



Zoning Board of Adjustment Meeting
Monday, July 7, 2008
Council Chambers, City Hall at 6:30 p.m.

Meeting Minutes
Approved August 4, 2008

Meeting Called to order at 6:40 pm by Chair Hurd

I. Roll Call

Present: Robert Woodman, Jim Hanson, Michael Hurd, Pierre Caouette, Carolyn Towle, Ed Friedman

Absent: None

City Staff: Eric Giles, City Planner; Allan Britton, Director of Planning & Development; Katrina Spaulding, Administrative Assistant

Attorney Matt Upton stated the consultation with Zoning Board members prior to the scheduled Zoning Board Meeting is considered a **Non-meeting**.

Review of Minutes:

June 2, 2008 Public Meeting Minutes & June 24, 2008 Workshop minutes

Motion to: Accept the June 2, 2008 Public Meeting Minutes

Made by: Mr. Woodman **Second:** Mr. Caouette **Vote:** Unanimous

Motion to: Accept the June 24, 2008 Workshop minutes

Made by: Mr. Woodman **Second:** Mr. Caouette **Vote:** Unanimous

II. Continuation:

- **(ZO2008-00008) Walter Fletcher, 33 Winter Street, Claremont, NH** – seeks an Area Variance from Sections 22-229 (3)&(4) of the City Zoning Ordinance in order to build a garage approximately 5 ft from the side yard where 10ft is required and 5ft from the rear yard where 25ft is required. Tax Map: 108, Lot: 103, Zoning District: R-2.

Mr. Hanson recused himself and Chair Hurd appointed alternate Ed Friedman to sit on the Board

No Abutters Present

Mr. Fletcher presented a survey completed on his property by Wayne McCutcheon. Mr. Fletcher advised that 45 feet are available on the side property line. However, as Mr. Hurd points out there is a slight jog in the property and this significantly decreases the side setback line for the proposed garage. The City owns the lot behind Mr. Fletcher and only upon negotiations with the City of Claremont for the purchase of the abutting property can this variance be considered.

Public hearing closed

Motion to: Continue to a later date at the discretion of the Planning Office following discussion with the City for purchase of the additional property required.

Made by: Mr. Hurd **Second:** Mr. Woodman **Vote:** Unanimous

- **(ZO2008-00009) Alan Dexter, 1 First Street, Claremont, NH** – seeks a Use Variance from Sections 22-166 of the City Zoning Ordinance in order to complete renovation to an existing building into an auto service and sales building. Tax Map: 135, Lot: 16, Zoning District: RR.

Motion to: Continue application until the August 4, 2008 meeting – can be continued until he has the required information regarding flood plain.

Made by: Mr. Hurd

Second: Ms. Towle

Vote: Unanimous

III. New Business:

- **(ZO2008-00014) Jerome Doolittle, 152 Washington Street, Claremont, NH** – seeks an Area Variance from Sections 22-604 (6) of the City Zoning Ordinance in order to add a second 25sqft sign to the building where only one is allowed and construct a 25sqft by 8ft high from the bottom freestanding sign where 16sqft and a total of 8ft high is allowed. Tax Map: 107, Lot: 287, Zoning District: B-1.5.

No Abutters Present

Mr. Giles stated a sign in the B1.5 zoning district may not exceed 16 square feet or 8 feet in height from the ground to the top. There are two variances required to be agreed upon.

Mr. Doolittle requests one 25 square foot sign and the height of the sign will be high enough to pass under without hitting your head. Mr. Doolittle indicates that Jiffy Mart never had a sign permit and was apparently grandfathered in for a sign. He also states that Competitive Computers needed a special exception for their 32 square foot sign. He points out that the sign is far enough back from the property line and there is a large shrub on the property. There is already a post on the property. Mr. Hurd asked if the second additional sign he is asking for will be painted on the building and if it was considered a sign with the same criteria. Mr. Hurd asked Mr. Giles if the same frontage was needed for a painted on sign. Mr. Giles said a sign painted on the building would not need the same frontage. Mr. Hanson wanted to know how far from the City Right of Way the proposed sign will be. Mr. Doolittle said approximately 2 feet from the sidewalk. Mr. Woodman asked exactly how high Mr. Doolittle planned to raise the sign up. Mr. Doolittle said approximately 7 feet. Mr. Hanson wanted to know what the hardship would be of a standard size sign. Mr. Doolittle wants to use the sign he is using at his current location. This is an illuminated sign. Mr. Giles said it can be lit for the hours of operation as well as from 7am to 12 midnight. Mr. Hurd wanted to know if it could be lit internally or externally. Mr. Giles said it could be internally lit.

