



Zoning Board of Adjustment Special Meeting

Monday August 2, 2010, 7:00 p.m.
City Hall, Council Chambers, Claremont

Meeting Minutes

Approved 9/7/10

I. Roll Call

Present: Jim Hanson, Tom Rock, Carolyn Towle, Pierre Caouette

Absent: Mike Hurd, Ed Friedman

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

II. Accept Meeting Minutes from July 6, 2010

Motion to: Accept Meeting Minutes from July 6, 2010

Made By: Tom Rock

Second: Pierre Caouette

Vote: Unanimous

III. Old 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.

At the request of the Zoning Board of Adjustment the Planning and Development Department staff conducted a review of the permitting history and available documentation related to the now constructed emergency egress from 61 Mulberry Street. This information is relevant to the referenced ZBA case, which has been continued to the July 6, 2010 hearing.

The enclosed materials and text below provide clarification to the permitting process for the construction of the egress and standard procedures. In summary:

- 1. Building Permit Application (September 25, 2009):** This application was submitted and paid for on the date of submission. It is standard procedure to issue a receipt for payment regardless of issuance of a building permit. The Building Inspector held the permit pending resolution to the zoning issue and, ultimately, denied the permit pending receipt of supplemental information. Current practice is for the Building Inspector to contact the applicant directly if there is a need for further information related to an application. This practice typically occurs through phone calls and/or office visits by the applicant.
- 2. E-mail Correspondence Between Kevin LaCasse and Terry Carter (November 17 to 19, 2009):** In this message to Mr. Carter, the Chief Building Inspector, Mr. LaCasse confirms the need to obtain a Variance for the emergency egress. As a standard practice, the Building Inspector does not issue a building permit without documentation of necessary zoning approvals.

Upon review of the property file there is no documentation of a building permit issued for the emergency egress, nor documentation of site visits. Discussions with Mr. Carter indicate that he had no intention of issuing a building permit prior to confirmation of receipt of a Variance to construct the egress as planned.

Further documentation of correspondence with the Planning and Development Department Staff is available upon request.

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?
Tom – Yes, it would make the building much safer and moving the stairs back would stop the encroachment on the abutters property
Carolyn – Agreed that this is the right thing to do
Jim – The egress is in accordance with public interest because it is a safety feature.
Pierre- The egress corrects the deficiency that existed
2. Would granting the Variance consistent to the spirit of the ordinance?
Tom – Yes, fire safety will be corrected
Carolyn –Yes, fire safety addressed and property line will be in compliance
Jim – Yes, safe emergency egress created
Pierre – Yes
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?)

Tom – Yes, there is substantial justice and helps public health safety and welfare

Carolyn – Yes, it corrects the existing issue

Jim – Yes, the benefit to the public outweighs the loss to the applicant. The safety to the tenants is increased

Pierre – Yes, Corrects the encroachment on the abutter and keeps the emergency egress functioning

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

Tom – Yes, this is a continuing use of the building and increases safety

Carolyn - Yes

Jim – Yes, if this was not in compliance the building would need to eventually be closed, this keeps everything going for the neighborhood

Pierre – Yes, maintains value

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

Tom – Yes, this is a reasonable use and there is no issue with the general public and it is a reasonable request

Carolyn – Yes, a reasonable use and request

Jim – Yes, the request needs to be done and it falls in line with the other requests

Pierre – Yes, agrees with the board

- 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. The existing egress stairway and footings shall be removed from 65 Mulberry Street.
2. The egress stairway shall be relocated 10 inches in the northerly direction to be approximately 3 inches inside the 61 Mulberry Street parcel. The egress stairway, including the footing, shall be within the property line.
3. Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access.
4. The egress shall be in compliance with City Building and Fire Safety Codes.
5. This Variance shall be recorded in the chain of title.

6. 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.
7. Construction of the reconfigured stairway shall be completely within the subject property and shall be complete within 30 days of this decision.

Applicant and Abutters accept a 4 member board.

Mr. LaCasse submitted plans to the board from Surveyor, Wayne McCutcheon. Mr. McCutcheon drew on the plans where the egress currently is and proposed. Mr. LaCasse stated the memorandum from Rick Bergeron adheres to...

7" over the property line currently and when it is pulled back it will have a 3" setback.

Vice Chair Hanson inquired about the location of the original pin. When Mr. McCutcheon completed the survey the granite marker was located.

Ms. Towle inquired about the footings that were on the neighbor's property. Mr. LaCasse stated that they will be removed and relocated onto his property. There will be room under the egress for passage. Mr. Paul Carter, abutter, stated he knows it is necessary and will be OK with the situation if the egress gets moved. Mr. Carter plans to have a 3"-6" setback for his privacy fence. He would like Mr. LaCasse to make it known to the tenants that they don't misuse the egress as the main entrance.

Mr. Caouette inquired about the existing egress and the access underneath it. Mr. LaCasse stated there is currently a path and a 7' - 8' clearance under the egress and the path is relatively the width of an automobile. As a reference to size: There is a barn behind the house and the dumpster for the tenants is also located back there. The sanitation truck has to get in without an issue.

Ms. Towle commended Mr. LaCasse for satisfying the board in terms of the survey but suggested he go about getting permits in advance for future projects.

Mr. Carter asked if there is a stipulated time line when this will have to be complete. Mr. LaCasse stated construction will start within a few weeks. Mr. McCrory stated that the board can amend the conditions to state a timeline or discussion points that are necessary.

Close Public Hearing

Amendment of conditions to include a 30 day timeline and to move the structure back 10" per the submitted plan

Motion: approve the application for an after the fact Variance for the construction of a second means of egress for the units of 61 Mulberry Street. The egress will be moved back 10" and within 3" of the property line. The footings are to be removed from the neighbor's property and relocated within the property line. This is to be completed within 30 days. Conditions for approval as follows: Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access. The egress shall be in compliance with City Building and Fire Safety Codes. This Variance shall be recorded in the chain of title. 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.

Made By: Tom Rock

Second: Jim Hanson

Vote: Unanimous

IV. New Business

- **(ZO2010-00012) 50 Lane Ridge Road, Claremont, NH** – Applicant seeks Special Exception to add a studio apartment on the 1st floor. Property location **50 Ridge Lane**. Tax Map: 164, Lot: 4 Zoning District: RR-2.

Project Description

The applicant is seeking a Special Exception to convert the property to a duplex per Section 22-187(7) of the Zoning Ordinance (Ordinance). The proposed duplex will be within the existing residential structure.

III. Primary Planning Considerations

The applicant is seeking a Special Exception for a duplex. The Planning and Development Department and Tax Assessor records are somewhat unclear regarding the historic use of the property. When the current owners purchased the property the residence included a separate apartment with a separate utility connection. The City record identifies the property as single family after a site visit in 2003. Correspondence from the City Planner to the owner's representative in 2006 recommended seeking a Special Exception to clarify the record. The applicant is following this recommendation at this time.

- IV. Review Criteria:** To approve a Special Exception for an accessory dwelling the ZBA must find favorably to the applicant on all of the above conditions and the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

1. Is the specific site an appropriate location for such a use?
Tom – Existing and past use make it appropriate
Carolyn – The existing use makes this appropriate
Jim – Yes, large structure and these days it would be an appropriate use
Pierre – Size and setting make this an appropriate use duplex
2. Will property values in the district be maintained by such a use?
Tom – Property values will not change as this has been an ongoing use
Carolyn – Property value will be maintained
Jim – House occupied better than an unoccupied house
Pierre – Property Values maintained, nothing changes
3. Will the proposed use result in any nuisance or unreasonable hazard?
Tom – This is a continuing use and hazards will not increase or decrease
Carolyn – This will not increase or decrease any proposed use
Jim – It will not be any different from what was before
Pierre – No nuisance or unreasonable hazard
4. Will there be minimal or non-adverse traffic impact as a result from such a use?
Tom – Continuing use of existing conditions there should be no impact
Carolyn – No impact on the current use
Jim – No impact on the current use

- Pierre – Possibility that traffic may go down if there are only two approved units (as there are three now).
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking?
 Tom – Sewer is up to current use, City Water and parking are adequate
 Carolyn – Adequate and appropriate appropriations
 Jim – Yes, applicants responded to questions and provided documentation of the sewer capacity and parking
 Pierre – yes, the applicant provided documentation

 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?
 Tom – No outside changes
 Carolyn – No adverse impact to the abutters
 Jim – No adverse impact
 Pierre – No adverse impact

 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?
 Tom – Neutral use on the cities operational services based on the current use
 Carolyn – In agreement with Tom, neutral based on current use
 Jim – The Cities operational services would not change at this point
 Pierre – No disproportionate burden

 8. The proposed use will not be detrimental to the public health, safety and general welfare?
 Tom – No public health, safety or general welfare concerns
 Carolyn – No detrimental issues to public health, safety or general welfare
 Jim – No concerns, parking and septic have been addressed
 Pierre – No concerns with regards to public health, safety or general welfare

 9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance?
 Tom – Yes, SE have been indicated in that zoning area
 Carolyn – Yes, will be in harmony
 Jim – Yes, it clears up the ambiguity of the definition of the property
 Pierre – Yes, it falls into the definition of a duplex

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

1. The property shall have only one curb cut and drive-way.
2. The property shall include adequate vehicle parking and turn-around on site.
3. This Special Exception shall be recorded in the chain of title.

Special Exception sought as a duplex. Abutters were given the opportunity to object to how notification was given. No objections received.

The application is for a duplex in this district which is allowed through Special Exception. In 2003 there is some indication that this classification changed from a duplex to single family. There was no clear definition of this being a duplex. However, historic and anecdotal information show that this building was and is used as a duplex. Specific questions will be left to the applicant.

Dave Cloutier and Ken Kaminski, Owners, clarified for the ZB that there is one apartment with 3 bedrooms and an efficiency apartment on the 2nd floor. There was an attempt to address the confusion on the classification of the building but nothing came to light. Mr. Kaminski stated that the building was identified on the tax card as a duplex. There is separate electrical going to both apartments.

The building has a septic system and not public sewer.

Vice Chair Hanson inquired about the intention. Mr. Kamanski stated on the first floor there is a unit which has an attached bathroom/shower. They would like to utilize this for rental purposes. At one point this space was used as a business unit. There is parking on the side of the house for approx. 6 cars.

Mr. Rock confirmed that a studio apartment is wanted. Mr. Cloutier stated the goal is to have 3 units but a SE is needed first to designate the property as a duplex. After this process they could come back to a later hearing for a multi-family unit if this SE is approved.

Mr. Kaminski stated they needed to replace the septic early on. He is uncertain of the capacity. Mr. Lemieux installed the septic. Mr. Kaminski stated that they put in the septic to accommodate several units of a multi family.

The existing Septic has the capacity for 6 bedrooms. The In-law apartment has 1 bedroom, 3 bedrooms are located in the apartment, and the efficiency proposed would have 1 bedroom. The septic tank installed is a 2000 gallon tank.

The barn on the plans is no longer standing. It was falling down when Mr. Lemieux installed the septic tank and he took it down.

Behind the house there is in-tandem parking (2 spaces); on the right side of the house (closest to the road) there is room for 3-4 parking spaces.

