

ZONING BOARD OF ADJUSTMENT  
December 6, 2011

**APPROVED:**

2/7/12\_\_jrl\_\_\_\_\_

AGENDA: SPECIAL EXCEPTION: JONATHAN T. WHITE REALTY LLC,  
545 Pleasant St., #228-005  
VARIANCE: JONATHAN T. WHITE REALTY LLC, 545  
Pleasant St., #228-005

ATTENDING: Alan DeStefano (Chairman), Michael Willingham, Lorraine  
Bohmiller, Larry Denton, Ashley Dolloff, Richard LaFlamme  
(alternate)

ABSENT: -----

OTHER: Michael Capone (Town Administrator), public

The meeting opened at 6:00 pm.

MINUTES OF NOVEMBER 1, 2011:

L. Denton made a motion, second by L. Bohmiller, to approve the minutes as read. The motion carried.

SPECIAL EXCEPTION: JONATHAN T. WHITE REALTY LLC

Mr. DeStefano explained the process for hearings. Ms. Laferriere read the application, abutters notified, where the hearing was advertised and noted that there were several calls for information only and no written responses.

Mr. White stated that they are looking to use retail space in the Industrial zone.

The Board looked at the materials given and determined that the application was complete via a voice vote.

Mr. White stated that he understands that if he meets the criteria, this can be accepted. The use would be less intense than an industry would be and less of an environmental concern. There is retail space already just two doors down.

SPECIAL EXCEPTION/WHITE continued:

Mr. Willingham asked if Mr. White was the developer or the owner and Mr. White answered that he is the developer. He continued to say that the building will be cement block and metal but the front façade will be mostly glass and it will be nicely landscaped. Mr. Willingham asked who the tenant will be and Mr. White stated that it is a National Chain; the Family Dollar. They have over 7,000 locations, he added. They do well in areas that have no Wal-Mart. It is good quality stuff, like a mini-Wal-Mart. Mr. DeStefano asked if they will have any refrigeration and Mr. White stated that they will have about 5 units and a tiny percentage will be groceries. These stores are doing well in these times. Mr. DeStefano asked if they will own the building and Mr. White stated that he will be the owner and will lease to Family Dollar. The lease is for ten years.

Special Exception criteria was then addressed and Mr. Willingham had to lend the applicant a copy of his application.

1. Appropriate location and of adequate size – Mr. White stated that it will be the perfect size for this store. 8,000 sq. ft. of retail store will be good for the town. It meets all setbacks.
2. The use will not adversely affect the character of the area – Mr. White stated that it will not affect the character of the area. There is a huge industrial facility there. The building will be attractive and nicely landscaped.
3. There will be no nuisance or serious hazard to vehicles or pedestrians – There will be none. The plan is designed by a professional engineer.
4. Will not place excessive or undue burden on Town services or facilities – It will be a low impact facility. They will have private sewer and water due to the distance to hook up.
5. No significant effect resulting from such use upon the public health, safety, and general welfare of the neighborhood – The building will be done to code. The safety of the customers is a high priority.

Mr. DeStefano asked if a sprinkler system is required and Mr. White answered that it is not. Mr. DeStefano asked about a traffic light and was told that there is nothing by the State that he knows of. Mr. DeStefano then asked about the entrances and exits. Mr. White said that the Robie Road entrance is for the delivery truck which is only once a week. They may have a Coke or Garrelick delivery in between. Ms. Bohmiller asked about their intended hours of business and was told that it will be 8:00 a.m. to 9:00 p.m., 7 days a week.

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SPECIAL EXCEPTION/WHITE continued:

Ms. Bohmiller then asked if it will be like the one in Meredith. Mr. White answered that it will be the same color; very similar. Mr. Denton asked how many employees do they intend to have and was told two, with four at most. Mr. Denton then asked about expected vehicle count and was told that they get about 200 customers a day and figure 1 ½ customers per car for a top count of 100 cars, but they only stay a couple of minutes (5 to 10 at most). When asked if this could be used for any other business, Mr. White stated that it could but he will have a 10 year lease.

Public Comment in favor – None.

