



**Zoning Board of Adjustment Meeting**  
Monday, August 3, 2009, 7:00 p.m.  
City Council Chambers, City Hall, Claremont

**Meeting Minutes**  
**Approved 9/8/09**

Meeting Called to order at 7:00 pm by Vice Chair Robert Woodman

**Roll Call**

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

**Absent:** Michael Hurd, Jim Hanson

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

Ed Friedman was appointed to Jim Hanson's seat as alternate.

**I. Review Meeting Minutes:** July 7, 2009 Meeting Minutes

Mr. Friedman asked to have the date changed to July 6<sup>th</sup> as this was the actual meeting date.

**Motion to:** Approve minutes of July 6, 2009 as amended

**Made by:** Pierre Caouette      **Second:** Carolyn Towle      **Vote:** Unanimous

**II. New Business**

- **(ZO2009-000018) Norman St. Aubin, 130 Old Newport Road, Claremont, NH** – seeks a Special Exception from Section 22-147(11) of the City Zoning Ordinance in order to extend the RR-2 Zoning District provisions to the AR Zoned portion of Tax Map: 100, Lot 7, Zoning District RR-2 and AR on **East Green Mountain Road.**

Mr. Edward Tinker presented the report for the Claremont Staff.

There was originally an approved subdivision two years ago for a 5 lot subdivision and the actual subdivision was never completed. In December of 2008, Norm St. Aubin's agent, Mr. Dick Wentzell, attended a Technical Review meeting to discuss conceptual plans for the current proposal. There were items that needed to be addressed and issues which the City requested be completed in developing the new subdivision application. The City has been waiting for an application to come forward since December of 2008.

**Project Description:**

The applicant is proposing a subdivision to create 35 house lots on a parcel of land that is divided by a zoning district boundary. Most of the parcel is zoned Agricultural Residential, which has a minimum lot size of 5 acres. The remainder of the parcel is zoned Rural Residential 2, which has a minimum lot size of 1 acre. The applicant is requesting a Special Exception under Section 22-147 (11) of the City of Claremont Zoning Ordinance to extend the lot sizing standard from the RR-2 District to the entire parcel. This would allow a

reduction in minimum lot size for the entire parcel to 1 acre. The existing plan proposes lots that range from 1.29 acres to 13.7 acres in size; most lots are in the range of 2 +/- acres.

### **Planning Considerations:**

The Zoning Board's task is to determine if smaller lot sizes are appropriate for this site under the criteria set forth in Section 22-63(a) of the Claremont City Code. At this time, staff recommends that there is not sufficient information available for the Board to make that decision and that the application for a special exception is premature. As part of its review, the Board may want to consider continuing its review of the application until all information it may need for its deliberations has been provided.

A smaller subdivision was conditionally approved in June 2007 on this parcel fronting on East Greet Mountain Road. A condition of that approval required drainage and road upgrades to East Green Mountain Road. These improvements were never completed and the subdivision never recorded with the registry of deeds. The applicant attended a Technical Review meeting with city staff in December 2008, with a new subdivision proposal that included a total of 35 smaller lots. At that time, staff expressed concerns about aspects of the project and requested that more information be provided to assist in development review. The most significant development issues are related to soils, drainage and roads, including the condition of East Green Mountain Road. (See attached Technical Review Notes 12/23/08) The applicant has not provided any of the additional requested information.

#### Drainage and Soil Conditions

A visual inspection of the site reveals rock outcrops and steep slopes. These two site features are a concern for roadway access, septic system and well design, stormwater run-off, and soil erosion.

