

**CITY OF NEW BRUNSWICK
ZONING BOARD OF ADJUSTMENT
JULY 22, 2019
MINUTES**

MEETING LOCATION:
CITY COUNCIL CHAMBERS
CITY HALL, TOP FLOOR
78 BAYARD STREET
7:00 p.m.

I. ROLL CALL

X	John Cox (Chairperson)
X	Ivan Adorno (VC)
	Peg Chester
	Sue McElligot
X	John Zimmerman
X	Doug Sheehan
X	Charlotte McNair
	Evelyn Azcona
	Nancy Coppola

II. PUBLIC ANNOUNCEMENT (OPEN PUBLIC MEETING ACT)

III. SALUTE TO THE FLAG

IV. MINUTES OF THE PREVIOUS MONTH'S MEETING

Motion to Approve
Second
Approved by unanimous roll vote

V. COMMUNICATIONS AND REPORTS

Resolutions of Memorialization

A. 235 GEORGE STREET DIALYSIS CLINIC INC., ZB-2019-02

Motion to Approve
Second
Approved by unanimous roll vote

VI. PUBLIC HEARINGS

A. UNIVERSAL PROPERTY SERVICES, ZB-2019-07, Site plan & use variance application for the conversion of a gasoline station/auto repair/retail use

into a gasoline station/retail use at 127 Easton Avenue, Block 71, Lot 29, 31 & 33. (David Himmelman, Esq.)

The application will not be heard tonight. For rescheduling purposes only. Carried to August 26, 2019 at 7:00 pm. The applicant will re-notice all residents.

Terry Finkelstein, Objector Attorney: Why has the applicant not shown up?

Aravind Aithal, Board Attorney: The applicant, or a representative of the applicant, is unavailable and they requested the matter be carried, I believe notice was given to us at 5:00 today.

Mr. Finkelstein: I ask that if this happens again the matter be dismissed and the applicant will have to apply again from the beginning. I would like to leave my card in case this happens, you can call me and I can notify the people.

Mr. Aithal: We will certainly carry the applicant, we don't dismiss it because, if there's some reason for them to be carried, we might not even reach it next time because of allocations that are ahead of them.

B. CHARLES ST NB, LLC, ZB-2018-14, Site plan application variance application for the construction of a multifamily residential building at 30 Charles Street, Block 454, Lot 32, Zoning District: C-2B (James Clarkin, Esq., continued from June 24, 2019)

James Clarkin, Applicant's Attorney: We were before you previously, we put on the testimony of Bob Krause, our architect, as I indicated in my opening remarks that night, this is a unique property and that has a two-family, non-conforming use up front and an old industrial building in the rear that was last used as a bakery. The site has two principal uses...

Nancy Coppola is read into the record as in attendance.

Mr. Clarkin, Esq.: ...two principal uses on the site and they are definitely not compatible. Everything on the site will be demolished and, in its place, will be six residential units with parking at grade level, three apartments on the second floor and three apartments on the third floor. The use is conditionally permitted, but we are before the Zoning Board because we do not meet several of the conditions. In addition, we require a nominal parking variance because we are one space short. Many of your approvals over the past several years have included parking variances far in excess of that. We worked with your professionals more on this case than any I can recently remember. We made a significant number of revisions in response to the staff requests, most important of which was to reduce the density from eight units down to six units. We have two witnesses this evening, the first is Mike Marinelli from Menlo Associates, who is our engineer, and whose office prepared the plans, and a planner who can justify the variances.

John Cox, Chairperson: Does anyone on the Board have a conflict with the application?

All: No.

Michael Marinelli, Applicant's Engineer: I'll refer to the exhibit on the easel, entitled 30 Charles Street Building, Block 454, Lot 32.01, 0.229 acres, existing conditions exhibit, dated 5/20/19, as A-4. This exhibit is an aerial representation of the subject property. The property is in the middle of the exhibit, highlighted with a dark black line in white highlight. The lot is designated as Block 454, Lot 32.01 on the tax maps of the city of New Brunswick. The property is commonly known as 30 Charles Street and is located on the south side of Charles Street, which runs left to right on this exhibit, between Joyce Kilmer Avenue which is just to the west of this white structure you see on the left side of the exhibit and Livingston Avenue is off to the east off the picture. The property is 100 by 100, a perfect square of 10,000 square feet. Overall, it's approximately 0.23 acres and is located entirely within the C-2B Commercial zoning district. There is a zone boundary that runs down Charles Street, north of the site is zoned R-6A. As you can see from the exhibit, the surrounding uses on both the east, west and south are primarily commercial, there are offices and retail. Across the street on the corner is a multifamily home, there's a small church, there's some single-family homes, and then there's additional multifamily homes in this general vicinity.