Public Opposition – Tom Keegan, abutter, stated that he thought that town water supplies the house. Mr. White answered that it is not an adequate line for the business and would be too costly to upgrade. Mr. Keegan then asked about what measures they have to prevent run-off onto the Keegan property. Are there adequate provisions? Mr. White stated that the engineer has gone through that. There will be some swales in front. Mr. Willingham mentioned that these items are Planning Board issues. Mr. Keegan asked about configurations and was told that this should also be brought up with Planning at the Site Plan.

Mr. Willingham explained that the ZBA has two things to address with this property: The Variance and the Special Exception. He added that, in the Special Exception, if approval is given, he would like to see a note stating that if the use changes to a different retailer, this would come back to the town for Special Exception. Mr. DeStefano stated that this could be done as a condition of the approval. He then summarized the case and closed the public portion of the hearing.

In deliberation, Mr. Denton stated that he feels that, in allowing this commercial property in the Industrial zone is a good use and less environmentally demanding. Ms. Bohmiller and Ms. Dolloff agreed. Mr. Willingham felt that the use is fine, the design and layout is good and Route 104 can handle the traffic. Mr. DeStefano agreed to the stipulation presented by Mr. Willingham previously and felt it was for the protection of the town. All members agreed.

M. Willingham made a MOTION, second by L. Bohmiller, to APPROVE THE SPECIAL EXCEPTION OF JONATHAN T. WHITE REALTY LLC WITH THE CONTINGENCY THAT IF A NEW TENANT IS CONTEMPLATED, THE OWNER MUST COME TO THE ZBA FOR A NEW SPECIAL EXCEPTION. The motion CARRIED.

The Notice of Decision was signed and Mr. DeStefano reminded the applicant that there is a 30 day time limit for anyone to appeal.

VARIANCE: JONATHAN T. WHITE REALTY LLC

Ms. Laferriere read the application, list of abutters notified, where the hearing was advertised and stated that there were no calls nor any correspondence received.

Mr. White stated that Family Dollar is asking for this Variance as they have several stores and 29 spaces is more than adequate for their needs. The Meredith store has 24 spaces and Mr. White has never seen a car parked beyond these.

Mr. DeStefano asked if the application is considered complete. Mr. Willingham pointed out that the plan shows parking spaces that are 9' x 18'; the Zoning Ordinance calls for 10' x 20'. He thought that they can squeeze more in if they are 9' x 18', it seems. Mr. White verified that the spaces are 9' x 18' on the plan. Mr. DeStefano stated that if they ask for 29 spaces and then use 9' x 18' we lose even more. Ms. Dolloff thought that they would need another variance in order to drop the size to 9' x 18'. Mr. Willingham suggested that they hear the case for the attending abutters, contingent that the 29 spaces be 10' x 20'.

M. Willingham made a MOTION, second by A. Dolloff, to APPROVE THE APPLICATION AS COMPLETE FOR HEARING AND, IF APPROVED, WE WOULD ADD THE CONTINGENCY THAT THE SPACES BE 10' X 20'. The motion CARRIED.

Mr. Denton asked why they have 9' x 18' spaces on the plan. Mr. White said that he had a conversation with the engineer about that but is not sure why. Mr. Willingham asked Mr. White if he is comfortable with the Board looking at 29 spaces of 10' x 20' and Mr. White answered that he is.

The criteria was then addressed:

1. Not contrary to the public interest – The tenant does not require more parking spaces than the number proposed and has thousands of stores so is extremely aware of what spaces are needed.
2. The spirit of the ordinance would be observed – The parking is designed so that people will not park beyond the designated spaces. There would be more than enough spaces for the site.
3. Substantial justice would be done – It would allow the project to be completed without undue cost and without undue impervious area of the lot.
4. Values of surrounding properties would not be diminished – There would be adequate parking and there would be enough green space to make for an attractive development.

VARIANCE/WHITE CRITERIA continued:

5. Unnecessary hardship – It would not be necessary for the proposed business to have as many parking spaces as the ordinance requires. The proposed use is reasonable because it fits in with other uses in the area. The lot is not suited for more due to its odd shape. This is a known tenant with a known amount of needed spaces. 49 spaces double the need. All that pavement is not good for the environment or esthetics. The odd shaped lot would be difficult to get 49 spaces and would not allow this project to go forward.

