



Zoning Board of Adjustment Hearing
Monday, May 4, 2009, 7:00 p.m.
City Council Chambers, City Hall, Claremont

Meeting Minutes
Approved 6/1/09

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

I. Roll Call

Present: Robert Woodman, Jim Hanson, Michael Hurd, Pierre Caouette, Carolyn Towle

Absent: Ed Friedman

City Staff: Ed Tinker, Director of Planning and Development; Jane Taylor, City Solicitor; Katrina Spaulding, Administrative Assistant

II. Public Meeting Minutes: April 6, 2009 Meeting Minutes

Motion to: Accept the April 6, 2009 Public Meeting Minutes

Made by: Chair Hurd

Second: Jim Hanson

Vote: Unanimous

III. Old Business

- **(ZO2009-00006) Phillip Osgood, 19 Whitcomb Lane, Claremont, NH** – seeks approval to expand a nonconforming use at **96 Summer Street** to increase the amount of space used as automotive repair. Tax Map: 131, Lot: 41 Zoning District: R-2.

Ed Tinker addressed the board regarding the storm water runoff. Ed and Bruce Temple, Director of DPW visited the site. Onsite there is a drywell which is cleaned every two years. It is recommended the Board require the applicant have the drywell cleaned every year. The work for enclosing the bay will include 2 phases. Phase two of the construction is to put a pitched roof heading off to Pearl Street. It is proposed the drainage swale on Pearl Street be repaved and improved so the drainage will be routed to the existing catch basin. These conditions should be considered by the Board.

Mr. Osgood is looking at engineering work to be completed during phase two and plans to work on this in collaboration with the City and DPW.

Bruce Temple said the pitched roof directs water runoff onto Pearl Street. The existing catch basin needs a different grate on it prior to usage. The storm water needs to be kept from running out onto the street. If Summer Street gets re-constructed it would be proposed the new system be tied into the City storm drain.

Mr. Woodman asked if the applicant would have to incorporate an oil separator into the storm drain. Mr. Temple said it would all be brought into compliance with D.E.S. requirements once connected to the City storm water system.

Open Public Hearing
Public Hearing closed

Chair Hurd feels the water runoff will be addressed and is under control. There are no abutters to disagree with the application.

Motion to: Approve the application with the condition to set a storm water runoff drain and roof plan in compliance with Public Works. The existing well will be cleaned annually and the applicant will connect to the City storm water system once Summer Street is rebuilt. There will be a written agreement with Planning and Development and Mr. Osgood.

Made by: Pierre Caouette

Second: Chair Hurd

Vote: Unanimous

1. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood. – It would be safer, Consensus.

2. There will be no nuisance or serious hazard to vehicles or pedestrians. Consensus.
3. Adequate and appropriate facilities (i.e., water, sewer, streets, parking) will be provided for the proper operation of the proposed use.

- **(ZO2009-00008) Joanne Jaworski/Harry Chesley, 358 South Hemlock Road, Charlestown, NH** – seeks an Area Variance from Section 22-169 of the City Zoning Ordinance in order to construct a second means of egress for a multi-family building as required by the Fire Department at **72 Sullivan Street**. Tax Map: 119, Lot 267, Zoning District RR.

Ed Tinker said the continuance was issued to clarify setbacks. There has been determination there are at least 16 feet needed from the rear of the building. The property abutting also parks a car in the vicinity, but there are still around 6' remaining after the steps are built. The only concern is there will be a loss of one parking space in the proposed area. Requiring a fence and concrete bollard will be helpful to ensure a safe egress. With the loss of one parking space, parking needs to be considered by the Board. The abutting property actually uses part of this lot for one parking space.

There are 5 units within this building. There should be 10 off street spaces. It appears the 10 can be accommodated. There may be an option to lease spaces off site. Mr. Hanson indicated there doesn't seem to be any curb cuts on the property.

Property pin was located and there are 14' 3" to the property line. The fence is located a little further separating the two properties.

Harry Chesley presented drawings and a map of the property to the Board. There is a possibility the landing for the stairs will be right on the property line. No portion shall be within the City right of way. Make sure it is back a couple of feet so the sidewalk isn't impeded. This can't be built on the edge of the road where it hangs over onto the sidewalk. It is determined the new drawings presented by Mr. Chesley, are completely different than the original submitted plan. Chair Hurd wants to see the application continued to research and survey the property.

The Fire Department needed 25' feet for distance from another egress from the building. The stairway from the original design encroached on the 25'. He didn't have the "remoteness" from the first egress. This is the purpose for the design change.