During staff review the applicant was asked to provide the following information to assist in the review of this application:

1. Soil mapping and sewage disposal information. The presence of ledge and wetlands is suspected, but the extent is unknown. It is unclear if the proposed lots can accommodate wells and septic systems; i.e. are the lots buildable. Soils should be mapped and the locations of well and septic systems for each lot identified. Note that wetlands are shown on the plan but the means of their identification are unknown and no wetland scientist stamp appears on the plans.
2. Drainage study-estimating pre and post development run-off is critical information to determine the adequacy of the existing drainage infrastructure such as culvert. All stormwater runoff from the site crosses East Green Mount Road at two culvert locations, located near lots 3 and 5. All stormwater eventually ends up on land which the applicant owns to the south of East Green Mountain Road. A deeded drainage easement is needed on that land.

#### East Green Mountain Road

During the initial review of the conditionally approved subdivision, East Green Mountain Road was determined to be inadequate and its improvement was a condition of the Planning Board approval. The road changes to a gravel surface at about proposed lot 3. At that point there are issues with the size of the culvert that carry water underneath the road. Surface water drainage from the site must be able to adequately cross at these locations without

spilling over and damaging the public road, which historically has been a problem. Development on this site will likely increase stormwater runoff and has the potential to exacerbate this issue if proper improvements are not made.

Furthermore, the adequacy of the road to handle the increase in traffic is also unknown. We recommend the following information:

1. Traffic impact study-provide estimated traffic impacts and determine road adequacy deficiencies and identify any needed improvements to city roads.
2. Drainage study to determine the anticipated flow rates of water from improvements required for subdivision development up to and including a 50-year flood event.

#### Other

Other issues that we identified include:

1. Road frontage for lot 21 does not comply with RSA 674:41.
2. Grades and profile for the proposed private road is unknown.
3. Plans indicate that they are “conceptual only” and contain no stamp from a professional engineer or soil scientist.
4. Contours are from USGS and are not based upon survey.
5. The visual aspects of development on Green Mountain were also a concern.
6. Impact on municipal fire services, requirement for sprinklers for each house constructed and determination of size and need for construction of fire pond on the property.

#### **Recommendation**

We recommend the ZBA continue the application hearing for the Special Exception so the applicant will have an opportunity to provide the following information:

1. Soil mapping of the entire parcel to determine adequacy of parcel to support both septic and wells for each proposed lot.
2. Drainage study to determine water flow from site upon complete build-out of subdivision and impact on East Green Mountain Road up to and including a 50-year flood event.
3. Traffic impact study of subdivision upon complete build-out upon both East Green Mountain Road and the intersection of East Green Mountain and Old Newport Road.
4. Erosion control plan for the site to minimize run-off and potential damage to East Green Mountain Road.
5. A non-lapsing bond or other guarantee estimate to reimburse the City for police and fire services which, as a result of frequency or intensity, place a disproportional burden on these services per Section 22-63(b)(9).

#### Open Public Hearing

Abutters Present:

Patricia King, Deborah Partlow  
Arthur Luce  
Norman Blouin  
Thomas Brothers  
James Fairbanks

Mr. Woodman asked the applicant if he would be ok with a 4 member board and Mr. Wentzel agreed to be heard by a four member board.

Mr. Wentzell presented for the applicant. He stated there were 28 items requested by the Technical Review Committee. Some of these items are repeat requests the State of NH would be asking for upon approval. He stated 19 of the 28 items they were/are willing to comply with. One of the items the applicant chooses not to agree with is the sprinkler systems being required within the new homes. There will be no cost to the City of Claremont for anything regarding this development. There won't be any water or sewer requirements, street lights or any additional expenses. These lots will not be built and sold for a great deal of time. The wetlands scientist is ready to work on the property. One of the recommendations made by the City of Claremont was to consider putting a cluster development into the lot; this would cut down on the lot size. This would require a minimum of a ½ mile road. There are three large lots on the top of the development, there won't be any further subdivision allowed. There will be no commercial or subdivision allowed. The board needs to determine what needs to be done so Mr. St. Aubin can get started. New law went into effect on July 1, 2009. Senate Bill 342 and clarifies planning and zoning. Mr. Wentzell had a handout regarding this SB. Mr. Wentzell recommended the board not make any decisions without taking the time to review the paperwork he was handing out.