Mr. McCrory would like to clarify that this application is for the duplex only. The applicants will come back at another date to request approval of a third Unit.

Open Public Hearing

Johanna Regan, Ward II, abutter, is confused about the application. First the property was a single family, then dual and now the possibility of a third. She stated her concern is the road. There is already a day care and increased traffic on the road. The day care traffic has prevented two-way traffic on occasion and Hinckley's also has increased traffic.

Close Public Hearing

Mr. Kaminski stated that going to a duplex would be possibly an additional 2 cars and studio an additional a car. This would amount to three cars in total. The applicant has inquired about the class of road.

Mr. Hanson stated that this is a Class 5 road and needs to withstand 80,000lbs of vehicle. If there was going to be a high impact of cars the board may request the road to be up to code (i.e. Hinckley's brought the road up to city standards as part of their permit). If there are concerns about the road it could be presented to the Highway Department. The Public Works Department has the documentation for bringing the roads up to specifications.

Mr. Rock asked the applicant how many people currently live on the property. There are three units currently rented. (In-law Apartment – a couple, Main Apartment - family, and the Studio Apartment – applicant's brother).

Mr. McCrory stated that this approval (for a duplex) will effectively eliminate one of the units. If this SE fails the use of the building reverts back to a single family.

Mr. Caouette stated that this is a paperwork issue as far as he is concerned that needs to be rectified from the past.

Motion: to approve a Special Exception to convert the property to a duplex per Section 22-187(7) of the Zoning Ordinance. The proposed duplex will be within the existing residential structure with conditions: The property shall have only one curb cut and drive-way, the property shall include adequate vehicle parking and turn-around on site and this Special Exception shall be recorded in the chain of title.

Made By: Pierre Caouette

Second: Carolyn Towle

Vote: Unanimous

- **(ZO2010-00013) 36 Webster Ave, Claremont, NH** – Applicant seeks a *Variance* to allow for an accessory dwelling unit over garage. **36 Webster Ave** Tax Map: 81, Lot 39, Zoning RR.

Project Description

The applicant is in the process of constructing a detached garage and wishes to use the upstairs of the garage as a residence. The proposal is for the applicant to occupy the residential unit above the garage and make room for an elderly parent to live in the existing primary residence. The footprint of the garage is approximately 1,120 square feet (SF), based on materials provided by the applicant.

III. Primary Planning Considerations

The applicant consulted with Planning and Development Department Staff about a year ago regarding the intent to construct a garage with a second-story residential unit. The applicant revisited this plan recently with Staff. Based on conversations and information presented to date the garage unit may be characterized as an accessory dwelling unit in accordance with Section 22-167(16) of the Zoning Ordinance, except it does not meet certain conditions in this section:

Condition 3. The existing, or proposed, home is currently or planned to be owner occupied, and;

Condition 4. The property owner states that their intent is that the occupant of the accessory dwelling unit will be a family member;

The proposal is for the family member to live in the primary residence and the accessory unit occupied by the property owner.

Condition 8. The accessory dwelling unit shall be part of the primary structure;

The accessory unit above the garage is not attached to the primary structure.

Condition 9. The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;

The garage will have a separate electrical service as required by the electrical utility.

Condition 10. The accessory dwelling unit shall be not more one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;

The tax card for this property states that the living area for the primary residence is 1,168 square feet (not including the finished basement). The greater of the two area requirements under this condition is 500 SF. If one assumes 75% utility of the accessory unit gross floor area ($0.75 * 1,120 \text{ SF} = 840 \text{ SF}$) proposed accessory dwelling exceeds this size limit.

Condition 13. That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;

The applicant is seeking, as part of this Variance, a waiver from this condition.

Based on the above circumstances, Staff determined a Variance is necessary for this proposal. The alternative approach, if these conditions could be met by the applicant, a Special Exception would be necessary to allow an accessory dwelling unit. The remaining conditions that need to be met for a Special Exception are as follows:

Condition 1. The existing, or proposed, home is, and will remain, a single family structure;

The applicant intends to maintain the property as a single-family parcel with an accessory dwelling unit.

Condition 2. The existing, or proposed, home is currently conforming to zoning;

The existing home meets this condition.

Condition 5. The property shall be sufficient in size so that there is at least fifteen thousand (15,000) square feet of property per dwelling unit, or a total of thirty thousand (30,000) square feet;

The property meets this condition.

Condition 6. The property shall have only one curb cut and drive-way;

The property has one curb cut and driveway.

Condition 7. The front setback shall not be utilized for parking;

The property layout allows for parking outside the front setback.

Condition 11. Evidence of adequate septic capacity;

The applicant will provide documentation for the ZBA to consider as part of this application review.

Condition 12. Adequate vehicle parking and turn-around on site;
There is adequate parking and turn-around capacity on-site.

Condition 14. A deed addendum with approval conditions be executed and recorded.
This is standard practice for a Variance approval.

If the ZBA grants a Variance from Section 22-167(16), Accessory Dwelling Units in the RR District, then all of the above conditions would be waived. Staff recommends that the ZBA incorporate the above conditions for the accessory dwelling unit into its Findings of Fact for a Variance. This approach would give the ZBA the latitude to develop conditions of approval for the Variance that are consistent with the conditions of a Special Exception, as outlined for accessory dwelling units.

Note that the recommended Conditions of Approval mimic those in Section 22-167(16) with the following exceptions (with a not explaining why it is omitted):

Condition 2, "The existing, or proposed, home is currently conforming to zoning;"
This is true and does not need to be a condition of approval for this Variance.

Condition 8, "The accessory dwelling unit shall be part of the primary structure;"
The applicant is seeking a Variance to allow an alternative building layout.

Condition 9, "The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;"
The applicant is seeking a Variance to a distinct utility connection to the garage, which includes the accessory dwelling unit.

Condition 10. "The accessory dwelling unit shall be not more one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;"
The applicant is seeking a Variance to allow a larger accessory dwelling unit.

Condition 13. "That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;"
The applicant is seeking a waiver from this step in the permitting process as part of this Variance application.

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.

Variance To review a 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 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, the following Conditions of Approval should be considered:

1. The existing home remain a single family structure.
2. The owner shall reside on the property, either in the primary residence or the accessory dwelling.
3. Occupant(s) of the primary and accessory dwelling units shall be members of the same family.
4. The property area shall remain at least thirty thousand (30,000) SF.
5. The property shall have only one curb cut and drive-way.
6. The front setback shall not to be utilized for parking.
7. The property shall have adequate septic capacity to serve the primary and accessory dwelling units.
9. The property shall include adequate vehicle parking and turn-around on site.
10. This Variance shall be recorded in the chain of title.

- **(ZO2010-00014) 36 Webster Avenue, Claremont, N.H.** – Applicant seeks a *Special Exception* to allow for an accessory dwelling unit over garage. **36 Webster Ave.** Tax Map: 81, Lot 39, RR.

Project Description

The applicant is in the process of constructing a detached garage and wishes to use the upstairs of the garage as a residence. The proposal is for the applicant to occupy the

residential unit above the garage and make room for an elderly parent to live in the existing primary residence. The footprint of the garage is approximately 1,120 square feet (SF), based on materials provided by the applicant.

III. Primary Planning Considerations

The applicant is seeking a Special Exception for an accessory dwelling unit concurrently with another request for a Variance from certain conditions to the reference section in the Zoning Ordinance. Per the Ordinance this proposal must meet the 14 conditions specified in the referenced section of the Ordinance. The following list summarizes the information included in the general property information maintained by the City and the application for this Special Exception.

Condition 1. The existing, or proposed, home is, and will remain, a single family structure;

This condition is met based on testimony submitted for ZBA Case No. 2010-0013. The hearing for the Variance application for this same use will clarify the use of the primary structure.

Condition 2. The existing, or proposed, home is currently conforming to zoning;

There are no known zoning issues at this time.

Condition 3. The existing, or proposed, home is currently or planned to be owner occupied, and;

The application for a Variance addresses this condition.

Condition 4. The property owner states that their intent is that the occupant of the accessory dwelling unit will be a family member;

This condition is met based on testimony for ZBA Case No. 2010-0013.

Condition 5. The property shall be sufficient in size so that there is at least fifteen thousand (15,000) square feet of property per dwelling unit, or a total of thirty thousand (30,000) square feet;

The total lot area is approximately 1.6 acres and satisfies this condition.

Condition 6. The property shall have only one curb cut and drive-way;

There is one existing access point. There is no information in the application regarding this condition.

Condition 7. The front setback shall not to be utilized for parking;

The current property layout appears to satisfy this condition. There is no information in the application regarding this condition.

Condition 8. The accessory dwelling unit shall be part of the primary structure;

The application for a Variance addresses this condition.

Condition 9. The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;

The application for a Variance addresses this condition.

Condition 10. The accessory dwelling unit shall be not more than one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;

The application for a Variance addresses this condition.

Condition 11. Evidence of adequate septic capacity;

The application does not clearly state this. Clarification is necessary.

Condition 12. Adequate vehicle parking and turn-around on site;

According to aerial imagery, there appears to be adequate parking on-site. There is no information in the application regarding this condition.

Condition 13. That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;

The application for a Variance addresses this condition.

Condition 14. A deed addendum with approval conditions be executed and recorded.

Incorporating this requirement as a condition of approval is recommended.

IV. Review Criteria: To approve a Special Exception for an accessory dwelling the ZBA must find favorably to the applicant on all of the above conditions (except those for which a variance is sought) and the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

1. Is the specific site an appropriate location for such a use?
2. Will property values in the district be maintained by such a use?
3. Will the proposed use result in any nuisance or unreasonable hazard?
4. Will there be minimal or non-adverse traffic impact as a result from such a use?
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking?
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?
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?
8. The proposed use will not be detrimental to the public health, safety and general welfare?
9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance?

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

1. The existing home remain a single family structure.
2. The owner shall reside on the property.

3. Occupant(s) of the primary and accessory dwelling units shall be members of the same family.
4. The property area in which the residential structure is located shall remain at least thirty thousand (30,000) SF.
5. The property shall have only one curb cut and drive-way.
6. The front setback shall not to be utilized for parking.
7. The property shall have adequate septic capacity to serve the primary and accessory dwellings.
9. The property shall include adequate vehicle parking and turn-around on site.
10. This Special Exception shall be recorded in the chain of title.

The Accessory Structure (AS) refers to the use of the structure and not the structure itself.

The AS itself has fourteen (14) conditions.

The On-line database states the property is R-1 and is actually RR. Corrections are ongoing to the database at this time.

The board will hear the application as a whole and vote separately; first on the Variance and secondly the Special Exception (SE). If the Variance fails the SE falls away as it is contingent on Variance approval.

Variance

Some items do not meet conditions and must be addressed additionally by the applicant. Based on the information that the City received early on, the owner was considering moving into the apartment and letting an elderly family member move into the single-story ranch. The ordinance states that the property owner must live in the primary residence.

For an AS it needs to be part of the primary structure. It is distinct from a duplex because it is a family member occupying that unit.

Utilities – The two units need to share the utilities in common for an AS. When the garage was constructed the power company required a separate meter.

The size of the AS unit exceeds the maximum allowance stated in condition number 10. The footprint shows 1120sqft; we assure 75% utility of the second story which leaves you at 840 sq ft living space. This exceeds a quarter of the living space or 500 sq ft; whichever is greater.

