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

**Meeting Minutes**
**Approved 1/4/10**

## I. Roll Call

**Present:** Robert Woodman**,** Mike Hurd, Pierre Caouette, Ed Friedman,
**Absent:** Jim Hanson, Carolyn Towle
**City Staff:** Mike McCrory; Interim City Planner, Jane Taylor, City Solicitor; Katrina Spaulding, Administrative Assistant

## II. Public Meeting Minutes: November 2, 2009 Meeting Minutes

**Motion to**: Approve minutes of November 2, 2009 as presented
**Made by:** Bob Woodman **Second:** Pierre Caouette **Vote:** Unanimous

## III. Old Business

- **(ZO2009-000018) Norman St. Aubin, 130 Old Newport Road, Claremont, NH** –Motion for rehearing of denial of 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.**

Existing conditions: Mr. McCrory explained the status of the application. Norman St. Aubin sought a Special Exception to apply the 1-acre minimum lot size standards for the Rural Residential 2 zoning district to the entire parcel. The subject parcel is divided by a zoning boundary and is zoned mostly Agricultural Residential, which requires a 5-acre minimum lot size. The Special Exception would facilitate a 35-lot subdivision of the subject parcel with lot sizes ranging from 1.29 to 13.7 acres.

Richard Wentzell, agent for Mr. St. Aubin, delivered correspondence to the Planning Office from Property Owner Norman St. Aubin that appears to be a Motion to Rehear the Board's denial of the application for Special Exception. The ZBA needs to decide if there is sufficient reason to rehear the application per RSA 677:2. If the ZBA decides to rehear the application, at the rehearing the petitioner would have to show the ZBA's prior determination was either unreasonable or contrary to law. Also, upon deciding to rehear the ZBA shall determine the date of the rehearing and instruct the petitioner to resubmit all application materials perceived as relevant to the case and consider this information as if it were a new application without reference to the original submission

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Jane Taylor, City Solicitor approached the Board and stated since there are not very many rehearing's brought before the Zoning Board, she would like to review the process and the required findings of fact.

A request for a rehearing must be made to the Board by the statute within 30 days of the notice of decision, which in this case was November 2, 2009. A request would have needed to be received on or before December 2. The letter was received on November 30th.

Rehearing before the ZBA is a two part process.

1. To determine whether or not there should there be a rehearing;
2. Then proper notice would follow and the abutters would be notified as well – the rehearing would be treated as new public hearing,

This decision on whether there should be a rehearing is not a public hearing or a chance for any public input. The board needs to determine if there are adequate grounds to require a rehearing. This is a determination made by the board if there is a reason to hear the case again. The vote is simply either to grant the request for a rehearing or not. The four criteria are as follows:

1. Was the request filed on time?
2. Does the request set forth specific grounds that support a claim the decision was unlawful.
3. Does the request set forth specific grounds that support a claim the decision was unreasonable
4. Does the request set forth new information that, if it were not to be considered, would call into question the accuracy or whether or not the initial decision was unlawful or unreasonable

Mr. Woodman asked about the 22 page packet. He wanted to know if this information was pertinent to the zoning board's decision. Ms. Taylor said there was a TR meeting on the proposal and the packet was dropped off with former director Ed Tinker for the Planning Board and was not part of the zoning application. She distributed copies of the packet to the Board. Mr. Woodman asked, does the Board consider this to be new information and if so then Mr. Woodman said this could be considered new information.

Ms. Taylor noted for the record that Mr. Woodman referred to a packet of material entitled "Kings Forest Royal Estates Subdivision" Map 100 Lot 7 and consists of a letter to the City Manager, Guy Santagate, a general letter, an outline of possible deed restrictions, a preliminary concept map, a location map, and two printouts of case law (Supreme Court of Texas, NH State Supreme Court Case *Burrows vs. City of Keene*)

The Board took time to review the packet.

Mr. Caouette said he had good reasons why he didn't think this should be approved as a Special Exception. He is permitted to build on five acre lots and this could be the choice of Norm St. Aubin. Tax revenue on a Short and Long term basis doesn't justify the expenses to the City.

Mr. Woodman feels the whole length of the road would need to be improved completely to support a subdivision of this size. It is for the safety of the people that live there currently and would move to the new location. The Planning Board previously approved a subdivision and required sprinklers due to the increase in fire safety.

Ed Friedman said the added information of the 22 page packet doesn't change his mind at all towards what he has already been voted upon. There isn't any additional information even with the packet to change the decision previously made by the Zoning Board.