Mr. DeStefano asked why Mr. White says that the consumer will only be in the store a short time. Mr. White stated that grocery stores are usually average 25 minutes, clothing stores ½ an hour. This type of store, the consumer turns over quickly. Ms. Bohmiller stated that she stays longer than that. A discussion followed.

The Chair called for public input for the proposal. None was forthcoming. He then called for comments in opposition. Tom Keegan, abutter, stated that, as it is an odd-shaped lot, 10' x 20' spaces and a septic system would take up even more space. Mr. DeStefano explained that the Planning Board will address that. He added that Planning can require a buffer zone between a commercial property and a residential property, as well. Mr. Keegan asked if they have an approved entrance on Route 104 and Robie Road. Do they have State approval? Mr. White answered that this is in process.

With no other comments, Mr. DeStefano closed the public portion of the hearing.

Mr. Denton stated that their plan would be less impervious. Ms. Bohmiller asked who decided on 29 spaces and was told that the engineer did. She asked if 27 would be reasonable and Mr. White answered that it would. Mr. LaFlamme stated that a handicap space should be 12' x 20' and have a buffer area. They will lose 7 spaces, as near as he can see. As to the Dollar Store in Franklin, he has never seen more than 20 cars. Ms. Dolloff asked if the Board can continue this hearing and allow the applicant to change to the correct spaces on the map. A discussion followed. It was thought that they might need a continuance based on the calculation. Mr. Denton stated that if they do 29, the Planning Board will look at it and maybe they would be okay. Ms. Bohmiller thought that they would need to come back to the ZBA. Mr. Willingham said that it would have to be very clearly stated as to what is needed. Mr. Denton added that we are talking about approving 29 10' x 20' spaces. Mr. LaFlamme said that they must come back with a change of schematics. Mr. Willingham thought that a continuation would be fair to the applicant right now or we would have to deny. Ms. Dolloff asked if the Board denied, could the applicant come back? Mr. DeStefano asked if it is better for the applicant to continue or to deny. More discussion followed.

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VARIANCE/WHITE continued:

Mr. DeStefano felt that we could continue with the stipulation that if there is a change, wouldn't we need to re-notice? Ms. Dolloff felt that if we continue the hearing, he must have 29 places that are 10' x 20'. Mr. Denton asked if the applicant thought that he can bring the plan up to that and Mr. White felt that he could. Mr. Willingham thought that the Board could vote their approval and let the Planning Board determine. This would be with 10' x 20' spaces.

Mr. DeStefano asked if the Board thought that the applicant met the criteria. Ms. Dolloff thought that he met the criteria but she is not comfortable with the drawing. Mr. Willingham asked about the number of spaces and Mr. DeStefano stated that the approval would be for the request of 29 spaces but of 10' x 20' in size.

M. Willingham made a MOTION to APPROVE THE VARIANCE FOR JONATHAN T. REALTY LLC FOR 29 PARKING SPACES THAT ARE 10' X 20' AND THAT THE APPLICANT MUST HAVE A NEW SITE PLAN COMPLETE WITH IMPERVIOUS COVER AND PARKING STRIPING SO NOTED AND APPROVED BY THE PLANNING BOARD. The motion CARRIED.

COMMUNICATIONS:

Mr. DeStefano read the LRPC Local Services Program announcement. The Town & City magazine will be in the Planning/Zoning office.

OTHER:

The secretary questioned the role of the Alternate position. Mr. DeStefano stated that it is alright for the alternate to speak but he/she cannot vote. Both Ms. Dolloff and Mr. Denton stated that they were not allowed to speak when they were alternates. The secretary explained that this was so that, in speaking they do not show sides and be unable to replace a missing member. Mr. DeStefano felt that it was okay to get expert opinion from an alternate with expertise. He/she just cannot vote.

NEXT MEETING:

Our next meeting is scheduled for Jan. 3, 2012. We have nothing on the agenda as yet. The final application date for that meeting is this Friday. Mr. DeStefano will wait for an e-mail from the secretary and then determine if we hold that meeting.

With no other business, M. Willingham made a motion, second by L. Denton, to adjourn at 7:35 p.m.

Respectfully submitted,  
Jan Laferriere, recording secretary