In addition there was discussion and consensus that this detailed review from the ZBA that the Planning Board reviews as well. The applicant chose to forgo the Planning Board review.

Right now the Conditions questioned are numbers 3, 4, 8, 9, 10, 13.

Special Exception

Reviews the same conditions as the variance.

Ms. Taylor would like to go on record stating that the Variance requires 3 votes in the affirmative to pass and that if the variance is turned down it cannot be reassessed unless the application is substantially changed. If the vote ties at 2-2 it fails.

The applicant was informed that could continue their application if they wish to be heard by a 5 member board. They do not object to a 4 member board.

Janet and Lee Chamberlain, owners, stated that they would occupy and continue to occupy the ranch house (primary structure). The AS is intended as an in-law apartment.

When the Chamberlain's started the process they were communicating with Peter Dzewaltowski and Ed Tinker. They made certain everything was to code and permitting. After finding out the property was zoned wrong, the Chamberlain's worked with the City. The City has been very helpful and it is clear that this was a mistake. The Chamberlains did everything in their power to assure this was up to code for the district they were told they were in. For example, the electrical was to code and approved, for the original zone.

Mr. Hanson confirmed that it is the intent to run water and sewer in the future. Ms. Chamberlain confirmed that this is correct.

Mr. Rock confirmed that this was always going to be designated as an AS and 1100 Sq Ft. The applicant was not informed that the AS had to be attached to the primary structure.

Condition 10

The record in the file, Peter Dzewaltowski wrote a file indicating that a SE permit had to be received for an AS. Attached were the criteria for the AS. It may be at the time that the full implication of the process was lost in the communication between parties. There is record that notification that a SE is necessary. Peter did include the R-1 district. The criteria are not substantially different. There seems to be some amount of a communication break down in that the Chamberlain's seemed somewhat surprised that they had to go to the ZBA. The SE might have been perceived as more of a building permit versus review from a formalized board.

Variance (from the requirements use only):

Ms. Taylor stated that whether R1 or RR there are 13 criteria for AS. You can only grant a SE if all of the requirements are met. If all requirements are met, you have to grant the SE. Because the application does not meet all of the criteria, a Variance must be approved. Procedurally those 13 conditions need to be met exactly and if they cannot, a Variance is needed.

Mr. Caouette would like to go over Conditions 8, 9, 10.

Condition 8- Mr. Caouette inquired why the condition would be put into the code. Mr. McCrory stated, in his professional opinion, is in intended to minimize the impact of an AS dwelling unit. The AS could accommodate the need for an additional apartment. AS units in codes other than Claremont are a bit less restrictive but are intended to provide efficiency. The AS dwelling classification in Claremont is focused on 'In-Law' apartments.

Condition 9- In the case of utilities the intent is to have a single point of service to lower the chance of someone not related to the owner will be living there. Once split it could be a renter as the owner would not take responsibility. If OK with separation, OK with separate utilities due to building codes.

Condition 10 – If the structure was attached it could be an eye sore if larger than the primary unit

Mr. Rock asked if the criteria of the AS is that it will be occupied by the family member, what happens if the need for a family member to occupy it no longer exists. A variance from a variance would be needed if a change of use was to occur in the future.

Mr. Caouette inquired about the proposed hardship?

Ms. Chamberlain stated that the hardship is financial. Their intent, as the owners, was honest and they worked with the City of Claremont from the start of the project.

Open Public Hearing

Daniel Worcester, abutter, asked if the intent was to be an AS from the beginning, what is the conflict between zones? Mr. McCrory stated that in the process of seeking permits there was discussion about possibly adding a residential unit. It sounded like the garage was the primary building and there was a letter from City Staff stating the need for a SE. It is unclear how much information was provided to the City and applicant.

Mr. Worcester stated if they [the applicants] were unclear, why would they go ahead and build. The hardship sounds to be self-inflicted. If living quarters was the intent it stretches the imagination. How is this convenient to a senior citizen? The structure was not build in mind with a senior citizen.

An additional concern Mr. Worcester presented was that several years ago the ability to build additional residences was denied. How is this situation acceptable? Mr. Worcester stated that the current property in question tried to subdivide and was turned down.

Ms. Towle inquired about Mr. Worcester's greatest concern with this application. Mr. Worcester stated that their intent was to build a residence that had been previously denied.

Ed Boggis, abutter, was concerned that he has tried twice to build with a 50ft entrance. He was told each time that he had to have an additional 50 ft entrance. Mr. Boggis is trying to figure how if this piece of land can forgo the additional entrance, and he cannot.

Ms. Chamberlain stated that a lift was looked into to be located in the back stairway. The Chamberlains were also here for a subdivision around 20 years ago and it was approved. There is a house on the lower lot. The second lot was approved to have a house built but currently there is no house on the lot.

Mr. McCrory stated that he would be willing to look at the property with Mr. Boggis in relation to access and frontage. In this case these are individually approved lots. In terms of relevance to this specific application there is no response.

Mr. Hanson inquired if the stairway was capable of carrying a lift. The Chamberlain's stated if need be. Research was done through Ace Hardware.

Ms. Chamberlain stated that the intent was always living. Mr. Hanson stated that the building permit was applied for without the knowledge that a Variance was needed. Mr. McCrory stated that the letter from Peter Dzewaltowski stated that a SE was needed.

If any additional information is needed and the public hearing closed it cannot be reopened.

Special Exception

Ms. Towle understands that there was miscommunication and that everything was up to code. While it is the belief that everything was done right she suggested that the application is continued and the board should do a walk through of the site to compare the differences.

Mr. Hanson questioned how the AS fits the neighborhood and if it needs to go before the Planning Board.

Ms. Towle stated that the ZBA is about changing a law that has been written. In order to vote, all the facts need to be presented. Mr. Caouette stated that yes the building is up, but the hardship that the building is up may not be enough to change the rule. The site visit might help convince the board. Mr. Hanson stated the site visit will provide a better opportunity for the applicants.

Mr. McCrory stated a site visit could be held and the application continued to the regularly scheduled meeting in September.

Motion: that the board hears the continuance of the Variance for Lee and Janet Chamberlain at a determined date by board members when they can be present for a site visit. The public hearing will be continued to the September meeting for a decision.

Made By: Carolyn **Second:** Pierre **Vote:** Unanimous

The site visit will be held Tuesday, August 10th at 6 PM at 36 Webster Ave., Claremont. The application will then continue to the Sept. 7th hearing.

V. Correspondence

VI. Other

Mr. Hanson stated that he has been getting complaints from citizens regarding egress aesthetics. Current Fire code does not require a roof but snow and ice must be removed at all times. Is this enforceable? Should this be a condition of a variance? Can a roof of sorts be used? Should the Planning Board be consulted?

Mr. McCrory stated that the building code in the past required egresses to be covered. That code has changed and is no longer a requirement. The question is how the City would instate a form of aesthetic review.

Ms. Taylor stated that aesthetics can be addressed with the 'neighborhood' concept. A condition requiring an enclosure may be stipulated even with Fire Code approval.

Mr. McCrory asked how the board would feel about a training session on egresses. Apartment codes will eventually require that all need egresses.

VII. Adjournment

Motion to: Adjourn

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

Meeting adjourned at 9:18 p.m.

Respectfully Submitted,

Kelly LeBlanc

Administrative Assistant



Zoning Board of Adjustment Special Meeting

Monday August 2, 2010, 7:00 p.m.
City Hall, Council Chambers, Claremont

Meeting Minutes

Approved 9/7/10

I. Roll Call

Present: Jim Hanson, Tom Rock, Carolyn Towle, Pierre Caouette

Absent: Mike Hurd, Ed Friedman

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

II. Accept Meeting Minutes from July 6, 2010

Motion to: Accept Meeting Minutes from July 6, 2010

Made By: Tom Rock

Second: Pierre Caouette

Vote: Unanimous

III. Old 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.

At the request of the Zoning Board of Adjustment the Planning and Development Department staff conducted a review of the permitting history and available documentation related to the now constructed emergency egress from 61 Mulberry Street. This information is relevant to the referenced ZBA case, which has been continued to the July 6, 2010 hearing.

The enclosed materials and text below provide clarification to the permitting process for the construction of the egress and standard procedures. In summary:

- 1. Building Permit Application (September 25, 2009):** This application was submitted and paid for on the date of submission. It is standard procedure to issue a receipt for payment regardless of issuance of a building permit. The Building Inspector held the permit pending resolution to the zoning issue and, ultimately, denied the permit pending receipt of supplemental information. Current practice is for the Building Inspector to contact the applicant directly if there is a need for further information related to an application. This practice typically occurs through phone calls and/or office visits by the applicant.
- 2. E-mail Correspondence Between Kevin LaCasse and Terry Carter (November 17 to 19, 2009):** In this message to Mr. Carter, the Chief Building Inspector, Mr. LaCasse confirms the need to obtain a Variance for the emergency egress. As a standard practice, the Building Inspector does not issue a building permit without documentation of necessary zoning approvals.

Upon review of the property file there is no documentation of a building permit issued for the emergency egress, nor documentation of site visits. Discussions with Mr. Carter indicate that he had no intention of issuing a building permit prior to confirmation of receipt of a Variance to construct the egress as planned.

Further documentation of correspondence with the Planning and Development Department Staff is available upon request.

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?
Tom – Yes, it would make the building much safer and moving the stairs back would stop the encroachment on the abutters property
Carolyn – Agreed that this is the right thing to do
Jim – The egress is in accordance with public interest because it is a safety feature.
Pierre- The egress corrects the deficiency that existed
2. Would granting the Variance consistent to the spirit of the ordinance?
Tom – Yes, fire safety will be corrected
Carolyn –Yes, fire safety addressed and property line will be in compliance
Jim – Yes, safe emergency egress created
Pierre – Yes
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?)

Tom – Yes, there is substantial justice and helps public health safety and welfare

Carolyn – Yes, it corrects the existing issue

Jim – Yes, the benefit to the public outweighs the loss to the applicant. The safety to the tenants is increased

Pierre – Yes, Corrects the encroachment on the abutter and keeps the emergency egress functioning

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

Tom – Yes, this is a continuing use of the building and increases safety

Carolyn - Yes

Jim – Yes, if this was not in compliance the building would need to eventually be closed, this keeps everything going for the neighborhood

Pierre – Yes, maintains value

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

Tom – Yes, this is a reasonable use and there is no issue with the general public and it is a reasonable request

Carolyn – Yes, a reasonable use and request

Jim – Yes, the request needs to be done and it falls in line with the other requests

Pierre – Yes, agrees with the board

- 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. The existing egress stairway and footings shall be removed from 65 Mulberry Street.
2. The egress stairway shall be relocated 10 inches in the northerly direction to be approximately 3 inches inside the 61 Mulberry Street parcel. The egress stairway, including the footing, shall be within the property line.
3. Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access.
4. The egress shall be in compliance with City Building and Fire Safety Codes.
5. This Variance shall be recorded in the chain of title.

6. 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.
7. Construction of the reconfigured stairway shall be completely within the subject property and shall be complete within 30 days of this decision.

Applicant and Abutters accept a 4 member board.

