

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 3, 2021

6:30 PM

**Hybrid Meeting:
Council Chambers/via Zoom**

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Arthur Gaudio
Michael Welsh

Staff Present:

Rhett Lamb, Community Development
Director/Assistant City Manager
Corinne Marcou, Zoning Clerk

Members Not Present:

Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public body meetings) during the declared COVID-19 State of Emergency. He called the meeting to order at 6:34 PM.

I. Introduction of Board Members

Roll call was conducted.

II. Minutes of the Previous Meeting – None

Zoning Clerk Corinne Marcou stated that due to the April meeting being so late in the month, the Minute-Taker was still working on the draft minutes from that meeting when the May agenda packet was sent to the Board; there are no minutes to approve this month.

III. Unfinished Business

A. Revisions to Zoning Board of Adjustment Regulations, Section II, I-Supplemental Information

Chair Gorman asked if Staff has anything to address. Rhett Lamb, Community Development Director, noted the agenda item regarding amendments to the Board's Rules of Procedure for the Board's consideration. The existing Rules of Procedure require the Board to have some discussion at a prior meeting, so this is the notice that the regulations are up for discussion though there is not meant to vote to adopt these changes at this meeting.

Ms. Taylor stated that what was included in the agenda packet is her suggestion based on the discussion at the April meeting. She continued that the Board has been frustrated on more than one occasion regarding being presented with information at the public hearing that they have not seen before. It is unfair to both the Board and the applicants to have the Board look at information cold in the middle of a public hearing. They also had discussed briefly that the portion of the rules is a little vague about how this should be handled. Thus, the submitted proposal and is open to any suggested changes.

Chair Gorman stated that he proposes that since Zoning Administrator John Rogers is not present at this meeting, it might be better to discuss this next month when he is back, since ultimately it will affect him potentially more so than the Board. He continued that he welcomes any commentary from Mr. Lamb as well. He asked if anyone agrees or disagrees.

Mr. Hoppock stated that he agrees with tabling this until the next meeting. Mr. Welsh stated that he agrees also. Ms. Taylor stated that she is fine with that; it is a good idea to wait until Mr. Rogers has had a chance to add his comments to the discussion. Mr. Hoppock stated that he agrees. Chair Gorman has tabled this until next month, under "Unfinished Business."

IV. Hearings:

- A. ZBA 21-11: Petitioner, Jaime Dyer of 44 Pierce Lane, Westmoreland, requests a Special Exception for property located at 110-120 Main St., owned by R & M Weinreich, LLC of Keene; Tax Map #575-062-000 that is in the Central Business District. The Petitioner requests a Special Exception from Section 102-482, Permitted Uses in the Central Business District for a Recreational Activity as a Business.**

Chair Gorman asked to hear from staff.

Mr. Lamb stated that this parcel is at the corner of Eagle Ct. and Main St., and is a well-known, important building downtown housing multiple businesses that is in the Central Business District. This application addresses the one site listed on the public hearing notice, 116 Main St. However, there are other businesses located in this building and on this lot. It is important to know that *"The intent of the Central Business District is to be the center or hub of the community. The Zone provides commercial, financial, retail, government, and multi-family uses oriented primarily towards pedestrian access. A mixture of uses side-by-side and in the same structure is to be encouraged."* He continued that the use requested through the Special Exception process is a recreational activity as a business. The history of the property, which is most likely well known, is that it has been either retail or retail service-type use. The last occupant of this storefront was 365 Cycles, before that, it was a tanning business.

Ms. Taylor asked Mr. Lamb to explain the parking requirements for the applicant. Mr. Lamb replied that the wonderful simplicity of the Central Business District is that there are no on-site

parking requirements.

Mr. Gaudio asked Mr. Lamb to provide them with information about what kind of a recreational activity the applicant will provide, continuing that the application does not state, though he has heard hearsay from the Keene Sentinel newspaper.

Mr. Lamb replied that he has not personally been connected to the conversations about the application, but the Sentinel article did represent what is being proposed: a recreational activity as an indoor business with respect to a sporting activity called axe throwing about which the applicant can provide more information. This sport/activity is coming first to Keene through this public hearing process, but it is a popular sporting activity common in other places.