The site, in the existing condition, consists of a two-family home that's on the north side of the site, that is a two-story structure, and then on the rear, or the south side, is a two-story commercial structure with an appendage off to the east side. There are two access points to the site, both on the eastern and westernmost property line. As you can see from this exhibit, the entire property is developed basically, except there is a small planting strip that is on the west side, between the existing commercial space and the existing structure. These two structures are non-conforming in many ways, the single-family residential home is not a conforming use, the commercial property is a conforming use, however it's over the setback line for both side and rear yard. So, the structures that we're taking out are non-compliant in the existing condition.

Now, if I could refer to my second exhibit, A-5, this plan is entitled site plan exhibit, dated 5/20/2019, this is the same area representation you saw in A-4, the difference being we've rendered the submitted site plans without any changes, just colorized the site and described it, it also has the landscape turned on so that you can see what is proposed with respect to buffering.

So, the applicant is proposing to remove all the existing improvements on the site in order to construct a new state-of-the-art apartment building. This apartment building will be three stories, the first story of which is understory parking and the ancillary uses to the structure. We provide for a bicycle room,

a lot of people in New Brunswick do use that type of transportation, so we've provided the storage space for that. We also provided a first-floor space for refuse and recycling, so there is an area inside the building to store, that is not outside and visible to the neighbors. There are two access points via a front lobby and emergency egress stairs at both the front and rear of the property, as well as an elevator that can be utilized. There are two other spaces on the first floor, including a tenant storage space and the utility and maintenance storage, so that the building super has a place to store all of his equipment. The second story is apartments and the third story is apartments. On each of those floors, there are three apartments, two bedrooms each. This building conforms with the bulk standards for setback, FAR, building coverage, impervious coverage, so it meets all the criteria as is dictated by the bulk standards.

We propose to eliminate the westernmost driveway, so that curb cut will no longer be there. There will be one less access onto Charles Street on the north, and maintain the easternmost as a two-way, full access drive that services two external parking spaces and nine understory parking spaces underneath the apartments. The single access drive accesses all of the parking spaces, including an ADA space that is immediately available next to the elevator, or front lobby, of the structure. We also provide new sidewalks along the entire frontage and access to the front door and storage areas, as well as the back door or emergency access into the parking lot. All these sidewalks are also ADA compliant.

With respect to stormwater management, we are reducing the amount of impervious coverage on the site, we also don't trigger the stormwater management rule because we're under an acre, we are well under a quarter-acre of new impervious coverage. All of the utilities are existing and available along Charles Street, so any new services will go out to Charles Street via underground conduit. This would include sewer, water, electric, gas, telephone, all necessary utilities for this structure.

This site does reside in the flood hazard zone, the stream is just to the northwest here. However, the structure is elevated compared to the buildings to the north, south and west. As far as landscape goes, we've provided 11 new shade trees, three ornamental trees, 44 evergreen trees, and 47 shrubs, as well as ground plantings to dress up the surrounding area, buffering on all sides. Although we've provided a total of 14 shade trees on the site, it doesn't meet the city's ordinance requirements for tree replacement, we're technically three trees deficient, however we are willing to contribute to the fund should we gain approval this evening.

With respect to lighting, the understory parking will be lit with ceiling-mounted lights, that will light the parking area in accordance with the code. We're only proposing one building-mounted light on the western façade that will adequately light the entire access way from Charles Street to the rear parking

area. That proposed light has a minimum of one footcandle with an average of 4.5 footcandles. That building-mounted light is not very high, at 12 feet it won't cause glare to neighboring properties.

We are not proposing any signage as part of this application.