Mr. LaCasse submitted plans to the board from Surveyor, Wayne McCutcheon. Mr. McCutcheon drew on the plans where the egress currently is and proposed. Mr. LaCasse stated the memorandum from Rick Bergeron adheres to...

7" over the property line currently and when it is pulled back it will have a 3" setback.

Vice Chair Hanson inquired about the location of the original pin. When Mr. McCutcheon completed the survey the granite marker was located.

Ms. Towle inquired about the footings that were on the neighbor's property. Mr. LaCasse stated that they will be removed and relocated onto his property. There will be room under the egress for passage. Mr. Paul Carter, abutter, stated he knows it is necessary and will be OK with the situation if the egress gets moved. Mr. Carter plans to have a 3"-6" setback for his privacy fence. He would like Mr. LaCasse to make it known to the tenants that they don't misuse the egress as the main entrance.

Mr. Caouette inquired about the existing egress and the access underneath it. Mr. LaCasse stated there is currently a path and a 7' - 8' clearance under the egress and the path is relatively the width of an automobile. As a reference to size: There is a barn behind the house and the dumpster for the tenants is also located back there. The sanitation truck has to get in without an issue.

Ms. Towle commended Mr. LaCasse for satisfying the board in terms of the survey but suggested he go about getting permits in advance for future projects.

Mr. Carter asked if there is a stipulated time line when this will have to be complete. Mr. LaCasse stated construction will start within a few weeks. Mr. McCrory stated that the board can amend the conditions to state a timeline or discussion points that are necessary.

Close Public Hearing

Amendment of conditions to include a 30 day timeline and to move the structure back 10" per the submitted plan

Motion: approve the application for an after the fact Variance for the construction of a second means of egress for the units of 61 Mulberry Street. The egress will be moved back 10" and within 3" of the property line. The footings are to be removed from the neighbor's property and relocated within the property line. This is to be completed within 30 days. Conditions for approval as follows: Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access. The egress shall be in compliance with City Building and Fire Safety Codes. This Variance shall be recorded in the chain of title. 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.

Made By: Tom Rock

Second: Jim Hanson

Vote: Unanimous

IV. New Business

- **(ZO2010-00012) 50 Lane Ridge Road, Claremont, NH** – Applicant seeks Special Exception to add a studio apartment on the 1st floor. Property location **50 Ridge Lane**. Tax Map: 164, Lot: 4 Zoning District: RR-2.

Project Description

The applicant is seeking a Special Exception to convert the property to a duplex per Section 22-187(7) of the Zoning Ordinance (Ordinance). The proposed duplex will be within the existing residential structure.

III. Primary Planning Considerations

The applicant is seeking a Special Exception for a duplex. The Planning and Development Department and Tax Assessor records are somewhat unclear regarding the historic use of the property. When the current owners purchased the property the residence included a separate apartment with a separate utility connection. The City record identifies the property as single family after a site visit in 2003. Correspondence from the City Planner to the owner's representative in 2006 recommended seeking a Special Exception to clarify the record. The applicant is following this recommendation at this time.

- IV. Review Criteria:** To approve a Special Exception for an accessory dwelling the ZBA must find favorably to the applicant on all of the above conditions and the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

1. Is the specific site an appropriate location for such a use?
Tom – Existing and past use make it appropriate
Carolyn – The existing use makes this appropriate
Jim – Yes, large structure and these days it would be an appropriate use
Pierre – Size and setting make this an appropriate use duplex
2. Will property values in the district be maintained by such a use?
Tom – Property values will not change as this has been an ongoing use
Carolyn – Property value will be maintained
Jim – House occupied better than an unoccupied house
Pierre – Property Values maintained, nothing changes
3. Will the proposed use result in any nuisance or unreasonable hazard?
Tom – This is a continuing use and hazards will not increase or decrease
Carolyn – This will not increase or decrease any proposed use
Jim – It will not be any different from what was before
Pierre – No nuisance or unreasonable hazard
4. Will there be minimal or non-adverse traffic impact as a result from such a use?
Tom – Continuing use of existing conditions there should be no impact
Carolyn – No impact on the current use
Jim – No impact on the current use

- Pierre – Possibility that traffic may go down if there are only two approved units (as there are three now).
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking?
Tom – Sewer is up to current use, City Water and parking are adequate
Carolyn – Adequate and appropriate appropriations
Jim – Yes, applicants responded to questions and provided documentation of the sewer capacity and parking
Pierre – yes, the applicant provided documentation
 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?
Tom – No outside changes
Carolyn – No adverse impact to the abutters
Jim – No adverse impact
Pierre – No adverse impact
 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?
Tom – Neutral use on the cities operational services based on the current use
Carolyn – In agreement with Tom, neutral based on current use
Jim – The Cities operational services would not change at this point
Pierre – No disproportionate burden
 8. The proposed use will not be detrimental to the public health, safety and general welfare?
Tom – No public health, safety or general welfare concerns
Carolyn – No detrimental issues to public health, safety or general welfare
Jim – No concerns, parking and septic have been addressed
Pierre – No concerns with regards to public health, safety or general welfare
 9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance?
Tom – Yes, SE have been indicated in that zoning area
Carolyn – Yes, will be in harmony
Jim – Yes, it clears up the ambiguity of the definition of the property
Pierre – Yes, it falls into the definition of a duplex

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

1. The property shall have only one curb cut and drive-way.
2. The property shall include adequate vehicle parking and turn-around on site.
3. This Special Exception shall be recorded in the chain of title.

Special Exception sought as a duplex. Abutters were given the opportunity to object to how notification was given. No objections received.

The application is for a duplex in this district which is allowed through Special Exception. In 2003 there is some indication that this classification changed from a duplex to single family. There was no clear definition of this being a duplex. However, historic and anecdotal information show that this building was and is used as a duplex. Specific questions will be left to the applicant.

Dave Cloutier and Ken Kaminski, Owners, clarified for the ZB that there is one apartment with 3 bedrooms and an efficiency apartment on the 2nd floor. There was an attempt to address the confusion on the classification of the building but nothing came to light. Mr. Kaminski stated that the building was identified on the tax card as a duplex. There is separate electrical going to both apartments.

The building has a septic system and not public sewer.

Vice Chair Hanson inquired about the intention. Mr. Kamanski stated on the first floor there is a unit which has an attached bathroom/shower. They would like to utilize this for rental purposes. At one point this space was used as a business unit. There is parking on the side of the house for approx. 6 cars.

Mr. Rock confirmed that a studio apartment is wanted. Mr. Cloutier stated the goal is to have 3 units but a SE is needed first to designate the property as a duplex. After this process they could come back to a later hearing for a multi-family unit if this SE is approved.

Mr. Kaminski stated they needed to replace the septic early on. He is uncertain of the capacity. Mr. Lemieux installed the septic. Mr. Kaminski stated that they put in the septic to accommodate several units of a multi family.

The existing Septic has the capacity for 6 bedrooms. The In-law apartment has 1 bedroom, 3 bedrooms are located in the apartment, and the efficiency proposed would have 1 bedroom. The septic tank installed is a 2000 gallon tank.

The barn on the plans is no longer standing. It was falling down when Mr. Lemieux installed the septic tank and he took it down.

Behind the house there is in-tandem parking (2 spaces); on the right side of the house (closest to the road) there is room for 3-4 parking spaces.

Mr. McCrory would like to clarify that this application is for the duplex only. The applicants will come back at another date to request approval of a third Unit.

Open Public Hearing

Johanna Regan, Ward II, abutter, is confused about the application. First the property was a single family, then dual and now the possibility of a third. She stated her concern is the road. There is already a day care and increased traffic on the road. The day care traffic has prevented two-way traffic on occasion and Hinckley's also has increased traffic.

Close Public Hearing

Mr. Kaminski stated that going to a duplex would be possibly an additional 2 cars and studio an additional a car. This would amount to three cars in total. The applicant has inquired about the class of road.

Mr. Hanson stated that this is a Class 5 road and needs to withstand 80,000lbs of vehicle. If there was going to be a high impact of cars the board may request the road to be up to code (i.e. Hinckley's brought the road up to city standards as part of their permit). If there are concerns about the road it could be presented to the Highway Department. The Public Works Department has the documentation for bringing the roads up to specifications.

Mr. Rock asked the applicant how many people currently live on the property. There are three units currently rented. (In-law Apartment – a couple, Main Apartment - family, and the Studio Apartment – applicant's brother).

Mr. McCrory stated that this approval (for a duplex) will effectively eliminate one of the units. If this SE fails the use of the building reverts back to a single family.

Mr. Caouette stated that this is a paperwork issue as far as he is concerned that needs to be rectified from the past.

Motion: to approve a Special Exception to convert the property to a duplex per Section 22-187(7) of the Zoning Ordinance. The proposed duplex will be within the existing residential structure with conditions: The property shall have only one curb cut and drive-way, the property shall include adequate vehicle parking and turn-around on site and this Special Exception shall be recorded in the chain of title.

Made By: Pierre Caouette

Second: Carolyn Towle

Vote: Unanimous

- **(ZO2010-00013) 36 Webster Ave, Claremont, NH** – Applicant seeks a *Variance* to allow for an accessory dwelling unit over garage. **36 Webster Ave** Tax Map: 81, Lot 39, Zoning RR.

Project Description

The applicant is in the process of constructing a detached garage and wishes to use the upstairs of the garage as a residence. The proposal is for the applicant to occupy the residential unit above the garage and make room for an elderly parent to live in the existing primary residence. The footprint of the garage is approximately 1,120 square feet (SF), based on materials provided by the applicant.

III. Primary Planning Considerations

The applicant consulted with Planning and Development Department Staff about a year ago regarding the intent to construct a garage with a second-story residential unit. The applicant revisited this plan recently with Staff. Based on conversations and information presented to date the garage unit may be characterized as an accessory dwelling unit in accordance with Section 22-167(16) of the Zoning Ordinance, except it does not meet certain conditions in this section:

Condition 3. The existing, or proposed, home is currently or planned to be owner occupied, and;

Condition 4. The property owner states that their intent is that the occupant of the accessory dwelling unit will be a family member;

The proposal is for the family member to live in the primary residence and the accessory unit occupied by the property owner.

Condition 8. The accessory dwelling unit shall be part of the primary structure;

The accessory unit above the garage is not attached to the primary structure.

Condition 9. The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;

The garage will have a separate electrical service as required by the electrical utility.

Condition 10. The accessory dwelling unit shall be not more one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;

The tax card for this property states that the living area for the primary residence is 1,168 square feet (not including the finished basement). The greater of the two area requirements under this condition is 500 SF. If one assumes 75% utility of the accessory unit gross floor area ($0.75 * 1,120 \text{ SF} = 840 \text{ SF}$) proposed accessory dwelling exceeds this size limit.

Condition 13. That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;

The applicant is seeking, as part of this Variance, a waiver from this condition.

Based on the above circumstances, Staff determined a Variance is necessary for this proposal. The alternative approach, if these conditions could be met by the applicant, a Special Exception would be necessary to allow an accessory dwelling unit. The remaining conditions that need to be met for a Special Exception are as follows:

Condition 1. The existing, or proposed, home is, and will remain, a single family structure;

The applicant intends to maintain the property as a single-family parcel with an accessory dwelling unit.

