



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

Meeting Minutes
Approved 12/7/09
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I. Roll Call

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

Absent: Jim Hanson

City Staff: Mike McCrory; Interim City Planner, Jane Taylor, City Solicitor; Katrina Spaulding, Administrative Assistant

II. Public Meeting Minutes: October 5, 2009 Meeting Minutes

Motion to: Approve minutes of October 5, 2009 as presented

Made by: Robert Woodman

Second: Mike Hurd

Vote: Unanimous

III. Old Business

- **(ZO2009-000018) Norman St. Aubin, 130 Old Newport Road, Claremont, NH –**
Continued public hearing on application for 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.**

Chair Hurd recused himself. With Jim Hanson absent, Ed Friedman was appointed as alternate.

This case has been continued since August for lack of a quorum; no new information has been submitted. Any questions are welcome to be asked at this time.

Mr. Richard Wentzell, agent for applicant, presented a map of the proposed development and shared it with the Zoning Board.

Mr. Woodman asked if there was a pond on the property. Mr. Wetzell answered there is one located on the site that he planned to give to the City. The pond could be used by the fire department if necessary. Mr. Woodman asked about brooks on the property. Mr. Wentzell said there was one that had water for about 10 months and one from run-off. He said there were culverts from logging roads.

Mr. Woodman stated this is a class 6 road. Mr. Wentzell said the deed restrictions that are being proposed with this project should protect against many of the concerns.

Mr. Wentzell said the access road around the site would be a private road and the City wouldn't have to maintain anything. The road will be a two way road and will be a standard regulation sized road. This will be built with crushed stone and a gravel base.

There was some confusion as to whether or not some information given to the Planning Department by the Applicant was distributed to the Zoning Board. The application was submitted in June. The information referred to by Mr. Wentzell, who said he brought 14 copies to the Planning Office, were dropped off in March of 2009. Mike McCrory said he doesn't believe these were ever part of the application. Mr. Wentzell said they were hand carried over to Ed Tinker.

Carolyn Towle stated that the application was required to be supported by all the required information. She feels there was some information the Board had asked for and was not provided to the Zoning Board. Mr. Wentzell said some of the things requested by Technical Review were duplicates of what the State of NH would be requiring. Back when he originally applied to the Zoning Board the state required a fee of \$150.00 per lot and now the cost is up to \$300.00 per lot to be sure a septic system can be put in with an artesian well. Because there are never enough members of the Zoning board for a quorum, this has been extended and the fees have gone up. This would be \$10,500 extra to the applicant. Soil testing and septic designs need to be approved by the State of NH.

Carolyn asked about the traffic impact study that was asked of Mr. Wentzell. He feels this was merely a suggestion to have a traffic study on a City road. Normally on this type of development this type of request is never asked. Carolyn said the abutters were very concerned with traffic impact as the existing road conditions were currently substandard. Carolyn hoped further review would assist the City and the Board. This was a very prominent issue at the last meeting in August.

Mr. Wentzell said he doesn't have the RSA but the law states there are certain things that can be asked for and required. Mr. Wentzell feels the way to eliminate the problem would be to put a few houses up there. When this comes out of current use, then money comes into the city. The property tax money would be \$300-400,000 in tax money.

Pierre Caouette asked how long it would take to gather enough money of \$400,000 of tax revenue and the road isn't ready to be maintained. The road gets pretty bad in the spring. He feels the houses need to sell and the road needs to be READY to be maintained. The City has asked the applicant to do a study on the impact of the road to see what further damage may occur. Mr. Wentzell said the City never asked him to do such things. The City made suggestions to Mr. Wentzell to do a study. This is similar to the Fire Department recommending sprinklers in all the houses. Mr. Wentzell said that sprinklers are not going to happen. Mr. Woodman said if the State accepts the new IRC 2009 code, all single family homes will be sprinklered. Right now this is not required.

Mr. Woodman stated that the road grades would have to be built to City standards, not more than 12 degrees.

Mr. Wentzell said every lot has 250'+ for road frontage where the required is 50'.

Open Public Hearing

Norm Blouin, East Green Mtn Road, said if there is a road built on the dirt portion of the road which is considered a class 5, there hasn't ever been a fire truck able to get up that road in the spring time. The dirt road needs to be rebuilt and the studies need to be done on the road. The brook Mr. Wentzell says comes from the pond up in the back is actually from his property. Only so much of the lot is usable. Drainage is very poor.