We are required to submit a flood hazard application permit as well as a DRCC permit approval, so those two will be required as a condition of approval.

There was an application in front of the Board a couple of years ago, they were trying to expand the bakery and as part of that application, the applicant received a flood hazard permit for that addition to the existing structure, but we have to supply a new permit application for the new structure.

I'll give a little bit of background on the proposed variances. The use is conditionally permitted within the zoning ordinance, however, we don't meet some of those conditions. One of those conditions is lot area, which requires a lot area of one acre, and this is only a 10,000 square foot lot, so we're seeking relief from that. As you can see, there's existing development on all three sides of the property, so there's no land immediately adjacent to bring this lot into conformance. We're also seeking a density variance. This type of use permits 16 units per acre, where we're providing 27 units per acre. Buffering, a 20-foot buffer is required around the site, if you were to provide that 20-foot buffer on all sides, it would render the site useless. We are requesting a parking variance, for the six units, 12 parking spaces would be required and we've only provided 11. And finally, loading, because this is a residential apartment with six units, a full-time loading space, we don't think is necessary and we have not provided one. It is going to be a secure building, there will be a punch code or swipe card to gain access into the building, there will also be closed circuit television for security reasons, for the safety of the patrons and to keep an eye on the understory parking, as well as the rear of the structure because it's sandwiched between this proposed use and the commercial use to the south.

The latest letter from D&R is March 20, 2019. There are a few items that are outstanding, including outside agency approvals, sanitary sewer report, which of course we can provide. I agree in testimony to comply with it in its entirety.

Mr. Clarkin, Esq.: Have you had an opportunity to read the Brignell planning report dated June 20?

Mr. Marinelli: I have.

Mr. Clarkin, Esq.: We move to the planning review comments. Item 10, located on page 5, Item 10A, outside approvals we need to obtain, we will certainly obtain them and agree with any conditions of approval. With regard to Item 10B, revised architectural elevations subject to Mr. Krause's testimony when we

were last before you, he indicated that the changes we made to give this more of a residential look, which is what the TAC was looking for, and described the building materials as well. With regard to Item 10C, you're going to hear testimony from the planner to justify the variance. With regard to Item 10D, the outstanding trees, we believe, are three, and as Mike indicated, we will contribute to the city tree fund. With regard to lighting, I believe we have had testimony, so perhaps he has answered the question as to whether it is a safe and secure place. We also had to explain the rooftop solar array, the roof plan represents the maximum number of solar panels that could be put on, all of the panels will be below the parapet so that we're not going to have any visual issue there.

Questions from the Board: None.

James Clarkin, Applicant's Planner: We are proposing a three-story, low-rise apartment building structure, with parking on the first floor, three units on the second floor and three units on the third floor, for a total of six. Each unit will have two bedrooms. Other improvements are a two-way driveway on the east side of the property, landscaping, lighting, bicycle storage, and solar panels on the roof.

The property is located in the C-2B Commercial district.

The variance that is needed for the conditional use is the "d(3)" variance, for deviations from the standards or specifications of the zoning code for the C-2B zone. Specifically, there are three deviations, minimum lot size, maximum density, and landscaping buffer. We also need a parking variance; we are one space short, and loading. Design standard relief includes a curb cut setback and a couple of landscaping design standards.

It is my professional opinion that the site can accommodate the development. Starting with the lot size, the site has been designed to fit almost all of the required parking, really it is the concise nature and good design that is allowing the site to accommodate this development. Also, we have no other setback, the height, the FAR conforms, so it's really because of the lot that we need to see the deviation from the conditional use standard. We cut the project from eight units to six units, and therefore 12 parking spaces are required and we have 11. Many reasons, car ownership rates are typically much lower than they are for single-family homes, so two parking spaces are more than enough and we have public transportation options, ride-sharing services, bicycle storage room, I believe 11 spaces will be more than sufficient.

Moving on to density, the building is excellently designed, the site fits the units, parking and amenities that would be expected from a modern multifamily apartment building. Finally, for the landscape buffer, landscaping has been provided, which meets the intent of the zone requirements.