Condition 2. The existing, or proposed, home is currently conforming to zoning;

The existing home meets this condition.

Condition 5. The property shall be sufficient in size so that there is at least fifteen thousand (15,000) square feet of property per dwelling unit, or a total of thirty thousand (30,000) square feet;

The property meets this condition.

Condition 6. The property shall have only one curb cut and drive-way;

The property has one curb cut and driveway.

Condition 7. The front setback shall not be utilized for parking;

The property layout allows for parking outside the front setback.

Condition 11. Evidence of adequate septic capacity;

The applicant will provide documentation for the ZBA to consider as part of this application review.

Condition 12. Adequate vehicle parking and turn-around on site;
There is adequate parking and turn-around capacity on-site.

Condition 14. A deed addendum with approval conditions be executed and recorded.
This is standard practice for a Variance approval.

If the ZBA grants a Variance from Section 22-167(16), Accessory Dwelling Units in the RR District, then all of the above conditions would be waived. Staff recommends that the ZBA incorporate the above conditions for the accessory dwelling unit into its Findings of Fact for a Variance. This approach would give the ZBA the latitude to develop conditions of approval for the Variance that are consistent with the conditions of a Special Exception, as outlined for accessory dwelling units.

Note that the recommended Conditions of Approval mimic those in Section 22-167(16) with the following exceptions (with a not explaining why it is omitted):

Condition 2, "The existing, or proposed, home is currently conforming to zoning;"
This is true and does not need to be a condition of approval for this Variance.

Condition 8, "The accessory dwelling unit shall be part of the primary structure;"
The applicant is seeking a Variance to allow an alternative building layout.

Condition 9, "The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;"
The applicant is seeking a Variance to a distinct utility connection to the garage, which includes the accessory dwelling unit.

Condition 10. "The accessory dwelling unit shall be not more one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;"
The applicant is seeking a Variance to allow a larger accessory dwelling unit.

Condition 13. "That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;"
The applicant is seeking a waiver from this step in the permitting process as part of this Variance application.

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.

Variance To review a 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 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, the following Conditions of Approval should be considered:

1. The existing home remain a single family structure.
2. The owner shall reside on the property, either in the primary residence or the accessory dwelling.
3. Occupant(s) of the primary and accessory dwelling units shall be members of the same family.
4. The property area shall remain at least thirty thousand (30,000) SF.
5. The property shall have only one curb cut and drive-way.
6. The front setback shall not to be utilized for parking.
7. The property shall have adequate septic capacity to serve the primary and accessory dwelling units.
9. The property shall include adequate vehicle parking and turn-around on site.
10. This Variance shall be recorded in the chain of title.

- **(ZO2010-00014) 36 Webster Avenue, Claremont, N.H.** – Applicant seeks a *Special Exception* to allow for an accessory dwelling unit over garage. **36 Webster Ave.** Tax Map: 81, Lot 39, RR.

Project Description

The applicant is in the process of constructing a detached garage and wishes to use the upstairs of the garage as a residence. The proposal is for the applicant to occupy the

residential unit above the garage and make room for an elderly parent to live in the existing primary residence. The footprint of the garage is approximately 1,120 square feet (SF), based on materials provided by the applicant.

III. Primary Planning Considerations

The applicant is seeking a Special Exception for an accessory dwelling unit concurrently with another request for a Variance from certain conditions to the reference section in the Zoning Ordinance. Per the Ordinance this proposal must meet the 14 conditions specified in the referenced section of the Ordinance. The following list summarizes the information included in the general property information maintained by the City and the application for this Special Exception.

Condition 1. The existing, or proposed, home is, and will remain, a single family structure;

This condition is met based on testimony submitted for ZBA Case No. 2010-0013. The hearing for the Variance application for this same use will clarify the use of the primary structure.

Condition 2. The existing, or proposed, home is currently conforming to zoning;

There are no known zoning issues at this time.

Condition 3. The existing, or proposed, home is currently or planned to be owner occupied, and;

The application for a Variance addresses this condition.

Condition 4. The property owner states that their intent is that the occupant of the accessory dwelling unit will be a family member;

This condition is met based on testimony for ZBA Case No. 2010-0013.

Condition 5. The property shall be sufficient in size so that there is at least fifteen thousand (15,000) square feet of property per dwelling unit, or a total of thirty thousand (30,000) square feet;

The total lot area is approximately 1.6 acres and satisfies this condition.

Condition 6. The property shall have only one curb cut and drive-way;

There is one existing access point. There is no information in the application regarding this condition.

Condition 7. The front setback shall not to be utilized for parking;

The current property layout appears to satisfy this condition. There is no information in the application regarding this condition.

Condition 8. The accessory dwelling unit shall be part of the primary structure;

The application for a Variance addresses this condition.

Condition 9. The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;

The application for a Variance addresses this condition.

Condition 10. The accessory dwelling unit shall be not more than one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;

The application for a Variance addresses this condition.

Condition 11. Evidence of adequate septic capacity;

The application does not clearly state this. Clarification is necessary.

Condition 12. Adequate vehicle parking and turn-around on site;

According to aerial imagery, there appears to be adequate parking on-site. There is no information in the application regarding this condition.

Condition 13. That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;

The application for a Variance addresses this condition.

Condition 14. A deed addendum with approval conditions be executed and recorded.

Incorporating this requirement as a condition of approval is recommended.

IV. Review Criteria: To approve a Special Exception for an accessory dwelling the ZBA must find favorably to the applicant on all of the above conditions (except those for which a variance is sought) and the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

1. Is the specific site an appropriate location for such a use?
2. Will property values in the district be maintained by such a use?
3. Will the proposed use result in any nuisance or unreasonable hazard?
4. Will there be minimal or non-adverse traffic impact as a result from such a use?
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking?
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?
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?
8. The proposed use will not be detrimental to the public health, safety and general welfare?
9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance?

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

1. The existing home remain a single family structure.
2. The owner shall reside on the property.

3. Occupant(s) of the primary and accessory dwelling units shall be members of the same family.
4. The property area in which the residential structure is located shall remain at least thirty thousand (30,000) SF.
5. The property shall have only one curb cut and drive-way.
6. The front setback shall not to be utilized for parking.
7. The property shall have adequate septic capacity to serve the primary and accessory dwellings.
9. The property shall include adequate vehicle parking and turn-around on site.
10. This Special Exception shall be recorded in the chain of title.

The Accessory Structure (AS) refers to the use of the structure and not the structure itself.

The AS itself has fourteen (14) conditions.

The On-line database states the property is R-1 and is actually RR. Corrections are ongoing to the database at this time.

The board will hear the application as a whole and vote separately; first on the Variance and secondly the Special Exception (SE). If the Variance fails the SE falls away as it is contingent on Variance approval.

Variance

Some items do not meet conditions and must be addressed additionally by the applicant. Based on the information that the City received early on, the owner was considering moving into the apartment and letting an elderly family member move into the single-story ranch. The ordinance states that the property owner must live in the primary residence.

For an AS it needs to be part of the primary structure. It is distinct from a duplex because it is a family member occupying that unit.

Utilities – The two units need to share the utilities in common for an AS. When the garage was constructed the power company required a separate meter.

The size of the AS unit exceeds the maximum allowance stated in condition number 10. The footprint shows 1120sqft; we assure 75% utility of the second story which leaves you at 840 sq ft living space. This exceeds a quarter of the living space or 500 sq ft; whichever is greater.

In addition there was discussion and consensus that this detailed review from the ZBA that the Planning Board reviews as well. The applicant chose to forgo the Planning Board review.

Right now the Conditions questioned are numbers 3, 4, 8, 9, 10, 13.

Special Exception

Reviews the same conditions as the variance.

Ms. Taylor would like to go on record stating that the Variance requires 3 votes in the affirmative to pass and that if the variance is turned down it cannot be reassessed unless the application is substantially changed. If the vote ties at 2-2 it fails.

The applicant was informed that could continue their application if they wish to be heard by a 5 member board. They do not object to a 4 member board.

Janet and Lee Chamberlain, owners, stated that they would occupy and continue to occupy the ranch house (primary structure). The AS is intended as an in-law apartment.

When the Chamberlain's started the process they were communicating with Peter Dzewaltowski and Ed Tinker. They made certain everything was to code and permitting. After finding out the property was zoned wrong, the Chamberlain's worked with the City. The City has been very helpful and it is clear that this was a mistake. The Chamberlains did everything in their power to assure this was up to code for the district they were told they were in. For example, the electrical was to code and approved, for the original zone.

Mr. Hanson confirmed that it is the intent to run water and sewer in the future. Ms. Chamberlain confirmed that this is correct.

Mr. Rock confirmed that this was always going to be designated as an AS and 1100 Sq Ft. The applicant was not informed that the AS had to be attached to the primary structure.

Condition 10

The record in the file, Peter Dzewaltowski wrote a file indicating that a SE permit had to be received for an AS. Attached were the criteria for the AS. It may be at the time that the full implication of the process was lost in the communication between parties. There is record that notification that a SE is necessary. Peter did include the R-1 district. The criteria are not substantially different. There seems to be some amount of a communication break down in that the Chamberlain's seemed somewhat surprised that they had to go to the ZBA. The SE might have been perceived as more of a building permit versus review from a formalized board.

Variance (from the requirements use only):

Ms. Taylor stated that whether R1 or RR there are 13 criteria for AS. You can only grant a SE if all of the requirements are met. If all requirements are met, you have to grant the SE. Because the application does not meet all of the criteria, a Variance must be approved. Procedurally those 13 conditions need to be met exactly and if they cannot, a Variance is needed.

Mr. Caouette would like to go over Conditions 8, 9, 10.

Condition 8- Mr. Caouette inquired why the condition would be put into the code. Mr. McCrory stated, in his professional opinion, is in intended to minimize the impact of an AS dwelling unit. The AS could accommodate the need for an additional apartment. AS units in codes other than Claremont are a bit less restrictive but are intended to provide efficiency. The AS dwelling classification in Claremont is focused on 'In-Law' apartments.

Condition 9- In the case of utilities the intent is to have a single point of service to lower the chance of someone not related to the owner will be living there. Once split it could be a renter as the owner would not take responsibility. If OK with separation, OK with separate utilities due to building codes.

Condition 10 – If the structure was attached it could be an eye sore if larger than the primary unit

Mr. Rock asked if the criteria of the AS is that it will be occupied by the family member, what happens if the need for a family member to occupy it no longer exists. A variance from a variance would be needed if a change of use was to occur in the future.

Mr. Caouette inquired about the proposed hardship?

Ms. Chamberlain stated that the hardship is financial. Their intent, as the owners, was honest and they worked with the City of Claremont from the start of the project.

Open Public Hearing

Daniel Worcester, abutter, asked if the intent was to be an AS from the beginning, what is the conflict between zones? Mr. McCrory stated that in the process of seeking permits there was discussion about possibly adding a residential unit. It sounded like the garage was the primary building and there was a letter from City Staff stating the need for a SE. It is unclear how much information was provided to the City and applicant.

Mr. Worcester stated if they [the applicants] were unclear, why would they go ahead and build. The hardship sounds to be self-inflicted. If living quarters was the intent it stretches the imagination. How is this convenient to a senior citizen? The structure was not build in mind with a senior citizen.