**Motion to**: To not grant the request for rehearing on Map 100 Lot 7.
**Made by:** Ed Friedman **Second:** Pierre Caouette **Vote:** Unanimous

**Findings of Fact:**

1. The request for rehearing filed on time? Yes Unanimous

2. Does the request set forth specific grounds that support a claim that the decision was unlawful? No Unanimous

3. Does the request set forth specific grounds that support a claim that the decision was unreasonable? No Unanimous

4. Does the request set forth specific new information that, if it were not to be considered, would render the Board's initial decision either unlawful or unreasonable? No Unanimous

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## IV. New Business

- **(Z02009-000030) Windham Environmental, Windham, NH –** Requesting an Area Variance from Section 22-298 of the City Zoning Ordinance to allow a lot area less then 20,000 sq. ft. Proposed use will be automotive repair shop. Tax Map 119, Lot 91, Zoning District B-2 at 87 Mulberry Street.

Mr. McCrory presented the report of City Staff

**Project Description:**

The applicant is seeking an Area Variance related to the creation of a non-conforming lot. The intent is to facilitate occupancy of an existing, vacant building by a small auto repair business. The potential buyer and proprietor of the proposed auto repair business need an on-site parking area to serve the business and satisfy the Zoning Ordinance. The Owner has agreed to a Lot Line Adjustment that will benefit the subject parcel (Map 119/Lot 91). The Lot Line Adjustment will increase the area of Map 119/Lot 91 from 4,172 square feet (sq. ft.) to 6,882 sq. ft. This will increase surface parking by taking a portion of the adjacent parcel to merge the lots.

**III. Planning Considerations:**

The subject parcel does not comply with the minimum lot size requirements in Section 22-298 of the Zoning Ordinance. The proposed new lot dimension still does not comply with the Zoning Ordinance, but will increase the lot size. A cursory review of the neighboring parcels along the westerly side of Mulberry Street in the B-2 zoning district indicates that many of these lots have similar dimensions to the subject parcel. Further, the proposed use of the site is an allowed use in the B-2 zoning district.

**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.

The existing Lot layout doesn't meet zoning standards but is a pre-existing lot and zoned B-2. The variance will bring the lot size more into conformance with zoning, but it will still be a substandard lot in area.

Chris Rice from TF Moran presented for the applicant. He demonstrated the lot line adjustments and how the site plan will be prepared. Currently three parcels to be merged into two parcels. Currently there are two non-conforming lots and one conforming lot. The proposed merger will result in one conforming lot and one non-conforming lot.

The request for an area variance is intended to increase the lot size to result in a lot of 6,882 square feet, which is under the 20,000 square feet that the zoning ordinance requires in the B-2 district. The request is being made to meet parking requirements.

This is the only spot conducive to add additional parking for the use being proposed.

The board was concerned about the setbacks from the front lot line and worried about the turnaround to parking vehicles in the proposed parking spaces and the potential from extending into or blocking Mulberry Street, especially during the loading and unloading of disabled cars. Chair Hurd is concerned with the traffic impact and clearance to the main road.

Mr. Caouette asked how many parking spaces were required. Mr. McCrory said 5 were required for a business. The ordinance is based on square footage of space but the minimum requirement is 5 spaces. For auto repair, it is most consistent with retail and other services which is 1 space per 300 square feet. Interior spaces can be counted as parking spaces.

*Open Public Hearing*

*No Abutters present*

*Close Public Hearing*

Mr. Caouette was concerned about getting vehicles that don't operate into the bays and off the street. He would like to see a different alternative to haulers trying to angle into the parking spaces.

Chair Hurd would like the applicant to go back to his client and continue to a later meeting. This continuation would allow for the applicant to explore the concerns of the Board with his client and to come back and better explain the business and future plans to the Board.

Ed Friedman would like to see more acreage added to the lot. Adding more real estate to the proposed lot would allow for more space and less of a hazard onto the main road. The board would like to see at least 10,000 square feet available to make this lot usable.

The board would like to have a special meeting to continue prior to the second planning Board meeting this month. This meeting would potentially be for December 21st. The size of the lot and the threat to public safety are the concerns of the Zoning Board. It would be better to have a larger lot to allow for more options and a safer entrance to the garage.

**Motion to**: Continue to a later date and hold a special meeting on December 21st. If this isn't feasible the meeting will be held in January 2010.
**Made by:** Bob Woodman **Second:** Pierre Caouette **Vote:** Unanimous

**Other**

**Adjournment**

**Motion to**: Adjourn
**Made by:** Pierre Caouette **Second:** Ed Friedman **Vote:** Unanimous

**Meeting adjourned at 8:56 p.m.**

**Respectfully Submitted,**
**Katrina Spaulding**