



Zoning Board of Adjustment Meeting
Monday, May 7, 2007
Council Chambers, City Hall at 7:00 p.m.

Meeting Minutes

Meeting Called to order at 7:01 pm by Chair Hurd

Roll Call

Present: Robert Woodman, Jim Hanson, Michael Hurd, Tracy Pope, Heather Bopp

Absent: None

I. Report(s) of Secretary:

- Monday, April 2, 2007 minutes

Mr. Hurd would like it added the minutes that prior to the meeting he spoke with Pastor David Crosby to confirm that he was comfortable with Mr. Hanson sitting on the board. Mr. Hurd assured Pastor Crosby that Mr. Hanson has reviewed the tape and the application. Pastor Crosby stated to Mr. Hurd that he was comfortable with Mr. Hanson sitting on the board.

Motion to: Accept the meeting minutes of April 2, 2007

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

II. Continuation:

- **(05-2007) Roman Catholic Bishop of Manchester, 16 Central Street, Claremont, NH** – appeals the decision of the Historic District Commission decision on November 20, 2006 not to grant for a Certificate of Appropriateness for the demolition of the St. Mary’s Convent. Tax Map 119, Lot 349. **Appellant requests a continuation to the August 6, 2007 meeting.**

Motion to: to continue the application to the August 6, 2007 meeting

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

- **(09-2007) Customized Structures, Inc, 272 River Road, Claremont, NH** - has submitted an application for a Special Exception from section 22-318 (2) of the City Zoning Ordinance in order to allow use of the upper floor of the office wing as a night watchman’s quarters. Tax Map: 105, Lot 5, Zoning District: I-1.

Mr. Coogan advised that Customized Structures is applying for a special exception to use space for dwelling quarters for a night watchmen / custodian on the property. The building is currently used for storage; they will be doing some retrofitting/modifications to the building. There could be 3 or 4 watchmen at one time at the facility.

Mr. David Feller advised they are in the process of negotiating the sale of the building; the prospective new owner is going to be manufacturing furnace equipment and building a piece of equipment for their process. This special exception if is for custodial duties during off hours. The equipment will be metal and bending equipment, they will be bringing in breaks and sheers and they want to make sure that equipment is safe during non working hours. More than anything else, the processes they are doing is very proprietary, the equipment is proprietary. They are looking for 2 quarters for sleeping, one is for the lead person who will provide the

security. The other one will be possibly for a custodian that may have to stay over. Their main operations is in Leominster, MA and they will be doing this for about a year. After that, the building will be secured and they will have installed a security system.

Mr. Hurd advised that in their application they advised there would be 3 to 4 workers to reside. Mr. Feller advised no one will reside there. There could be a worker who would be staying there, he would come up and work as an example bending metal for the production and he will stay over and his job that night is the security for the safeguard of the property and equipment.

Ms. Pope asked why they are asking for 3 or 4 workers. Mr. Fellar advised that one of the security people will be a constant, but there could 3 people who rotate. At anyone time there will probably not be more than 3. This is for security at night; it is to keep the building and grounds tidy and clean for the people who are retrofitting the building. Mr. Woodman asked if there would be any kitchen facilities. Mr. Feller advised that there will probably be a stove and a refrigerator.

Mr. Hurd asked the attorney Taylor if there can be a time limit set on a special exception. Mr. Taylor advised that you need to focus on the use of the building for the special exception.

Ms. Bopp asked why they need to have sleeping areas, if you have a night watchman he would not be sleeping. Mr. Feller advised that the night watchman would sleep for a couple of hours and then do rounds. There are some minor site plan changes that will be handled administratively at the Planning Office due to the minor nature and the office can put that condition on the site plan changes if that is a concern of the board. Mr. Woodman advised they should make a condition that it will be a paid employee and it will not be just anybody. Ms. Pope advised that they do not want to have someone who is not a night watchman staying on the property, it should not be used as an apartment.

Mr. Coogan advised that he believes that this application will come before the Planning Office. It will be handled administratively or by the Planning Board because there will be some minor site modifications. When it goes through the planning process, the condition of approval regarding the temporary nature of the night watchman could be added. If the applicant states the temporary dwelling for a night watchman is for a year that can be a condition of the zoning permit. The staff or the Planning Board can offer this as a condition. Mr. Coogan advised that staff will take the information back to the office or the Planning Board regarding this concern.

Ms. Pope advised they want to be sure that this is a night watchman. What if they have an employee who had a tragedy and they tell them they can stay in the night watchman's room. Mr. Coogan advised that it cannot be used as a residential use and they receive information on a regular basis on zoning violations and if they had reasons to believe that that was happening, the Planning Office would check into it.

