



Zoning Board of Adjustment Meeting
Tuesday, September 7, 2010 at 7:00 p.m.
City Council Chambers, City Hall, Claremont

Meeting Minutes
Approved October 4, 2010

I. Roll Call

Meeting opened at 7:10 pm

Present: Jim Hanson, Pierre Caouette, Mike Hurd, Carolyn Towle

Absent: Tom Rock, Ed Friedman

City Staff: Mike McCrory; Interim City Planner, Jane Taylor, City Solicitor; Katrina Spaulding, Business Development

210 Washington Street would like to continue as well as 50 Lane Ridge Road to the next meeting for lack of a full member board.

Cheshire oil has decided to be heard and the Chamberlain's have agreed to be heard by the three member board.

II. Review Public Meeting Minutes from August 2, 2010 & August 10, 2010

Motion to: Accept Meeting Minutes from August 2, 2010

Made By: Jim Hanson

Second: Pierre Caouette

Vote: Unanimous

Motion to: Accept Meeting Minutes from August 10, 2010

Made By: Jim Hanson

Second: Carolyn Towle

Vote: Unanimous

III. Old Business

- **(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 District 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.

Mike Hurd recused himself from the continued meeting. Mike McCrory stated the applicant would like to have the upper story of an approved garage as an accessory dwelling unit.

Mike McCrory explained the structure was permitted as a garage with storage in the upper story when permit was issued. Applicant requests a Variance so the upper story may be used as an accessory dwelling unit. There are a number of reasons for requiring a Variance, including the physical separation of the garage from the primary residence. This and other conditions of the site will require a variance to allow the use. If the variance is approved then the ZBA shall vote on a Special Exception to allow an accessory dwelling in the zoning district. The details of the site conditions are in the Staff Report to the ZBA, dated July 28, 2010.

The ZBA conducted a site visit on August 10th and subsequent to this site visit, the Chamberlains submitted a letter explaining their understanding of the permitting process. The case has been continued to this public hearing and each action, the Variance and the Special Exception, shall be conducted separately.

Jim Hanson mentions the letter from the Chamberlains contradicts the order of the way things were understood to have happened in the City records. The applicant was sent a letter in July 2009 stating they would need a variance. In 2010, it is clear to Hanson the applicant was aware of the need for a Variance. McCrory clarifies his limited experience with the project and he is relying on the written record in the file, which includes the July 2009 letter instructed the applicants to file a Special Exception. When McCrory reviewed the project he determined the need for a Variance in addition to the Special Exception. There was a Building permit for the garage and did clearly show the intention to have overhead storage. There *could* be a future residential use, if approved by Zoning Board. Once this came before McCrory, he encouraged the applicant in June to get their paperwork in order for a variance sooner than later.

Open Public Hearing

The Chamberlains addressed the Zoning Board regarding their letter. Janet said originally this was supposed to be in the lower adjoining lot that they own (Map 81, Lot 40). This wasn't going to be optimal for the property owner. If the house was built on the lower lot, the owner wouldn't be able to build their own house without licensed contractors. Other considerations included location on the site and likely impacts to neighbors. As long as the building was accessory to the primary residence on the subject property (Map 81, Lot 39) they could build on their own property without contractors and subs. Previously Ed Tinker, Assessor told them it was a good idea to do the accessory building and get the permit after May 30th to avoid an entire year of taxes. Tinker reviewed future tax impacts with the Chamberlains. Janet said when they were notified in December they just had a box for the building and it was way ahead of May 30th. They opted to wait before filing a permit to avoid additional tax costs and perhaps go a year later to the Zoning Board.

Jim Hanson pointed out the permit was for a garage strictly. It appeared on the site visit there was heating and plumbing and always the intention to build an accessory dwelling unit. Janet stated they were trying to be pro-active in the construction and include all necessary features because interconnected location of utilities, windows, and siding before hanging drywall so in the future the dwelling unit and the building wouldn't need to be torn apart to complete the work. The project was intended to take a long period of time to complete.

Jim reiterated that they received a letter in July 2009 instructing them to get a zoning permit. Chamberlain reiterated that they anticipated the change in use could be done at a future, undetermined date. They were not concerned with, nor did they appreciate the complexity of the process. Chamberlain stated that they wanted to work from the start with the understanding of the process. Carolyn supports Jim in stating the permit was originally for just the garage. On August 10th during the Site Visit it was apparent the building was always intended for a livable unit in the upper story. Chamberlain agrees.

Hanscom stated that the Variance should have been obtained before construction. The presence of the building does not make it right.

Mike McCrory said if the lower lot was in fact used to build upon, there would not be a need for the special exception or the variance. It would have been an allowed use as a residence on a single lot. Jim said the owner may want to move a lot line or something to allow for this to be on its own lot. Janet said this isn't something they really want to do. They decided to put the building on the upper lot and now they regret what was done. Jim responds that he has trouble seeing the hardship for this case. Janet responds that they had to consider the loans received to construct the garage.

