



**Zoning Board of Adjustment Meeting**  
Tuesday, November 7, 2005, 7:00 PM  
Council Chambers, City Hall, Claremont, NH

**Minutes**  
*Accepted at 12/5/05 Meeting*

**Meeting called to order at 7:00 p.m. by Chairman Michael Hurd**

- I. Roll Call:** Michael Hurd (Chair), Robert Woodman, Tracy Pope, Richard Dietz, Deborah Snelling, Erwin Caplan, Donald Lavalette  
**Present:** Michael Hurd, Robert Woodman, Tracy Pope, Richard Dietz, Deborah Snelling, Erwin Caplan.  
**Absent:** Donald Lavalette  
**Staff:** Gerald Coogan, AICP, City Planner/Zoning Administrator, Katrina Spaulding, Administrative Assistant, Jane Taylor, City Solicitor.

**II. Appointment of Alternates**

- Mr. Caplan sitting in for Mr. Woodman on the Old Business of Jim and Joanne Rogers

**III. Report of Secretary**

**Motion:** Accept the minutes of 9/6/05.  
**Made by:** Robert Woodman **Second:** Deborah Snelling  
**Vote:** Unanimous

**New Business and Related Public Hearing:**

- **Stewart M. and Susan L. Johnson, 408 Elm Street, Claremont, NH** - Seek a Special Exception under Section 22-167 (11) of the City Zoning Ordinance to establish a home occupation consisting of a small scale welding business that will manufacture products for canine agility, horse shoe art and other items. Tax Map 49, Lot 2; Zoning District: RR
- Mr. Coogan presents:
    - Small Scale home business- Meets criteria for home occupation and the definition of:
    - No change of residential character
    - Only allows for one non-residential employee
    - No Display of stock or trade
    - No outside storage of material
    - Termination of application once the house is sold

Mr. Johnson, the applicant, stated that he would be working from the existing building that is situated on his 17 acres of land. He has 13 years of welding experience and proposed business would consist primarily of repairs and smaller jobs. This will be an enclosed business, all electrical will be inside of the facility, and there will be no blocking of any public access. There will be no parking on the road and no obvious conflict with the surrounding area. The applicant has spoken with his neighbors and finds them to all be in agreement of his business intentions. He will be asking for permission for a small sign above the mailbox to indicate his business location.

Chair Hurd asked if welding shop will be doing truck repair or welding. Applicant responded that he would not and that there would not be any large fabrication or work on any large equipment strictly smaller scale items.

Ms. Pope asked about the use of other outbuildings. Applicant replied he would just be using the two car garage.

Ms. Pope asks if there would be any welding outside or if there would be anything that was visible to the public. Applicant responds that he will only take on jobs that don't require long term work where items would require outdoor storage. These jobs would consist of mostly trailer repair, and custom hitches as well as custom built for horse trailers.

Ms. Pope asks if he had spoken with all his abutters. Applicant confirms and states that abutters have no objections.

Chair Hurd questions oxygen storage and if the Fire Department have any questions. Mr. Coogan replied that this could be an issue and states possible concerns. Chair Hurd advises applicant to resolve these issues prior to opening business.

Mr. Woodman questions if applicant will be using Heliarc. Applicant responded no.

### **Open Public Hearing:**

- Abutters Role Call
  - **Present:** Robert Porter, Stewart Johnson

### **In Favor:**

Mr. Porter speaks in favor of the application. He owns a farm across the street and does haying on property to the south. Mr. Porter is familiar with the type of business and may even be a customer, has no objections whatsoever.

### **Close Public Hearing:**

Chair Hurd suggested that a change be made to include the correct terminology from small welding of horse shoe art and canine agility to small welding jobs of a wider variety to allow other jobs to be done.

**Motion:** Move to approve the application for a small scale welding business- including the definition of home occupation.

Jerry Coogan mentioned that this is all contingent on receiving all the appropriate permits that are necessary.

Motion amended by Ms. Pope to include this statement.