Public Hearing Closed

Ms. Towle states she doesn't feel there is a proven hardship regarding the 16 square foot requirement. Mr. Hurd feels the established ordinance is a good reinforcement for traffic protection and could obscure the vision of the line of traffic. Sign placement at intersections has requirements according to Mr. Hanson. Mr. Woodman points out that per the ordinance the top of the sign falling under the 8 feet would be sitting close to the ground and sidewalk leaving the sign subject to vandalism. He would like to see the sign higher rather than lower to protect the sign.

Motion to: Deny the area variance for an 8 foot high freestanding sign.

Made by: Mr. Caouette

Second: Ms. Towle

Vote Mr. Woodman – Nay
Mr. Hanson – Aye
Mr. Friedman - Aye
Chair Hurd – Aye
Mr. Caouette – Aye
Ms. Towle – Aye

Fact Finding:

1. Does the proposed use maintain the value of surrounding property?

Mr. Woodman – Aye
Mr. Hanson – Nay
Mr. Friedman - Nay
Chair Hurd – Nay
Mr. Caouette – Nay
Ms. Towle – Nay

2. Would granting the variance maintain the objectives of the zoning ordinance?

Mr. Woodman – Aye
Mr. Hanson – Nay
Mr. Friedman - Nay
Chair Hurd – Nay
Mr. Caouette – Nay
Ms. Towle – Nay

3. Would denial of the variance result in unnecessary hardship to the applicant because:

a. There are special, unique conditions of the property itself that make it difficult or impossible to use applying the requirements of the zoning ordinance?

Mr. Woodman – Aye
Mr. Hanson – Nay
Mr. Friedman - Nay
Chair Hurd – Nay
Mr. Caouette – Nay
Ms. Towle – Nay

b. The use sought by the applicant cannot be achieved by another method, other than through the granting an area variance?

Mr. Woodman – Aye
Mr. Hanson – Nay
Mr. Friedman - Nay
Chair Hurd – Nay
Mr. Caouette – Nay
Ms. Towle – Nay

4. Will granting the variance result in substantial justice?

Mr. Woodman – Aye
Mr. Hanson – Nay
Mr. Friedman - Nay
Chair Hurd – Nay
Mr. Caouette – Nay
Ms. Towle – Nay

5. Is the use in accord and not contrary to the spirit and intent of the ordinance?

Mr. Woodman – Aye
Mr. Hanson – Nay
Mr. Friedman - Nay
Chair Hurd – Nay
Mr. Caouette – Nay
Ms. Towle – Nay

Eric cited the ordinance Sec. 22-672 “The measurement of the area of a sign shall be the surface area and shall be considered to include all lettering or elements of a sign, accompanying design and symbols, together with the background, whether open or closed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself and which are not designed to attract attention. Where the sign consists of letters or symbols affixed to a surface or building, without any distinguishing border, panel or background, the area shall be considered to be the smallest rectangle or shape which encompasses all of the letters and symbols. The area of one (1) side of a double-faced sign shall be regarded as the total area of the sign.”

Mr. Giles said that the area is looked at by the area of the letters and borders. Square footage of what it actually covers. This sign would be affixed and each sign would be measured on its own and Mr. Doolittle is allowed one affixed sign per

frontage. Mr. Doolittle's frontage is on two roads. A corner lot has two frontages. Mr. Giles said they need to determine IF he has two frontages. Not defined by a fixed entrance or a driveway. The signs on the building may be lit from 7am to 12 midnight.

Public Hearing Closed

Motion to: Accept application under 22-672 to have a second affixed sign on the building. Amended that there are two frontages.

Made by: Ms. Towle

Second: Mr. Hurd

Vote: Unanimous

Findings of fact:

1. The value of surrounding properties will not be diminished - Unanimous
2. The variance will not be contrary to the public interest- Unanimous
3. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship - Unanimous
4. Substantial justice is done - Unanimous
5. The variance is consistent with the spirit of the ordinance – Unanimous

- **(ZO2008-00015) Robert Picard, 36 Cedar Street, Claremont, NH** – applicant has submitted an application for an appeal of administrative decision by the Zoning Administrator. The applicant refutes the Zoning Administrators determination that the applicant is running a waste and recycling business out of the property at 36 Cedar Street in an R-1 District where such business activity is not permitted. Tax Map: 82, Lot: 64, Zoning District: R-1.