Purposes “e” and “i” of the Municipal Land Use Law will be furthered, “e” is promoting the appropriate population densities that will contribute to the neighborhood and community by providing needed rental housing in a neighborhood that has similar apartment complexes, across the street and further down the street, when I visited the site, I saw about six to eight units in the apartment buildings, they have larger densities than here, so those being of equal or more density, that our proposed development can be handled and is an appropriate population density. Purpose “i” is promoting a desirable visual environment through creative development techniques and good civic design.

The parking can be justified by the “c(2)” flexible bulk variance. It can be granted in that we are almost providing two spaces per unit. There are many other transportation options. The benefits of the project outweigh any detriment for being just one space short.

The only potential negative consequence could be for the parking, but will not actually be negative based on prior testimony. No impairment to the city's zoning ordinance or master plan. The positives from this development significantly outweigh any negatives.

Questions from the Board: None.

Questions from the Public

Charles Kratovil: Who is behind the LLC?

Mr. Clarkin, Esq.: The application contains a corporate disclosure statement. I will tell you at the end of the discussion.

Mr. Kratovil: What about impervious coverage?

Mr. Marinelli: There was a decrease, but I don't have the report to tell you the exact number. There will be more grass.

Public Portion Closed

Todd Bletcher, Board Planner, reads the conditions into the record.

Nancy Coppola: I do have one question. You say it's a secured building? What about the parking? Is that as well?

Mr. Marinelli: It's open. But there will be cameras monitoring it.

Questions from the Public: None.

Motion to Approve

First: Ivan Adorno
 Second: Nancy Coppola

	YES	NO
John Cox (Chairperson)	X	
Doug Sheehan	X	
Ivan Adorno (VC)	X	
Nancy Coppola	X	
Evelyn Azcona		
Sue McElligot		
John Zimmerman	X	
Charlotte McNair	X	

C. 303 GEORGE STREET – MATRIX AEW NB, LLC, ZB-2019-01, Variance application for the installation of façade signs on a mixed-use building located at 303 George Street, Block 117.01, Lot 1, in the C-4 Zoning District. (Sandy Galacio, Esq.)

Charles Liebling, Applicant's Attorney: The applicant is the owner of the building at 303 George Street, it's the sister building to 317 George Street next door, and behind it is a parking garage that both buildings use. This is a simple and limited application. We're seeking approval put in a new projecting sign in the same location where the current façade sign is, identifying the two buildings and the back-end parking. The content of both signs is similar and we will agree to any conditions of approval that although there is an off-premises sign, we will retain the content of the sign as we present it to you this evening, just the addresses and the parking information. The application contains four bulk variances, one for the off-premises sign, and they're needed to make the signs work. Our planner, Christine Cofone, will provide testimony in support of the variances. First our engineer will provide details of the technical aspects of the application.

Michael McKenna, Applicant's Engineer: What brings us here tonight is a sign on the New Street side of the building at 303 George. If you know this block, there's two buildings, 317, a parking garage and a new residential building on Neilson. This appears on New Street to be a dead end, but it's really a parking garage, what brings us here tonight is signage, the message is just the address, 303 & 317, and access to 24-hour parking. These offices are used for medical, the Board recently approved canopies on the building, we did the parking garage and the residential building about five years ago. Exhibit A-1, 7/22, the name is Sign Location Plan.

Ms. Coppola: The sign is just going to say "303 & 317"?

Mr. Liebling: Yes. We received a report from the Board's planner, I think there was one request that we modify the plans to show that the stop sign will be removed, you can take care of that post-approval. That's really all.

Questions from the Board: None.

Christine Cofone, Applicant's Planner: Four bulk variances, sign size, setback and thickness of the sign, as well as the fact that we are technically an off-premises sign. Given the circumstances of the application, the "c(2)" statutory criteria are applicable here. In the absence of any hardship, if the Board finds that this is a better zoning alternative and that some purpose of the Municipal Land Use Law will be advanced if the application were granted, then the Board is within it's right to grant the variance we need.

