

Zoning Board of Adjustment
Town of Hanover, New Hampshire
Case No. 25015/014 Z2019-10

Date of Public Rehearing: March 14, 2019
Dates of Deliberations: March 21, 2019 and March 28, 2019
Board members participating: Radisch, Eggleton, Gardiner, Green, Waugh.

Green prepared the preliminary draft. It was published and reviewed by Board members individually and without discussion prior to the March 28, 2019 deliberation session.

PROCEEDINGS

1. Rehearing of Case No. 25015/014 Z2018-28: 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 Board met in public session on January 28, 2019 to consider the Christ Redeemer Church (hereinafter “CRC” or “applicant”) motion for rehearing of Case No. 25015/014 Z2018-28. The Board voted 5-0 to rehear the case and to consult with counsel under the RSA 91-A:2(b) “consultation with counsel” exception to the RSA 91-A public meeting requirements.
3. During the rehearing, Waugh moved to adopt the record of the three 2018 cases so that representation of evidence already presented would be unnecessary. Gardiner seconded. The Board approved the motion 5-0.

SUMMARY OF THE RECORD – CASE NO. 25015/014 Z2018-28

4. Dates and Board participants:
 - a) Dates of Public Hearings: June 28, July 9, August 30, September 6, and October 25, 2018
 - b) Dates of Deliberations: November 12, December 6, 2018
 - c) Board members participating: Radisch, Eggleton, Gardiner, Green, Waugh

5. 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 Modder, 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.
6. The following materials were submitted by persons questioning or opposed to the application (most either abutters or near neighbors) prior to and during the hearing process:
 - 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 Aeppli 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.
7. The Applicant was represented at the hearings 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.
8. 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 Road);
 - 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) Dana Schlosser (#42 Greensboro).
9. 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 were decided separately by the Board. The record was held open to permit consideration of any evidence received in the other two cases that may have been relevant. By including the record from the other two proceedings, we consider evidence from those proceedings to the extent we consider it relevant to reaching our decision.

SUMMARY OF THE RECORD - REHEARING

10. The following materials were presented by the Applicant and those favoring the project, prior to and during the rehearing:
- a) Motion for Rehearing submitted January 4, 2019 on behalf of CRC by attorneys Thomas R. Hanna, Esq. and Michael J. Tierney, Esq. The motion included a copy of the Board’s decision, transcripts of both deliberation sessions for the case, and excerpts from an earlier draft decision to approve the application that failed by a 3-2 vote of the Board.
 - b) A letter dated March 14, 2019 from Michael J. Tierney, counsel for CRC, responding to RLUIPA arguments raised in a letter from Nate Stearns, counsel for Jeffery and Lara Acker (see 13a below).
 - c) An email from Joe Roberto (230 Dogford Road).
 - d) An email from Kay Hillinger, M.D. (Hanover Center Road).
 - e) A letter from Javier Valenzuela (4 Bacchus Circle, Velvet Rocks).
11. The following materials were presented by those opposed to the project prior to and during the rehearing:
- a) A letter dated March 13, 2019 from Nate Stearns, counsel for Jeffery and Lara Acker, responding to arguments in CRC’s motion for rehearing.
 - b) A letter dated March 14, 2019 from Jeffery Acker (#27 Greensboro Road) regarding character of the area (5 pages).
 - c) A letter dated March 14, 2019 from Jeffery Acker regarding RLUIPA (6-pages).
 - d) A letter dated March 14, 2019 from Jeffery Acker regarding traffic issues and the RSG traffic study.
 - e) A letter dated March 13, 2019 from Heide Whelan (#43 Greensboro) and Lara Acker (#27 Greensboro Road).
 - f) An email from Sandra White (#44 Greensboro Road).
 - g) An email from Susan Pietie Birnie (Velvet Rocks Resident). Thread also containing comments from Lara Acker (#27 Greensboro Road).
 - h) An email from Susan Hawley.
 - i) An email from Sarah K. LaBombard (#41 Greensboro Road).

