



**Zoning Board of Adjustment Meeting**  
Monday December 1, 2008  
Council Chambers, City Hall at 7:00 p.m.

**Meeting Minutes**  
*Approved 2/2/09*

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

**I. Roll Call**

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

**Absent:** Jim Hanson

**City Staff:** Ed Tinker, Director of Planning and Development; Jane Taylor, City Solicitor; Michelle Aiken, Boards & Commissions Coordinator

**II. Appointment of Alternates**

Ed Friedman appointed to sit for Jim Hanson

**III. Review of Minutes:** November 3, 2008 Public Meeting Minutes

**Motion to:** Accept the November 3, 2008 Public Meeting Minutes

**Made by:** Mr. Woodman

**Second:** Ms. Towle

**Vote:** Unanimous

**IV. Continuation:**

- **(ZO2008-00030) Scott Cooper, 21 Prospect Street, Claremont, NH** – Seeks an Area Variance in order to Construct a Single Family Residential Dwelling totaling 4,350 sq. ft. in an Existing Non-Conforming Lot and to seek relief from the 1 unit per 10,000 square feet of land area density requirement, located on 21 Prospect Street, Claremont. Tax Map: 131, Lot: 49, Zoning District: R2. Applicant's Agent: Wayne McCutcheon

Abutters roll call – Mr. Andrew Austin present

Mr. Ed Tinker advised that the application is for a single family residence and the lot is non-conforming due to the 10,000 sqft requirement and the rear lot setback also needs to be determined. A nonconforming structure can only be reconstructed with a zoning variance and requires 2 off-street parking spaces. Should also consider all of the reporting criteria and whether or not a hardship exists and the applicant must show that the conditions are such that the proposed allowed use cannot be made without a variance. That practical considerations make it difficult to implement the permitted use. The applicant must be able to demonstrate that granting the variance does not interfere with the underlying purpose of the restriction in the context of health, safety or general welfare of the community. The board may also consider the circumstances of the site and the intention of the existing provisions of the zoning ordinance and the surrounding properties. Mr. Woodman asked to address the issue and Chair Hurd advised that the City has the ability to be stricter than the state standard and 22.114 of the city code is stricter than state law. Ms. Taylor advised that another provision has been upheld in Supreme Court and there is case law on this fact. Ms. Taylor advised the single family variance should be voted on first and then the second would be for the rear setbacks.

*Open Public Hearing*

Mr. McCutcheon advised that they previously where here for a duplex and they are back with a single family home on the lot. The dimensions of the footprint of the building are 30x36 and the setbacks from rear are not adequate. If they were to be in compliance on the plan and the building could only be 21ft which they do not feel is big enough to fit in with the surrounding structures. They are complying on the front and sides; they are looking for a variance for the rear setbacks to make it appear that it has always been there. The parking area is blue stone with room for 3 cars. Chair Hurd questioned the parking on the side and asked how many bedrooms there would be. Mr. McCutcheon advised there are going to be a minimum of 3 bedrooms. He advised that his client has the intention of obtaining this variance and selling the land, his intention is not to rebuild himself, and

he is planning on selling the lot. Chair Hurd asked if the parking on the side would be a problem. Ms. Taylor advised the parking is 2 spaces for a single family unit and it does not specify bedrooms. Mr. Woodman stated that he is glad that the owner did not just walk away and leave the City with this mess; he was hoping that some of the neighbors would have bought the property. Mr. Caouette asked for clarification of the parking. Mr. Tinker advised 22.533 states single family 2 spaces.

Mr. Andrew Austin, 17 Prospect Street, advised that the neighbors in the back and on the side tried to buy it and his price was a double what is was assessed at which was probably to recoup his losses. The problem he sees with it is he thought the building would be a little smaller, he does not object to it but he is unsure about building the same size building as the duplex but they are calling it a single family. He is worried that this is not finalized here tonight because the owner does not plan to build. Chair Hurd advised that the variance will stay with the land once Mr. Cooper sells the property. Mr. Hurd asked if there was a height restriction, can you restrict whether it's two or three stories. Ms. Taylor advised that she would have to look into it; you can place conditions, such as having the plan recorded, you can have buffers, etc, you can use conditions to make it fit better. Mr. McCutcheon asked if they can limit the size built to what is on the plan. Ms. Taylor advised that if the applicant was coming before you with a specific building in a specific location, they are given specific approval in the normal course of events. She is not sure that she has seen where someone has come before the board without the intention of building; she cannot give a definitive answer without doing some research.

Mr. Paul LaCasse is confused as to why this wasn't allowed to be built where it stood, the property was never abandoned. The variance should be for the setbacks, doesn't mean he can't build a duplex. He can use a reduced lot, he has a reasonable expectation to build a house since there was a house there before. You can limit the size and give him a building envelope he cannot exceed, and if he goes beyond that he would need a variance, but he doesn't see how this board can deny the applicant from building on his same footprint. Ms. Taylor advised that because under 22.114 it was a complete destruction of a non-conforming use that it could not be built without a variance since this zone requires 10,000 sqft.