An additional concern Mr. Worcester presented was that several years ago the ability to build additional residences was denied. How is this situation acceptable? Mr. Worcester stated that the current property in question tried to subdivide and was turned down.

Ms. Towle inquired about Mr. Worcester's greatest concern with this application. Mr. Worcester stated that their intent was to build a residence that had been previously denied.

Ed Boggis, abutter, was concerned that he has tried twice to build with a 50ft entrance. He was told each time that he had to have an additional 50 ft entrance. Mr. Boggis is trying to figure how if this piece of land can forgo the additional entrance, and he cannot.

Ms. Chamberlain stated that a lift was looked into to be located in the back stairway. The Chamberlains were also here for a subdivision around 20 years ago and it was approved. There is a house on the lower lot. The second lot was approved to have a house built but currently there is no house on the lot.

Mr. McCrory stated that he would be willing to look at the property with Mr. Boggis in relation to access and frontage. In this case these are individually approved lots. In terms of relevance to this specific application there is no response.

Mr. Hanson inquired if the stairway was capable of carrying a lift. The Chamberlain's stated if need be. Research was done through Ace Hardware.

Ms. Chamberlain stated that the intent was always living. Mr. Hanson stated that the building permit was applied for without the knowledge that a Variance was needed. Mr. McCrory stated that the letter from Peter Dzewaltowski stated that a SE was needed.

If any additional information is needed and the public hearing closed it cannot be reopened.

Special Exception

Ms. Towle understands that there was miscommunication and that everything was up to code. While it is the belief that everything was done right she suggested that the application is continued and the board should do a walk through of the site to compare the differences.

Mr. Hanson questioned how the AS fits the neighborhood and if it needs to go before the Planning Board.

Ms. Towle stated that the ZBA is about changing a law that has been written. In order to vote, all the facts need to be presented. Mr. Caouette stated that yes the building is up, but the hardship that the building is up may not be enough to change the rule. The site visit might help convince the board. Mr. Hanson stated the site visit will provide a better opportunity for the applicants.

Mr. McCrory stated a site visit could be held and the application continued to the regularly scheduled meeting in September.

Motion: that the board hears the continuance of the Variance for Lee and Janet Chamberlain at a determined date by board members when they can be present for a site visit. The public hearing will be continued to the September meeting for a decision.

Made By: Carolyn **Second:** Pierre **Vote:** Unanimous

The site visit will be held Tuesday, August 10th at 6 PM at 36 Webster Ave., Claremont. The application will then continue to the Sept. 7th hearing.

V. Correspondence

VI. Other

Mr. Hanson stated that he has been getting complaints from citizens regarding egress aesthetics. Current Fire code does not require a roof but snow and ice must be removed at all times. Is this enforceable? Should this be a condition of a variance? Can a roof of sorts be used? Should the Planning Board be consulted?

Mr. McCrory stated that the building code in the past required egresses to be covered. That code has changed and is no longer a requirement. The question is how the City would instate a form of aesthetic review.

Ms. Taylor stated that aesthetics can be addressed with the 'neighborhood' concept. A condition requiring an enclosure may be stipulated even with Fire Code approval.

Mr. McCrory asked how the board would feel about a training session on egresses. Apartment codes will eventually require that all need egresses.

VII. Adjournment

Motion to: Adjourn

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

Meeting adjourned at 9:18 p.m.

Respectfully Submitted,

Kelly LeBlanc

Administrative Assistant



Zoning Board of Adjustment Special Meeting

Monday August 2, 2010, 7:00 p.m.
City Hall, Council Chambers, Claremont

Meeting Minutes

Approved 9/7/10

I. Roll Call

Present: Jim Hanson, Tom Rock, Carolyn Towle, Pierre Caouette

Absent: Mike Hurd, Ed Friedman

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

II. Accept Meeting Minutes from July 6, 2010

Motion to: Accept Meeting Minutes from July 6, 2010

Made By: Tom Rock

Second: Pierre Caouette

Vote: Unanimous

III. Old 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.

At the request of the Zoning Board of Adjustment the Planning and Development Department staff conducted a review of the permitting history and available documentation related to the now constructed emergency egress from 61 Mulberry Street. This information is relevant to the referenced ZBA case, which has been continued to the July 6, 2010 hearing.

The enclosed materials and text below provide clarification to the permitting process for the construction of the egress and standard procedures. In summary:

- 1. Building Permit Application (September 25, 2009):** This application was submitted and paid for on the date of submission. It is standard procedure to issue a receipt for payment regardless of issuance of a building permit. The Building Inspector held the permit pending resolution to the zoning issue and, ultimately, denied the permit pending receipt of supplemental information. Current practice is for the Building Inspector to contact the applicant directly if there is a need for further information related to an application. This practice typically occurs through phone calls and/or office visits by the applicant.
- 2. E-mail Correspondence Between Kevin LaCasse and Terry Carter (November 17 to 19, 2009):** In this message to Mr. Carter, the Chief Building Inspector, Mr. LaCasse confirms the need to obtain a Variance for the emergency egress. As a standard practice, the Building Inspector does not issue a building permit without documentation of necessary zoning approvals.

Upon review of the property file there is no documentation of a building permit issued for the emergency egress, nor documentation of site visits. Discussions with Mr. Carter indicate that he had no intention of issuing a building permit prior to confirmation of receipt of a Variance to construct the egress as planned.

Further documentation of correspondence with the Planning and Development Department Staff is available upon request.

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?
Tom – Yes, it would make the building much safer and moving the stairs back would stop the encroachment on the abutters property
Carolyn – Agreed that this is the right thing to do
Jim – The egress is in accordance with public interest because it is a safety feature.
Pierre- The egress corrects the deficiency that existed
2. Would granting the Variance consistent to the spirit of the ordinance?
Tom – Yes, fire safety will be corrected
Carolyn –Yes, fire safety addressed and property line will be in compliance
Jim – Yes, safe emergency egress created
Pierre – Yes
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?)

Tom – Yes, there is substantial justice and helps public health safety and welfare

Carolyn – Yes, it corrects the existing issue

Jim – Yes, the benefit to the public outweighs the loss to the applicant. The safety to the tenants is increased

Pierre – Yes, Corrects the encroachment on the abutter and keeps the emergency egress functioning

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

Tom – Yes, this is a continuing use of the building and increases safety

Carolyn - Yes

Jim – Yes, if this was not in compliance the building would need to eventually be closed, this keeps everything going for the neighborhood

Pierre – Yes, maintains value

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

Tom – Yes, this is a reasonable use and there is no issue with the general public and it is a reasonable request

Carolyn – Yes, a reasonable use and request

Jim – Yes, the request needs to be done and it falls in line with the other requests

Pierre – Yes, agrees with the board

- 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. The existing egress stairway and footings shall be removed from 65 Mulberry Street.
2. The egress stairway shall be relocated 10 inches in the northerly direction to be approximately 3 inches inside the 61 Mulberry Street parcel. The egress stairway, including the footing, shall be within the property line.
3. Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access.
4. The egress shall be in compliance with City Building and Fire Safety Codes.
5. This Variance shall be recorded in the chain of title.

6. 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.
7. Construction of the reconfigured stairway shall be completely within the subject property and shall be complete within 30 days of this decision.

Applicant and Abutters accept a 4 member board.

Mr. LaCasse submitted plans to the board from Surveyor, Wayne McCutcheon. Mr. McCutcheon drew on the plans where the egress currently is and proposed. Mr. LaCasse stated the memorandum from Rick Bergeron adheres to...

7" over the property line currently and when it is pulled back it will have a 3" setback.

Vice Chair Hanson inquired about the location of the original pin. When Mr. McCutcheon completed the survey the granite marker was located.

Ms. Towle inquired about the footings that were on the neighbor's property. Mr. LaCasse stated that they will be removed and relocated onto his property. There will be room under the egress for passage. Mr. Paul Carter, abutter, stated he knows it is necessary and will be OK with the situation if the egress gets moved. Mr. Carter plans to have a 3"-6" setback for his privacy fence. He would like Mr. LaCasse to make it known to the tenants that they don't misuse the egress as the main entrance.

Mr. Caouette inquired about the existing egress and the access underneath it. Mr. LaCasse stated there is currently a path and a 7' - 8' clearance under the egress and the path is relatively the width of an automobile. As a reference to size: There is a barn behind the house and the dumpster for the tenants is also located back there. The sanitation truck has to get in without an issue.

Ms. Towle commended Mr. LaCasse for satisfying the board in terms of the survey but suggested he go about getting permits in advance for future projects.

Mr. Carter asked if there is a stipulated time line when this will have to be complete. Mr. LaCasse stated construction will start within a few weeks. Mr. McCrory stated that the board can amend the conditions to state a timeline or discussion points that are necessary.

Close Public Hearing

Amendment of conditions to include a 30 day timeline and to move the structure back 10" per the submitted plan

Motion: approve the application for an after the fact Variance for the construction of a second means of egress for the units of 61 Mulberry Street. The egress will be moved back 10" and within 3" of the property line. The footings are to be removed from the neighbor's property and relocated within the property line. This is to be completed within 30 days. Conditions for approval as follows: Appropriate measures shall be taken to maintain the egress to prevent personal injury to those using the egress, and to ensure year-round access. The egress shall be in compliance with City Building and Fire Safety Codes. This Variance shall be recorded in the chain of title. 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.

Made By: Tom Rock

Second: Jim Hanson

Vote: Unanimous

IV. New Business

- **(ZO2010-00012) 50 Lane Ridge Road, Claremont, NH** – Applicant seeks Special Exception to add a studio apartment on the 1st floor. Property location **50 Ridge Lane**. Tax Map: 164, Lot: 4 Zoning District: RR-2.

Project Description

The applicant is seeking a Special Exception to convert the property to a duplex per Section 22-187(7) of the Zoning Ordinance (Ordinance). The proposed duplex will be within the existing residential structure.

III. Primary Planning Considerations

The applicant is seeking a Special Exception for a duplex. The Planning and Development Department and Tax Assessor records are somewhat unclear regarding the historic use of the property. When the current owners purchased the property the residence included a separate apartment with a separate utility connection. The City record identifies the property as single family after a site visit in 2003. Correspondence from the City Planner to the owner's representative in 2006 recommended seeking a Special Exception to clarify the record. The applicant is following this recommendation at this time.

