



Zoning Board of Adjustment Special Meeting

Monday April 5, 2010, 7:00 p.m.

City Hall, Council Chambers, Claremont

Meeting Minutes

Approved May 3, 2010

I. Roll Call

Present: Mike Hurd, Pierre Caouette, Tom Rock, Ed Friedman, Carolyn Towle

Absent: Jim Hanson

City Staff: Mike McCrory; Interim City Planner, Jane Taylor, City Solicitor; Kelly LeBlanc, Administrative Assistant

Ed Friedman has been appointed as an alternate to fill in for Jim Hanson.

Motion to: Accept Meeting Minutes from March 1, 2010

Made By: Pierre Caouette

Second: Tom Rock

Vote: Unanimous

II. New Business

- **(ZO2010-00003) BIS Realty, Inc., Claremont, NH** – Applicant seeks a Variance from a ZBA decision made on February 9, 2009 (application ZO 2009-0002). This proposed Variance would restore the historic residential use of the existing building on the subject parcel. Once the variance is received, the Applicant will submit an application to subdivide the parcel into one residential lot and one lot with a commercial use in the I-3 zone. **21 Grissom Lane**. Tax Map: 176, Lot: 6, Zoning District: I-3.

Mike McCrory, Interim Planner, provided a background summary of the February 2, 2009 Variance. I-3 zoning required this variance to crush stone. A condition stated that the land will be constituted as industrial and the ability to use property as a residence is lost. [Condition 4 under *conditions subsequent* from the February 2, 2009 meeting of the Zoning Board of Adjustment stated as follows; '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.' BIS has been working with the city prior to the one year expiration and therefore are in bona fide standing with the city.]

The applicant is before the ZBA this evening to start the subdivision process to alleviate the conflicting uses on the site. If the Variance is granted by the ZBA, the Site Plan will undergo Planning Board approval when complete.

The applicant stated that the property they purchased is adjacent to other single family uses and I (Industrial) zoned parcels. There is an increase of industrial natured developments over ½ miles west as the industrial zoning increases. The road-side zoning uses generally exhibit a lower industrial or a residential use. BIS stressed that allowing the reinstated residential use would not be inferior to the surrounding uses.

II. Project Description:

The Applicant seeks relief from one condition of approval linked to a Variance granted to allow the stockpile of crushed stone material on the subject parcel, which was granted February 9, 2009 (Case # ZO2009-0002). The Applicant plans to subdivide the parcel into two lots where the lot containing the existing building, Lot A, will be maintained as a residence, which is consistent with its historic use. The use of the second lot, Lot B, will be consistent with the I-3 zoning district in which the lot is located.

1. Planning Considerations:

In effect this application requests a Variance from an earlier Variance. The Applicant did not appeal the original conditions of approval for the original Variance and has met with City Staff on numerous occasions to try to retain the historic use of the existing building on the property. The February 2, 2009 conditions of approval clearly state that a residential use is not allowed on the property where the material is being stored without reference to whether this condition of approval would be lifted once the Applicant uses said material for site construction or removes the material from the site.

At present the Applicant wishes to subdivide the existing property to effectively separate the requested residential use on Lot A and any future use on Lot B. The specific design of the proposed subdivision seeks to maintain a single-family residence on Lot A in perpetuity. It is important to note that any future residential subdivision by the applicant or a future owner would require another Variance as long as the I-3 zone exists.

The following is a summary of uses for buildings east to Charlestown Road and west within a half mile of the subject property driveway:

<u>Address (Map/Lot):</u>	<u>Use:</u>	<u>Zone:</u>
7 Grissom Lane (176-7)	Single Family Residence	I-3
Charlestown Road (176-9)	Agriculture/Material Extraction	I-3
Grissom Lane (176-5)	Vacant	I-3
103 Grissom Lane (176-4)	Single Family Residence	I-1
108 Grissom Lane (188-5)	Single Family Residence	I-1
113 Grissom Lane (176-1)	Single Family Residence	I-1
118 Grissom Lane (188-4)	Single Family Residence	I-1

Properties more than a half mile west of the subject property are generally industrial in nature.