Mr. LaCasse advised he disagrees and the Coopers went in for a building permit on the original footprint and it was never denied. At that time he feels they had every right to rebuild that structure on its original footprint, because the use wasn't abandoned and the partial building was still there, so he has a slight disagreement with what Ms. Taylor has told the board. Chair Hurd advised they should have appealed the building permit denial and they did not do that. Mr. LaCasse advised that according to Mr. Cooper they were told they did not have another choice. Chair Hurd advised that they did tear the building down and now we are here for this variance. Mr. LaCasse felt that he does not have to meet the 10,000 sqft requirement because he never abandoned the property. Chair Hurd advised that it was destroyed by the fire and once it was torn down it must meet the guidelines of the ordinance. Mr. LaCasse advised that this is a taxable piece of land and it is a buildable lot. Ms. Towle advised that it was non-conforming and they have to look at the facts they have before them now. Mr. Caouette asked for more details on what he is trying to bring to the board. Mr. Tinker advised that the property was totally destroyed by fire and in 22.114 states that it must follow the ordinance and this is the law this board must go by.

Mr. McCutcheon advised that he appreciates Mr. LaCasse's comments, although Mr. Cooper is happy to propose this plan and they are trying to get permission to have this building built.

#### *Public hearing closed*

Chair Hurd asked Ms. Taylor if they should make their motion before or after they do their review criteria. Ms. Taylor advised that it does not matter as long as they create their record by discussing all of the criteria.

#### Review Criteria:

The proposed will/will not diminish value of surrounding property? Chair Hurd felt a single family would be better than what was there. Mr. Friedman felt it was keeping within the area. Ms. Towle advised her answer would be no because she is worried about all the variables, and she disagrees with the motion. Mr. Caouette believes that it will not diminish the values, as long as it was a single family and it will add value to the area. Mr. Woodman felt it would not be any higher than any others on the street.

The proposal is/is not contrary to the public interest? Mr. Friedman felt it would not be. Mr. Caouette believes it would be in accord with public interest and he feels that we are in better shape with the public interest. Ms. Towle advised she is bothered by the fact that we are trying to uphold the law and the lot size is only 4350 vs. the 10,000 sqft and the whole motion still bothers her.



Granting the proposal will/will not result in substantial justice. Would granting the variance threaten public health, safety or welfare? Is the loss to the applicant out weighed by the benefit to the public. Unanimously agreed that this would result in substantial justice.

Proposal is/is not contrary to the spirit of the ordinance? Unanimously agreed that this variance is not contrary to the spirit of the ordinance.

## **I. Review of By-Laws**

Ms. Towle would like to make sure that the meetings stay consistent and stay at the same time each night. Ms. Taylor advised that this discussion is for items just like that and it should be in your bylaws. Ms. Taylor passed out a copy of the OEP ZBA rules of procedure. Ms. Taylor advised that the Planning Board is the only board that has recently updated their bylaws and she would like some feed back and input for a revised set of bylaws that she can bring to the board in February. The existing ones state time and place have to be duly noted. Chair Hurd asked that the bylaws state that the training sessions could be done at the planning office. He would like it to show that the Boards & Commissions Coordinator should be a city employee or someone contracted and that the minutes and noticing cannot fall back on a board member. He would also like a continuance or appeal clarified so that when a board member was not here it will be an option to have an alternate sit in on it. Ms. Taylor advised that the same board should be re-constituted but it can be waived. Chair Hurd advised that its states on pg 2 that only present members can hear, he would like it clarified. Ms. Taylor advised that this is why she gave the board the Planning Board bylaws because these have been revised and she is looking at some of those issues that can be refined. Chair Hurd asked who approves it after this board. Ms. Taylor advised that this board approves their own bylaws. Ms. Taylor wants to make a lot of clarifications. Chair Hurd asked if they could have a variety of bylaws from some of the bigger surrounding towns. Ms. Taylor advised she would like it on the January agenda to go over their input. Discussion regarding too many applications in one night and the ability to be sure that the meeting doesn't go past a certain time. Ms. Taylor advised that this is something they will need to consider and can be specified and clarified in the new bylaws and you should be able to work with the applicants.

## **II. Correspondence**

- o **Notice of Decision** - Doolittle's Print Serve, Jerome Doolittle, 84 Elm Street, Claremont, NH
- o **Notice of Decision** - Angela Wilkins, 31 Bible Hill Road, Claremont, NH

## **III. Other**

**Motion to:** approve the 2008/2009 meeting dates as presented

**Made by:** Mr. Caouette

**Second:** Mr. Woodman

**Vote:** Unanimous

## **IV. Adjournment**

**Motion to:** Adjourn

**Made by:** Chair Hurd

**Second:** Mr. Friedman

**Vote:** Unanimous

**Meeting adjourned at 8:37 p.m.**

**Respectfully Submitted,**

**Michelle Aiken**

**Boards & Commissions Coordinator**