Arthur Luce, resident and abutter of this proposed project, stated there are certain criteria that need to be addressed. There are 8 things that need to be addressed by the Zoning Board and encouraged

the board to review what is required to grant a special exception. The request is premature and the road is a critical item. Seven years ago there was a similar project requested by an applicant and it was turned down as it was determined to be premature for that area. This is primarily because of the road and the inability to get fire trucks and service vehicles into that area. The Master Plan that is being proposed shows this is an RR area and the applicant is proposing something that is totally inappropriate at this time.

Mr. Wentzell said when the State of N.H. gives an approval on a septic design they are sure this isn't going to be a problem and interfere with someone else property. The future road will be built properly. It is between the City and the landowners currently to take care of the existing problem. It is illegal to force someone to build a town road beyond the access of the actual users. Mr. Wentzell also stated if the lots are going to be 5 acres lots, then the applicant doesn't even need a special exception. There will most likely only be two homes placed at the site within two years as the economy won't allow for more than that. There will be a spec house built by Harold LaValley and it will show this will be something nice.

Norm St. Aubin wants this to be a peaceful development and the first house will be 1900 square feet with artesian well and there won't be any stimulus money involved. There is a culvert located near the property that the City has put in.

Larry Becker, a neighbor, wanted to mention to Mr. Wentzell that just a couple of years ago, 57 acres were subdivided and the Planning Board required either an expansion of the width of the road and a turnaround, this would allow for fire trucks and school busses to pass. The Planning Board does have the right to require a paved road. If the Planning Board is going to require paving, it should be required the entire road be paved. A week ago there was wash over of the road again and the culverts were clogged. Mr. Becker said every house built up there, had to have a sprinkler system. Every place does in fact have a sprinkler system. This was mandated by the Planning Board Mr. Woodman said.

David Perry, East Green Mountain Road, feels the biggest concerns have been traffic and traffic study. The whole East Green Mountain road including the corner where you leave the Old Newport road and turn and exit has been a safety hazard. The stop signs haven't helped much.

Jeannine Perry of East Green Mountain Road addressed the board and would like to know how many homes will be built on the actual Class 6 Road that is being recommended. Mr. Wentzell said there will be 35. The City doesn't allow any homes to be built on a Class 6 road. Mr. Wentzell said it will be brought up to a Class 5 road standard. The RSA is very clear he doesn't have to go beyond this development and bring any other roads up to standard. Mr. Wentzell said the road is not Norm St. Aubin's responsibility particularly if there have been problems on this road for years anyway.

Tom Brothers, an abutter, spoke extensively at the August meeting and offered recommendations. He opposes the proposal and would like the Board to consider the costs of community services between to what is being proposed, this development, and the similar proposal on St. Aubin Holdings near the Route 11 corridor. If they are interested in growing this development in a "smart" way and would be interested in helping Claremont to grow efficiently then they would want to minimize the costs of community services. This development will not generate enough money in taxes to offset the expenses.

Mr. Brothers feels there needs to be a full fledged hydrological study of the area. Now that you add the impervious surfaces where the houses are proposed, these will all detract the ability for the area to absorb water runoff. No one will study this unless the Board asks the applicant to perform a

study. The study will help to prevent significant damage to the roads. Beyond the roads, there should be a noise study done.

Public Hearing Closed

Pierre Caouette wanted clarification of the Class 6 road. There is no building allowed on a Class 6 Road. Mr. Woodman restated that the city does NOT allow for building on any Class 6 Roads. There are some places in Claremont people have wanted to build on that are on Class 6 Roads and they have been denied. The difference between a Class 5 and Class 6 road would be City maintenance according to Mr. Woodman.

If the applicant decides to build on 5 acre lots then it is removed from the Zoning Board jurisdiction and the Planning Board would be presented to them for recommendations. The Zoning Board is making a decision based on the front lots in the RR zone which can be 1 acre lots and the rear portion of the development is in the AR leaving the requirement to 5 acre lots. Mr. Wentzell is asking to have this area extended to RR in order to build all the homes on 1 acre lots.

