



**Zoning Board of Adjustment Meeting**  
Monday, November 6, 2006  
Council Chambers, City Hall at 7:00 p.m.

**Meeting Minutes**

Meeting Called to order at 7:00 pm by Chair Hurd

**I. Roll Call**

**Present:** Robert Woodman, Richard Dietz, Michael Hurd, Tracy Pope, Heather Bopp

**Absent:** None

**II. Report(s) of Secretary:**

- Monday, September 5, 2006 minutes

Mr. Dietz advised that he had minor corrections to the minutes

**Motion to:** Accept the meeting minutes of September 5, 2006 with the amendments as discussed

**Made by:** Ms. Bopp    **Second:** Ms. Pope    **Vote:** Unanimous

**III. Old Business:**

**The St. Aubins Application has been withdrawn**

**IV. New Business:**

- **Daniel Zee, Box 626, Quechee, VT** – seeks Area Variance from Section 22-260 (4) rear yard of the City Zoning Ordinance in order to bury a propane tank approximately 7ft from the property line. Tax Map: 120, Lot 180, Zoning District: B-1.5.

Mr. Coogan advised that Mr. Zee purchased the property (aka 18 Wall), which had a complete fire in early 2005. Mr. Zee desired to re-build in kind, which is allowed kind within one for a non conforming use destroyed by fire or a natural cause. The grandfather clause is not absolute; he has an underground propane tank stored about 7 feet from the property line. Mr. Zee seeks an area variance from section 22-260 (4) which requires 25ft. Recent information from Captain Downing advises that the CFD has no objections and recommends approval of the variance request. The CFD reviewed the information about the location of the tank and the size of the tank. Mr. Coogan advised that the City requires 25ft and the state requirement is 10ft. If this request is approved, the applicant will have to seek a waiver from the State Requirement.

Ms. Pope asked if the building has been rebuilt. Mr. Coogan advised that it has been built and this issue is the last remaining piece. Mr. Zee cannot receive a Certificate of Occupancy until this issue is resolved. Mr. Woodman asked if the tank was installed with the supervision of the Fire Department.

Mr. Zee advised that he was issued a permit to rebuild the property in the same footprint and the building is actually a little bit smaller than the original. He thought he had everything that he needed. There is nothing in the city or building department that advised he needed a permit for the tank. Mr. Walsh brought this to his attention and advised that he needed to obtain zoning approval. He has met with Mr. Walsh and the CFD; all parties have reviewed the information and possibilities for placement and they have advised that the present location is the best place for the tank, for safety and aesthetic reasons.

Mr. Deitz asked why an underground tank is considered a structure. Mr. Coogan advised that they have talked with the City Solicitor and read other cases where a permit was needed for this. Ms. Bopp advised that they will still need to get a permit from the State Fire Marshall. Mr. Zee advised he is aware of this.

Closed the public hearing

**Motion to:** recommend to grant the variance

**Made by:** Ms. Pope                      **Second:** Ms. Bopp    **Vote:** 4-1

Mr. Dietz – Aye

Chair Hurd – Aye

Ms. Pope – Aye

Ms. Bopp - Aye

Mr. Woodman – Nay

- **Raymond Bernard, 5 Alden Road, Claremont, NH** – seeks Area Variance from Section 22-168 of the City Zoning Ordinance which requires a minimum width of 150 at building line and an area of 1.0 acre. If granted, one lot would be 0.52 acres with the existing buildings and a second lot would be 0.51 acres with a proposed single family dwelling and garage. Tax Map: 159, Lot: 59, Zoning District: RR. If approved by the ZBA, the applicant needs to prepare a subdivision plan.

Open Public hearing

Mr. Coogan advised that Mr. Bernard owns one lot of record which is 1.03 acres. Mr. Bernard would like to divide this lot into two lots to have an adjoining lot for his daughter and son in law. Other lots in this vicinity that are .05 acres. The area requirement for this district is 1 acre. The theory of zoning is to make zoning decisions that conform to the zoning and do not create non confirming lots. Mr. Coogan read a Memo from City Solicitor.

Mr. Bernard advised that if he thought they were violating the zoning ordinance he would not be here. They tried to purchase additional land from an abutter but were unsuccessful. The property has a 150 foot frontage and will be directly across from a mobile home park. Surrounding properties are all .05 acre properties. Ms. Pope advised you cannot keep making exceptions to the zoning laws; if a change to the zoning for the RR district is requested, City Council needs to act on it.

Closed Public Hearing

**Motion to:** to grant the area variance

**Made by:** Mr. Woodman      **Second:** Mr. Dietz      **Vote:** 3-2

Ms. Pope advised that at present there is a conforming lot there and there is a request to make two nonconforming lots. Chair Hurd advised that the owner has sufficient road frontage. Dietz advised that, as the City Solicitor points out, this proposal is against the spirit of the ordinance. But because there are so many half acre lots immediately surrounding this property he would have to approve the application.