This should be continued for the time being according to City Solicitor, Jane Taylor.

Motion to: Continue until decided if it needs to be re-applied
Made by: Chair Hurd **Second:** Carolyn Towle **Vote:** Unanimous

IV. New Business

- **(ZO2009-00010) Crown Castle USA, Inc. represented by Mclane, Graf, Raulerson, Middleton, 900 Elm Street, Manchester, NH** – seeks Area Variances from Section 22-655(b)(1)&(3) of the City Zoning Ordinance in order to replace the existing 152.8 foot telecommunications towers with a 165 foot lattice tower at 153Cat Hole Road. Tax Map 75, Lot 1, Zoning District AR.

Ed Tinker stated there was a request to withdraw the application by the applicant.

Motion to: Withdraw the application
Made by: Pierre Caouette **Second:** Jim Hanson **Vote:** Unanimous

- **(ZO2009-00011) Michael LaPointe, P.O. Box 540, Claremont, NH** seeks a Use Variance from Section 22-206(7) of the City Zoning Ordinance in order to locate a manufactured home at 10 42nd Street. Tax Map 129, Lot 152, Zoning District R-1.

Ed Tinker said this is an existing vacant lot. The proposed lot is compliant with existing zoning. A recent lot line adjustment was completed in 2002. There is road frontage available for the property and this is an identified location for onsite water and septic.

Chair Hurd asked if this was a manufactured or modular. Ed Tinker said it is a manufactured home with a steel frame. It needs to meet the requirements for the State of NH. These homes require a concrete foundation and approved by the State.

Open public hearing

Mr. Michael LaPointe, property owner wants to put a manufactured home on the lot and the home hasn't been chosen at this point in time. He is waiting for approval from the Zoning Board.

Abutters present – Kristel and Jeffery Desmond asked to see what the lot would like with a home on it. Kristel is concerned about crowding. She is wondering if there would be another home placed in the adjacent lot. She is concerned about the snowplowing.

The house will be required to meet all zoning requirements and setbacks. The side setback would be 10 feet and the front and rear would be 25'. There is more than enough depth to place a home according to the requirements.

Mr. LaPointe stated he would not be crowding any of the lot lines. It would be positioned to allow for enough space, it will be placed toward the rear of the lot.

Public hearing closed

Conditions:

1. Manufactured housing will meet the definition of RSA 205-D:1, VI and XI.
2. On-Site septic approval must be obtained from the Department of Environmental Services prior to locating the manufactured home on the lot.

Motion to: Grant the use variance under RSA 674:33 for placement of a manufactured home with the conditions stated above for 10 42nd Street.

Made by: Jim Hanson

Second: Carolyn Towle

Vote: Unanimous

1. The value of surrounding properties will not be diminished; Fits with what is currently in the area, Consensus.
2. The variance will not be contrary to the public interest. Consensus
3. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. Consensus
 - The zoning restriction as applied interferes with the landowner's reasonable use of the property, considering the *unique setting of the property in its environment*;
 - Is the property so different from the surrounding parcels that the proposed use is "reasonable" in this unique setting (i.e. does the burden arise from the property, not from the individual situation of the landowner)? No Homeowner. Consensus
 - Does the restriction with the proposed use result in any decline in value of the property or diminished return on investment to the owner? Consensus
 - Would the proposed use alter the essential character of the neighborhood? 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. Consensus
 - The variance would not injure the public or private rights of others. Consensus.
4. Substantial justice is done (i.e. Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?) Consensus
5. The variance is consistent with the spirit of the ordinance and does not interfere with the underlying purpose of the restriction. Consensus.

1. Use Variance from Section 22-226 of the City Zoning Ordinance to construct a community center in the R-2 Zoning District; and

The Applicant is requesting to operate a gymnasium in the R-2 zoning district which is not a permitted use. The lot is currently vacant and the parcel was located based on the need for a centrally located site. This is close to the downtown area, the rail trail, and site plan review will be required in the future. The Claremont Savings Bank still owns the lot and therefore the application is being presented by Claremont Savings Bank.

Wayne McCutcheon handed out a plan to the Board to present the location of the facility as proposed. This is located on Broad and South Street. The building will be entirely on the Clarebank property. Hutter Construction has been chosen as the construction firm. The Applicant is requesting the use be allowed to have a gymnasium on this property. This site is wetlands and D.E.S. permits will all be applied for appropriately.

