



Zoning Board of Adjustment Meeting
Monday February 2, 2009
Council Chambers, City Hall at 7:00 p.m.

Meeting Minutes
Approved 3/2/09

Meeting Called to order at 7:02 pm by Chair Hurd

I. Roll Call

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

Absent: Carolyn Towle

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

II. Review of Minutes: November 3, 2008 Public Meeting Minutes

Motion to: Accept the December 12, 2008 Public Meeting Minutes

Made by: Mr. Woodman

Second: Mr. Caouette

Vote: Unanimous

III. Election of Officers

Motion to: to keep chair and vice chairperson as it is

Made by: Mr. Hurd

Second: Mr. Hanson

Vote: Unanimous

IV. New Business:

- **(ZO2009-00001) Leo Roy, 188 Old Newport Road, Claremont, NH** – seek a Use Variance from Sections 22-167 (2a) of the City Zoning Ordinance in order to process and remove or use stockpiled pavement material on site at **716 Washington Street**. Tax Map: 136, Lot: 2, Zoning District: RR.

Chair Hurd asked Mr. Roy if he felt there was a conflict with anyone sitting on the board. Mr. Roy advised he did not.

Mr. Tinker explained the application is for a Use Variance. The site currently houses a greenhouse and shed and has been the site for processing asphalt from the State project on Newport Road. Now the materials will need to be removed and this application is to bring the material into compliance. They are proposing to process a pile of reclaimed asphalt leftover from the NH DOT RT 11/103 project. This process is not permitted in the RR district of the Zoning Regulations. No matter what the material must be removed, the issue is determining the best way to remove the existing material to bring the parcel back into zoning compliance. Should the applicant be required to remove the material and process elsewhere or process the material on site, there will be heavy truck traffic.

Mr. Hurd advised he is not sure why this application is before the board now, it has been used for two years and there was a portable processing center on site already. There is already an existing driveway and it was acceptable for two years along with a portable screen that is bigger than your normal contractors screen. Mr. Tinker advised that the state is exempt from our Zoning regulations and the driveway may not be acceptable for this and he needs to check with the State regarding this issue. We need to make sure there is an access that can carry those large trucks and that is a determination that the State will make. He may need a permit to get off that property and onto the highway. Mr. Woodman advised this is a state permitted driveway and when you use state money you can be exempt from state or local control. Mr. Tinker advised that if the driveway is there, they still need a permit for the driveway. Ms. Taylor advised that whatever was done during the construction it was under the state jurisdiction. Now it is a private ownership and the rules kick in and the driveway may be perfectly fine, but the condition is that it needs to be ok with the state. Chair Hurd interpreted this to mean that even though the driveway exists, if you change the use you need to get the states permission to access the state highway and to make the inquiry whether or not it is needed. Mr. Hanson advised it is a way for the State to protect the shoulder of that road and make sure it is acceptable. If the state had

authorized Audley to use this, they wouldn't have had to follow the rules either but since they left it for the private property owner to deal with now the rules click in. Ms. Taylor advised that even though dumping was in violation, the state could do it. Now the property owner is in violation and the question before the board is what is the best way to remove the asphalt from the property or have it processed on site and removed. The property owner believes the most efficient way is to put on this temporary processing approval. Mr. Woodman felt that under the excavation ordinance you can excavate up to 250 yards. Ms. Taylor advised it does not apply. Mr. Tinker advised it either needs to be hauled out as is or processed on site. Considerations for processing on site would be heavy truck traffic, noise and dust, vibration and storm water runoff. The possibility exists for the oils and fuels in the asphalt to runoff into storm water.