Chair Gorman asked if there were any further questions for Mr. Lamb. Hearing none, he thanked Mr. Lamb and opened the public hearing. He explained the procedures for participation. He asked to hear from the property owner, Roger Weinreich.

Roger Weinreich stated that he is before the Board on behalf of Jaime Dyer, the applicant, who was unable to be present due to his working. He continued that he can answer questions about the venue, but will start with a brief history. When 365 Cycles left, he and his wife went looking for a suitable tenant. When they have had vacancies before, they usually received applicants from financial or service businesses. Although those are great tenants, he and his wife look for someone who will draw traffic downtown to help the existing tenants and the whole community be more vibrant. They researched what would be good, and axe-throwing venues came up high on the list before they even met Mr. Dyer. He and his wife visited one such venue in Rhode Island, and became curious about what the demographic is like, wondering if it would just be men. They found that people of all ages go.

Mr. Weinreich continued that one of the great things about Mr. Dyer's proposal is that he will not have alcohol in the mix, so he will be able to have 6- to 10-year-old children there with their parents. It will be a great family-type activity. He and his wife also wanted to explore the issue of safety. In the venues they visited and every other venue, each axe-throwing lane is designed with an enclosure or cage around it so the axe cannot bounce anywhere or hit anyone. It is not just about axe throwing, it is about teaching how to hit the target with the axe. It is a hands-on activity and people usually stay for about an hour, having to register ahead of time. These places get very busy. He and his wife thought this would be good for the existing tenants, and other surrounding businesses downtown who need more flow of traffic for their dinner and food services.

Mr. Weinreich continued that he and his wife found that there are four franchises around the country. They spoke with a couple and considered becoming a franchisee as they discovered that

there is an international league of tournaments becoming more prevalent. They were on the cusp of opening this business themselves when Jaime Dyer reached out inquiring about the vacant space. It was a fascinating experience, having done the prep work on a prospective tenant, not knowing the intent, which put them as property owners, in a good position to understand the business model.

Chair Gorman asked if anyone had questions about the venue itself before Mr. Weinreich proceeds with the specifics of the criteria.

Ms. Taylor asked Mr. Weinreich to orient them to the submitted site plan as to Main St. Mr. Weinreich replied that Mr. Dyer did the sketch, and explained that where it states “main entrance” is Main St. He continued that before the previous tenant of 365 Cycles, the tenant was Beeze Tees. Mr. Dyer plans to remove all of the interior partitions, as it is a long building, approximately 100 feet deep. There will be eight lanes, created in a way that ensures there will not be the sound of axes hitting things against the sidewalls for other tenants. They will build a soundproof wall alongside the Thai Garden side, which is a concrete block wall, to mitigate any sound, but they know there is really no transmission. Part of the idea was to give walk space on each side of the lanes. Mr. Dyer could fit in more lanes, but this is a friendly set up for it.

Ms. Taylor asked how many people there would be per lane. Mr. Weinreich replied one person per lane throwing at a time, with eight people throwing at once. There could be other people sitting around or standing behind or next to the people throwing with only one person in a lane at a time. Ms. Taylor asked where other friends and family members would be while the person throwing. Mr. Weinreich replied that typically, most designs have a sofa-height table at the back of the lane that two or three people could stand right behind to watch the activity. In visiting some facilities, he saw that people come in small groups and tend to congregate right at the lane, watching from the back. With Mr. Dyer’s plan, people could also watch from the side of the cage, which is different from how it is in other venues. Most venues have the lanes set up almost like a bowling alley. In this case, Mr. Dyer will be giving more space around each lane, not just for egress and passage, although that is one of the ideas, but also for people to view from the side of the lane.

Ms. Taylor asked if there would be any kind of retail, such as snacks or merchandise. Mr. Weinreich replied in the affirmative that in the front area there will be a receiving booth with a table/counter with an employee greeting and signing in customers. He continued that Mr. Dyer would limit the sales to water and maybe not snacks. Part of the idea is to engage people in the process, knowing that customers can visit other downtown restaurants for food. His merchandise for sale, for the most part, will be T-shirts.