Closed public hearing

Motion to: to grant the special exception under Section 22-318

Made by: Mr. Woodman **Second:** Mr. Hanson **Vote:** Mr. Woodman – Aye
Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp - Nay

Is the specific Site an appropriate location for such a use;

Vote: Mr. Woodman – Aye
Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp - Aye

Will property values in the district be reduced by such a use;

Vote: Mr. Woodman – Nay
Mr. Hanson – Nay
Mr. Hurd – Nay
Ms. Pope – Nay
Ms. Bopp - Nay

Will such a use result in any nuisance or unreasonable hazard;

Vote: Mr. Woodman – Nay
Mr. Hanson – Nay
Mr. Hurd – Nay
Ms. Pope – Nay
Ms. Bopp – Nay

Will there be any adverse traffic impact as a result from such a use;

Vote: Mr. Woodman – Nay
Mr. Hanson – Nay
Mr. Hurd – Nay
Ms. Pope – Nay
Ms. Bopp – Nay

Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking;

Vote: Mr. Woodman – Aye
Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp – Aye

Will there be any adverse impact on the view, light and air of any abutter as a result of the proposed use;

Vote: Mr. Woodman – Nay
Mr. Hanson – Nay
Mr. Hurd - Nay
Ms. Pope – Nay
Ms. Bopp - Nay

Will the proposed use place a disproportional burden on the city's operational services in comparison to the anticipated tax revenue associated with the property/use in question;

Vote: Mr. Woodman – Nay
Mr. Hanson – Nay
Mr. Hurd – Nay
Ms. Pope – Nay
Ms. Bopp – Nay

Will the proposed use be detrimental to the public health, safety and general welfare;

Vote: Mr. Woodman – Nay
Mr. Hanson – Nay
Mr. Hurd – Nay
Ms. Pope – Nay
Ms. Bopp – Nay

Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance;

Vote: Mr. Woodman – Aye

Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp – Naye

Ms. Pope did want it to be clear in the minutes that the board is concerned with it being used as a night watchman's quarters for longer than a year.

- **(10-2007) Brian and Rebecca Stowell, 1 Charlestown Road, Claremont NH** – has submitted an application for an Equitable Waiver of Dimensional Requirements from Section 22-512 of the Zoning Ordinance to allow an existing in ground swimming pool to remain in place without complying with the 10ft setback requirement. Tax Map: 143, Lot 143, Zoning District: R-1.

Mr. Coogan advised that the applicant was before the board in November 2006 and obtained a Area Variance. One of the abutters brought suit against the Area Variance and the case is now in Superior Court. At the time of the last hearing there was discussion about an equitable waiver, but it had already been filed as a variance and it couldn't be changed at the time. They are now seeking an equitable waiver which may be the appropriate way to go and there is no conflict with the Area Variance as they are both mutually exclusive.

Ms. Pope asked if granting the equitable waiver would make the variance null and void. Ms. Taylor advised that the area variance is in the hands of the court. The equitable waiver and the area variance are on separate courses and are mutually exclusive.

Mr. Stowell advised that the issue is the swimming pool and to the best of his knowledge the pool was built correctly. The neighbor bought their property after they had already installed their pool. They hired someone who they thought knew what they were doing. They cannot alter the pool because it is the corner of the deep end of the pool that is the problem. It was installed with good faith and was an honest mistake. With prompting from the neighbor they were asked to sue the people who installed it. They decided that was not the way they wanted to go, so they applied for a variance. The non conformance was noticed by the neighbor as they were reviewing GIS. They did find that they had a piece of their fence and cement that was on the neighbor's property, they had that removed as soon as they found out just to be a good neighbor. They had no problems with the neighbor until the end of the summer, they were friends, the neighbor swam in their pool, they played golf together, etc. One day the neighbor invited them over and he requested they pay for the survey, all legal fees and 1/10th of an acre that is on his lot for about \$20-25,000. This would be about \$250,000 an acre. Mr. Stowell thought he was kidding although he found out he was very serious. Mr. Stowell advised him that they were going to apply for an area variance. At this point they were no longer friends and to give everyone their privacy, Mr. Stowell put up a fence. To this day there have been no issues with exception of talks with their lawyers. The pool was put in that spot to be away from the road and there is an electric retractable pool cover and there is a fence around the pool. They have a lot of money invested in the pool, it is unfortunate that it has turned into this, but if they have to they will bulldoze the pool in. They obtain the proper permits, it was handled by professionals, it was inspected and still a mistake was made.

Motion to: to grant the equitable waiver from Section 22-512

Made by: Mr. Woodman **Second:** Mr. Hanson **Vote:** Mr. Woodman – Aye

The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot of other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

Vote: Mr. Woodman – Aye
Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp - Aye

The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

Vote: Mr. Woodman – Aye
Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp - Aye

The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;

Vote: Mr. Woodman – Aye
Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp – Aye

Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected;

Vote: Mr. Woodman – Aye
Mr. Hanson – Aye
Mr. Hurd – Aye
Ms. Pope – Aye
Ms. Bopp – Aye

III. Correspondence

- Letter from Mathew Upton regarding Appeal of Richard F. Dietz
- Notice of Decision for First Baptist Church
- Planning Commissioners Journal

IV. Adjournment

Motion to: Adjourn

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

Meeting adjourned at 7:38 p.m.
Respectfully Submitted,

Michelle Aiken
Boards and Commissions Coordinator