Mr. Caouette said given there are 9 abutters not in favor, concerns about drainage, community service costs and the City has requested more information and not received as of yet, he did not see the benefit of the proposal. There needs to more study done to the area in order to be more comfortable about the future of these lots and then he might be more comfortable. It would be cheaper to go to five acre lots as then he wouldn't have to pay the state of NH subdivision fee. They wouldn't have to check the test pits.

In thinking about the findings of fact, Carolyn Towle said the answers to the questions are all premature. For Example, "Will there be minimal or non adverse traffic impact as a result from this use?" Carolyn believes this can't be answered in a positive way.

The Board asked Jane Taylor about the criteria if the motion is to deny and she said they all still need to be addressed and that if a denial is voted, reasons for a denial must be stated.

Motion to: Deny the request for a special exception from section 22-147(11) to extend the RR-2 Zoning District provisions to the AR Zoned portion.

Made by: Mr. Caouette **Second:** Carolyn Towle **Vote:** Unanimous

1. Is the specific site an appropriate location for such a use? All said it hasn't been shown it is an appropriate site to build on 1 acre lots with concerns about the drainage and the class of the road unanswered. There has been little information to substantiate the issues that were asked to be investigated. Mr. Woodman says it is premature and it would be better to go with five acre lots.

2. Will the property values in the district be maintained by such a use? Ed, Carolyn and Bob said no as the adjacent property would be affected by vacant lots and it would be detrimental to the existing property values. Bob also cited the marginal nature of the existing road. Pierre answered yes.

3. Will the proposed use result in any nuisance or unreasonable hazard? Ed said yes the increased traffic will create a hazard and nuisance and the possibility exists that the future fire code may require sprinkler systems and this is not intended by the applicant. Carolyn said it will result in a nuisance as there will be many more City services required and the road is impassable. Pierre said yes it would be a noise nuisance. Bob voted no as but the hazard will be the condition of the road.

4. **Will there be minimal or non-adverse traffic impact as a result of such us?** All said no there will be more cars and a large increase in traffic and the road is at its limit now.

5. **Are there adequate and appropriate facilities provided for proper operation, maintenance of a proposed uses including water, sewer and parking?** Ed voted yes, Carolyn said she couldn't answer as she didn't receive answers so doesn't have enough information, Pierre and Bob said 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?** Ed said this requires elevation of building and asked if there was a limit on what could be constructed there already? Carolyn said there will be more light and less view. Pierre said yes, it would be minimal. Bob said no.

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 properties use in question?** Ed said it will absolutely add to the City services and a disproportional burden, Carolyn agreed with Ed, and Pierre agreed, especially regarding fire and police services, Bob voted no as well.

8. **The proposed use will not be detrimental to the public health safety and the general welfare?** Pierre said it will be detrimental, Carolyn said it will be detrimental to all, Pierre said no for the danger of the road, Bob voted no because the condition of the road and safety in the whole area.

9. **Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance?** Ed said it will not and it goes against the ordinance, Carolyn said it will not be in harmony, Pierre said no as it infringes on too many abutters, Mr. Woodman voted no because the lack of information provided.

- **(ZO2009-000022) Erik Jaspersohn, 11 Spruce Street, Claremont, NH** – Application for a Special Exception from Section 22-207 of the City Zoning Ordinance in order to operate a home based business. Tax Map: 119, Lot 318, Zoning District R-2 on **11 Spruce Avenue**.

Requested by the Board, Chief Alex Scott was present to give testimony. Chief Scott said that due to the nature of the business and the number of federally licensed fire arms, this particular business wouldn't raise any concerns at all for him. The licensing through the federal government goes well beyond the expectations of the local agency. All applications go through his local Claremont office and he isn't aware of any issues with this circumstance. There are around 3 licenses that the Chief sees on a regular basis. These licenses are all renewable every three years.

Brinks security went to Erik's home and told him what they would put in to cover the security. It would be a local alarm and if someone were to break in, the motion sensor and alarm would go off.

Special exception stays with the USE not with the property. However, a special exception for a home occupation under the Code says with the activity of a specific occupant and does not run with the land. The Board can add conditions to the decision if they want to.

Tom Brothers wanted to speak on behalf of Erik to say he is extremely responsible and an upstanding citizen. He chose to live here for a better way of life and would like to maintain his business. This is not a storefront business; it is all internet based business. There may be an occasional person stopping by but this is the exact sort of business we should offer.