Ms. Taylor asked for clarification from the newspaper article stating Mr. Dyer intended to serve

alcohol in the future, which is contradictory to what Mr. Weinreich stated. Mr. Weinreich replied that if he said that in the article, his intention is to do that in the future if possible, but if he does not have alcohol, he could run the business just fine. He continued that to begin with, Mr. Dyer would not serve alcohol, per their lease agreement, though that could be revisited in the future.

Ms. Taylor further asked for clarification on the hours of operation as the news article stated that it would be open couple of days a week. Mr. Weinreich replied that Mr. Dyer will be the business owner and they will have to work this out, but from what he has seen from axe venues around the country, the busiest times are Friday night, Saturday day and night, and Sunday afternoon. Many run until midnight or 1:00 AM. Usually they start in the afternoon. Most rent out the space on weeknights; they often have a non-profit component where they let someone use the space Monday, Tuesday, and Wednesday evening for fundraisers. That is going to be one of the models Mr. Dyer puts into play, but initially, he will start running this Friday, Saturday, and Sundays.

Mr. Gaudio stated that this is a new sport/experience. He asked if there is any kind of regulatory body or process that would regulate, supervise, and oversee that the lanes are constructed properly and safely, that the operating procedures are safe and people cannot throw axes the wrong way or take axes out the back door. Mr. Weinreich replied that there is not anything like that set up that he is aware of, no national oversight, but there is an international league, which specifies the size lanes for tournaments. In terms of safety, all of the venues they visited adopt the same criteria: they fully encage the lane with walls, ceiling, and wire. They are all substantial, as they do not want anything to penetrate the area. In addition, the person throwing the axe receives one axe at a time. Most venues function with one axe per lane, which means the person throws it then walks down the lane to get it. The axes do not tend to bounce far when they do not hit the target; they fall a foot or two off from the target with each lane typically about 12 feet long. He continued that of the venues he has visited, he has not seen any issues. All of the operators they have seen adopt the same criteria, leaning toward the same dimensions as they all want to be chosen as a facility for international tournaments. He and his wife would love Mr. Dyer to do the same and have the possibility of Keene hosting tournaments in the future. Nevertheless, currently, there is no established criteria for oversight of this type of venue. In some instances, people are allowed to bring their own axes, but others prohibit the practice. Mr. Dyer's business would most likely have its own axes to start, but there is merit to people bringing their own, too. Surprisingly, it is a very easy, smooth activity. When he and his wife visited axe venues, they saw a broad demographic, which surprised them, both men and women.

Mr. Gaudio asked how many supervisors would be on the premises. Mr. Weinreich replied that he does not know what Mr. Dyer has planned, but the venues he and his wife visited had two employees, minimally. He continued that number may be surprising, but the employees train everyone one-to-one before customers can participate alone, with the parameters are so tight that

there is not much that can happen. Another part of the model that Mr. Dyer will do is require participants to make reservations, online with a credit card, because the activity is so popular. That means there will not be a line of people waiting to get in the door. The capacity is therefore very controllable.

Chair Gorman asked if there were any further questions before Mr. Weinreich proceeded with the criteria. Hearing none, he asked Mr. Weinreich to proceed.

- 1. The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such use.*

Mr. Weinreich stated that this is an allowed use in the Central Business District and requires a Special Exception. He continued that other, similar uses have included McCue's Billiards, The Moving Company, and so on and so forth.

- 2. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Mr. Weinreich stated that he and his wife have spoken with many of their business neighbors and fellow property owners, and they understand that the proposed use will be an asset to the downtown community.

- 3. There will be no nuisance or serious hazard to vehicles or pedestrians.*

Mr. Weinreich stated that all activities would be contained within the building in a safe environment.

- 4. Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.*

Mr. Weinreich stated that the facilities are all up to date and the condition of the building is excellent.