The Chair advised that this is what this board is here for and each case has to be individually looked at. Ms. Pope advised that they do not have any special circumstances; their only defense is that the surrounding properties are half acre lots. Ms. Pope advised that the goal is to bring properties into conformance. Chair Hurd advised that the biggest question here is the hardship issue. Mr. Coogan advised that there are five criteria for an area variance and the Board should review each item as they make their decision.

Ms. Pope advised that in reading the review criteria, the only one that they have a problem with is #5 which it is contrary to the spirit of the ordinance. It is creating non conformance.

**Mr. Woodman – Aye**

**Mr. Dietz – Aye**

**Chair Hurd – Aye**

**Ms. Pope – Nay**

**Ms. Bopp - Nay**

- **Brian and Rebecca Stowell, 1 Charlestown Road, Claremont, NH** – seeks an Area Variance from Section 22-512 of the City Zoning Ordinance for 3½ft to permit an existing in ground swimming pool that is 6½ft from the property line to remain in place, 10 foot setback is required. Tax Map: 143, Lot: 143, Zoning District: R1.

Mr. Coogan advised that the applicant applied for and received a building permit for the pool, which notes on the bottom of the permit that it should be 10 feet from the property line. The permit was approved on July 17, 2003; it was constructed and the owner had a professional's survey and it was designed by professionals. The contractor made a mistake in the field and the pool was built 6½ft from the property line. It came to light in a recent survey.

Mr. Stowell advised that they installed the pool about 3 years ago. The zoning requirement is to prohibit overcrowding and they do not believe that this causes overcrowding with the abutting property. Due to mistakes by the professionals they hired and themselves it was discovered that the pool is in violation. The pool was installed and situated tight to the home. They actually found that they had an area of fencing that was on the abutting property and they had that removed. Safety is a priority to them; the cover is closed every evening and could hold the weight of a small vehicle. The use would not be limited; it would be non existent because they would have to bulldoze the pool in if the variance is not approved. The cost of the pool, concrete and decking is in an excess of \$50,000 and they would not have made the investment if they knew there was an error; they regret an error was made. They hired professionals to handle every facet of the project, and still a mistake was made. The error was discovered when an abutter had their property surveyed. They do not believe it

is a violation of the spirit of the ordinance because they believe it is in place to provide a safe and attractive community and prevent overcrowding. Granting the variance would maintain the spirit of the ordinance.

Ms. Bopp asked that they had found that there was some fencing that was on an abutter's property, is this when you found this issue with the pool? Mr. Stowell advised that it was brought to their attention that they had a boundary issue with the fence; they cut the fence and a portion of concrete that actually extended onto the abutting property. They cannot cut back the pool; they actually invested another \$9,000 in a fence to provide privacy. Chair asked if they installed the white fence. Mr. Stowell advised that it was.

The Olson's attorney Nicholas Burke advised that he is representing Mr. Olson. Mr. Burke advised that he can sympathize with the Stowell's although this is a problem of their own making. The permit that they received required them to comply with the zoning ordinance. Mr. Stowell had approached Mr. Olson in December when he realized that he had a problem with his swimming pool. This is potentially a problem for him and he has recourse against those who installed it. There are other factors to consider, whether the variance is necessary to enable the applicants proposed use given the necessary for the special conditions of the property. There is nothing stopping the Stowell's from building the pool at least 10ft from the common boundary. It is feasible to have the Stowell's relocate the swimming pool. Whoever did the surveying or sited the pool may be responsible to the Stowell's. Just because the Olson's bought the property after the pool was installed, there may be an economic impact on the value of their home by having a swimming pool located that close to their property.

Mr. Dietz asked if there is any screening around the property line. Mr. Burke advised that there is a white fence that is 6-3½" that you cannot see through, which is a privacy fence. Mr. Dietz was surprised that they still object with the fence up. Ms. Bopp asked when the property was purchased. Mr. Olson advised that the property was purchased about 3 years ago and all the pins were on location so they did not survey the property when they bought it. They discovered the pins were on site and they noticed it did not look right when they were trying to clean up the grounds. The infraction was discovered after discussions with the Stowells.

Ms. Bopp asked if they knew that it existed at that time, why didn't they come to the office at that time. Mr. Olson advised that it was a dispute between two neighbors on a common boundary; his intent through August was to come up with a workable solution in order to resolve the matter. Ms. Pope asked what the workable solution was. Mr. Olson advised that he had offered to sell the Stowells some of his land to make them compliant. Those discussions did not lead to a result and those discussions have been cut off.

