



**Town of Henniker
Zoning Board
Tuesday December 20, 2023 6 PM
Henniker Community Center**

Members Present: Chairwoman Doreen Conner, Vice Chairwoman Joan Oliveira, Gigi Laberge, Robert Pagano, Leon Parker
Member's Excused: Alternate Ron Taylor
Town Planner: Mark Fougere
Recording Secretary: Hank Bernstein
Guests: see attached

A) CALL TO ORDER

Chair Connor called the meeting to order at 6:00 pm.

B) PUBLIC HEARING:

Case 1. ZBA Case 2023:02: Variance application to increase the housing unit density (currently 6 units) by replacing the existing restaurant with addition of 3 new apartment units, existing lot area is 15,296 square feet – area required to conform with zoning 29,900 square feet; requesting relief from Article X Lot Size, Section 133-39 Minimum lot sizes, Applicant/Owner Frank Chen, Map 5D Lot 210, 8 Maple Street, Zoned CV.

Mr. Chen gave background. The building currently has six apartments and a restaurant, Gin Gin Restaurant. When Mr. Chen purchased the building, the restaurant was run by Dennis (last name not provided). Dennis ran the restaurant successfully for ten years. When Dennis left, new owners took over. The new owners ran the restaurant through the pandemic and are struggling to make rent. Mr. Chen shared that he had two coffee shops in Massachusetts, and they have faced similar difficulty. The families that run these establishments struggle to make rent and by the time they realize that they must close their doors it is too late, and they are already facing serious financial turmoil. Mr. Chen further shared that by turning the restaurant space into student apartments that the chaotic parking situation will see relief.

1. Granting the variance would not be contrary to the public interest because:

I do not see the current use of the space as the best use. The restaurant will not be missed, and without the restaurant the parking situation will improve. Currently the front lot is restaurant parking, but without the restaurant that space could become tenant parking.

2. Describe how the spirit of the ordinance would be observed by granting the variance:

The footprint of the building is not changing, and we are not changing the character of the building. The building is currently a multiuse lot, but this variance would allow the lot to become a single use lot.

3. Describe how substantial justice would be done by granting the variance:

For the past decade the restaurant has struggled to service. Closing the doors to the restaurant will prevent another family or business from facing the same struggles.

4. Describe how values of surrounding properties would not be diminished:

Granting this variance will make the area more appealing and create less chaos. It will alleviate the parking chaos and make the corner look nicer. Removing the chaos will accommodate a quieter, more appealing environment. Perhaps it could increase values, but not much.

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5. Owing to special conditions of the property that distinguish it from properties in the area, denial of the variance would result in unnecessary hardship because:

a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The current restaurant storefront looks more residential than commercial. It is common for unsuccessful restaurants to close their doors.

b. The proposed use is a reasonable one because:

I see inquiries from people that are looking for apartments to rent in Henniker, and there are plenty of students looking for open apartments. My current apartments are 100% occupied.

c. If the criteria in subparagraph 5(a) and (b) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

There are already a lot of restaurants in Henniker. It is hard to get a reasonable profit while competing with the other restaurants. Granting this variance would provide more customers and one competitor to the existing restaurants.

The Zoning Board asked questions of the applicant.

L. Parker noted that the town is losing its small business space and asked the applicant if he had attempted to find another business to take over the lease.

Mr. Chen shared that he wanted to seek a variance before contacting other businesses. He noted that he lost about half a million dollars in closing other restaurants and did not want to put another family through that situation. The previous success of the restaurant came mostly from bar patrons, and when the bar is doing well it causes an increase in the police presence.

Chair Connor asked the applicant to describe the density characteristics of this property compared to other properties. Mr. Chen shared that this building is consistent with other properties in the center of town.

Chair Connor opened the public hearing.

Susan Adams, of Ramsdell Road, noted that the purpose of a special exception is to promote public health, safety, and appearance. She sees nothing in this application that would promote that. This location already has a parking issue, a traffic issue, and a pedestrian issue. Ms. Adams noted that the dumpster at this property is often full and open and is an unwelcoming representation of the town.

Chair Connor shared email correspondence from the Highway Superintendent that expressed concerns about parking and the complications it creates during snow removal.

Chair Connor shared a letter from Kathleen Hatt, of Maple Street, expressing concerns about the condition of the parking.

Peter Flynn, of Main Street, shared that he had inquired with the restaurant tenants and learned that they were not aware of this variance application, and they believed the restaurant is running successfully. Mr. Flynn also expressed concerns about parking.

Scott Dias, of Flanders Rd, noted that this is far from the required square footage for the proposed density. He also shared that the Town Health Officer has visited this property on multiple occasions in response to the overflowing dumpster. Mr. Dias also expressed concerns about parking, noting a black Tahoe that makes it difficult to see up 114 to cross the intersection safely.

Nancy Jackson-Reno, of Western Ave, agreed with the previous statements from the public, and further expressed concerns about the condition of the property.

Chair Connor asked Mr. Chen if he would like to respond to these concerns.