Chair Gorman asked if there were any further questions. Hearing none, he thanked Mr. Weinreich and asked if he had anything to add. Mr. Weinreich stated he always invites prospective tenants to vet him as a landlord before they move in or consider a lease, and they also go to the existing tenants in the building and across the street. He continued that he has let nearby business owners know what is happening and the response they have received for the project has been really great.

Chair Gorman asked if there was any public comment, and explained the procedures for participation. Seeing none, the Chair closed the public hearing and stated that the Board will deliberate.

1. *The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such use.*

Mr. Hoppock stated that regarding the examples given in the application, McCue's Billiards has been out of business for about five years, and The Moving Company is more of a school than a recreational activity, similar to the YMCA. He is not sure he can identify any recreational use that has been authorized in this district, from his recollection, and he has been here over 30 years. He continued that his second comment is that it is a deal-breaker for him if alcohol is to be served.

Chair Gorman asked Mr. Hoppock what his thoughts are on an approval with a condition of no alcohol served, and if this condition would be possible. Mr. Hoppock replied that he is not sure that is in the Board's jurisdiction. There is a State agency devoted to that, and they presumably do effective enforcement. He thinks the mixture of axes and alcohol is potentially deadly.

Mr. Welsh stated that first, he shares Mr. Hoppock's concern about the alcohol; it does seem like a problematic combination. He continued that with the absence of alcohol, he could see the adventure aspect of this. Regarding other recreational activities, such as karate studios and the YMCA, he sees this business as a recreational activity and there not being many examples, but the alcohol is a source of concern for him.

Ms. Taylor stated that she raised the question about alcohol due to concerns but is not sure whether it is in the Board's jurisdiction. She agrees that axes and alcohol do not mix well, no matter how much the area is enclosed. She continued that she had similar concerns about similar uses authorized in the district. She does not consider it necessarily a deal-breaker because it is certainly not that far away from the skate park, for example, or the basketball courts further down the Rail Trail. She cannot think of any appropriately similar approved uses, but at the same time, it might be an appropriate location.

Mr. Gaudio stated that he thinks the alcohol issue is more related to the third criterion and possibly the second criterion than to the first, but he agrees with alcohol being an issue. He continued that the sale of alcohol is not the concern, but the possibility that individuals could bring in alcohol.

Mr. Hoppock stated that he suggests that the Board make a decision based upon no sale or use of alcohol on the premises. He continued that his reasoning is as follows: the Board is to determine if

this application deserves approval in a certain zone that allows for this use with a Special Exception, which is a question of the use. If the use of the property would be towards alcohol consumption and axe throwing, he thinks that is within the Board's purview. The alcohol-licensing group may take a different view and want to grant a license. Granting a license is definitely not this Board's purview though in terms of regulating the use, he believes it is. Whether it falls under the first or third criterion does not concern him too much. He agrees with Mr. Welsh and Ms. Taylor about the uses like karate and the YMCA and is consistent with similar uses, one or more of which have been in that district in the past, or are now. Thus, he does not have any problem with the use, though he does as a safety issue.

Chair Gorman stated that he does not have a problem with the use in terms of being a recreational activity as activities such as this brings people downtown to participate in which brings vibrancy to other businesses and the whole community. Thus, from that sense he does not take any exception to the axe throwing. He continued that his concern is with the activity mixed with alcohol, but he stated his uncertainty of the Board's purview. His opinion is that if the State is willing to say it is safe, then he is not fit to decide against that. In addition, serving alcohol is an allowed use in that district. He relies on the parties that are responsible for alcohol service to ensure that our community is safe, and from a Zoning perspective, this meets the first criterion in his opinion.

2. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Ms. Taylor stated that she does not think there is a property value issue, even though they have not really heard anything about that. She continued that it is a business district and this another type of business. The only way it might be injurious, obnoxious, or offensive may be the alcohol issue. As long as it is completely contained within the building, she does not have a particular issue.