Open public hearing

Mr. Leo Roy advised that he wants to grind the material up, crush it, dispose of some on the property and some to be removed and sold. The State gave him the paperwork for a driveway permit and he has not heard anything negative about it. Mr. Roy advised that the question of truck traffic being safe has been discussed with Bill Eaton from the State. Mr. Hanson asked what the intention is, is it to crush the whole pile and get it done or dispose of it slowly. Mr. Roy advised he would like to crush it in a one time allotment, he cannot say it will be dispersed in one segment but the sooner the better. He believes they are looking at 1000 to 1500 yards, it should be 2 or 3 days to have it all crushed. Consensus from the members present that it does behoove him to have it done and gone quickly. Mr. Roy wants to reclaim his land to what it was. Mr. Caouette asked how long will it sit there? The sooner he can sell it the better; he cannot say it will be there 6 months or a year. He doesn't see it being there for any extended amount of time.

Mr. Caouette asked what the difference in runoff is from the way it is or if it's crushed. Mr. Roy and Mr. Hanson advised it does not change. Mr. Hanson advised that a lot of the oils are out of it and it is turning back into aggregate. It is a good way to recycle it. Chair Hurd asked when he plans on grinding. Mr. Roy would like to start it in the spring. Mr. Friedman confirmed that he does not have a contract in place yet. Mr. Roy advised he did not yet. Mr. Woodman advised that the cooler it is the better it crushes also. Mr. Caouette asked if the material is worth less in its current state. Mr. Roy advised it is. Recycling and reusing it is an environmentally safe way. Mr. Roy advised it is a very good top dressing material that is a valuable resource. Discussion among members regarding how the materials can be used on site and it appears some of the conditions proposed would prohibit that.

Mr. Brian Nordle, Vice President of Audley Construction advised he met Mr. Roy when they were looking at the project for the State. They did all the disposal agreements up and down the corridor. It is towards 1500 yards of material, not a great deal. It is a federal mandate to recycle and reuse the materials and they have always reused, mostly towns and pavers use it. The material was put there without the proper permits with the City and he would have done that if he had been involved since the beginning. If it was year's worth of crushing and transporting the State would get involved but since it's such a small amount they won't get involved. The environmental conditions advise that whether you crush it, move it, oil it, etc, the nature of it does not change, there is no hazardous runoff. It is no different than the millions of pounds of asphalt around town. The state has already calculated the anticipated runoff. He is sorry that it was not previously brought to the city for permits, the intent is to properly seed and mulching of the area when it's done.

Public hearing closed

Chair Hurd felt that the conditions suggested by the City Planner were not realistic. Mr. Hanson felt that 2, 3, and 4 were not necessary. Discussion among board members regarding the conditions proposed. Chair Hurd also felt that the condition of time constraint is un-necessary. Mr. Friedman felt the hours of operation are reasonable for neighbors in the area. Chair Hurd has an issue with the condition that does not allow for the applicant to use the material on his own driveway. Ms. Taylor advised that this is a variance for crushing and the storage of this material is not permitted. Mr. Roy is here to be allowed to use this property for a commercial use; he is not proposing to keep the asphalt onsite. Chair Hurd wanted to make sure that he can use the asphalt for his driveway if he wants to. Ms. Taylor advised that if you build a road or curb cut the materials have their own rules and regulations. Ms. Taylor advised that the #3 condition intention is that once the material is crushed it should not remain a large pile on site and the pile that is there will be removed and reseeded.

Motion to: approve the use variance of 22-167 to process or use stockpiled material of 716 Washington Street with conditions noted under conditions precedent and subsequent conditions which allow for some use of the asphalt material on site as long as the pile that is there is removed within 1 year.

Made by: Mr. Caouette

Second: Mr. Hanson

Vote: Unanimous

Review Criteria:

The value of surrounding properties will not be diminished? Chair Hurd felt that a processor being there for a week is not going to diminish the values of the property – Consensus.

The variance will not be contrary to the public interest? Chair Hurd felt it would benefit the public interest by getting rid of the pile – Consensus.

Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The zoning restrictions as applied interfere with the landowner's reasonable use of the property, considering the unique setting of the property in its environment; Mr. Hanson felt it would be a waste not to use it and you would lose all value – Consensus.