Here, criteria "i," this will be an attractive sign like The Qunicy, it's also proportional to the scale of the building, so we can rely on criteria "i" but probably more importantly here is criteria "h" which talks about promoting the free flow of traffic, and it's been represented to us, by our client, that some of the tenants have been told that it's difficult to...some patrons are missing the turn. The Board can rely on criteria "h" as well. Also, we must show that the benefit of the variance would outweigh the detriment. I think there is a lack of detriments, it's attractive, it will help people in the car or walking. We are consistent with the purpose of the C-4 zoning district. I think we meet the statutory burden of proof for the granting of the "c(2)" variance.

Ms. Coppola: Is this only on one side of the sign or on both sides?

Ms. Cofone: It is on both sides, yes.

Questions from the Public: None.

Todd Bletcher reads the conditions into the record.

Motion to Approve

First: Nancy Coppola

Second: John Zimmerman

	YES	NO
John Cox (Chairperson)	X	
Doug Sheehan	X	
Ivan Adorno (VC)	X	

Nancy Coppola	X	
Evelyn Azcona		
Sue McElligot		
John Zimmerman	X	
Charlotte McNair	X	

VI. OTHER MATTERS OF INTEREST TO THE PUBLIC

Mr. Kratovil: I want to understand, Mr. Chairman, do you believe in climate change? Specifically, do you believe that humans are causing increasingly extreme weather, things like sea level rise?

Mr. Cox: I'm not going to discuss that here.

Mr. Kratovil: You're not going to take a side on climate change?

Mr. Cox: No.

Mr. Kratovil: Then I don't think you should continue to be the Zoning Board Chair if you're not willing to come out and admit we have a problem with climate change.

Mr. Aithal: The Chairman and members of the Board are limited to opining on the Municipal Land Use Law. I don't know that there's anything there that requires them to take a position on climate change.

Mr. Kratovil: Let me explain. My concern is about the environment. Of course, land use has impacts on our environment. I think we should have a Zoning Board where everyone on it thinks that climate change is a human caused problem that needs a human solution, and that government entities should be using their power to help guide us towards that solution, and that includes land use decisions that are made. In New Brunswick, you used to have to worry about eminent domain, but these days, so these reckless real estate companies, leading them to cut corners, shortchanging worker safety, and the planet, and our community at large. I saw this manifest itself last night when a construction crane was taken down by a storm, extreme weather, that situation alone endangered many lives, no one died, no one was hurt, that was a miracle, but it has now come upon all of us to work to raise our standards so this never happens again.

The reason I'm here is the Board did approve this project unanimously in June 2017 over the objections of some community residents and based on the representations of an attorney who, in my view, shouldn't be representing applicants at this level. I do want to ask, what conditions does the Board

typically put on applicants regarding safety of the construction site, operations of the site? Is that something the Board has ever put a condition on?

Mr. Aithal: Mr. Chairman, if I may, if it's related to the accident itself, that's a construction issue, so the Board certainly would ask that they follow the construction code, which is inherent in every approval, prior to the issuance of any building permits. There are also OSHA standards, which is a Federal statute, they still need to follow the law.

Mr. Kratovil: I'm just trying to figure out if there's anything more this Board could do, when applicants are going to build, say, something 100 feet or taller, are going to need to be bringing in large cranes, is there anything we can do to make sure there's more safety or hold them more accountable for the choices they make, as to which companies they hire and those companies track records and reputations are? And so, I encourage all of us to research and see what we each can do in our own capacity to hold these folks accountable. I'll just say as we move forward the Board should take into account past actions and statements of the applicant, as well as their experts and attorneys who have come before the Board before.

On July 8, this Board held a hearing for an applicant Recon Services, represented by Mr. Thomas Kelso, who also represents the county government. That hearing had been postponed twice before, once because the applicant and their attorney failed to give proper notice to the neighbors, the second time your agenda was full, so you went out of your way to schedule a special meeting, and in the testimony taken at that hearing you made clear a few facts, first of all that the applicant initially requested a waiver of the requirement to create an environmental impact statement, and secondly, at some point in January or February, the applicant claims they changed their mind, and then submitted an environmental impact statement.