Mr. Hoppock stated that he wants to state for the record that he thinks the Board can regulate the use of alcohol there if it is going to involve a potentially hazardous activity such as axe throwing. He suggests that the Liquor Commission and State agencies will not concern themselves with what other activities are going on there; they are going to concern themselves with licensing requirements, and the activity there will not fall under that umbrella. Thus, it behooves the Board to pay attention to that. He would not trust agents of the State to try to protect this community's safety and welfare. That is this Board's responsibility.

Chair Gorman replied in agreement with Mr. Hoppock that the governing body over alcohol probably is not going to look at the underbelly of the use.

Mr. Gaudio stated that he agrees with Mr. Hoppock. He continued that the Board does have the

authority to say this recreational activity is a permitted use as long as no alcohol is served. If the proposition came forward with, as was already said, axe throwing and alcohol, the Board could say deny the request. If it is axe throwing without alcohol, they could say approve the request. He thinks the Board can put the condition on it as a pre-condition of the granting of the Special Exception.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

Mr. Gaudio stated that this is where the alcohol issue comes in, and this is where there could be additional nuisance or serious hazard, concerning the serving of alcohol. He thinks everything they said before is applicable here.

Chair Gorman stated that he agrees that this is the criteria where the alcohol drinking and axe throwing could cause some trouble for the application.

Ms. Taylor stated that she views the third criterion as applying to external to the building. If, as has been represented to the Board, this will be 100% contained within the building, she does not see it creating a nuisance or hazard to vehicles or pedestrians.

Mr. Hoppock stated that he agrees with Ms. Taylor's interpretation. He continued that he thinks the third criterion is external, and the alcohol problem certainly can fall within the second criterion in the "injurious, obnoxious, or offensive to the neighborhood" clause, and more indirectly within the first criterion. He is more comfortable with that problem under the second criterion than the third. He agrees that the activity itself would be contained in the building and would not present an issue as a nuisance or serious hazard to vehicles or pedestrians on the sidewalk or walking past the business. He does not have an issue with that.

4. Adequate or appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for proper operation of the proposed use.

Chair Gorman stated that since this is a commercial operation currently, he assumes it already has adequate facilities. He continued that Mr. Lamb pointed out that there are not any requirements for parking.

Chair Gorman asked if anyone had further comments. Hearing none, he asked for a motion.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-11 on the condition that no alcohol be served or brought into the premises, while the recreational activity in question is ongoing. Mr. Gaudio seconded the motion.

Ms. Taylor stated that Mr. Hoppock added, “as long as the axe-throwing is going on in the building,” and that is hard to distinguish. She continued that she would prefer it just being limited to not used, sold, or brought in without including that limitation.

Mr. Hoppock replied that he is happy to amend the motion to state; “as long as there is a Special Exception governing the use of this particular recreational activity, no alcohol will be served or brought in.” He asked for conformation. Ms. Taylor replied in the affirmative. Mr. Gaudio seconded the amendment.

Chair Gorman clarified that the motion is now “to approve ZBA 21-11 on the condition that as long as the Special Exception for axe-throwing is permitted, there will not be alcohol served or brought in.” He asked for a vote.

1. *The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such use.*

Met with a vote of 5-0.

2. *Such approval would not reduce the value of any property in the district or be otherwise injurious, obnoxious, or offensive to the neighborhood.*

Met with a vote of 5-0.

3. *There will no nuisance or serious hazard to vehicles or pedestrians.*

Met with a vote of 5-0.

4. *Adequate or appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for proper operation of the proposed use.*

Met with a vote of 5-0.

The motion to approve ZBA 21-11 with the condition passed with a vote of 5-0.

Mr. Weinreich asked Chair Gorman if he could speak. After conferring with the Board, Chair Gorman approved.

Mr. Weinreich stated that as of yet, no one knows if alcohol is a problem. He continued that when

he did his diligence on this business model, he discovered that on average people would consume one to two beers in their hour of play and then be out of the building. That is not a case for the pros or cons of it, but he just wanted to say that. He is a retired firefighter and does not drink alcohol, so he is happy to not have alcohol at the venue for the moment, but he also knows that dart throwing in bars has not been super hazardous. He does not really know if this is an issue or not, but the Board has addressed it in the proper way, so he appreciates that.