No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property as applied to this specific parcel? Cannot bury it and you have to do something with it – Consensus.

The variance would not injure the public or private rights of others – Consensus.

Substantial justice is done? There is plenty of visibility and you would be cleaning something up and this is not a hazardous material and you are not creating more runoff.

The variance is consistent with the spirit of the ordinance and does not interfere with the underlying purpose of the restriction - Consensus it is the right thing to do.

Conditions Precedent:

1. The applicant obtains a state access permit to Route 11/103 and provides a copy of such permit to the City.
2. If required, the applicant obtains a nonmetallic mineral processing plant permit and/or other required permits from the NH Department of Environmental Services.
3. Applicant provides a stormwater and erosion control plan, using best management practices, to the City for its approval prior to commencement of any processing.
4. Applicant will be responsible for repair of any damage to roads or culverts and erosion control resulting from this project. The applicant is required to provide the City a performance bond, approved by the Planning and Development Department, for the cost of roadway access improvements including the driveway apron, drainage swale, and culvert; and the cost of temporary erosion control measures.

Conditions Subsequent:

1. Outside material processing is restricted to asphalt on site at the time of approval, if given, and will be on a temporary basis (one year).
 2. Processing of asphalt and trucking will be restricted to Monday through Friday between the hours of 7 am and 5 pm.
 3. Upon completion of the processing, all asphalt-related material on site shall be removed with the exception of any material that is to be used on-site.
- **(ZO2009-00002) BIS Realty, Inc., 85 Plains Road, Claremont, NH** – seeks a Use Variance from Sections 22-354.1 of the City Zoning Ordinance in order to use the property for storage of processed ledge to be used for foundation of entrance, drive and parking lots at **21 Grissom Lane**. Tax Map: 176, Lot: 6, Zoning District: I-III.

Chair Hurd asked the applicant if they had any problem with anyone sitting on the board and Mr. Aiken advised he did not.

Mr. Tinker advised the applicant is requesting a Use Variance for the purpose of storing crushed and processed stone on a site. On the Maclay Prentiss site which is on Charlestown Road they are currently crushing material on site. They are permitted to crush gravel and rock as part of construction of that site. The main thing we want to look at is where the materials are going to be stored, the visibility from the roadway, public right of way. We are also concerned with the amount of material that will be stored. There is no indication of the quantity of the materials that will be. This would be primary land use of the site; currently the un-occupied single family dwelling would not be compatible with the material storage. The existing dwelling would become incompatible with this use. Mr. Woodman asked if this house could be a watchman's shanty. Ms. Taylor advised it could be a watchman's shanty, but could not be used as a residential use.

Mr. Tinker advised they would like the board to consider the amount of material which is important to know and the regulations require the materials to be 250ft from the property line.

Open Public Hearing

Mr. Charlie Aiken advised that they are working with St, Pierre to crush to about 4" in size and they are going to store on site for cost savings, they were initially going to do a parking area for their storage trailers. They need a foundation for their trailers so that they do not sink in the mud in the Spring. They have just received the topographical from Mr. McCutcheon, so they are 120 days until they do a site plan. Their proposal is to install a parking lot and he was told he could use the existing drive and they will pull in about 100ft and into the natural swale and pile the material up on the top. The neighbor does not have any windows facing this area and they have left a barrier of trees so that it is shielded. Until they get a permit they are not sure how much material they would be getting. The storage they are looking for is to figure out how it will be laid out. Mr. Aiken advised it should be gone before this time next year. They had a good agreement with Claremont fiber and now they must move them by September and using the storage trailers keeps their products clean. Mr. Hanson knows that Maclay Prentiss is looking at 30,000 yards of materials being crush and some of that is being used on site. Until they had the survey done on the property they didn't dare to go any further and they only figured out where they would put it. Chair Hurd asked what the depth is and Mr. Aiken advised he is not sure what the depth is but he knows there is a good base of ledge there. He advised that you cannot see the site from the existing building. He advised that you cannot see it from Grissom Lane or Charlestown Road. Mr. Caouette asked if he feels the 250ft requirement from the property line is acceptable for him. Mr. Aiken felt that requirement would be fine. Mr. Caouette asked if the applicant could give a maximum of material. Mr. Aiken advised he doesn't think that they would not take more than 5000 yards, he wants to be able to move in and out with the trailers and it would be approximately an acre. This is more economical to have them deliver it to their site so that it is not trucked to St. Pierre's and then back again. The reason for the variance is due to the time lapse for when the material is ready and the time they would be ready to go for a site plan. Mr. Aiken advised Maclay Prentiss is working on their property for the next 8 weeks and after that the material will be trucked to St. Pierre's and then trucked back if they don't do it now. Chair Hurd asked what they are going to do with the house. Mr. Aiken advised they had considered renting it out but they are thinking about using it as an office. Chair Hurd explained that the residential use of the property is lost with storage of trailers, unless it is watchman's quarters.