Mr. Wentzell said the City of Claremont will not have any expense related to this subdivision and there would be \$400,000 increase to the tax base.

Ms. Towle asked about the 9 items the technical review committee requested with which Mr. St. Aubin didn't want to comply. Mr. Wentzell said there are some items which are required by the State of NH and the applicant feels it is redundant for the City to ask for the same items. #1 is the first item, #4 (Cluster Housing), #12 (Traffic Impact Studies), #13 Probability for high concern, #16 (Suggestion to keep a minimum of top three lots as conservation land as recreation areas), #21 (Plans to outline cross section of roadways – Mr. Wentzell said this will be a totally private road) the private road will be a crushed stone. #23 (Drainage calculation and soil information should be shown to prove buildable lots), #24 concern for only having one entrance with the size of the development – Mr. Wentzell asked why this is required and doesn't feel another entrance is necessary– this is a totally open field. #26 (fire Department requiring sprinkler system)

Mr. Caouette asked if Claremont is superseding the State Building Code. Mr. Wetzell said the State doesn't even require #26. He feels it was a reach out to prohibit this development. The handout Mr. Wentzell handed out to the Board; he (Mr. Wentzell) feels this will address some of these issues.

Carolyn Towle asked if there was a preliminary plan that could be submitted. Has there been an engineered plan? Mr. Wentzell said there hasn't been anything paid for and drawn up for the project. Mr. Wentzell said the plans will be completed upon the authorization or approval of the Zoning Board.

Mr. Woodman asked if he was aware of the city not issuing any building permits without the property abutting a class 5 road. He stated there are miles of class 6 roads in Claremont that do not allow building. A class 5 road could be built and then deeded to the City.

Ms. Towle asked about the expense to the City. The services don't have to go to this development? Ambulance, Fire, Police services need to go to this development. It is all part of the planning and review of this site. There won't be any water or sewer or maintenance to the City as an expense

according to Mr. Wentzell. Mr. Wentzell recommended that the Board postpone any decision until after the paperwork he handed out is reviewed.

Mr. Tinker said he has had concerns since December regarding the negative press and the City's unwillingness to cooperate. The fact is an application never came forward for this issue. The applicant was saying the City was not in favor; however an application was never submitted to be approved or denied. The \$400,000 in tax money from change in current use status will not be taxed until digging and building begins however most of this property is in current use at this time.

Mr. Arthur Luce, abutter addressed the Board. In seeking a special exception the Zoning Board is supposed to review 8 different items with the review criteria. In 2002 a different applicant appeared before the Planning Board requesting a 7 lot subdivision. This was premature and reduced to 4 lots to a minor subdivision. What has changed in 7 years? Until the City upgrades the roads to modern standards, any major development here should be categorized as premature.

Mr. Thomas Brothers, 265 East Green Mountain Road, wanted to comment on this special exception request. He feels the ZBA decision does not determine whether St Aubin can or cannot develop this parcel of land. He feels there are many other parcels of land within the City of Claremont that are much better suited for large scale residential developments. Mr. Brothers questioned whether the applicant satisfied the following required criteria for approval of a special exception: Is the site appropriate? What is the burden on services v. taxes contributed? What is the adverse impact on traffic? Is the use detrimental to the surrounding area? Would the development create a nuisance? Would the development affect surrounding property values? He requested the Board require the applicant to provide studies of the cost to community services, the impact on the life cycle costs on roads in Claremont, the feasibility and legality of assessment on the development for the increased cost of community services, a hydrological study of the property, noise impact and environmental impact.

Jim Fairbanks is an abutter and doesn't have a problem with land development but feels there are other parcels more suitable for development. He said a school bus has lost control and a rubbish truck has gone off the road. There isn't enough room for the impact on the neighborhood of a development of this size. He feels another 300 cars would be detrimental to the community.