Mr. Hoppock stated that he appreciates Mr. Weinreich's thoughts. He continued that he knows people do get hurt with darts but that is not what they are talking about right now.

V. New Business:
A. Land Use Code Update

Chair Gorman asked Mr. Lamb for comments. Mr. Lamb replied that he has a quick update for the Board on the Land Development Code. He continued that this has been a large-scale, multi-year project, to simplify, make more efficient, and include some thoughtful changes into the Zoning and Development standards. The idea came out of the 2010 Comprehensive Master Plan, and throughout the year's staff have been working towards the completion of this Land Development Code. He thinks the Board will find that once they experience this Code the simplicity and the organization and the graphic nature of it will greatly enhance everyone's operation, whether you are building something, seeking a permit for a swimming pool, or seeking a Variance, and whether you are a developer, or staff, or a Board member. They hope to see substantial changes as a result of this reorganized Code and are at the end of the review process. The City Council held a public hearing at the end of April, who referred the updates to the Planning, Licenses, and Development (PLD) Committee, which meets May 12. The PLD Committee's recommendation will then go back to the City Council.

Mr. Lamb continued that staff would also look at changes to Chapter 46, dealing with congregate care and social service uses, which have been established in this new Code with a licensing process being created through City Council. They are hoping that as they work their way through the end of this process people will be aware of it. Staff wanted to make sure the Zoning Board knew where they are at in the process. If all goes well they will have a PLD Committee recommended approval on May 12 and it will be back in front of the City Council for final adoption on May 20.

Mr. Lamb continued that staff has established a transition period of several months, when the existing Zoning Code, Planning Board regulations, and other development standards will still be in effect, because the Code, if it is adopted by City Council, will come with an effective date of September 1. That allows a number of things to happen in this large transition, including helping the public understand the new Code and helping staff get up to speed with its new operation. In addition, it gives time to establish the new procedural aspects and put in place with a couple changes to boards and commissions, including the creation of a Site Plan Development Committee, which would oversee smaller developments before or instead of going to the Planning Board. Thus, there is still a lot of work to do, even after the adoption process ends in the month of May.

Chair Gorman stated that they appreciate the update and stated they know staff have been working

hard on this, and they are all looking forward to it. He asked if the Board had any questions.

Ms. Taylor stated that this takes a tremendous amount of work and she really appreciates all the time that has been put into it. She knows that various licensing and social service aspects have been removed. She tried to read through it and found the permitting section to be extremely complicated. While it is a much-needed area to be addressed, it just seems like it is really complicated.

Mr. Lamb replied that to some degree this is a compromise in the community. He continued that there is obviously a need for congregate living and social service types of activities in the community, and the advocates have been active participants in creating this opportunity in the City's Code. Staff feels like they are trying to respond to these advocates in a reasonable way. Obviously, they are also sensitive to these uses being included in places where people desire a high quality of life in their neighborhoods. They have been trying to find that balance point between creating opportunity and room within the Code and within Zoning, while also preserving the ongoing oversight by the license process by the Conditional Use process. They do recognize the concern Ms. Taylor raised. There is opportunity in Chapter 46 to make changes in the future if they have overbalanced it in one direction or another.

Ms. Taylor thanked Mr. Lamb and asked if staff will be providing training for the Board. Mr. Lamb replied in the affirmative that training would be provided during the transition period. He continued that staff would be reaching out to the Board to help them understand the major changes, as the vast majority of the Zoning Ordinance has been re-organized. Most people's experiences through the permitting and Zoning process will not change at all. But there are some pretty substantial changes, especially around Downtown, where there will be six new Zoning districts taking the place of Central Business District and Central Business Limited and the surrounding area. Staff would be happy to get the Board familiar with those changes, and everything else in the Code.

Chair Gorman asked if there were any further questions or comments. Hearing none, he thanked Mr. Lamb.

VI. Communications and Miscellaneous:

VII. Non Public Session: (if required)

VIII. Adjournment:

There being no further business, Chair Gorman adjourned the meeting at 7:30 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Edits submitted by,
Corinne Marcou, Zoning Clerk