- IV. Review Criteria:** To approve a Special Exception for an accessory dwelling the ZBA must find favorably to the applicant on all of the above conditions and the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

1. Is the specific site an appropriate location for such a use?
Tom – Existing and past use make it appropriate
Carolyn – The existing use makes this appropriate
Jim – Yes, large structure and these days it would be an appropriate use
Pierre – Size and setting make this an appropriate use duplex
2. Will property values in the district be maintained by such a use?
Tom – Property values will not change as this has been an ongoing use
Carolyn – Property value will be maintained
Jim – House occupied better than an unoccupied house
Pierre – Property Values maintained, nothing changes
3. Will the proposed use result in any nuisance or unreasonable hazard?
Tom – This is a continuing use and hazards will not increase or decrease
Carolyn – This will not increase or decrease any proposed use
Jim – It will not be any different from what was before
Pierre – No nuisance or unreasonable hazard
4. Will there be minimal or non-adverse traffic impact as a result from such a use?
Tom – Continuing use of existing conditions there should be no impact
Carolyn – No impact on the current use
Jim – No impact on the current use

- Pierre – Possibility that traffic may go down if there are only two approved units (as there are three now).
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking?
 Tom – Sewer is up to current use, City Water and parking are adequate
 Carolyn – Adequate and appropriate appropriations
 Jim – Yes, applicants responded to questions and provided documentation of the sewer capacity and parking
 Pierre – yes, the applicant provided documentation

 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?
 Tom – No outside changes
 Carolyn – No adverse impact to the abutters
 Jim – No adverse impact
 Pierre – No adverse impact

 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?
 Tom – Neutral use on the cities operational services based on the current use
 Carolyn – In agreement with Tom, neutral based on current use
 Jim – The Cities operational services would not change at this point
 Pierre – No disproportionate burden

 8. The proposed use will not be detrimental to the public health, safety and general welfare?
 Tom – No public health, safety or general welfare concerns
 Carolyn – No detrimental issues to public health, safety or general welfare
 Jim – No concerns, parking and septic have been addressed
 Pierre – No concerns with regards to public health, safety or general welfare

 9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance?
 Tom – Yes, SE have been indicated in that zoning area
 Carolyn – Yes, will be in harmony
 Jim – Yes, it clears up the ambiguity of the definition of the property
 Pierre – Yes, it falls into the definition of a duplex

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

1. The property shall have only one curb cut and drive-way.
2. The property shall include adequate vehicle parking and turn-around on site.
3. This Special Exception shall be recorded in the chain of title.

Special Exception sought as a duplex. Abutters were given the opportunity to object to how notification was given. No objections received.

The application is for a duplex in this district which is allowed through Special Exception. In 2003 there is some indication that this classification changed from a duplex to single family. There was no clear definition of this being a duplex. However, historic and anecdotal information show that this building was and is used as a duplex. Specific questions will be left to the applicant.

Dave Cloutier and Ken Kaminski, Owners, clarified for the ZB that there is one apartment with 3 bedrooms and an efficiency apartment on the 2nd floor. There was an attempt to address the confusion on the classification of the building but nothing came to light. Mr. Kaminski stated that the building was identified on the tax card as a duplex. There is separate electrical going to both apartments.

The building has a septic system and not public sewer.

Vice Chair Hanson inquired about the intention. Mr. Kamanski stated on the first floor there is a unit which has an attached bathroom/shower. They would like to utilize this for rental purposes. At one point this space was used as a business unit. There is parking on the side of the house for approx. 6 cars.

Mr. Rock confirmed that a studio apartment is wanted. Mr. Cloutier stated the goal is to have 3 units but a SE is needed first to designate the property as a duplex. After this process they could come back to a later hearing for a multi-family unit if this SE is approved.

Mr. Kaminski stated they needed to replace the septic early on. He is uncertain of the capacity. Mr. Lemieux installed the septic. Mr. Kaminski stated that they put in the septic to accommodate several units of a multi family.

The existing Septic has the capacity for 6 bedrooms. The In-law apartment has 1 bedroom, 3 bedrooms are located in the apartment, and the efficiency proposed would have 1 bedroom. The septic tank installed is a 2000 gallon tank.

The barn on the plans is no longer standing. It was falling down when Mr. Lemieux installed the septic tank and he took it down.

Behind the house there is in-tandem parking (2 spaces); on the right side of the house (closest to the road) there is room for 3-4 parking spaces.

Mr. McCrory would like to clarify that this application is for the duplex only. The applicants will come back at another date to request approval of a third Unit.

Open Public Hearing

Johanna Regan, Ward II, abutter, is confused about the application. First the property was a single family, then dual and now the possibility of a third. She stated her concern is the road. There is already a day care and increased traffic on the road. The day care traffic has prevented two-way traffic on occasion and Hinckley's also has increased traffic.

Close Public Hearing

Mr. Kaminski stated that going to a duplex would be possibly an additional 2 cars and studio an additional a car. This would amount to three cars in total. The applicant has inquired about the class of road.

Mr. Hanson stated that this is a Class 5 road and needs to withstand 80,000lbs of vehicle. If there was going to be a high impact of cars the board may request the road to be up to code (i.e. Hinckley's brought the road up to city standards as part of their permit). If there are concerns about the road it could be presented to the Highway Department. The Public Works Department has the documentation for bringing the roads up to specifications.

Mr. Rock asked the applicant how many people currently live on the property. There are three units currently rented. (In-law Apartment – a couple, Main Apartment - family, and the Studio Apartment – applicant's brother).

Mr. McCrory stated that this approval (for a duplex) will effectively eliminate one of the units. If this SE fails the use of the building reverts back to a single family.

Mr. Caouette stated that this is a paperwork issue as far as he is concerned that needs to be rectified from the past.

Motion: to approve a Special Exception to convert the property to a duplex per Section 22-187(7) of the Zoning Ordinance. The proposed duplex will be within the existing residential structure with conditions: The property shall have only one curb cut and drive-way, the property shall include adequate vehicle parking and turn-around on site and this Special Exception shall be recorded in the chain of title.

Made By: Pierre Caouette

Second: Carolyn Towle

Vote: Unanimous

- **(ZO2010-00013) 36 Webster Ave, Claremont, NH** – Applicant seeks a *Variance* to allow for an accessory dwelling unit over garage. **36 Webster Ave** Tax Map: 81, Lot 39, Zoning RR.

Project Description

The applicant is in the process of constructing a detached garage and wishes to use the upstairs of the garage as a residence. The proposal is for the applicant to occupy the residential unit above the garage and make room for an elderly parent to live in the existing primary residence. The footprint of the garage is approximately 1,120 square feet (SF), based on materials provided by the applicant.

III. Primary Planning Considerations

The applicant consulted with Planning and Development Department Staff about a year ago regarding the intent to construct a garage with a second-story residential unit. The applicant revisited this plan recently with Staff. Based on conversations and information presented to date the garage unit may be characterized as an accessory dwelling unit in accordance with Section 22-167(16) of the Zoning Ordinance, except it does not meet certain conditions in this section:

Condition 3. The existing, or proposed, home is currently or planned to be owner occupied, and;

Condition 4. The property owner states that their intent is that the occupant of the accessory dwelling unit will be a family member;

The proposal is for the family member to live in the primary residence and the accessory unit occupied by the property owner.

Condition 8. The accessory dwelling unit shall be part of the primary structure;

The accessory unit above the garage is not attached to the primary structure.

Condition 9. The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;

The garage will have a separate electrical service as required by the electrical utility.

Condition 10. The accessory dwelling unit shall be not more one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;

The tax card for this property states that the living area for the primary residence is 1,168 square feet (not including the finished basement). The greater of the two area requirements under this condition is 500 SF. If one assumes 75% utility of the accessory unit gross floor area ($0.75 * 1,120 \text{ SF} = 840 \text{ SF}$) proposed accessory dwelling exceeds this size limit.

Condition 13. That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;

The applicant is seeking, as part of this Variance, a waiver from this condition.

Based on the above circumstances, Staff determined a Variance is necessary for this proposal. The alternative approach, if these conditions could be met by the applicant, a Special Exception would be necessary to allow an accessory dwelling unit. The remaining conditions that need to be met for a Special Exception are as follows:

Condition 1. The existing, or proposed, home is, and will remain, a single family structure;

The applicant intends to maintain the property as a single-family parcel with an accessory dwelling unit.

Condition 2. The existing, or proposed, home is currently conforming to zoning;

The existing home meets this condition.

Condition 5. The property shall be sufficient in size so that there is at least fifteen thousand (15,000) square feet of property per dwelling unit, or a total of thirty thousand (30,000) square feet;

The property meets this condition.

Condition 6. The property shall have only one curb cut and drive-way;

The property has one curb cut and driveway.

Condition 7. The front setback shall not be utilized for parking;

The property layout allows for parking outside the front setback.

Condition 11. Evidence of adequate septic capacity;

The applicant will provide documentation for the ZBA to consider as part of this application review.

Condition 12. Adequate vehicle parking and turn-around on site;
There is adequate parking and turn-around capacity on-site.

Condition 14. A deed addendum with approval conditions be executed and recorded.
This is standard practice for a Variance approval.

If the ZBA grants a Variance from Section 22-167(16), Accessory Dwelling Units in the RR District, then all of the above conditions would be waived. Staff recommends that the ZBA incorporate the above conditions for the accessory dwelling unit into its Findings of Fact for a Variance. This approach would give the ZBA the latitude to develop conditions of approval for the Variance that are consistent with the conditions of a Special Exception, as outlined for accessory dwelling units.

Note that the recommended Conditions of Approval mimic those in Section 22-167(16) with the following exceptions (with a not explaining why it is omitted):

Condition 2, "The existing, or proposed, home is currently conforming to zoning;"
This is true and does not need to be a condition of approval for this Variance.

Condition 8, "The accessory dwelling unit shall be part of the primary structure;"
The applicant is seeking a Variance to allow an alternative building layout.

Condition 9, "The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;"
The applicant is seeking a Variance to a distinct utility connection to the garage, which includes the accessory dwelling unit.

Condition 10. "The accessory dwelling unit shall be not more one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;"
The applicant is seeking a Variance to allow a larger accessory dwelling unit.

Condition 13. "That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;"
The applicant is seeking a waiver from this step in the permitting process as part of this Variance application.

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.

Variance To review a 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 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, the following Conditions of Approval should be considered:

1. The existing home remain a single family structure.
2. The owner shall reside on the property, either in the primary residence or the accessory dwelling.
3. Occupant(s) of the primary and accessory dwelling units shall be members of the same family.
4. The property area shall remain at least thirty thousand (30,000) SF.
5. The property shall have only one curb cut and drive-way.
6. The front setback shall not to be utilized for parking.
7. The property shall have adequate septic capacity to serve the primary and accessory dwelling units.
9. The property shall include adequate vehicle parking and turn-around on site.
10. This Variance shall be recorded in the chain of title.

- **(ZO2010-00014) 36 Webster Avenue, Claremont, N.H.** – Applicant seeks a *Special Exception* to allow for an accessory dwelling unit over garage. **36 Webster Ave.** Tax Map: 81, Lot 39, RR.

Project Description

The applicant is in the process of constructing a detached garage and wishes to use the upstairs of the garage as a residence. The proposal is for the applicant to occupy the

residential unit above the garage and make room for an elderly parent to live in the existing primary residence. The footprint of the garage is approximately 1,120 square feet (SF), based on materials provided by the applicant.

III. Primary Planning Considerations

The applicant is seeking a Special Exception for an accessory dwelling unit concurrently with another request for a Variance from certain conditions to the reference section in the Zoning Ordinance. Per the Ordinance this proposal must meet the 14 conditions specified in the referenced section of the Ordinance. The following list summarizes the information included in the general property information maintained by the City and the application for this Special Exception.

Condition 1. The existing, or proposed, home is, and will remain, a single family structure;

This condition is met based on testimony submitted for ZBA Case No. 2010-0013. The hearing for the Variance application for this same use will clarify the use of the primary structure.

Condition 2. The existing, or proposed, home is currently conforming to zoning;

There are no known zoning issues at this time.