Mr. Hurd recused himself and Mr. Woodman asked fellow board members if he should be recused due to being a customer of Mr. Picard's. The members expressed they don't have a problem with Mr. Woodman staying. Mr. Friedman has been appointed to sit for Mr. Hurd

Mr. Giles stated several complaints that were filed with the City of Claremont regarding the property in question. Attorney Matt Upton prepared a letter that Mr. Picard is in fact carrying out a Commercial business in a zoning district where this use is not permitted. Mr. Woodman asked if there was any follow up after May 20th. There has not been any follow up according to Mr. Giles. Ms. Towle requested to see the photos that were taken of the property on May 19th, 2008. Mr. Giles doesn't have the photos that were taken in May. He has the 2007 photos.

Mr. Picard feels that this is not a COMMERCIAL business. He doesn't have any signs on his property. He doesn't have any employees and he doesn't use his property for storage. He only has two cans on his property for his own personal use. Mr. Picard mentions that Blish Trucking in Claremont a similar "business", parked their trucks across the street from his property. He notes that he doesn't get paid before he leaves his property. This business is run out of pocket cash and there is no bank money involved with his business. If he is forced to lease another property he will have to close his business down. Mr. Woodman asked if the truck had been parked there since May and Mr. Picard said he has not parked in his yard. Ms. Towle asked Mr. Picard if he had anyone working with him. Mr. Picard said he is the only employee. The business has a separate checking account and Ms. Towle asked if Mr. Picard paid himself from this account. Mr. Picard says he hasn't paid himself at all in the history of his business; he in fact is losing money. Ms. Towle asked if the billing was done on his property. The billing is done on his property and the trucks are registered to his home address. Mr. Caouette asked if there was a commercial license to run the business. There is a City License but Mr. Picard stated anybody can get a hauler's license.

Mr. Picard states he wants to be treated fairly and feels his City Council seat is the reason for the attack on him personally and his business.

Recess for clarification requested by Pierre Caouette with Attorney Matt Upton. 7:54 p.m.

Open Public Hearing

Chelsea Melcher (a neighbor but not an abutter) spoke and feels that this is a home occupation and stated that the storage and odor is a nuisance. There is equipment in Mr. Picard's yard and can be seen on a daily basis. She wants to be sure that if Mr. Picard is allowed to run his business that the dump trucks are monitored and the dumpsters are checked to be sure there isn't excessive storage.

John Gatto, of 31 Cedar Street says he is a neighbor right across the street from the Picard's and he personally doesn't have any odor issues. There haven't been any rodents or problems and he doesn't feel there is any hazard to the public. The dumpsters are empty and not a problem.

Ms. Towle asked if Mr. Picard brought the trash home. He answered that it all goes to Wheelabrator daily and he has tipping tags as receipts. He keeps no more than 2 cans on his property at a time since he was asked to reduce the number from 13. He has done everything except remove the trucks from his property. Storage totes are stored inside the garage and are all brand new. Ed Friedman asked if the old cans get rinsed and where does this happen? Mr. Picard said the can is sprayed and is the spray used bio-degradable.

Close Public Hearing

Mr. Caouette is not convinced either way if this is a commercial business or not and sees this as a regular business being operated from Mr. Picard's home. Mr. Picard states that none of the business is being conducted on his property. It all happens off site from his property. This is not a commercial business. Mr. Caouette feels that maintenance of the totes and the billing being done on the property indicates a business. Mr. Caouette feels this is business activity. Ms. Towle feels every question she has asked Mr. Picard reflects back to his business. The phone is at his home to conduct business.

Mr. Hanson said the appeal is based on what happened in January and how the City reacted to the initial decision.

Mr. Caouette said he is not against Mr. Picard's business. He feels that the business should apply for a variance to continue conducting his business. Mr. Picard thought he WAS here asking for a variance. Mr. Caouette simply wants Mr. Picard to perform under the city requirements.

Motion to: To deny the appeal of the administrative decision.

Made by: Mr. Hanson **Second:** Ms. Towle **Vote:** Mr. Woodman – Nay
Mr. Hanson – Aye
Mr. Friedman - Aye
Chair Hurd – Aye
Mr. Caouette – Aye
Ms. Towle – Aye

- **(ZO2008-00016) Emily and Rachael Lemieux, 519 Jarvis Hill Road, Claremont, NH** – seeks an Area Variance from Sections 22-604 (1) of the City Zoning Ordinance in order to construct a 24 sqft sign where a 4 sqft sign is allowed. Tax Map: 128, Lot: 1, Zoning District: R-1.