I take pride as a journalist in making the proper legal requests for government records to assist me in my news gathering efforts, and I often share the records I take with other community members, and this particular application was no exception. I had requested the application and all of its attachments through an OPRA request and that request was made in April, and the city's planning department was involved in producing the response that was ultimately shared with me via a Google drive folder and I then shared that with community members, including individuals who were concerned about that project, and the community at large. However, the link omits the EIS. It was not provided to me by the city and no withdrawal of the waiver is there, so if anybody who looks at documents is going to get the impression that they asked for a waiver, and my right to review the complete application was violated by that insufficient response to my lawful request. I asked the Board to hold off and adjourn, and reschedule for tonight, but this Board chose not to do that and approved it unanimously. I followed up and was not able to get an EIS and unfortunately it took another week or so for me to actually get it.

Were each of the Board members provided with a copy of the EIS at the time of your vote?

Mr. Aithal: Mr. Chairman, if I may. I think we may have discussed, in the normal course of events, the application itself and all supporting materials are to be available for public inspection during business hours. We try to make it available on the website as well. Under the Municipal Land Use Law, the application and any supporting material would have to be available for public inspection, including any amendments or changes that have been made, at least 10 days prior to the hearing itself. My recollection was that the EIS for this application was submitted at least 10 days prior. Those applications are available to the Board members and all supporting documents, as well as part of their application review process. They do have an opportunity to review all of those documents. If additional information is necessary, they can ask follow up questions or for additional time so they can digest that material. But in this case, I believe the EIS was part of the application at least 10 days prior, though it may not have been part of the OPRA request.

Mr. Kratovil: My question is was the Board provided it?

Mr. Bletcher: All of the paper documents that were submitted in the file I do put on the table for the Board to look at, architectural and plans, if there are other addendum documents, engineering reports and environmental reports and so on...

Ms. Coppola: I'm pretty sure it was e-mailed to us.

Mr. Kratovil: I do have that excerpt.

Mr. Kraotvil reads excerpt of EIS into the record re. Scenic and Historic Qualities.

Mr. Kratovil: Does anyone know what "Kikpa" is?

All: No idea.

Mr. Kratovil: So that's an error in this EIS.

Ms. Coppola: Maybe it's Kirkpatrck Chapel. A typo.

Mr. Kratovil: This is exactly what I would have done if I had the opportunity to review the EIS before the hearing. I would have asked the applicant, "what is this?"

Mr. Aithal: I think it would have been more relevant if the EIS had said it was going to impact it.

Mr. Kratovil: I would suggest that this is an incomplete assessment. And the fact that only two sentences are applied to the historic nature of the sixth ward of New Brunswick. This project shouldn't have been approved with a sloppy EIS. It was a mistake, in my view, not to give the public time to review this. And now it's too late.

Mr. Aithal: There is a 45-day appeal period. So, it's not too late.

Mr. Kratovil: You're suggesting that I could file a...

Mr. Aithal: The Board has taken the action that it must take within a certain period of time. Anyone that has any objection to the approval or actions of the Board can pursue a prerogative writ action. The Board members understand that they're not the final say, there's always an appeal.

Mr. Kratovil: For the record, I'm considering that. The other reason why I'm considering that, there was a statement made on the record, she has asked whether the environmental board, if they had the opportunity to review the elusive EIS, and...

Mr. Aithal: I should advise the Board, if you're considering a writ action, this application, as long as there's a pending or potential prerogative writ action, as Mr. Kratovil has indicated, that we not discuss this application or entertain additional questions about this.

Mr. Kratovil: Mr. Dominguez had made statements at the last meeting that implied the Environmental Commission had the opportunity to review the EIS and the full application, and the following night I went to the Environmental Commission and they had trouble getting a quorum and there were only two people who showed up, but they said we had not seen that. I brought it up to the City Council and Mr. Dominguez to ensure that the Environmental Commission does have the opportunity to review these important applications before they get to the TAC, these hearings. I wanted to correct the record that that's another reason I'm concerned, the desire to live in a clean, healthy place...

VI. DISCUSSION ITEMS

Ms. Coppola: So our next meeting will be at 7:00?

Mr. Dominguez: Going forward, all of the meetings will start at 7:00. Not just summer hours, the rest of the year. We may continue it next year.

Motion to Adjourn

First: Nancy Coppola

Second

All in Favor.

VI. ADJOURNMENT