



**Zoning Board of Adjustment Meeting**  
Monday June 7, 2010, 7:00 p.m.  
City Hall, Council Chambers, Claremont

**Meeting Minutes**  
**Approved July 6, 2010**

**I. Roll Call**

**Present:** Mike Hurd, Ed Friedman, Jim Hanson

**Absent:** Tom Rock, Pierre Caouette, Carolyn Towle

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

Ed Friedman has been appointed as an alternate for this evenings hearing

Chair Hurd stated that the applicants have the right to continue their applications to next month to be heard by a full member board. The vote must be unanimous in with a 3 member quorum.

Applicants have confirmed that they are okay with a 3 member board.

**II. Accept Meeting Minutes from April 5, 2010**

**Motion to:** Accept Meeting Minutes from May 3, 2010

**Made By:** Jim Hanson

**Second:** Ed Friedman

**Vote:** Unanimous

**III. New Business**

- **(ZO2010-00005) 61 Mulberry Street, Claremont, NH** – Applicant seeks a Variance to allow a second means of egress. Property location **61 Mulberry Street**. Tax Map: 119, Lot: 86 Zoning District: B2.

There is no record of a building permit prior to the egress. The egress has been constructed at this time. There was a citizen's complaint filed due to the proximity of the structure to the property boundary.

The disturbed earth is in the vicinity of the pin/granite posts.

Mr. Friedman inquired when was the upper egress constructed.

There was a building permit filed in the late summer/fall 2009 but there is no record the building permit being issued.

Kevin LaCasse – Owner of 61 Mulberry

Mr. LaCasse closed on the property last August. There were multiple life-safety issues that were addressed with Terry Carter from the Building Department and Rick Bergeron with the Fire Department.

Mr. LaCasse stated the work was in compliance with the Building Permit (filed on 9/25/2009) and was then inspected by both Terry Carter and Steven Coombs. When the building permit was filed, Mr. LaCasse stated that he was told the he would not necessarily need Zoning Board approval.

Mr. Hanson inquired if a sign off was granted for the second egress.

Mr. LaCasse stated there was no sign off stating the egress was 'ok' but there was a verbal acknowledgement.

Jim Hanson asked if Mr. LaCasse has seen the property boundary.

Mr. LaCasse did not have the property surveyed.

Chair Hurd stated that the first problem is that the egress appears to be over the property line. If a surveyor can come in and point out the property lines or if there is a copy of a survey that can be acquired that this would clarify the placement of the egress. If there is no survey the property line is unclear. A second concern is the building permit. A receipt states that there was an application but not the status of issue. Administration will provide paperwork regarding the building permit.

The burden of proof is on the applicant to solidify property lines. The variance would be for a side yard setback.

Mr. Hanson stated he needs to see something legal or a survey of the property.

Mike McCrory – Wayne McCutcheon had surveyed an adjacent parcel and may be able to supply a survey. He could be contacted as a 3<sup>rd</sup> party consultant.

Mr. LaCasse confirmed that he has to locate is the building pins/survey for the next meeting and provide documentation to the Zoning Board of Adjustment.

The administrative chain of events is to be clarified by the Planning and Development Department.

**Motion:** to continue the hearing until July 6<sup>th</sup> meeting to give the opportunity for more information to be acquired.

**Made by:** Mike Hurd

**Second:** Ed Friedman **Vote:** Unanimous

### **Project Description**

The applicant is seeking an after-the-fact Variance for the construction of a second means of egress for some units in the multi-family property located at 61 Mulberry Street. The egress is along the south face of the building. The primary need for the encroachment is safety egress for tenants in the building.

### III. Primary Planning Considerations

The building was constructed before the current city code and life safety code were enacted. The egress shall be located so that it can serve the apartment that requires a second means of egress. This egress needs to be maintained year-round.

This egress was constructed without a building permit, according to City records. And a citizen's complaint states that the structure may have been constructed on a property boundary and encroaches on an abutting property. The application does not provide information on property dimensions, boundaries, or encroachments upon property setbacks. The enclosed photographs are based on a site visit conducted in March 2010.