12. The Applicant was represented at the rehearing by Chris Audino, CRC's Executive Pastor, as well as attorneys Thomas Hanna and Michael Tierney. Mr. Hanna presented the motion for rehearing, while Mr. Tierney spoke about matters related to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). In addition, the following persons spoke in favor of the project:
- a) William Johnson (realtor for CRC in his personal capacity);
 - b) Drew Modder, church member.
13. The following persons spoke in opposition to the project:
- a) Nate Stearns, counsel for Jeffery and Lara Acker;
 - b) Abutter Jeffrey Acker (#27 Greensboro Road);
 - c) Abutter Lara Acker (#27 Greensboro Road);
 - d) Abutter Amit Chakrabarti (#25 Greensboro Road);
 - e) Yeong-Ah Soh (resident of Velvet Rocks development).
14. 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

15. 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.
16. In the Hanover Zoning Ordinance churches are allowed by right in the Institution (I) district and the Downtown (D) district¹, 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), 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.
17. 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

¹ Our previous decision incorrectly states that Churches are only allowed by right in the Institution (I) district. Applicant's Motion for Rehearing correctly states that both the Institution (I) and Downtown (D) districts allow Church use by right, as does Mr. Acker's 5-page letter of March 14, 2019.

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. Applicant proposes to remove those residences and accessory structures and the access drive for the residence on Lot 15.

18. 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.
19. There is one commercial use in the neighborhood. That is a relatively non-obtrusive one-story 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 in the RR district. They are adjacent and to the north with drives through the Zone providing access to Greensboro Road.
20. Applicant proposes a new 13,400 square foot footprint two story Church and an attached structure for associated uses including a gathering hall and offices. Total size of the building will be 21,250 square feet. The building 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.
21. 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. Based on the proposed maximum occupancy of 415 persons, the parking lot must include at least 104 spaces to conform to requirements of the Zoning Ordinance.
22. The proposed Church sanctuary will seat 400 congregants. Up to 15 staff members may also be present. 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. The record includes information from the Church website as it existed in July 2018 that reports its founder's vision for the future: "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.
23. 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) with the goal to 'love and care for the Upper Valley community by serving our neighbors and contributing to the overall building up of our neighborhoods, schools and communities'."

The Church website 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.

24. 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 stormwater 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.
25. Applicant's Motion for Rehearing, and letters submitted by counsel for CRC and the Ackers for the rehearing, focused on the Ordinance, the Board's reasoning and related matters of law. Those materials contain many case law citations which we will not enumerate here. Otherwise, no facts were introduced prior to or during the rehearing that were not in the case record.
26. Further factual matters from the record are addressed in the Reasoning section below.

REASONING OF THE BOARD

INTERPRETATION AND APPLICATION OF THE ORDINANCE

27. Applicant's motion contends that the Board unreasonably and unlawfully interpreted and applied the special exception provisions of Section 207 of the Ordinance by including impacts from aspects of the project that meet the general and specific standards of the Ordinance in its determination that the project will adversely affect the character of the area under 207.1.B(1). For example, if the noise generated by a project in the SR-2 district does not exceed 60dB at the property line by day and 50dB by night, then the Board cannot include that noise in its determination under Section 207.1.B(1). We disagree.
28. Section 207.1.A requires compliance with all general and specific standards of the Ordinance. Section 207.1.B(1) requires the Board to determine whether the project will adversely affect the character of the area. These are separate requirements, and there is no provision in the Ordinance that excludes consideration of compliant aspect of the project in the Board's determination under 207.1.B(1), or for that matter 207.1.B(2) and 207.1.B(3). Further, it does not comport with common experience to say that just because an aspect of a project complies with the Ordinance it cannot adversely affect the character of the area. For

example, the crowing of a rooster confined to an area sufficiently far from the property line may comply with the noise standards of the Ordinance, but when heard by neighbors at sunrise may be considered by the Board to adversely affect the character of the area.