Closed public hearing

Motion to: approve the use variance of 22-354 for storage of material on 21 Grissom Lane with the conditions that a site plan is presented to the Planning Board, the setback requirement of 250ft, piles are not to be seen from the road, and not to exceed 5000 yards

Made by: Mr. Hurd

Second: Mr. Woodman

Vote: Unanimous

Review Criteria:

The value of surrounding properties will not be diminished? Chair Hurd advised this is a plan that is rolling forward and the materials will be delivered and then used - Consensus.

The variance will not be contrary to the public interest? Mr. Hurd felt it would benefit the public interest and it s a shorter span and less ware and tare of the road- consensus

Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The zoning restrictions as applied interfere with the landowner's reasonable use of the property, considering the unique setting of the property in its environment; Chair Hurd it is cutting down on the impact on the highway and it is in an industrial zone anyway. It does not affect the character because of the site distance and there are no other neighbors that would be visible - Consensus. Once they use it as industrial they cannot use it as a residence, as soon as they start this process they lose the ability to use it as a residence. It has been vacant 2½ years.

1. The applicant submits plans that indicate the precise location of the stored material. Material will be located away from property lines and be located out of view from neighboring properties and public right-of-way. In no circumstance will material be located within 250 feet of a property line.
2. The applicant demonstrates that no storage is proposed to occur on wetlands.
3. Applicant obtains all necessary permits from the City and State Departments.

Conditions Subsequent:

1. Outside material storage will be on a temporary basis (one year) within the identified storage area only.
2. Storage will be limited to strictly crushed ledge material to be stored no higher than eight feet from the ground.
3. Maximum amount of material will be 5,000 yards.
4. If site plan approval is not obtained by the Planning Board within one year, all storage materials will be removed from the site and the site restored and seeded appropriately to prevent subsequent water run-off and erosion.
5. The existing vacant single-family residence on the property may no longer be used a residential dwelling unit due to its incompatibility with material storage.

I. 8:00 PM - Communications:

- **Letter from Robert D. Haight, Architect for White Mountain Children's Center** – Requesting to install sprinkler requirement in phases

Ms. Taylor advised that she would look into this and get back to the board next month.

II. Reports from Boards & Commissions

Mr. Woodman advised there is a meeting with the Joint Rivers Commission on the 10th and asked Ms. Aiken to send out the meeting notice to the Conservation Commission.

III. Other

Ms. Taylor provided packets to the members with a draft of proposed bylaws that conforms to the current laws and the rules are parallel to the City Council and Planning Board. She has included copies of the state laws as referenced in the draft along with a copy of the most recent version of 91-A.. The board can review and discuss at the next meeting.

IV. Adjournment

Motion to: Adjourn

Made by: Mr. Woodman

Second: Mr. Hurd

Vote: Unanimous

Meeting adjourned at 8:42 p.m.

Respectfully Submitted,

Michelle Aiken

Boards & Commissions Coordinator