The two lots that the Applicant would create from the subject parcel will share the existing access to the site due to topographic limitations along the Grissom Lane frontage for Lot A. It is difficult at this time to anticipate the use of the access, if at all by Lot B. The Applicant owns other adjoining parcels and may decide to develop Lot B along with the adjoining parcels with an access from Charlestown Road, not Grissom Lane. Regardless, any discussion of the shared access by the ZBA should acknowledge that there is no current use proposal for Lot B. Staff recommends deferring discussions regarding shared access location, geometry, and safety to Site Plan Review by the Planning Board when the Applicant requests approval to develop Lot B.

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

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. Would granting the Variance be in accord with the public interest?
Ed Friedman– Yes, The variance will be the beginning to the end of this situation, Pierre Caouette- Yes, one lot can then break down into two, Carolyn Towle – Yes, Tom Rock– Yes, The Variance will move the project forward with no detriment
 2. Would granting the Variance be consistent to the spirit of the ordinance?
Yes – Unanimous
 3. Would granting the variance, as requested, do 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?)
Ed Friedman– Yes, the variance does not threaten public safety or welfare, Pierre Caouette– Yes, Mike Hurd– No abutters present to dispute the variance and this was an existing residence, Carolyn Towle – Yes, the work has been done to complete the project at hand correctly, Tom Rock – Yes, this moves the project forward
 4. Does the proposed use maintain the value of surrounding properties?
Ed Friedman– Yes, continue with a residence; No foreseeable detriment, Pierre Caouette – Yes, Mike Hurd – Yes, adds value, Carolyn Towle – Yes, Tom Rock- Yes
 5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?
Ed Friedman– Proposed use is reasonable, Pierre Caouette– In agreement with Ed, Unnecessary hardship is not the goal and the applicant has demonstrated the use is reasonable, Carolyn Towne – Yes, substantial justice, Tom Rock- Yes, reasonable use and does not change the material currently on the lot
- A. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:
- (i) The Applicant has demonstrated that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property.
 - (ii) The Applicant has demonstrated that the proposed use is a reasonable one.

Alternatively, if and only if the criteria in the above subparagraph cannot established

- B. Has the Applicant demonstrated the special conditions of the property that distinguish it from other properties in the area prevent reasonable use in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property?

V. Conditions: If the ZBA approves the application for a Variance Staff recommends the following **Conditions of Approval:**

1. The Applicant shall obtain Planning Board approval for the proposed two-lot subdivision that is substantially consistent with the application materials submitted for this Variance. This Variance is null if the subdivision is not recorded within 3 years of this decision.

2. This Variance shall be recorded in the chain of title.

Open Public Hearing

No Abutters Present

Chair Hurd inquired about the status of a proposed site plan and progress of BIS. Mr. McCrory confirmed that while there was no Site Plan the applicant worked with the City to understand the Conditions of Approval and the reasons why staff were unable to process the Site Plan application. After several meetings and discussions with City staff it has been confirmed that a reasonable effort was made to meet the Variance standards.

The applicant would like to reestablish the residential use of the property before going forward with proposed plans that include a parking lot proposed in February 2009. Additional applications and meetings may be necessary.

Mr. Friedman asked for clarification on parcel B located on the map presented to the board. It was stated that the primary purpose of this meeting was to make a decision regarding parcel A.

Chair Hurd would like to confirm that the majority of future development is zoned RR (Parcel C) as future applications could potentially impact the decision made by the ZBA at this hearing. Mr. McCrory stated the applicant is looking at the parcel for future development while taking constraints and options into consideration.

Charlie Aiken, BIS Realty, confirmed that a year ago they went before the ZBA for a Variance in order to use the property for storage of processed ledge material. This material would be used for the entrance foundation, driveway, and parking lots. Bulldozers have obliterated the 250' setback. The tentative Site Plan cannot be used due to residential restrictions. Therefore, BIS is asking for a variance to restore residential use. The next step will be a subdivision of 11.75 acres with the remaining lot at 12.72 acres. Soil management has been completed.