Ms. Bopp advised that it does not appear that they want to buy the piece of property. It was a construction error and they fenced it off. It is a safe area and secure area and they are talking about feet here. Mr. Olson advised that he is subjected to a set of rules and regulations when other community members are not required to follow. There is no reason why the problem cannot be fixed. As a property owner in NH he is interested in property rights laws. Ms. Bopp advised that if the pool was 6 feet on his property then this would be different situation. The pool is not on his property. Mr. Olson advised the City requires a 10 foot set back be in place for all pools for a

reason. Otherwise change the zoning rules and the problems go away. A variance is something that is supposed to happen before the pool was built, not after the fact. That is why he tried to come to a private agreement with his neighbor and they were not able to reach an agreement.

Ms. Pope advised that they did do their permitting and through no fault of their own there was an error. When they realized this, they put up a privacy fence up. Digging up a \$50,000 pool would be considered a hardship. Ms. Bopp advised that once they found that the fence was found on their property it was immediately removed. Mr. Olson advised that it was not immediately done. They are trying to clean up their property to help make this a nice community.

Ms. Stowell advised that there was a December meeting although it had nothing to do with the set backs. It was about a screen house she was thinking of installing. They could not install the screen house because of the setbacks. They approached the Olson's advising that if they had this little triangular piece of their property she could build her screen house. They all decided that the screen house was unattractive. She also advised that she has been working diligently at getting this problem resolved once it was found. All summer long the Olson's have enjoyed their pool. Until the day that they asked for \$24,000 for this small slice of property is when they got the fence that was on their property removed. This all happened within 4 weeks and she tried talking to Mr. Olson and he said to talk to his lawyer. She did keep in contact with his lawyer advising them what she was doing. He has now filed a law suit with Superior Court saying that the fence has not been removed, the padding has not been moved and the pool needs to be filled in. If they do not get the variance they will get rid of the pool. Mr. Woodman asked Mr. Stowell if the pool was signed off by the building inspector. Mr. Stowell advised that they did have approval from the building inspector.

Closed public hearing

**Motion to:** approve the variance

**Made by:** Ms. Pope

**Second:** Ms. Bopp

**Vote:** Unanimous

Ms. Pope advised that there was an error made and they tried to resolve the issue and she does not think it is in the best interest for them not to pass this variance.

- **Tedeschi Food Shops, Washington Street, Claremont, NH** – seeks Special Exception from Section 22-297 (1) of the City Zoning Ordinance in order to construct 12 fueling stations built in conjunction with a convenience store that would also occupy a drive through coffee and sub shop. Tax Map: 146, Lot: 24-3, Zoning District: B-2. Property Owner: S.R. Weiner & Associates.

Mr. Coogan advised that this application is for a convenience store, gas station, and sub shop. There are also three other stations like this on Washington Street. They have done an excellent job with the application. Mr. Robert Cruess from TF Moran advised that the zoning in the area is such that a special exception is required. It is the area in front of Home Depot and instead of the retail use they had in mind, they would have a 4,000 SF convenience store with about 14 pumps. Without exception they believe they have met all the criteria. The proposed store is attractive. This is the same as the store built in Londonderry. If they receive approval, they would work with the Planning Board on criteria, such as landscaping, colors, etc with the intent for a colonial looking building in front of the Home Depot. They believe it is consistent with the forward looking Claremont. There

is still room for another 6,000 SF restaurant or building. Mr. Woodman advised that the Conservation Commission should be contacted due to rails to trails. Mr. Cruess advised that their intent is to work with the rails to trails program; they intend to add space for snowmobiles and four wheelers to park. Chair Hurd asked if they knew exactly where the road/rail is. Mr. Cruess advised they will be required to go in front of the Planning Board and at that time they will have all the information they need.

Closed Public Hearing

Ms. Pope advised that this was a very thorough application and the Board appreciate the effort.

**Motion to:** to approve the application

**Made by:** Ms. Bopp                      **Second:** Ms. Pope    **Vote:** Unanimous

#### **V. Communications**

- **American Planning Association** – CD-ROM Training Package
- **Zoning Board of Adjustment, Roles and Responsibilities** – From OEP conference 10/28/06. Next conference is 4/28/07, Manchester.
- **Arranging your Furniture, Operational Basics for Local Land Use Boards** - From OEP conference 10/28/06. Next conference is 4/28/07, Manchester.

#### **VI. Other**

Mr. Dietz asked if there is some information from the Rogers Case he would like that information. Mr. Coogan advised that he will provide the information when it becomes available.

#### **VII. Adjournment**

**Motion to:** Adjourn

**Made by:** Mr. Woodman                      **Second:** Ms. Bopp    **Vote:** Unanimous

Meeting adjourned at 8:23 p.m.

Respectfully Submitted,

Michelle Aiken  
Boards and Commissions Coordinator