Mr. Lawrence Becker is a 32 year resident. 15 houses have been built since he has lived there. There is a big difference in the traffic with the increase of residential property. His nephew owns a parcel that was subdivided in 2002. He doesn't feel any more houses being built on the side of this hill is a good idea.

Mr. Mark Squires of 395 East Green Mtn Road addressed the board. He has just built his home recently. He has moved here from a planned community and likes the quiet rural area. He was concerned that the development would not generate enough income to maintain the road as private and it would fall to the City. He was also concerned about water running off the hillside.

Amy St. Pierre, a neighbor, 158 East Green Mtn Road. She and her husband cannot support this application. The size and space is inappropriate for an area designated as agricultural. They are concerned for safety and desire proper studies be considered, as well as traffic impact study, and a further review of Claremont's Master plan.

Norm Blouin from 442 East Green Mtn. Road stated the property is mountainous and shaped like a bowl. The noise will generate and flow to the east. The road conditions are horrendous. In the

spring the road is a mess and impassable for 6-8 weeks. If 35 lots were added the impact would be immeasurable.

Steve Raymond, Ward 1, does not live in this neighborhood but has a daughter that does. He said during the winter the road was terrible. He said after the pavement ends the road is very hard to travel.

Deborah Partlow, an abutter at 342 East Green Mtn. Rd, stated her concern with traffic and was concerned about run-off from the development polluting wells. She also stated that there is a right-of-way across her property to the St. Aubin parcel and she does not want it to be used for a public driveway to any new development.

*Public Hearing to be left open*

**Motion to:** Continue the application and public hearing to the September meeting.

**Made by:** Carolyn Towle                      **Second by:** Pierre Caouette      **Vote:** Unanimous

- **(ZO2009-000019) Thomas Carpenter and Renee Maynes, 34 Grove Street, Claremont, NH –** Seeks a Special Exception from Section 22-207(8) for the creation of an Accessory Dwelling Unit and an Area Variance from Section 22-207(8)(b)(10) to increase the size of the Accessory Unit to 864 square feet, more than one-quarter of the size of the primary dwelling, and an Area Variance from Section 22-207 (8)(b)(5) to have less land area than the required 30,000 square feet at **34 Grove Street**. Tax Map: 119, Lot 175, Zoning District R-1.

Applicant is ok with a four member board.

**Project Description:**

The applicant is requesting a Special Exception under Section 22-207 of the Claremont City Zoning Ordinance for the purpose of having an accessory dwelling unit in the R-1 zoning district. The proposal also requires an area variance from Section 22-207(8)(b)(10) to increase the permitted size of the accessory unit and an Area Variance from Section 22-207(8)(b)(5) to reduce the land area requirement. The applicant has constructed a new garage which is proposed to be attached to the primary unit and host an Accessory Unit in the loft.

The size of the proposed accessory dwelling unit (approx. 864 sq. ft.) exceeds the allowable size standard in Section 22-207(8)(b)(10), which states the unit cannot be more than one quarter of the primary dwelling unit size or 500 sq. feet, whichever is greater. In this case the allowable Accessory Unit size is 640 square feet (2,560 [primary unit size] x 0.25 = 640 sq. ft.).

Section 22-207(8)(b)(5) requires 30,000 square feet of land area and only 12,197 is available.

The upstairs of the garage is currently an unfinished shell. This will be attached permanently to the house by a breezeway. Everything will be up to building code and the building inspector has already been there to do inspections. The fire rated sheetrock will be put into place.

## Planning Considerations:

The applicant is seeking approval to use the loft portion of the garage for the purposes of an accessory dwelling. The applicant states the unit will be used by a family member. The primary structure will be connected to the accessory unit by a breezeway. The unit will be serviced by city water and sewer.

Adequate on-premises parking exists (3 spaces required). Please see below for the applicable accessory dwelling unit standards. The proposed use is subject to the requirements of Sec. 22-207(8).

