beauregard reported two of these tanks are on the surface and three are buried. He also indicated the tanks are just inside the fence of the proposed soccer field (northeast corner). In response to Chair Zerba Mr. Beauregard suggested the tanks were added after the Middle School moved. Furthering his comments he noted they are not inside the area roped off for the soccer fields but are accessible to people inside the fence for the soccer fields. Continuing the discussion Mr. Gorman suggested this could be addressed without impeding the playing surface. Mr. Beauregard agreed. Mr. Beauregard is concerned because they are close to his property line; he is also concerned with valve accessibility.

Mr. Gorman asked Mr. Beauregard how the daytime use would mitigate the exhaust fumes. He also asked for Mr. Beauregard's estimation of a reasonable time to curtail activity. Mr. Beauregard then commented he doesn't feel the exhaust fumes would be that much of an issue; adding the nighttime activity would cause him to suffer all the lights shining into his apartments.

Mr. Beauregard also stated running the lights until 9:30 or 10 o'clock at night will infringe on the rights of his tenants. His concern with the fumes comes from the exhaust from the diesel generators used to power the temporary lights.

William Beauregard, of 57 Washington Street noted he also owns a number of properties surrounding the site; he pointed to them on the map displayed. Mr. Beauregard referred to the parking lot put in by the School District noting as a governmental entity there is no screening whatsoever. Mr. Beauregard indicated at night the lights would shine right down into the windows of the property on Roxbury Court. Mr. Beauregard agreed with his brother's previous comments regarding the noise from the diesel generators reverberating off of the brick buildings. Continuing his comments and noting his concerns Mr. Beauregard explained as part of the school system all activities ended at dusk; he suggested the lights will be an issue in the fall.

Mr. Curran affirmed Mr. Beauregard's comments regarding this issue also going before the Planning Board this evening; he explained they will be covering issues such as lighting and screening.

Mr. Curran also posed the following question to staff; when this moved from a governmental use to a private use how did it move along without anyone discussing screening or protection of the propane tanks, and lighting issues. Chair Zerba commented she would assume it was not used; adding she also has a question regarding the propane tanks. She asked if the Fire Department or some other entity wouldn't have dealt with this.

The City Attorney reminded the Board they do have a fair amount of latitude under the Special Exception criteria with respect to any Special Exception application; public health, safety, or welfare. Noting the questions regarding the propane tanks are valid questions; the City Attorney suggested those questions should go to the Fire Department for any further review. Chair Zerba asked if that request could go through the Planning Department or should the Board set a condition in this regard. After additional comments the City Attorney agreed the Board could condition it upon review and approval by the Fire Department for the safety of the propane tanks. He continued stating to allow the subject matter experts determine what needs to be done.

There being no further questions/comments from the public Chair Zerba asked Attorney Davis if he had any additional comments.

Attorney Davis indicated the propane tanks are in the upper northeastern corner of the field (not depicted on the map); he advised his client has indicated the area around the propane tanks will be enclosed with cyclone fencing. Mr. Bragdon asked what the propane tanks serve. Attorney Davis replied he did not know; he assumes they were servicing the school (building).

Continuing, Attorney Davis submits the nighttime use is reasonable for the neighborhood. He addressed the lighting concerns noting his client will be using directional lights for the fields, and is willing to use them with shutoffs or hoods; it is not his intent to light the parking lots.

Attorney Davis noted there is already a lawful use for the City to have parking on what's labeled on the map as 41 (41 Spring Street); noting the lighting concerns he doesn't feel the petitioner's use will be substantially increased as far as that's concerned.

Addressing the noise factor Attorney Davis suggested the vast majority of the noise would come from the playing field itself. Attorney Davis suggested games would be done by 9-ish during the school year and perhaps later in the summer; but in no case any later than 10:00 PM.

Attorney Davis addressed the previous problems of reefers running diesel suggesting there is a big difference between a vehicle parked in the parking lot emitting diesel fumes as opposed to four lights in the corners of the field. Understanding why the neighbors would have issues with this Attorney Davis continued stating he still feels this is a reasonable use, location, and time. He reiterated the propane tanks will be fenced in.

