

Zoning Board of Adjustment
Town of Hanover, New Hampshire
Case No. 25015/014-Z2018-28

Date of Public Hearings: June 28, July 9, August 30, September 6, and October 25, 2018.

Date of Deliberations: November 12, December 6, 2018;

Board members participating: Radisch, Eggleton, Gardiner, Green, Waugh.

Gardiner prepared the preliminary draft.

PROCEEDINGS:

1. Chris Audino, agent for Christ Redeemer Church, is requesting a special exception under Article IV, Sections 405.8 and 405.9, to permit construction of a church at 28 and 32 Greensboro Road, Tax Map 25, Lots 14 and 15 in the SR-2 and RR zoning districts.
2. The following materials were presented by the Applicant and those favoring the project, prior to and during the hearing process:
 - a) 5/29/18 Letter/narrative from Breadloaf Architects, Planners & Builders (Chris Huston, Architect) detailing how the project is claimed to meet the special exception standards.
 - b) Set of plans, prepared mainly by Breadloaf, including land title survey (Wayne McCutcheon), Existing and Demolition Plan C-0.1, Zoning Exhibit C-0.2, Zoning Exhibit w/Overlay C-0.3, Proposed Layout C-1.1, Proposed grading C-1.2, Utility Plan C-1.3, Erosion & Sediment Control Plan C-1.4, Access Drive Profile C-2.1, Utility Profiles C-2.2 and 2.3, Utility Notes and Details C-4.1 and 4.2, Stormwater Notes and Details C-4.3, Erosion Control C-4.4, and Site Planting Plan L-1.0 (2 sheets).
 - c) Building plans and drawings, sheets A-2.1, 2.2, 4.1, 4.2 and Zoning Use diagram.
 - d) A traffic and congestion analysis performed by RSG Inc., and concluding for the reasons given therein that the project will not cause undue adverse impacts to traffic on the surrounding roadways; *also see* 7/9/18 supplement.
 - e) Noise report from RSG, Inc. (Eddie Duncan) with attachments, concluding that the project will meet the Town's noise standards.
 - f) A 5/11/18 letter from Michael W. Gammal, MAI, Certified Real Estate Appraiser, concluding that the church will not have a negative impact on the market values of surrounding properties.

- g) A set of 8 analyses of several individual churches, in the Upper Valley and elsewhere (e.g. Keene NH), intended to demonstrate the lack of any negative impact on neighboring property values.
 - h) Lighting report prepared by Jim Pulver of Breadloaf, including an update submitted on 7/10/18.
 - i) 7/20/18 Stormwater System Design Narrative from Otter Creek Engineering, with numerous attachments;
 - j) Copies of relevant tax maps and numerous photographs;
 - k) 7/10/18 Memo from Eddie Duncan, rebutting the presentation of Atty. Stearns on the noise issue;
 - l) 7/12/18 Supplemental Memo from Ben Swanson of RSG addressing background levels of traffic;
 - m) 7/20/18 Memo in rebuttal on engineering issues by Brent Rakowski, PE of Otter Creek Engineering, plus attachments;
 - n) 7/10/18 Letter in favor from Drew Matter, church member;
 - o) 7/3/18 E-mail from Linda Yaman, church member, in favor of the project.
 - p) 7/10/18 letter from William H. "Star" Johnson reciting his efforts as a realtor to find church property for the Applicant in Hanover.
3. The following materials were submitted by persons questioning or opposed to the application (most either abutters or near neighbors):
- a) 6/21/18 and 6/29/18 letters from Sandra White;
 - b) 6/22/18 letter from Jennifer Stone Randolph;
 - c) 6/22/18 E-mail from Emily Taylor, Justin Assad & Henley Assad
 - d) 6/24/18 letter from Heide Whelan;
 - e) 6/24/18 letter from Lara Acker;
 - f) 6/25/18, 7/20/18, and 9/6/18 letters from Jeffrey Acker (accompanied by a petition from other area residents in support of his position);
 - g) 6/26/18 letter from Atty. Nathan Stearns;
 - h) 6/27/18 letter from Ingrid Zimmermann, Gabriel Aepli and Yeong-Ah Soh;
 - i) July 2018 Report on wetlands and drainage, by Wetlands Scientist Rick Van de Poll on behalf of the Ackers (with attachments);
 - j) 7/3/18 E-mail from Paul Beisswenger & Carolynne Krusi;
 - k) 7/9/18 Drainage evaluation by Ann G. Kynor PE and Jeffrey Goodrich PE, on behalf of the Ackers (with attachments);
 - l) 7/9/18 letter from Margaret Bragg
 - m) 7/13/18 E-mail from Clair Hunt;