**Made by:** Ms. Pope                      **Second:** Mr. Dietz  
**Vote:** Unanimous

## **IV. Old Business:**

A. Mr. Woodman raised concerns over a letter of that was received in the ZBA packets.

- B. **Jim and Joanne Rogers, 308 Jackson Road, Cornish, NH** — requesting a rehearing on the affirmation of an Administrative Decision and denial of an Area Variance. Map 87, Lot 1; Zoning District: AR
- Mr. Caplan sitting in for Mr. Woodman

Attorney Kevin Carr presents for the applicant:

- There are new facts based on RSA 677-2 - Re-hearing for good reason.
- Statute is 674-41 giving the ZBA authority to hear an appeal based on the decisions made by the Building Inspector. Is there an easement still in existence or is it more properly called the ROW because it was created by deed rather than by use?
- Letter from Cullen Downing, response time for emergency vehicles to this property is in excess of 3.5 minutes the fire department requests that there be a sprinkler system in place. Mr. Rogers indicated that he would comply.

- Concerns with the city over water run off - 20 ft right-of-way (ROW) is acceptable to Claremont standards. Claremont requires a 10 foot width.
- According to Claremont Ordinance Section 22-111 Mr. Rogers is not in violation based on the fact that he has 20ft in width and the lot was created before March 2004. Driveway specs allow for this provision.
- According to Section 674-41 the Zoning Board agreed that Mr. Rogers previously did not meet criteria. In reviewing the material Attorney Carr felt that the request should have been granted.
  1. Create a practical difficulty or unnecessary hardship. Mr. Rogers is not able to access his property or ROW.
  2. The circumstances do not require the building to be related to the existing or proposed street. Depends on the driveway overburdening the easement. Meets the 10 ft requirement made by the city for a driveway. Attorney Carr brings up that Mr. Goss up the road from Mr. Rogers' property was allowed to build on a class 6 road, land locked parcel. This situation being very similar to Mr. Rogers. He also brought up a situation involving Wayne McCutcheon and a permitted driveway.
  3. Special Conditions of the property require that a variance be granted which would otherwise limit the proposed use of the property.

Attorney Carr brings up that in the previous minutes there was some concern as to whether or not there would need to be a new curb cut. The ROW is bordered by a stone wall. The deed reads that the stone wall serves as the boundary of the Sarges' property and runs 20 feet to the west. It does not stop in the middle of the neighbors' driveway. If the ROW came down the middle there would need to be three curb cuts. The question was also brought up in the previous minutes as to what was the intended use of the ROW. The photos show that this is a road that is very drivable. This is not a path. This road allows access to the top of the hill with the intention of lots for building.

The position on appeal based on Claremont Zoning Ordinance will be for not allowing Mr. Rogers a variance. Chair Hurd brought up that there was a separate easement agreement for logging purposes and the right-of-way which is very vague in the deed.

Attorney Carr refers to the second paragraph of the easement agreement that the language from the easement could clearly be understood to mean that the use of the land could still be used for access to the property. Chair Hurd asked at this point for only new information in order to determine whether or not there was going to be a re-hearing. Attorney Carr feels that based on the previous minutes things weren't clear as to why the board decided to deny based on not meeting the criteria. He felt that there were errors made in respect to the use and impact of the driveway on the easement and the criteria in the minutes in the denial for the variance request.

Attorney Carr then stated the Board decided that granting this driveway would have diminishing effects on the property values for the Sarges. There is no evidence to support this according to Attorney Carr. The ROW existed prior to the Sarge's purchase of the property.

Attorney Carr states applicant's request is not contrary to the public interest. That the intention to build a home on 15 acres of land was in fact a good reason to have a re-hearing. Attorney Carr expressed his concerns that it is unfair and unconstitutional to change the law after a citizen has already purchased the property. This is why zoning ordinances have pre-existing and non-conforming provisions. The board's decision ignores their own statute.

Mr. Dietz mentions a letter from Jane Taylor written May 19, 2005 and wants to know if there was any other correspondence prior to the last meeting because he felt they didn't get a history or record of this before they heard the situation originally. Mr. Dietz wanted to know when this was contested originally. Feels that there has been a great deal of turnover with the building inspectors and that the current inspector hasn't been properly informed.

Mr. Rogers stated that it wasn't the Building Inspector at all it was the interim City Planner. (Dan Laroche) Gerald Coogan sent a letter in August of 2004. Mr. Coogan stated that correspondence was prior to application and non-related.

Mr. Dietz states concern that 3 letters weren't shared with the board regarding this case.