29. Even if we were to accept applicant's assertion about compliant aspects, we would still include negative aspects of traffic levels and congestion in our determination under 207.1.B(1) because the Ordinance does not set general or specific standards for traffic levels or congestion. Further, noise from idling cars on Greensboro Road queued to enter the CRC property on Sundays is not regulated by the Ordinance because it does not emanate from the property.
30. Applicant also has asserted that the Board unlawfully combined the "cumulative effects" of multiple negative impacts to arrive at its determination that the project will adversely affect the character of the area. We disagree. There is nothing in the Ordinance that prevents the Board from assessing the combined impacts from the project, even if none of them individually warrants a determination that the project will adversely affect the character of the area. Indeed, the Ordinance asks whether the "proposed use" will adversely affect the character of the area, which we take to mean *all* the impacts taken together.
31. Applicant contends that the Board's definition of "area" was too narrow, focusing primarily on the three abutters most affected by the project when it should have considered "area" to include the larger "environs", "neighborhood" and "town". We disagree. The Board believes that the area relevant to our analysis is principally the Zones in which the project is located, with the importance of effects increasing as proximity to the site increases.
32. Applicant's motion is critical of the word "scale" used in our decision and by some in the majority during deliberations. While some members of the Board are concerned about the size of the building and parking lot, which are aesthetic aspects of scale, our shared larger concern about scale is the intensity of use. By intensity of use, we mean the number of people converging on and departing from the property over a given period of time, along with their activities while on the property. In the case of the CRC project, the more people that arrive and depart, and the shorter the time over which arrivals and departures take place, the more intense will be the use and the larger will be the impacts from traffic, noise and, to a lesser extent, light. While Board members were not unanimous about whether these impacts warranted denial of the application, the facts of the case clearly show that the project's intensity of use will generate potentially negative impacts. Therefore, our previous decision was based on details of the site and plan, additional facts taken from the record, as well as readily observable facts from our visits to the property. It was not unreasonable, capricious, or based on mere opinion and vague concerns.

CONSIDERATIONS FOR CONDITIONS

33. Section 207.4 of the Ordinance gives the Board broad authority to impose conditions on its approval of a special exception:

In addition to the general and specific standards established by this Ordinance, the Board shall impose upon the approval of a special exception such additional conditions as it finds reasonably appropriate to safeguard the neighborhood...

The phrase “In addition to the general and specific standards established by this Ordinance” makes clear that the Board is empowered to impose restrictions that go beyond the general and specific standards of the Ordinance to mitigate negative impacts from both compliant and unregulated aspects of the project, and that the Board is required to do so. We believe by using our broad power to impose conditions, we can safeguard the character of the subject neighborhood in the SR and RR districts as described for those districts in the Ordinance.

34. The RSG study does not adequately address the problem of traffic congestion and noise in six respects: It estimates the effect on traffic over a period of an hour, not the shorter time during which cars can be expected to drive to and from the church. It assumes an average number of trips based on the square feet of the building rather than expected attendance at a service. It assumes an average of 2.9 people in each car driving to the church. It does not address the traffic issue at the entrance to the church but only at the distant intersection of Greensboro Road and Route 120. It assumes church attendance of 300, while the capacity of the assembly room in the church is 415. It fails to consider the number of spaces in the parking lot.
35. The RSG study calculates a total of 212 trips (102 entering and 110 exiting) during the peak hour on Sundays. Ben Swanson, RSG’s traffic expert, confirmed at the June 28, 2018 hearing that estimated traffic flow and congestion was based on 212 trips averaged over a 60-minute period, not 102 entering and 110 exiting in 15-20 minute periods before and after church services, which in our experience is when most church traffic takes place. Mr. Swanson conceded that the study did not model traffic flow or congestion using shorter time periods than 60 minutes. As such, we find that the RSG study cannot be relied upon to estimate traffic flow and congestion during peak periods before and after church services.
36. During the June 28, 2018 hearing, Mr. Swanson was asked for the source of the assumed 2.9 persons per vehicle that results from dividing the typical attendance of 300 stated in the study by 102 inbound trips. Mr. Swanson did not provide an answer, but RSG later submitted a supplementary memo dated July 9, 2018 explaining that the number of trips was calculated based on the square footage of the building, proposed to be 21,250 square feet, not the expected average attendance divided by an assumed average persons per vehicle. The memo states that RSG used the industry standard Institute of Transportation Engineers (ITE) method for calculating traffic for church land use (LU 560), selecting the more conservative national average of 9.99 trips per 1,000 square feet rather than the 5.99 trips per 1,000 square feet “local” calculation by the Southern New Hampshire Regional Planning Commission.
37. We find two related issues with the ITE methodology. First, it results in an average of 2.9 persons per vehicle at the current typical CRC attendance of 300 on Sundays, an average which some Board members consider to be optimistic relative to our experience of church traffic in the area. RSG has not provided details on how ITE arrived at its average trips per 1,000 square feet of building, and how that average may be influenced by different building

designs and sanctuary capacities, average church attendance, or by church demographics such as the percentage of families with children. The second and more significant problem with the RSG study is that the capacity of the proposed sanctuary is 415 persons, and the aspirational vision of the church's founder is "average attendance of 400". With those numbers, RSG's trips per 1,000 square feet require an average of 3.9-4.1 persons per vehicle, greatly in excess of the RSG assumption.