- n) 6/27/18 and 7/24/18 letters from Amit Chakrabarti;
 - o) 7/28/18 letter from Debra Truman and Bruce Hettleman, MD;
 - p) Letter (undated) from Tracy Smith
4. The Applicant was represented at the hearing by Mr. Audino, its Executive Pastor, Attorney Thomas Hanna, Chris Huston, Architect AIA from Breadloaf (project), Jim Pulver of Breadloaf (light), Eddie Duncan, INCE (noise), Ben Swanson, PE of RSG Inc.(traffic) and Brent Rakowski, PE of Otter Creek Engineering (water). In addition, the following persons spoke in favor:
 - a) Perry Seale, testifying about other churches (including some as large as the proposed one) and their lack of adverse impact on neighborhoods or property values;
 - b) Bob Sidler of Etna, generally in favor;
 - c) Chase Carlyle (church member) in favor.
 5. The following persons testified at the hearings in opposition to the project:
 - a) Abutters Jeffrey and Lara Acker;
 - b) Attorney Nathan Stearns, representing the Ackers;
 - c) Pietie Birnie (Velvet Rocks resident);
 - d) Maria LaScaris (Velvet Rocks resident);
 - e) Josh Hunt (#24 Greensboro Rd);
 - f) Heidi Whelan (#43 Greensboro);
 - g) Sandy White (#44 Greensboro);
 - h) Gary Levine (Velvet Rocks resident);
 - i) Amit Chakrabarti (see his letters);
 - j) Margaret Bragg (see her letter);
 - k) Donna Schlosser (#42 Greensboro).
 6. Additional materials and testimony were also submitted in favor of, and against, the two companion applications by Christ Redeemer Church – viz., the wetlands special exception case No. 25015/014-Z2018-29, and the driveway width Case No. 25015/014-Z2018-27. Those cases are being decided separately in opinions adopted today. The record in this case was held open to permit consideration in this case of any evidence received in the other two that may be relevant here. We have considered evidence from the other two proceedings to the extent we have considered it relevant to reaching the decision we announce here.
 7. Members of the Board are familiar with the area and individually visited the properties involved. The Board has also thoroughly reviewed the extensive documentary record. The failure to emphasize a particular detail in this decision does not mean that detail has been ignored.

FINDINGS OF FACT:

8. From the voluminous testimony there emerge the following primary facts. Applicant is a Church group that has been in existence approximately 18 years, and currently holds its services in the Hanover High School (generally from 10 to 11:30 on Sundays). It has been seeking its own more permanent location for many years. A prior effort to relocate to a site on Buck Road was unsuccessful.
9. In the Hanover Zoning Ordinance churches are allowed by right in the Institution (I) district and by Special Exception in the Residence and Office (RO), General Residence (GR), Single Residence (SR), and Rural Residence (RR) districts. Churches are not allowed in the Business and Limited Manufacturing (BM), Downtown (D), Business (B), Office and Laboratory (OL), Forestry and Recreation (F), Natural Preserve (NP) and Goose Pond (GP) districts. The Buck Road property on which Applicant previously sought permission to locate the church was in the OL District.
10. Applicant now owns Lots 14 and 15, the two lots involved in the current proposal, plus some adjacent lots which it plans to retain as residences, and which are not involved in this application. Lots 14 and 15 lie primarily in the SR-2 Zoning District; their northerly extremities extend into the RR Zoning District. They are now occupied by two existing residences with an accessory barn on Lot 14 and an accessory shed on Lot 15. The existing structures are of advanced age and characteristic of early 20th century rural residences. Applicants propose to remove those residences and accessory structures and the access drive for the residence on Lot 15.
11. The SR-2 Zone in which Applicant proposes to place the church extends for roughly 200 or 300 yards on either side of Greensboro Road from its western terminus at Route 120 all the way to Great Hollow Road and then north on Hanover Center Road. The Zone is characterized by modest single family homes, primarily pre-war cape style homes on relatively large lots. Most belong to long-time homeowners.
12. There is one commercial use in the neighborhood. That is a relatively non-obtrusive one storey multi-use building that remains as a non-conforming preexisting use about one quarter mile to the east of the proposed project. Several open space subdivisions, including Velvet Rocks, Silent Brook and Berrill Farms developed in the late 1990-early 2000's lie in the area. They are not in the SR-2 Zone. They are adjacent and to the north with drives through the Zone providing access to Greensboro Road.
13. Applicants propose a new 13,400 square foot footprint two story Church and an attached structure for associated uses including a gathering hall and offices. The structure will present 128 feet of building frontage facing east. The south side of the building facing Greensboro Road will extend parallel to the road for about 60 feet. At its nearest point it will be set back about 45 feet from the road. While built into a rise, the western end of the Church structure