Attorney Jane Taylor spoke to the board and addressed the following issues:

- Attorney Taylor stated that it was not intentional to keep any inquiries memo from anyone; these were prior to any formal application.
- Memo of May 19<sup>th</sup>, concern was if it couldn't meet criteria of 674-41 that in order to build on a land locked lot even though it may have a ROW to valid road frontage, circumstances do not require the building to be related to existing or proposed streets. If the ZBA determines that an exemption cannot be granted because not all four criteria can be satisfied the item may be addressed through inquiring whether or not the easement (or ROW) can or should be considered a driveway under local regulation. Attorney Taylor questions whether or not the board wants to review that issue. How much use that ROW can have is not for the city to determine. It is between the two property owners. And a ROW is a property interest. The ZBA just needs to determine if the easement may constitute a driveway under local regulation.
- In reference to Attorney Carr's mention of Mr. McCutcheon's approved driveway, Jane mentioned that this property was NOT land locked. Mr. McCutcheon had a valid lot with 20 feet of ROW on Plains Rd., this was property that could be used, it was very hilly but he had a valid ROW which gave him proper frontage. Mr. McCutcheon also had access through ROW through another parcel that he owned himself.
- Issue at hand is for the board to decide whether or not their prior decision was made correctly.
- The key issue with grandfathering is the use and the way it was used when the zoning was implemented and whether or not this constitutes a driveway. The critical issue is the ROW itself and whether or not it constitutes a driveway. The state law says that in RSA 674:41 III "this section shall super cede any less stringent local ordinance, code, or regulation and no existing lot or tract of land shall be exempted from the provisions of this section except in the accordance of the procedures set forth in this section", and "for the purposes in paragraph one the street giving access to the lot means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or ROW unless the easement or ROW also meets the criteria in sub-paragraphs a, b, c, d, or e." And those are the issues that have been discussed previously that it is on frontage on a class 5 road, a class 6 road with approval from the governing body, a private road with approval, existing street that has been constructed prior to the enactment of the statute and is recorded on a sub-division plaque.
- Power of the state is very clear. This is what the board has to base a decision upon.

Ms. Pope questions if the grandfathering of lots and not having to meet the 50 foot frontage could even apply to this situation. Attorney Taylor responds that according to 22-111 this does not apply at all. This is a true lot with zero frontage. The state is pretty clear that a ROW does not constitute frontage.

Jane said that the reason that she brought up the possibility of a variance was that the Zoning Board determined that the ROW would constitute a driveway. If they did not constitute this as a driveway, then there would be no need of a variance. That was a judgement for the zoning board to make. This is what they upheld.

Attorney Carr said that they were asking the board to make the exception under paragraph two. This gives the local zoning board the discretion in situations that create hardships to make exceptions.

**Motion:** To take a recess for consultation with counsel

**Made by:** Ms. Pope                      **Second:** Chair Hurd

**Roll Call Vote:**     Michael Hurd - yes  
                             Tracy Pope - yes  
                             Richard Dietz - yes  
                             Deborah Snelling - yes  
                             Erwin Caplan - yes

Board goes into non-public session with council at 8:20 p.m.  
Public Meeting called back to order by Chair Hurd at 8:35 p.m.

**Motion** - Move to uphold the decision previously made by the zoning board and deny the request for a re-hearing on the affirmation of an administrative decision and the denial of an area variance.

**Made by:** Ms. Pope **Second:** Ms. Snelling

Mr. Dietz does not support this decision. He feels the facts were not given and quoted sec. RSA 676:5 I. He feels that the 3 pieces of correspondence were not provided that were given to the applicant. He feels that they should have been made available for the July 5<sup>th</sup> meeting. Mr. Dietz feels that because of this the applicant deserves a re-hearing and he does not support the motion.

Ms. Pope responded that these inquiries were not relevant to the application and were created before the action.

**Vote: 4-1**

**In Favor** – Chair Hurd, Ms. Pope, Ms. Snelling, Mr. Caplan

**Opposed** – Mr. Dietz

Request for re-hearing denied

**V. Communications**

1. Due to the New Year Holiday, January 2<sup>nd</sup> is not a good time for the next meeting. The next meeting is to be determined.
2. Chair Hurd would like to request an informational meeting for the zoning board.

**VI. Adjournment**

**Motion:** To Adjourn

**Made by:** Chair Hurd **Second:** Ms. Snelling

**Vote:** Unanimous

Meeting adjourned at 8:50 p.m.

Respectfully Submitted,

Katrina Spaulding  
Recording Secretary