BIS would then be ready to go before the Planning Board with the Site Plan upon being granted a variance. When BIS purchased the parcel they were under the assumption that they were buying business real estate and thus do not want to be in violation. Mr. Aiken would like to assure the Board that the residential parcel would not view the parking lot, storage trailers, etc.

Chair Hurd clarified that the ZBA informed BIS in February 2009 that the house could not be used as a residential property. BIS believed that the house could be used as a residential home after conditions were met.

Chair Hurd reiterated that one lot constitutes one use and that intended use was going to be the proposed parking lot. A residence, therefore, could not be added on one lot serving an alternate purpose. Chair Hurd stated that there was never an indication to the Board that what was presented was what was going to be acted on. The change in direction was not the original plan.

Mr. Aiken was under the impression that they could not have a residence until a site plan was completed and a subdivision would alleviate the concern.

Carolyn Towle stated her concern was that during the February 2009 meeting there was a discussion stating residential use could not occur. This was confirmed by Jane Taylor, City Attorney.

Chair Hurd confirmed that the *new* application is looking for approval to keep the residence and then subdivide so assure that the residential property will fall into an existing use and not a new use.

Mr. Aiken stated that BIS intends to sell the residence in the future.

Mr. McCrory confirmed to the board that the Variance and Conditions of Approval are what he abides by as the City Planner who was not present at the hearing in February 2009.

Tom Rock asked about the 250' setback for the ledgings. It was confirmed that the material/stock pile must be 250' from the property line. The finished parking lot will be level and the 250' will no longer be relevant. Mr. Aiken stated that they will have the city required set backs met.

From this point forward the stockpile of crushed stone will change to the bed of a parking lot so that it is a set structure and not undefined material.

Chair Hurd confirmed with Ms. Taylor that even though BIS is over the one year time period that they are in compliance because they have been working with the City to remedy the issues at hand.

Close Public Hearing

Motion: Reopen public hearing

Made By: Mike Hurd

Second: Pierre Caouette

Vote:– Unanimous

Mr. Caouette would like to ask if the board could surmise any proposed or possible detriments if the Variance is approved

Chair Hurd inquired about the location of the new driveway.

Wayne McCutcheon, Surveyor for BIS, stated that the intent is to have a common curbcut. There will be one entrance off Grissom Lane. After a short distance in (100 feet or less) the driveway will fork to the left and continue to the house.

Close Public Hearing

Jane Taylor stated that because there is a standing Variance and corresponding condition that prohibits a residential use a motion of approval would need to include that this Variance supersedes the previous motion. All prior conditions remain from the February 2009 meeting will remain.

Because BIS has not stopped forward motion the previous conditions from February 2, 2009 are valid.

Motion to: Approve application ZO2010-0003 BIS realty, Inc to restore the historical residential use of their building which was lost by a previously stipulated condition stating that 'the existing vacant single-family residence on the property may no longer be used as a residential dwelling unit due to its incompatibility with material storage.' This motion will restore the residential use of lot A and thus grant the applicant an opportunity to subdivide the parcel into one residential lot and one with a commercial use in the I-3 Zone if desired. Mandated conditions of approval to include: (1) The Applicant shall obtain Planning Board approval for the proposed two-lot subdivision that is substantially consistent with the application materials submitted for this Variance. This Variance is null if the subdivision is not recorded within 3 years of this decision, (2) This Variance shall be recorded in the chain of title.

Made by: Tom Rock

Second: Ed Friedman

Vote: Unanimous

III. Correspondence

Mike McCrory would like to remind the board that the OEP conference application deadline is approaching. The city will cover the cost of the conference.

Mr. Caouette recommended the conference as it provides a wealth of information during the sessions

IV. Other

V. Adjournment

Motion to: Adjourn

Made by: Mike Hurd

Second: Ed Friedman

Vote: Unanimous

Meeting adjourned at 8:40 p.m.

Respectfully Submitted,

Kelly LeBlanc

Administrative Assistant