for 34 feet of its frontage along the road will be approximately nine feet higher than the roof ridge of the existing residence.

14. The proposed Church would be accessed by a two lane driveway on the west side of Lot 14. The new two lane road will replace and expand the existing driveway for residence on Lot 14 to provide access to a parking lot upland away from Greensboro Road. The parking lot will consist of three separate areas the most northerly of which will extend into the RR Zone. The precise number of spaces in the lot has not finally been determined (see our opinion in case Z2018-29) but it must include at least 104 spaces to conform to requirements of the Zoning Ordinance.
15. The Church sanctuary will seat 400 congregants. The primary use of the Church will be for Sunday services. Applicant estimates that approximately 300 people using 100 cars will be present for a Sunday service and that there will be concurrent Sunday School classes. This estimate may be somewhat conservative. The record includes information from the Church website as it existed in July 2018 that states that the "average weekly attendance is now over 400." The Church will also be the point of services for weddings and funerals and associated post service gatherings.
16. As for use during the weekdays, the Applicant contemplates office use for two to five people, and periodic morning or evening meetings for 10 to 20 people. Applicant's written submission contemplates "further auxiliary uses (including service to the community)... including the goal to 'love and care for the Upper Valley community by serving our neighbors and contributing to the overall building up our neighborhoods, schools and communities." The Church web site in July 2018 states that the schedule at that point included a Youth Group and Women's Book Group on Monday evenings, 6:00 to 7:00 AM and 9:00 to 10:30 AM Bible Study Groups on Tuesday, other Bible Groups on Tuesday and Thursday evenings and a First Friday Men's Breakfast at 6:00 to 7:00 AM. Testimony of Applicant at the hearing made clear that the Church meeting spaces will be open as appropriate for other non religious groups for community purposes such as Boy Scouts, Little League and the like. At our hearings, representatives of the Church were reluctant to establish any arbitrary fixed limit on the amount of weekday and evening use.
17. Testimony from many long time residents reflected their fear that the project will negatively affect the 20-30 residences in the immediate vicinity and impair seriously what they appreciate as the quiet modest residential character of the neighborhood. Their testimony voiced strenuous objection to the traffic, light, and noise of the project, its disruption of existing pastoral views, and its potential to aggravate existing storm water runoff problems from the project site onto Greensboro Road and adjoining residences. The most immediately and seriously affected residents are the owners of the adjacent properties to the project at 24, 25 and 27 Greensboro Road.
18. Further factual matters are addressed in the Reasoning section below.

REASONING OF THE BOARD:

19. The Hanover Zoning Ordinance allows a church by special exception in both the SR-2 and RR zoning districts. Indeed, the only zone in Hanover where a church is permitted without a special exception is the Institutional zone, most of which is owned by non-religious institutions. The special exception mechanism constitutes the way in which Hanover intends to accommodate religious land uses in other zones.¹ In allowing churches by special exception in residential zones, there is an acknowledgement that there will be some characteristics typical of churches that will be tolerated in such zones. The mere fact that there will be need for a building larger than a normal residence to accommodate an assembly, that there will be the need for adequate parking, or that congregant car traffic will occur at schedule service times, particularly on Sunday, should not be grounds for denying the special exception. At the same time, the Ordinance makes clear, by requiring special exception review, that there are limits to the level of impact that will be allowed. There is a line at which church uses may be sufficiently substantial and jarring to the primarily residential objectives of the Zone to fail the special exception test. We have the unenviable task of determining whether that line has been crossed in this case. In making our judgment, our analysis must be based on the details of the site and plans at issue here and our understanding of the Ordinance.
20. Turning to the special exception criteria, Section 207.1A requires that a special exception use “must conform to the general and specific standards established by this Ordinance.” The two companion applications that we are concurrently deciding address matters relating to the conformity of the proposed use to standards set forth in the Ordinance and, if the project proceeds, it will do so in compliance with our decisions in those applications. There is no testimony or other evidence suggesting that the project might fail to meet the general and specific standards of the Ordinance in any other respect.
21. Section 207.1 B(3) requires that the proposed use will not adversely affect town services and facilities. The record raises one matter of possible concern in this respect - the possible necessity of policing the proposed church parking lot. To meet visual aesthetic concerns, Applicant proposes to place the lot well uphill and away from Greensboro Road and, with vegetation to shield the lot from view. The lot will benefit from significant lighting but, to address other concerns, lights will not be on at night when the lot is not in use by the Church. For that reason, there may be the possibility that the lot might become an attractive location for illicit late night rendezvous or otherwise become a nuisance requiring police attention. We have considered the possibility that this issue could effectively be addressed by gating the lot. Possibly so. But this strategy could backfire, as the gate could prevent law enforcement from easily accessing the lot and there would always be the question of appropriate maintenance and use of the gate. The record before us is not sufficient for us to conclude that observation of the parking lot would place any significant burden on town

¹ We are aware of the difficulty Applicant has had in finding a permanent site anywhere in Hanover and that federal law (the Religious Land Use and Institutionalized Persons Act) would prohibit a town from effectively zoning out church use.

police services, particularly since the Town has not registered any such concern. But we recognize the potential for inappropriate night use of the lot.

22. Section 207.1 B (2) requires that the proposed use will not adversely affect the highways and sidewalks and use thereof located in the area. Here the Applicant presented a detailed traffic study from RSG, Inc. The analysis assumes that 300 persons would attend typical Sunday service that would generate approximately 212 vehicle trips. Occasional study groups and meetings might be attended by 50 people with many fewer trips. On this basis, RSG concludes that the proposal will not at any time create unsatisfactory conditions under prevailing traffic standards either on Greensboro Road or the nearby intersection of Greensboro Road and Route 120. Neighbors presented no contrary expert testimony. The RSG analysis of Sunday usage suggest the need for 106 parking spaces to accommodate the congregation and an average occupancy of 1.4 people per car.
23. We now turn to the most hotly-contested issue in this case raised by the provisions of Ordinance Section 207. 1 B(1), whether the proposal “will not adversely affect...the character of the area in which the proposed use will be located.” The parties differ on how “the area” should be defined here, with the Applicant suggesting a half-mile radius around the project, while some neighbors suggested a much smaller area – basically what can be seen from the road in front of the residences immediately across from the project. The Board believes that the area relevant to our analysis is most logically defined as the SR-2 Zone with the importance of effects increasing as proximity to the site increases. When the Board makes a "character of the area" findings for special exceptions such as extra height for fences or considerations of dimensional requirements, we typically consider the immediate neighborhood and not everything within one-half mile of the site.
24. Since the SR-2 Zone is the area relevant to our analysis, the effect of the project must be assessed with attention to the character that the Zoning Ordinance prescribes for that district. The objective of the Single Residence (SR) district is defined in Section 405.8, "...for a district to provide for one family dwelling units as is typical in many New England villages. With adequate safeguards, certain other types of uses...will be permitted. These types of uses not only complement the single family homes, but serve these homes as well." We gain some insight into the Ordinance description of the SR Zone by contrasting it with the description of the GR Zone in Ordinance Section 405.7. The GR Zone is: a "built up" area suitable for "high and moderate density residential dwellings in a range of dwelling units from single family to multi-family." The character that the Ordinance tells us to protect is an area suitable for single family homes (not high and moderate density multi-family dwellings).
25. Applicant asks us to take into account, in determining the character of the area, the warehouse located one quarter mile to the east which exists as a non-conforming pre-existing use. We do not think we should do so. Grandfathered uses are permitted in deference to property rights existing before enactment of the Zoning Ordinance establishes a new regime specifying the types of structures and uses for a district. Once enacted, the Ordinance establishes a new vision for the character of an area. Necessarily tolerated pre-existing uses

should not affect, in a special exception proceeding, our judgment of the character of the area that the Ordinance is designed to establish.²