### 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 all necessary criteria are met.

**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?
2. Would granting the Variance consistent to the spirit of the ordinance?
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?)
4. Does the proposed use maintain the value of surrounding properties?
5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?
  - 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 be 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 both a Variance, the following **Conditions of Approval** should be considered:

1. Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access.
  2. The egress shall be in compliance with City Building and Fire Safety Codes.
  3. This Variance shall be recorded in the chain of title.
  4. The egress shall be used for emergency and life safety purposes only. The proposed structure shall not be used as a secondary access to the building.
- **(ZO2010-0006) 16 Glidden Street, Claremont NH** – Applicant seeks a Variance for the construction of a second means of egress. Property location **16 Glidden Street**. Tax Map: 120, Lot 92, Zoning District: B-1.

Historic District – Certificate of Appropriateness was issued and Building Permit was applied for and issued for the replacement of an existing stairway.

Janice Brehio – Owner of 16 Glidden Street

A second form of egress for the back apartment was required three years ago. This year, an inspection stated that the staircase is not up to code due to the railings and risers. The Brehio's are proposing to rebuild the staircase to meet code. There will be 4' from the side boundary where the proposed staircase will be located because code requires the staircase to extend.

Side yard setbacks in a business district are 15'.

Chair Hurd stated that the house is in the setback already or very close to being in the setback.

Open Public Hearing  
*No Abutters Present*  
Close Public Hearing

Mr. McCrory stated that a fourth condition will now become common practice stating that ‘The egress shall be used for emergency and life safety purposes only. The proposed structure shall not be used as a secondary access to the building.’

**Motion:** Grant the area variance for 16 Glidden Street with the 4 conditions that were outlined by Staff

**Made By:** Mike Hurd                    **Second:** Jim Hanson   **Vote:** Unanimous

### **Project Description**

The applicant is seeking a Variance for the construction of a means of egress for the building at 16 Glidden Street. The proposed egress will be constructed no closer than four feet from the property boundary.

### **III. Primary Planning Considerations**

The application does not clearly state the purpose or need for the second egress and the specific circumstances of the site or the building that make this the only reasonable alternative for a second means of egress of the building tenants. There are no plans indicating the property boundary other than the figure submitted, which is based on the City’s online GIS.

### **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 all necessary criteria are met.

**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?  
          Mike Hurd – Yes, already existing and increases the safety  
          Ed Friedman– Yes, would take a condition that is not meeting building code and make it so that it conforms. This would be a safety improvement.  
          Jim Hanson– The purpose is to improve what they already have and make it safer for the tenants.
2.        Would granting the Variance consistent to the spirit of the ordinance?  
          Mike Hurd– Yes, granting the variance is consistent with the spirit of the ordinance and increases safety  
          Ed Friedman– Yes, it would be in the spirit of the ordinance  
          Jim Hanson– Yes, it is consistent with the ordinance

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?)

Mike Hurd– The loss would be no rental property and the applicant would lose. No threat to public safety.

Ed Friedman– Granting the variance would not impede public health, safety or welfare as long as it is used as a second means of egress

Jim Hanson– Yes, it would do substantial justice as a lot of these homes are handicapped with boundaries and clearances and this fits well.

4. Does the proposed use maintain the value of surrounding properties?

Mike Hurd – Yes, because the owner is replacing what is there by making it better

Ed Friedman- Yes, if the egress is made to building code and specifications (rise, & run, handrails, etc)

Jim Hanson– Yes, if they would sell, the house is up to code and guidelines are met

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?

Mike Hurd- Yes

Ed Friedman– By not approving the variance there would be an unnecessary hardship as it would be a loss of their rental property and the egress increases the likelihood of people getting out of the building in a safe/timely manner.

Jim Hanson– Yes, doing the right thing by coming in for a variance and bringing the egress up to code.

- 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 be 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 both a Variance, the following **Conditions of Approval** should be considered:

1. Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access.
2. The egress shall be in compliance with City Building and Fire Safety Codes.
3. This Variance shall be recorded in the chain of title.
4. The egress shall be used for emergency and life safety purposes only. The proposed structure shall not be used as a secondary access to the building.

#### **IV. Correspondence**

#### **V. Other**

#### **VII. Adjournment**

**Motion to:** Adjourn

**Made by:** Jim Hanson

**Second:** Ed Friedman

**Vote:** Unanimous

**Meeting adjourned at 7:46 p.m.**

**Respectfully Submitted,**

**Kelly LeBlanc**

**Administrative Assistant**