Mr. Woodman asked if there was a solid price with Nobis engineering for the work on the wetlands. Mr. McCutcheon said that work is going to be contracted with Hutter Construction.

Open public hearing

Abutters Present:

Judith White
Fred & Amy Thompson

Fred and Amy Thompson asked if this was the same proposal originally put together by the organization or if this is a modification. Wayne McCutcheon said this is one of the plans submitted and varies from the original plan. The building is going to be 52,000 square feet and will have an aquatics 8 lane pool, and a large gymnasium. It will be divided internally. There will be a track cantilevered over the gymnasium. The portion of the building towards South Street will look like a condominium complex. There will be a walkway from the rear of the building.

Amy Thompson asked how tall the building would be. John Napsey said the tallest portion of the building from the rear it will be similar to the height of the Middle School Gymnasium.

Pierre Caoutte asked what the Thompson's largest concerns were. Amy mentioned she is concerned with the traffic and noise as well as the size.

Judith White, abutter stated she would like to sell her house to the project and hopes to receive a proper price for the house. Her home would be used to increase the amount of parking for the facility. She would like to postpone the variance until her house has been sold. Chair Hurd said the variance doesn't have any reflection on the issue of property value for Ms. White.

Wayne McCutcheon addressed the concerns of the Thompsons regarding noise and night time lighting. Mr. McCutcheon said the building will be completely insulated and there won't be any noise from the inside. There will be down lighting in the parking areas and only directed to the area where cars will access the parking lot. A hedge will be placed as a screening to keep down the light and noise.

Public hearing closed

Motion to: Reopen public hearing

Made by: Mr. Woodman **Second:** Mike Hurd **Vote:** Unanimous

John Napsey stated the parking is going to overlap from the Middle School and will be used from time to time for parking. Traffic will be entering and exiting from South Street. Traffic impact will be on South Street.

Public Hearing Closed

Motion to: Accept the use variance from section 22-226 and add the condition the trail be created from the opening of the rail trail to Arrowhead and would have the same guidelines and rules as the existing rail trail. Adding a second condition there be a plan for a buffer for the back of the building for the consideration of the abutting landowners which shall be enforced by City Staff. The conditions shall be noted on all site plans related to the project.

Made by: Pierre Caouette **Second:** Jim Hanson **Vote:** Unanimous

Review Criteria:

The value of surrounding properties will not be diminished? Consensus

The variance will not be contrary to the public interest? Public Benefit, Consensus

Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The Zoning regulations as applied interfere with the landowner's reasonable use of the property, considering the unique setting of the property in its environment - Proximity is good for the use – 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? Consensus

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

Substantial justice is done? Consensus

The variance is consistent with the spirit of the ordinance and does not interfere with the underlying purpose of the restriction. Consensus

2. Area Variance from Section 22-229 of the City Zoning Ordinance to reduce the rear setback to 15 feet (from 25 feet) at the corner of Broad and South Street. Tax Map 132, Lot 174.

Wayne McCutcheon said this is 10 feet further north than the 25 foot setback allows for. It will be 15 feet from the property line. This may be required to complete the building construction. This is not actually near Broad and South Street it is to the rear closest to the rail trail.

Pierre Caouette asked if there will be a driveway and Wayne stated there will be a walkway only. This is for code requirements.

Open Public Hearing

Public Hearing Closed

Motion to: Grant area variance from section 22-229 to reduce the rear setback from 25 to 15 feet.

Made By: Carolyn Towle **Second:** Chair Hurd **Vote:** Unanimous

1. Does the proposed use maintain the value of surrounding property? Consensus
2. Would granting the variance be in accord with the public interest or, in other words, would granting the variance be in agreement with the objectives of the zoning ordinance? Consensus
3. Would denial of the variance result in unnecessary hardship to the applicant because: Consensus
 - a. Explain the special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed:
 - b. Explain why the applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden:
4. Will granting the variance result in substantial justice? (Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?) Consensus
5. Is the use in accord and not contrary to the spirit and intent of the ordinance and does not interfere with the underlying purpose of the restriction? Consensus

Discussion of Draft Bylaws with City Attorney Jane Taylor postponed until the next meeting depending on the extent of the agenda and possibly placed at the beginning of the next agenda. There is also the option to have a special meeting. .

Motion to: Adjourn
Made by: Carolyn Towle

Second: Jim Hanson

Vote: Unanimous

Meeting adjourned at 9:50 p.m.

Respectfully Submitted,

**Katrina Spaulding
Administrative Assistant**