26. Applicant also asks us to take into account in determining the character of the area that includes several large open-space subdivisions that have been constructed in the area. We do not think that is appropriate because those subdivisions are not in the SR-2 Zone. At the same time, we note that developments are all single family homes, are not of the scale and intensity of the proposed use, and are set back so that they are not seen from abutting properties.
27. We outline below a number of factors the we have considered in reaching our conclusion that the proposal would adversely affect the character of the area. We take into account the cumulative consequences of all of them.

We acknowledge that churches are allowed in the SR 2 Zone and can complement and serve the residential community as set forth in the objective statement for that zone. Churches have historically been a part of the prototypical New England village, as are exemplified by the churches that are established in Etna and Hanover Center (discussed below). It is the scale and intensity of this specific proposal that we conclude would have an adverse impact on the character of the area.

28. *Building Scale:* The proposed Church and use is out of scale with the smaller facilities one might reasonably expect in a residential neighborhood. For example, the record includes scale data on two that exist in residential zones and are more appropriately sized

First Baptist Church in Etna:

Footprint	5119 square feet
Total Finished area	10,000 square feet
Parking Lot	unpaved, unlit

First Congregational Church in Hanover Center

Footprint	4048 square feet
Total finished area	6400 square feet
Parking Lot	unpaved, unlit

Proposal:

Footprint	13,400 square feet
Total Finished Area	21,000 square feet
Parking Lot	more than 100 cars - paved and lit

Visit the Etna and Hanover Center churches, note their size, and then picture a structure two and a half to three times as large. The proposed Christ Redeemer Church structure would be a very large visually jarring intrusion on the landscape, its prominence aggravated by its

² This case is not a request for a variance. In such cases the Board must decide whether to set aside Ordinance requirements to avoid unnecessary hardship. In a special exception case we must adhere to the requirements of the Ordinance.

placement on the hill dominating the topography of Lot 14. The scale of the building and parking lot is akin to facilities in Centerra Business Park and larger than the Hanover Coop and other commercial buildings in town. It would be at home in a commercial or dense residential setting, not in this residential neighborhood with single family lawned homes.

29. We find that the scale and associated intensity of a 300 to 400 person congregation would have an adverse impact on the quiet semi-rural character of the neighborhood in which it is proposed to be located due to traffic and noise that it would generate, particularly on Sundays, a time which is typically quieter in a residential area.

Traffic: The RSG, Inc. conclusion as to satisfaction with road adequacy standards established by the State Department of Transportation does not address neighbor concerns that increases in traffic would alter the character of the neighborhood by greatly increasing use of Greensboro Road at least at times adjacent to church services. Nor does the fact that traffic on Greensboro Road, which now functions as a Class II arterial road – *see* Hanover Master Plan (2003), Map 12-1 – while intensifying for several decades and active on weekdays, would be significantly increased at least on Sunday, by the traffic associated with a new large Church and community assembly facility - traffic that will be concentrated at one time and at one place will adversely affect the neighborhood.

31. *Noise.* Similarly as to noise. The Applicant presented testimony from an experienced noise engineer concluding that noise generated on the site, as altered, would comply with the noise requirements on the Hanover Zoning Ordinance and the Site Plan Regulations. The expert concluded that sounds from ceremonies in the building would not be heard by neighbors, and that noise from air conditioning would be removed from the roof to avoid noise from that source and that noise from persons assembling outside the building, on a porch facing Greensboro Road or otherwise, would not exceed ambient noises now prevailing. But we think the testimony dismisses a bit too casually the sounds of outdoor summer celebratory convocations of one kind or another and the noise associated with the entry and parking of 100 or more cars and their occupants. The sound expert testified that talking and driving and car door closing sounds are not "new" sounds and are common in a residential neighborhood. But we do not consider them common when they are coming from several hundred people on the same property. A great deal more noise would emanate from Lot 14 if the project were to proceed than occurs in its present configuration or that would result from a church half the size of that proposed.