Mr. Bragdon asked if the petitioner was looking to keep the lights on until 10:00 PM. Attorney Davis replied in the affirmative; adding as a maximum. Mr. Bragdon then asked if the petitioner could instead do something two hours past dusk. Attorney Davis noted exactly when this program starts/ends each year is weather dependent. Attorney Davis also noted 10:00 PM shows up some of the Design Standards for the Planning Board. Discussion continued with Mr. Gorman asking if there could be some restrictions in place during the week days. Attorney Davis noted the weekdays will primarily be practices for the school age children, and will probably get done earlier.

Mr. Gorman asked for clarification that the generators are diesel; Attorney Davis replied in the affirmative. Mr. Gorman then asked if Attorney Davis was familiar with their emissions compared to a reefer truck. Attorney Davis commented similar lights without the cutoffs have been used at Carpenter Field for the football program with no problems reported. The petitioner did look into solar lights and found they don't produce as much light and are much more expensive to rent. Attorney Davis also mentioned the proposed generators do meet the City's Design and Performance Standards. Attorney Davis continued stating he knows nothing about the emission standards other than it meets the EPA requirements. Chair Zerba indicated the Planning Board would be dealing with the lighting in depth.

Mr. Bragdon clarified the Planning Board would be dealing with lighting and asked if they would also be dealing with times. Discussion continued with Board members agreeing they needed to know who has jurisdiction over the timing. Rhett Lamb, Planning Director noted staff put together a recommendation that the Planning Board would deal with lighting, some noise, and the screening issue. Mr. Lamb sees the timing as a use issue which is relative to this Board's jurisdiction. He recommended if the Board has an issue with the timing it should be put on the record and dealt with through the Board's authority. Mr. Lamb asked for the City Attorney's opinion on this. The City Attorney agreed with Mr. Lamb. Attorney Davis advised the petitioner has no objection to the Board setting time limits; he proposed 9:30 PM on week days and 10:00 PM on weekends.

Igor Monteiro, of 111 Ridgewood Avenue noted soccer is the second biggest sport in America for youth ages. Mr. Monteiro explained his history with the sport and the connections he has made along the way. He also noted the partnerships made and upcoming events. Mr. Monteiro noted Keene has never had anything like this; adding this will be the biggest soccer club within 50 miles. Mr. Monteiro also explained the timing pointing out the club sports are not allowed to overlap with varsity sports. There were no questions for Mr. Monteiro.

There being no further questions/comments Chair Zerba closed the public hearing at 5:34 PM.

Mr. Stout made a motion seconded by Mr. Curran to approve ZBA 16-13 subject to the following condition:

1. Fire Department review and approval of the propane tank treatment.

Mr. Stout noted most of this activity will be during the summer months, the lighting is relative to the parking which he sees as an existing condition, and he doesn't feel that lighting relative to how parking affects the neighbors is an issue for this Board. Board members continued their discussion agreeing the Fire Department should review and approve the propane tank treatment and that the hours should be set in stone.

Mr. Bragdon motioned to add a second condition regarding the hours to which Mr. Stout and Mr. Curran agreed.

2. Hours to be no later than 9:30 PM on week days and 10:00 PM on weekends.

Chair Zerba went over the Findings of Fact for a Special Exception:

The proposed use is similar to one or more of the uses already authorized in that District and is an appropriate location for such a use: Granted 5-0.

Such approval would not reduce the value of any property in the District nor otherwise be injurious, obnoxious, or offensive to the neighborhood: Granted 5-0.

There will be no nuisance or serious hazard to vehicles or pedestrians: Granted 5-0.

Adequate and appropriate facilities will be provided for the operation of the proposed use: Granted 5-0.

The motion was approved on a vote of 5-0 with two conditions:

1. Fire Department review and approval of the propane tank treatment
2. Hours to be no later than 9:30 PM on week days and 10:00 PM on weekends

III. Adjournment-

There being no further business Chair Zerba adjourned the meeting at 5:39 PM.

Respectfully submitted by:
Mary Lou Sheats-Hall, Minute Taker
April 12, 2016