Condition 3. The existing, or proposed, home is currently or planned to be owner occupied, and;

The application for a Variance addresses this condition.

Condition 4. The property owner states that their intent is that the occupant of the accessory dwelling unit will be a family member;

This condition is met based on testimony for ZBA Case No. 2010-0013.

Condition 5. The property shall be sufficient in size so that there is at least fifteen thousand (15,000) square feet of property per dwelling unit, or a total of thirty thousand (30,000) square feet;

The total lot area is approximately 1.6 acres and satisfies this condition.

Condition 6. The property shall have only one curb cut and drive-way;

There is one existing access point. There is no information in the application regarding this condition.

Condition 7. The front setback shall not to be utilized for parking;

The current property layout appears to satisfy this condition. There is no information in the application regarding this condition.

Condition 8. The accessory dwelling unit shall be part of the primary structure;

The application for a Variance addresses this condition.

Condition 9. The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure;

The application for a Variance addresses this condition.

Condition 10. The accessory dwelling unit shall be not more than one quarter of the size of the primary structure, or more than five hundred (500) square feet in size, whichever is greater;

The application for a Variance addresses this condition.

Condition 11. Evidence of adequate septic capacity;

The application does not clearly state this. Clarification is necessary.

Condition 12. Adequate vehicle parking and turn-around on site;

According to aerial imagery, there appears to be adequate parking on-site. There is no information in the application regarding this condition.

Condition 13. That a site plan be approved by the planning board to insure that the accessory dwelling unit does not change the character of or negatively impact the neighborhood;

The application for a Variance addresses this condition.

Condition 14. A deed addendum with approval conditions be executed and recorded.

Incorporating this requirement as a condition of approval is recommended.

IV. Review Criteria: To approve a Special Exception for an accessory dwelling the ZBA must find favorably to the applicant on all of the above conditions (except those for which a variance is sought) and the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

1. Is the specific site an appropriate location for such a use?
2. Will property values in the district be maintained by such a use?
3. Will the proposed use result in any nuisance or unreasonable hazard?
4. Will there be minimal or non-adverse traffic impact as a result from such a use?
5. Are there adequate and appropriate facilities provided for the proper operation and maintenance of the proposed use, including water, sewer and parking?
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?
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?
8. The proposed use will not be detrimental to the public health, safety and general welfare?
9. Will granting the special exception be in harmony with the general purpose and intent of the zoning ordinance?

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

1. The existing home remain a single family structure.
2. The owner shall reside on the property.

3. Occupant(s) of the primary and accessory dwelling units shall be members of the same family.
4. The property area in which the residential structure is located shall remain at least thirty thousand (30,000) SF.
5. The property shall have only one curb cut and drive-way.
6. The front setback shall not to be utilized for parking.
7. The property shall have adequate septic capacity to serve the primary and accessory dwellings.
9. The property shall include adequate vehicle parking and turn-around on site.
10. This Special Exception shall be recorded in the chain of title.

The Accessory Structure (AS) refers to the use of the structure and not the structure itself.

The AS itself has fourteen (14) conditions.

The On-line database states the property is R-1 and is actually RR. Corrections are ongoing to the database at this time.

The board will hear the application as a whole and vote separately; first on the Variance and secondly the Special Exception (SE). If the Variance fails the SE falls away as it is contingent on Variance approval.

Variance

Some items do not meet conditions and must be addressed additionally by the applicant. Based on the information that the City received early on, the owner was considering moving into the apartment and letting an elderly family member move into the single-story ranch. The ordinance states that the property owner must live in the primary residence.

For an AS it needs to be part of the primary structure. It is distinct from a duplex because it is a family member occupying that unit.

Utilities – The two units need to share the utilities in common for an AS. When the garage was constructed the power company required a separate meter.

The size of the AS unit exceeds the maximum allowance stated in condition number 10. The footprint shows 1120sqft; we assure 75% utility of the second story which leaves you at 840 sq ft living space. This exceeds a quarter of the living space or 500 sq ft; whichever is greater.

In addition there was discussion and consensus that this detailed review from the ZBA that the Planning Board reviews as well. The applicant chose to forgo the Planning Board review.

Right now the Conditions questioned are numbers 3, 4, 8, 9, 10, 13.

Special Exception

Reviews the same conditions as the variance.

Ms. Taylor would like to go on record stating that the Variance requires 3 votes in the affirmative to pass and that if the variance is turned down it cannot be reassessed unless the application is substantially changed. If the vote ties at 2-2 it fails.

The applicant was informed that could continue their application if they wish to be heard by a 5 member board. They do not object to a 4 member board.

Janet and Lee Chamberlain, owners, stated that they would occupy and continue to occupy the ranch house (primary structure). The AS is intended as an in-law apartment.

When the Chamberlain's started the process they were communicating with Peter Dzewaltowski and Ed Tinker. They made certain everything was to code and permitting. After finding out the property was zoned wrong, the Chamberlain's worked with the City. The City has been very helpful and it is clear that this was a mistake. The Chamberlains did everything in their power to assure this was up to code for the district they were told they were in. For example, the electrical was to code and approved, for the original zone.

Mr. Hanson confirmed that it is the intent to run water and sewer in the future. Ms. Chamberlain confirmed that this is correct.

Mr. Rock confirmed that this was always going to be designated as an AS and 1100 Sq Ft. The applicant was not informed that the AS had to be attached to the primary structure.

Condition 10

The record in the file, Peter Dzewaltowski wrote a file indicating that a SE permit had to be received for an AS. Attached were the criteria for the AS. It may be at the time that the full implication of the process was lost in the communication between parties. There is record that notification that a SE is necessary. Peter did include the R-1 district. The criteria are not substantially different. There seems to be some amount of a communication break down in that the Chamberlain's seemed somewhat surprised that they had to go to the ZBA. The SE might have been perceived as more of a building permit versus review from a formalized board.

Variance (from the requirements use only):

Ms. Taylor stated that whether R1 or RR there are 13 criteria for AS. You can only grant a SE if all of the requirements are met. If all requirements are met, you have to grant the SE. Because the application does not meet all of the criteria, a Variance must be approved. Procedurally those 13 conditions need to be met exactly and if they cannot, a Variance is needed.

Mr. Caouette would like to go over Conditions 8, 9, 10.

Condition 8- Mr. Caouette inquired why the condition would be put into the code. Mr. McCrory stated, in his professional opinion, is in intended to minimize the impact of an AS dwelling unit. The AS could accommodate the need for an additional apartment. AS units in codes other than Claremont are a bit less restrictive but are intended to provide efficiency. The AS dwelling classification in Claremont is focused on 'In-Law' apartments.

Condition 9- In the case of utilities the intent is to have a single point of service to lower the chance of someone not related to the owner will be living there. Once split it could be a renter as the owner would not take responsibility. If OK with separation, OK with separate utilities due to building codes.

Condition 10 – If the structure was attached it could be an eye sore if larger than the primary unit

Mr. Rock asked if the criteria of the AS is that it will be occupied by the family member, what happens if the need for a family member to occupy it no longer exists. A variance from a variance would be needed if a change of use was to occur in the future.

Mr. Caouette inquired about the proposed hardship?

Ms. Chamberlain stated that the hardship is financial. Their intent, as the owners, was honest and they worked with the City of Claremont from the start of the project.

Open Public Hearing

Daniel Worcester, abutter, asked if the intent was to be an AS from the beginning, what is the conflict between zones? Mr. McCrory stated that in the process of seeking permits there was discussion about possibly adding a residential unit. It sounded like the garage was the primary building and there was a letter from City Staff stating the need for a SE. It is unclear how much information was provided to the City and applicant.

Mr. Worcester stated if they [the applicants] were unclear, why would they go ahead and build. The hardship sounds to be self-inflicted. If living quarters was the intent it stretches the imagination. How is this convenient to a senior citizen? The structure was not build in mind with a senior citizen.

An additional concern Mr. Worcester presented was that several years ago the ability to build additional residences was denied. How is this situation acceptable? Mr. Worcester stated that the current property in question tried to subdivide and was turned down.

Ms. Towle inquired about Mr. Worcester's greatest concern with this application. Mr. Worcester stated that their intent was to build a residence that had been previously denied.

Ed Boggis, abutter, was concerned that he has tried twice to build with a 50ft entrance. He was told each time that he had to have an additional 50 ft entrance. Mr. Boggis is trying to figure how if this piece of land can forgo the additional entrance, and he cannot.

Ms. Chamberlain stated that a lift was looked into to be located in the back stairway. The Chamberlains were also here for a subdivision around 20 years ago and it was approved. There is a house on the lower lot. The second lot was approved to have a house built but currently there is no house on the lot.

Mr. McCrory stated that he would be willing to look at the property with Mr. Boggis in relation to access and frontage. In this case these are individually approved lots. In terms of relevance to this specific application there is no response.

Mr. Hanson inquired if the stairway was capable of carrying a lift. The Chamberlain's stated if need be. Research was done through Ace Hardware.

Ms. Chamberlain stated that the intent was always living. Mr. Hanson stated that the building permit was applied for without the knowledge that a Variance was needed. Mr. McCrory stated that the letter from Peter Dzewaltowski stated that a SE was needed.

If any additional information is needed and the public hearing closed it cannot be reopened.

Special Exception

Ms. Towle understands that there was miscommunication and that everything was up to code. While it is the belief that everything was done right she suggested that the application is continued and the board should do a walk through of the site to compare the differences.

Mr. Hanson questioned how the AS fits the neighborhood and if it needs to go before the Planning Board.

Ms. Towle stated that the ZBA is about changing a law that has been written. In order to vote, all the facts need to be presented. Mr. Caouette stated that yes the building is up, but the hardship that the building is up may not be enough to change the rule. The site visit might help convince the board. Mr. Hanson stated the site visit will provide a better opportunity for the applicants.

Mr. McCrory stated a site visit could be held and the application continued to the regularly scheduled meeting in September.

Motion: that the board hears the continuance of the Variance for Lee and Janet Chamberlain at a determined date by board members when they can be present for a site visit. The public hearing will be continued to the September meeting for a decision.

Made By: Carolyn **Second:** Pierre **Vote:** Unanimous

The site visit will be held Tuesday, August 10th at 6 PM at 36 Webster Ave., Claremont. The application will then continue to the Sept. 7th hearing.

V. Correspondence

VI. Other

Mr. Hanson stated that he has been getting complaints from citizens regarding egress aesthetics. Current Fire code does not require a roof but snow and ice must be removed at all times. Is this enforceable? Should this be a condition of a variance? Can a roof of sorts be used? Should the Planning Board be consulted?

Mr. McCrory stated that the building code in the past required egresses to be covered. That code has changed and is no longer a requirement. The question is how the City would instate a form of aesthetic review.

Ms. Taylor stated that aesthetics can be addressed with the 'neighborhood' concept. A condition requiring an enclosure may be stipulated even with Fire Code approval.

Mr. McCrory asked how the board would feel about a training session on egresses. Apartment codes will eventually require that all need egresses.

VII. Adjournment

Motion to: Adjourn

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

Meeting adjourned at 9:18 p.m.

Respectfully Submitted,

Kelly LeBlanc

Administrative Assistant