32. *Program Scale:* Applicant has expressed its interest in making the property available as an assembly point and community resource available when it is not needed for the church program. This open ended interest raises the question of whether such additional uses will significantly add to activity in a way that damages the protected residential character of the neighborhood. We have considered the possibility that conditions could be imposed on non religious activity that could bring the resulting disruptions down to acceptable levels but are

not confident that it is possible to establish such conditions by rule. Taken with other disruptive factors, we weigh this as a negative in our "character of the area" judgment.

33. *Light:* Lighting for the project has been designed with sensitivity to neighboring properties. Applicant's light expert concluded that lights from the Church and parking lot will comply with the requirement in Section 513 of the Zoning Ordinance that adjacent properties be protected from "unreasonable illumination" and that such lighting not result in "light spillage" beyond the property line. Applicant has agreed to restrictions that will eliminate illumination when it is not necessary for its use of the building and parking lot and also has agreed that the Board could condition approval of the project on a requirement that Applicant install a system to turn off lights when the property is not in use. Operation in that manner would certainly ease the situation. But it does not meet neighbor concern that night time ambient light, particularly from reflection of snow on the parking lot, will significantly change the local vista. Nor does it address a problem caused to neighboring properties by the night time light of cars descending the church driveway to Greensboro Road. Those lights will shine directly into the front windows of the home at 25 Greensboro Road which is almost directly opposite the driveway to the south. Adverse impact on one neighbor would not be sufficient to deny a special exception but it is still another factor that we weigh with others in judging cumulative effect on the character of the area.
34. *The Parking Lot:* There is some question regarding the adequacy of the proposed parking lot to accommodate a 400-person congregation. The proposal meets the parking requirements of the Zoning Ordinance. We note, however, that for a 113 space parking lot to serve a 300-person congregation³, this would equate to almost three people per car, which seems quite high. The situation would be even tighter as the number of congregants were to approach 400. Some congregants may walk or bike to the site, but given the less than central location we would not expect this to be a large number of people. In addition, our public transit system does not run on Sunday. The Applicant's own traffic study assumes 1.4 persons per car for the traffic analysis. As parking is not allowed on Greensboro Road, and the site is otherwise hemmed in by wetlands, overflow parking (i.e., for more than 113 cars) cannot be handled on site. We acknowledge that the proposal meets the zoning requirements for parking, but we remain concerned that if the provided parking area proves to be inadequate, the project could lead to fugitive parking on the undeveloped portions of the site, including wetlands or their buffers.
35. *Wetlands and Drainage:* Project opponents argued strenuously that the development will significantly aggravate the existing problem of storm water runoff that has created flooding conditions in the past. This is a serious engineering problem that must be resolved in a way that does not worsen an already existing nuisance. However, as discussed in detail in our

³ Applicant proposes a parking lot with 120 spaces. In our accompanying opinion in case Z2018-29 we required that the northwest portion of the lot invading the wetland buffer be removed, leaving 113 spaces in the lot. Our concern about parking adequacy would remain even if the lot included all 120 spaces originally proposed in the application before us.

companion opinion in Case Z2018-29, we believe other provisions of the Zoning Ordinance, as well as the Hanover Planning Board Site Plan Regulations and the New Hampshire Department of Environmental Alteration of Terrain regulations, taken together, deal comprehensively and much more specifically with this concern. If those regulations are not met, the impact of drainage on the character of the area will be a moot point since the project could not proceed. If they are met, the character of the area issue will not be adversely affected on account of water flow problems.

36. *Conclusion.* In conclusion, taking into account the cumulative effect of all the factors mentioned above, the Board concludes that the proposed project is will adversely affect the character of the SR 2 area in which it is proposed.

ACTION OF THE BOARD:

It was moved by Gardiner, and seconded by Radisch, to **DENY** the requested special exception.

Voted in favor: 3 (Gardiner, Green, Radisch)

Voted in opposition: 2 (Eggleton, Waugh)

Jeremy Eggleton

Arthur Z. Gardiner, Jr.

Richard L. Green

Carolyn Radisch, Chair

H. Bernard Waugh, Jr.

Your right to appeal this decision depends on your compliance with the New Hampshire RSA 677.