No Abutters Present

Mr. Giles said there are two signs onsite, one affixed on the side of the barn 24 square feet, one sign at the end of the driveway 12 square feet.

Beth Lemieux spoke and said that 4 square feet is not large enough to be seen from the road. The sign being requested would be on hooks and removed at the end of each season. The applicant mentioned there has been a change from the original application. They would like to have a sign on the front of the barn instead of the gable end of the barn for better visibility. The speed limit on the road is 35 miles per hour. There would be a sandwich board set out on the side of the road and placed out when the business was open. Mr. Giles said there is only one allowed. A free standing sign and an affixed sign would be two.

This sign is not illuminated and the percentage of the size of the building to the sign is not a problem. The sandwich board would be the only concern. Ms. Towle feels the applicant truly has a hardship advertising their business with the allowable sign size.

Motion to: Approve the area variance for the 24 sq foot sign. 8' x 3' affixed to the barn and the sandwich board which will be removed daily and will not be illuminated during closed hours.

Made by: Mr. Caouette **Second:** Mr. Hurd **Vote:** Unanimous

Findings of fact:

1. The value of surrounding properties will not be diminished - Unanimous
2. The variance will not be contrary to the public interest- Unanimous
3. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship - Unanimous
4. Substantial justice is done - Unanimous
5. The variance is consistent with the spirit of the ordinance – Unanimous

- **(ZO2008-00017) Catherin Pellerin, 9 Beckwith Avenue, Claremont, NH – seeks a Special Exception from Sections 22-212 (2)(a) of the City Zoning Ordinance in order to expand from a family daycare home to a Family Group Daycare home. Tax Map: 129 Lot: 93, Zoning District: R-1.**

Motion to: Continue the application until the August 4, 2008 meeting

Made by: Ms. Towle **Second:** Mr. Caouette **Vote:** Unanimous

- **(ZO2008-00018) Dale Decato, 104 Elm Street, Claremont NH – Seeks a Special Exception from Section 22-207 (1) of the City Zoning Ordinance in order to have a home occupation consisting of a retail flooring showroom. Tax Map: 107 Lot 290, Zoning District: R-2.**

Mr. Giles said this is NOT a home occupation but the applicant is seeking a use variance. There is an application in the packets. Change from Storage to retail. This will be used for the purpose of conducting business of tile and carpet. Access will be from North Street. The area is residential and borders a business zoning district. This will go to site plan following the Zoning board approval.

Dale Decato presented copies of a site plan from 1983. This building was elevated in 1983 and the addition was on the building at that time. It has had a commercial use since that time.

Mr. Hanson asked about signage. Mr. Giles said there will be signs but the applicant is only allowed up to 4 square feet since this is in a residential neighborhood.

Mr. Giles said this will go for Site Plan if passed by the Zoning Board. This will be a change of use from one non-conforming use to another non-conforming use. Warehouse to retail.

Motion to: Grant the use variance for #107-290 R-2 zoning district

Made by: Mr. Hurd **Second:** Mr. Caouette **Vote:** Unanimous

Findings of fact:

1. The value of surrounding properties will not be diminished - Unanimous
2. The variance will not be contrary to the public interest- Unanimous
3. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship - Unanimous
4. Substantial justice is done - Unanimous
5. The variance is consistent with the spirit of the ordinance – Unanimous

IV. Correspondence

- Notice of decision for Lynda Trepanier, 13 Ashton Avenue
- Notice of decision for Michael and Elizabeth Lemieux, 519 Jarvis Hill Road
- Notice of decision for Church of Nazarene, Michael Crone, 175 Mulberry Street
- Notice of decision for Amy Tibbits, 44 West Pleasant Street
- Notice of decision for Pamela Leonard, 74 Lafayette Street
- Notice of decision for James Sabalewski, 127 Slab City Road

V. Reports from Boards & Commissions

VI. Other

Training Session to be initiated by Planning Office and City Solicitor for August Meeting.

VII. Adjournment

Motion to: Adjourn

Made by: Mr. Caouette

Second: Ms. Towle

Vote: Unanimous

Meeting adjourned at 8:50 p.m.

Respectfully Submitted,

**Katrina Spaulding
Administrative Assistant**