Public Hearing Closed

Chair Hurd said this seems to be supported by the community as there are no abutters present. Chief Scott doesn't have any issues with the business.

Carolyn Towle said everything the Board requested of Erik has been provided to the board by Erik. He has been very cooperative.

Motion to: Approve the application for a Special Exception from Section 22-207 of the City Zoning Ordinance in order to operate a home based business with the requirement of the recording with the chain of title to be consistent with the Zoning ordinance pertaining to home occupation.

Made by: Ed Friedman **Second:** Mike Hurd

Vote: Carolyn Towle – Yes
Pierre Caouette – Yes
Mike Hurd – Yes
Ed Friedman - Yes
Bob Woodman -No

1. Is the specific site an appropriate location for such a use? Mr. Woodman No- too congested
2. Will Property values in the district be maintained by such a use? Unanimous
3. Will the proposed use result in any nuisance or unreasonable hazard? Unanimous
4. Will there be minimal or non-adverse traffic impact as a result from such a use? Mr. Woodman no
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking? Unanimous
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? Unanimous
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? Unanimous
8. The proposed use will not be detrimental to the public health, safety and general welfare? Unanimous
9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance? Mr. Woodman – No

Conditions

If the ZBA approves the application for a Special Exception, the following **Conditions of Approval** should be considered:

1. Require a recording in the chain of title of the Special Exception.

2. Limiting the Special Exception for so long as the home business is in continual use for the approved purpose.
3. Require the Home Occupation to comply with the Ordinance with regard to the Internet-based aspects of the business.

New Business

- **(Z02009-000029) Ronald & Patricia Drapeau, Essex, CT.**– Requesting an Area Variance from Section 22-229 of the City Zoning Ordinance to construct a second means of egress within a non-conforming space. Tax Map 107, Lot 257, Zoning District R-2 at **20 Belding Street.**

Project Description:

The applicant is proposing the construction of a second means of egress from the second floor of the multi-family property located at 20 Belding Street. The egress is proposed at the northeasterly corner of the building. The applicant states that the proposed location is the only reasonable location for the egress structure that will meet fire safety regulations and maintain use of the remaining site. The existing building is approximately 5 feet from the shared parcel boundary with 24 Belding Street. The building is within the front and side-yard zoning setbacks. The proposed structure will encroach further into the setback as shown in the plans provided by the Applicant.

III. Planning Considerations:

The building was constructed before the current city code and life safety code were enacted. The proposed second means of egress serves the living units to the front of the building. The construction of this egress along the south face of the building would likely require the reconstruction and modification of existing pedestrian access and the existing driveway. These changes to the site may result in unreasonable financial hardship on the Applicant.

IV. Review Criteria: When considering this application, the following Area Variance criteria should be considered. The burden of proof is upon the application to demonstrate that the meet the following criteria.

Open Public Hearing

Denis Desilets, representing the owner, addressed the board about the landing. The stairs can be put in no other place. The survey was done to place the stairs in the best location.

Close Public Hearing

Needs 8' 8" on the side and 18' on the front for variance.

Motion: Approve the area variance for sec 22 -249 with the conditions listed and including concrete bollards to the base of the structure for safety.

Made by: Ed Freidman **Second:** Carolyn Towle **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? **Unanimous**

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? **Unanimous**
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? **Unanimous**
 - b. The applicant cannot achieve the intended result by another reasonably feasible method, other than through the granting of an area variance? **Unanimous**
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?) **Unanimous**
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? **Unanimous**

V. Conditions

If the ZBA approves the application for both an Area Variance, the following **Conditions of Approval** should be considered:

1. Appropriate measures shall be taken to ensure year-round access (e.g.: clearing snow and ice).
2. Require the egress be constructed in compliance with City Building and Fire Safety Codes.
3. Require recording the Area Variance in the chain of title.

Other

Meeting between the planning Board and the Zoning Board will not take place in November as previously discussed.

Adjournment

Motion to: Adjourn

Made by: Ed Friedman

Second: Pierre Caouette

Vote: Unanimous

Meeting adjourned at 9:40 p.m.

**Respectfully Submitted,
Katrina Spaulding**