Mr. Chen noted that granting this variance would create ten new parking spaces for tenants, and there is additional parking behind the pharmacy. He noted that without the restaurant there he could move the dumpster behind 15 Western Ave (another property he owns) and have residents deposit their trash there. Addressing the concern about the restaurant tenants being unaware of the variance application, Mr. Chen shared that when he had first applied for the variance the tenants were not interested in renewing the lease, which gave him reason to apply. Since that time the tenant's son has expressed interest in taking over the lease. Mr. Chen further shared that he loves this town, and that every building he owns he has made significant improvements to.

Chair Connor closed the public hearing.

Criteria #1: The variance will not be contrary to public interest.

L. Parker noted that the number of small businesses in Town has been declining over the years and Mr. Chen has converted those spaces into student housing. The small businesses would be more successful if they were maintained better, and converting these spaces into student housing is contrary to public interest.

B. Pagano noted that it seems that the concerns at this property would be eased if the variance is granted. If the bar is the high profit area, that is also the high traffic draw.

Chair Connor noted that there are space requirements for multi-unit housing, and this application is well outside the requirements. The Zoning Board may grant a variance based on criteria, but she does not believe those criteria have been met.

The Zoning Board voted on Criteria #1: 1 in favor, 4 opposed.

B. Pagano in favor.

Criteria #2: The spirit of the ordinance is observed.

Chair Connor noted the same issue, the footprint is too small for the request. She further noted that the applicant did not state anything different about this property compared to other properties.

L. Parker noted that the discussion on this application is not about impediment to the improvement of the property, it is about a change of use.

B. Pagano noted that this lot is undersized for a restaurant, and that granting this change would improve the parking and traffic situations.

Chair Connor respectfully disagreed and expressed concern about the speculative outcome of the future.

The Zoning Board voted on Criteria #2: 1 in favor, 4 opposed.

B. Pagano in favor.

Criteria #3: Substantial justice is done.

L. Parker noted that just because this restaurant is failing does not mean another one will not survive.

Chair Connor shared that there is a factual dispute on the success of the business, however no effort has been made to seek another business in that location.

J. Oliveria agreed that there is a discrepancy on the success of the business.

The Zoning Board voted on Criteria #3: 5 opposed.

Criteria #4: The values of surrounding properties are not diminished.

B. Pagano noted that the commercial operation relies heavily on traffic to the bar. He does not see that as a positive and cannot see that being better than renting to tenants.

G. Laberge shared that she does not think this criteria was addressed one way or the other.

Chair Connor noted that an expert opinion has not been provided on this, and she would not know how being located next to a restaurant or student housing would impact values.

L. Parker agreed that this is a difficult criteria.

DRAFT

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The Zoning Board voted on Criteria #4: 2 in favor, 1 opposed, 2 abstentions. No majority vote.

L. Parker and B. Pagano in favor, J. Oliveria opposed.

Criteria #5: Denying the application will cause undue hardship.

a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

L. Parker noted that this property exists and can continue to run the way it is.

The Zoning Board voted on Criteria #5(a): 3 opposed, 2 abstained.

G. Laberge and B. Pagano abstained.

b. The proposed use is a reasonable one.

G. Laberge did not believe that this was a reasonable use. She has not seen facts or evidence on a shortage of housing and has only heard of it as hearsay.

The Zoning Board voted on Criteria #5(b): 1 in favor, 4 opposed.

B. Pagano in favor.

c. If the criteria in subparagraph 5(a) and (b) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

L. Parker noted that the property is working fine the way it is.

The Zoning Board voted on Criteria #5(c): 5 opposed.

J. Oliveria moved to deny ZBA Case 2023:02 as it did not pass criteria 1-5, seconded by L. Parker. Motion carried unanimously.

C) MEETING MINUTES SEPTEMBER 20, 2023

L. Parker moved to accept these minutes, seconded by B. Pagano. Motion carried 3-0-2.

D) 2024 PROPOSED MEETING SCHEDULE

The Zoning Board Meeting schedule for 2024 is as follows:

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|--------------------------------|---------------------------------|
| • Wednesday, January 17, 2024 | • Wednesday, July 17, 2024 |
| • Wednesday, February 21, 2024 | • Wednesday, August 21, 2024 |
| • Wednesday, March 20, 2024 | • Wednesday, September 18, 2024 |
| • Wednesday, April 17, 2024 | • Wednesday, October 16, 2024 |
| • Wednesday, May 15, 2024 | • Wednesday, November 20, 2024 |
| • Wednesday, June 19, 2024 | • Wednesday, December 18, 2024 |

G. Laberge noted that she will not be available in January or February.

E) ADJOURNMENT

Meeting adjourned at 7:15.

Respectfully Submitted,

Hank Bernstein

Minutes Approved:



Meeting: Zoning Board

Date: December 20, 2023

PLEASE PRINT

Name

Address

PETER FLYNN	65 MAIN ST - HKR.
Susan Adams	32 Ramodell Rd.
Scott + Cathy DIAS	
Marce + Michele McMurphy	24 Rush Road
Michele McMurphy	24 Rush Rd.
Frank + Cynthia Chen	
NANCY JACKSON - RENO	134 WESTERN AVE
Sandra Murray	35 Prospect St.
Scott Osgood	100 Foster Hill