38. At the rehearing, applicant offered a condition that only 104 vehicles would be allowed to park on the property, which given the 113 spaces permitted by our conditions for approval in case Z2018-29 leaves nine spaces for staff. This should preclude the possibility of cars parking in the wetland buffer, which was a concern expressed in our decision. Applicant also offered that if attendance exceeds the lot capacity, shuttle busses will be used to ferry remaining attendees to the church.
39. While we are skeptical of RSG's implied estimate of 2.9 persons per vehicle, we have no facts to prove that it is high. Therefore, we must assume that 113 parking spaces will accommodate 300 attendees, and shuttle busses will not be required. But that is the limit of the parking lot. If occupancy per vehicle is lower, or if attendance were ever greater than 300, some alternative transportation arrangement like shuttle busses will be required.
40. We find that potential problems from the limited capacity of the parking lot will be considerably worse at an average attendance of 400, a 33% increase from 300. Assuming an attendance in excess of 400, RSG's estimate of 2.9 persons per vehicle would require about 100 attendees to be transported by shuttle bus, perhaps requiring two large school busses or 4-6 smaller shuttle busses. If the estimate of 2.9 persons per vehicle is high, the number of busses required will increase. For example, vehicle occupancy of 2.0 would require busses for 200 people, or half the attendance. That could require four large school busses or 8-12 smaller shuttle busses. And if RSG's traffic study understates traffic congestion on Sunday mornings, which seems almost certain because attendees will arrive in a 15-20 minute period rather than over an entire hour, then larger and noisier vehicles will join cars idling on Greensboro Road in front of neighboring properties and on the property. We conclude that at an average attendance of 400, the chances are much greater that there will be adverse impact from traffic congestion, noise and disruption in a neighborhood that currently gets respite from the sounds of heavy traffic and school busses on only two days of the week.
41. We have concerns about the use of shuttle busses to compensate for the capacity of the parking lot. A plan will be required to limit the number of vehicles parking in the lot to 113 and manage arrival of more than 113 vehicles. In addition to greater traffic flow and congestion on Greensboro Road, pick-up/drop-off vehicles may cause congestion and safety issues in the parking lot, which they must enter to change direction.
42. Another concern is that the RSG study doesn't take into consideration that the walk from the parking lot to the building is quite long, and we expect that a large percentage of drivers will pause at the entrance of the building to drop off their passengers, especially in the winter. This could result in traffic backing up all the way to the property entrance at Greensboro Road and beyond. The greater the number of vehicles attempting to enter the property, the

more likely this scenario is. The above considerations support our conclusion that any grant should be subject to substantial conditions.

43. The parking lot, which by our condition in Z2018-29 must have no more than 113 spaces, is another serious problem with the proposed project. It is too small for the maximum capacity of the sanctuary, which is 415 persons. At RSG's implied vehicle occupancy of 2.9 persons, it would take 144 spaces to accommodate maximum capacity, as well as 31% more trips than predicted in the study. The parking lot has barely enough spaces to handle the 110 vehicles predicted by RSG for outbound trips.
44. RSG concluded that CRC traffic will not adversely affect the highways of the area, satisfying 207.1.B(2). But that conclusion may only be valid for typical attendance of 300, and it does not necessarily satisfy 207.1.B(1) because neither RSG nor applicant's noise expert assessed noise from cars and buses queued on Greensboro Road on Sunday mornings. We conclude that applicant has not provided convincing evidence that traffic flow and congestion will not have adverse impacts on the neighborhood when attendance grows over 300. Given the potential consequences to the neighborhood from a lower-than-expected average vehicle occupancy and the maximum building capacity of 415 persons, a number RSG did not model, we believe the key condition for approval is a limit on occupancy of the premises, as permitted by 207.4.E. We will impose this condition to limit the negative impacts from elevated levels of traffic flow, congestion and noise that are expected to occur before and after services on Sundays.
45. In determining the limit on occupancy, we are faced with the problem of defining for the applicant the permissible occupancy of the church, given the character of the area. We see no better measure to establish this limit, than to adopt one suggested by the applicant in its presentation to us, which is a limit of 300 persons implied by the traffic study.
46. Reference is made to the First Baptist Church (footprint 5,119 sf, finished area 10,000 sf, seating capacity 120) in Etna Village and the First Congregational Church in Hanover Center (footprint 4,048 sf, finished area 6,400 sf, seating capacity 150). Both of these churches would be in character with the area, according to the testimony of the opponents of the project and the observation of the Board members. A church with capacity of 300 persons is much closer to this baseline, and also in character with the area.
47. In order to enforce the occupancy limit, which the Town has insufficient resources to do, we will restrict occupancy on the property and seating in the sanctuary.
48. We will require the parking lot to have no more and no less than 113 spaces. Although the lower occupancy may allow a smaller number of spaces under the Ordinance, based on the RSG traffic study we believe that 113 spaces is the minimum that can accommodate the current typical attendance on Sundays, and that a smaller lot would lead to additional trips by shuttle busses and drop-off/pick-up vehicles.