Mr. Carpenter has a brother-in-law who is completely disabled and would like to provide him housing in the space above the garage. There will be a chair lift and the fire codes will all be met. This house was originally a two-family but is now occupied as a single-family home. They are not going to re-create the two-family status, merely adding the in-law apartment for his brother-in-law. This will be an accessory dwelling, not a two-family.

### *Open Public Hearing*

Allen Damren, 40 Grove St., the only abutter present, wanted to say he hasn't had any problems with the Carpenter's regarding the construction. Mr. Damren would like to include in the deed to say this accessory dwelling unit only be allowed for the Carpenter family and not for future property owners.

### *Public Hearing Closed*

**Area Variance** To review an Area Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Does the proposed use maintain the value of surrounding property? **Consensus-Yes**
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 -Yes**
3. Would denial of the variance result in unnecessary hardship to the applicant because:
  4. a. There are special, unique conditions of the property itself such that the proposed use cannot be made without a variance? **Consensus -Yes**
  5. b. The applicant cannot achieve the intended result by another reasonably feasible method, other than through the granting of an area variance? **Consensus -Yes**
6. 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 - Yes**
7. 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 - Yes**

**Motion to:** Grant the Area Variance from Section 22-207(8) (10) to increase the size of the Accessory Unit to 864 square feet, more than one-quarter of the size of the primary dwelling with the conditions listed below.  
**Made By:** Ed Friedman      **Second:** Pierre Caouette      **Vote:** Unanimous

**Area Variance** To review an Area Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Does the proposed use maintain the value of surrounding property? **Consensus - Yes**
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 - Yes**
3. Would denial of the variance result in unnecessary hardship to the applicant because:
  - a. There are special, unique conditions of the property itself such that the proposed use cannot be made without a variance? **Consensus - Yes**
  - b. The applicant cannot achieve the intended result by another reasonably feasible method, other than through the granting of an area variance? **Consensus - Yes**
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 - Yes**
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 - Yes**

**Motion to:** Grant the Area Variance from Section 22-207 (8) (5) to have less land area than the required 30,000 square feet at 34 Grove Street with the conditions listed below.  
**Made By:** Pierre Caouette      **Second:** Ed Friedman      **Vote:** Unanimous

**Special Exception** To approve a Special Exception the ZBA must find favorably to the applicant on all the following **Findings of Fact**:

1. Is the specific site an appropriate location for such a use? **Consensus - Yes**
2. Will property values in the district be maintained by such a use? **Consensus - Yes**
3. Will the proposed use result in any nuisance or unreasonable hazard? **Consensus - Yes**
4. Will there be minimal or non-adverse traffic impact as a result from such a use?  
**Consensus - Yes**
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking? **Consensus - Yes**
6. Will there be minimal or non-adverse impact on the view, light, and air of any abutter as a result of the proposed use? **Consensus - Yes**

7. The proposed use will not place a disproportional burden on the city's operational services in comparison to the anticipated tax revenue associated with the property/use in question? **Consensus - Yes**
8. The proposed use will not be detrimental to the public health, safety and general welfare? **Consensus - Yes**
9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance? **Consensus - Yes**

**Motion to:** Grant the Special Exception from Section 22-207(8) for the creation of an Accessory Dwelling Unit with the conditions listed below.

**Made by:** Ed Friedman      **Second:** Carolyn Towle      **Vote:** Unanimous

**Conditions**

The following **Conditions of Approval** are to be done:

1. Require a recording in the chain of title of the Area Variances and Special Exception.
2. Limiting the Special Exception for so long as the Accessory Dwelling is used for the approved purpose.

**III. Correspondence**

**IV. Other**

**Adjournment**

**Motion to:** Adjourn

**Made by:** Ed Friedman      **Second:** Pierre Caouette      **Vote:** Unanimous

**Meeting adjourned at 8:55 p.m.**

**Respectfully Submitted,**

**Katrina Spaulding  
Administrative Assistant**