49. We will limit the hours of operation in order to reduce noise, light, traffic and commotion during nighttime and early morning hours. We have chosen hours that are consistent with our observations of the hours during which most activities take place at area churches.
50. We will place conditions on auxiliary uses to ensure that they are consistent with church use and traditional community uses of churches, but will not otherwise restrict those activities, which are commonplace at area churches and benefit both church members and the rest of the community. It may be argued that the large membership of CRC will lead to more auxiliary use than that which takes place at other area churches, but we point out that other area churches have memberships that number in the hundreds, albeit with much lower average attendance. It is possible that greater enthusiasm among CRC's congregants will drive more participation at its auxiliary activities than takes place at other churches, but we have no way of knowing if this will be true. We will point out, however, that like members of all the churches in the area, CRC's members have weekday and weeknight obligations that likely will limit their participation in activities at the church.
51. On the subject of exterior illumination, we defer to the Planning Board, which has jurisdiction in the applicable site plan regulations.

ACTION OF THE BOARD

It was moved by Green, and seconded by Gardiner, to **GRANT** the requested special exception, as detailed above, subject to the following conditions:

- A. The project must be completed substantially in accord with the plans, materials and testimony on file. No substantial or material deviations shall be permitted without further action by this Board, even if such deviations arise out of review by the Planning Board or State agencies.
- B. The maximum occupancy on the premises shall not exceed 300 persons.
- C. At no time shall the sanctuary have seating for more than 300 persons.
- D. Hours of operation and occupancy of the property shall be limited to 7:00 AM – 9:00 PM weekdays and 8:00 AM – 9:00 PM weekends, except 9:00 PM – 12:00 AM on December 24 and 12:00 AM – 2:00 AM December 25.
- E. There shall be no residential housing or overnight occupancy on the property except for refuge from natural disaster.
- F. The number of spaces in the parking lot shall be 113. No more than 113 vehicles shall park on the property, and only in the parking lot, except for temporary parking in the driveway for delivery of goods. Spaces in the parking lot shall not be rented, nor permitted to be used, for purposes of parking for off-site uses or activities.

- G. A traffic coordinator shall be utilized as needed to avoid unreasonable congestion and ensure neighborhood driveways are not blocked by vehicles queued to enter the property.
- H. Windows of the sanctuary shall remain closed during all activities except in case of emergency or failure of the HVAC system.
- I. The noise mitigation screen around the mechanical equipment, as described in RSG's 1/30/18 letter, is an element of the application and is required to be implemented.
- J. Landscape screening shall be added along the west property boundary and along the south parking lot edge to shield abutters from headlights. Landscape screening shall be added along the south and east sides of the building. In addition to the vegetation shown on the updated landscaping plan, the existing trees on the church-owned lots not involved in the application shall be retained.
- K. The principal use of the premises shall be for a church, as defined in the Zoning Ordinance, and shall not be changed to any other principal use without further review. No portion of the premises shall be rented, or allowed to be used, for commercial purposes. In addition to the Applicant's own religious uses, space on the premises may occasionally be used for nonprofit or community group activities in the manner traditional with church properties in New Hampshire (for example Trumbull Hall in Etna), and the church may charge customary rental fees for use of its space for such activities; however such uses, each and as a whole, must remain "accessory" to the principal use as a church, as the term "accessory" is defined in the Zoning Ordinance and relevant N.H. case law, including the requirement for such uses to remain "subordinate" and "incidental" to the principal use as a church.
- L. The special exception in this case may be implemented only if the special exception granted in Case No. 25015/0214-Z2018-29 is not reversed on appeal.

Voted in favor: 5

Opposed: 0

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.

This approval shall become void if the work is not begun within 2 years from the approval date of such special exception.