Pierre Caouette said he doesn't see where this is really a hardship. A financial hardship is not reason enough to allow for the variance. Lee Chamberlain clarifies that moving lot line would make this right. Jim responds that he would defer to Mike on that. Pierre states something else needs to happen with this situation to preserve the rules and regulations put into place. Carolyn is in agreement with Pierre's statement.

Jim observes the communications between the City and the Chamberlains clearly sets the evidence that they knew of the permitting requirements before or early in the construction process. He comments that they received this letter and still proceeded with construction.

Janet states the City was a huge help and has nothing negative to say about the way the City employees worked with them. Janet states that the cost and taxes were an important consideration in their planning and their actions. Jim reiterates that the ZBA permit should have been the first step. Janet feels they didn't realize the sense of urgency that was being placed on the request for an application to the Zoning Board. They felt it was something they could have done during the process and were not trying to mislead anyone. They were

only trying to get through the building process. They constructed the building to meet residential building codes.

There were no abutters present wishing to speak.

Public Hearing Closed

Because of the three conditions that were not met, Pierre feels this should not be granted.

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;

This condition is met based on testimony from the Applicant.

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 from the Applicant.

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. – **Not Met**

Condition 9. The accessory unit shares utilities in common, i.e. one (1) service, with the primary structure; - Not Met

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; - Not Met

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

Motion: Deny the variance for an accessory dwelling according to sec 22-167 (16) there is no reason for hardship according to the Zoning rules.

Made By: Pierre Caouette

Second: Carolyn Towle

Vote: Unanimous

Variance

1. Would granting the Variance be in accord with the public interest?

Jim Hanson: No, it violates at least three criteria in the zoning ordinance.

Pierre Caouette: No, it does not follow the guidelines of the zoning rules.

Carolyn Towle: No, it does not follow the rules and regulations of the zoning board.

2. Would granting the Variance consistent to the spirit of the ordinance?

Jim Hanson: The proposed use and components (utilities, etc.) are not in the spirit of the Ordinance.

Pierre Caouette: No, for example, the ordinance requires the unit to be attached and that is not the case.

Carolyn Towle: No, it would not be consistent with the spirit of the ordinance because there are numerous conditions not being met,

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?)

Jim Hanson: It would not threaten public health, safety or welfare, but it does not do substantial justice the way the variance is written. The loss to the applicant is self-inflicted regardless of complexity.

Pierre Caouette: The proposal does not cause harm to the public, but it does take away from the Variance procedures that should be followed.

Carolyn Towle: No, granting the conditions for the variance are irregular in the rules for the variance.

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

Jim Hanson: Yes, it is a beautiful structure and it does not deter from the neighborhood.

Pierre Caouette: Yes, it would.

Carolyn Towle: It does not deter from the surrounding property values.

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.

Jim Hanson: The paperwork issued for the applicant could have prevented the present issues for the applicant. Filing a permit earlier in the process could have avoided the issues.

Pierre Caouette: I do not believe that the literal enforcement causes a hardship because there are other means available to comply with zoning.

Carolyn Towle: I agree with Pierre. No hardship.

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?

Jim Hanson noted that the Special Exception criteria do not need to be reviewed since the Variance did not pass.

IV. New Business

- **(ZO2010-00015) 50 Lane Ridge Road, Claremont, NH** – Applicant seeks a Variance to add a studio apartment on the 1st floor for a total of three units. Property location **50 Ridge Lane**. Tax Map: 164, Lot: 4 Zoning District: RR-2.

Continued to October Meeting.

- **(ZO2010-00016) 210 Washington Street, Claremont, NH** – Applicant seeks a Variance to allow for illuminated signage under Section 22-600 Sign Movement and Color. Property location **210 Washington Street**. Tax Map: 121, Lot: 45, Zoning District B-2.

Continued to October Meeting

- **(ZO2010-00017) Cheshire Oil Company, Claremont, NH** – Applicant seeks a Variance to construct a new 173 Square Foot equipment room off the existing car wash building. Property Location: **225 Washington Street** Tax Map: 121, Lot: 1, Zoning District B-2.

No Abutters present

II. Project Description

The applicant is seeking a Variance to encroach on the property side yard, which requires relief from Section 22-299. The Applicant plans to make upgrades to an existing carwash with modifications to the location of the car wash mechanical equipment. The proposed addition to the carwash structure will encroach into the side yard by approximately 4'-10", according to available site information.

Intent is for a new equipment room for the car wash. This is a functional economical way to make improvements to the building.

Old structure is built up to the side yard setback. The new building will be 10' from the property boundary.

III. Primary Planning Considerations

This proposal is for a minor addition to the existing car wash. As the application explains, the need for this expansion is to protect certain mechanical equipment from corrosion and extend the operational life-span car wash components. The ultimate separation between the proposed building face and the adjacent property line is approximately 10'. This proposal will require the removal of plantings that have served as a visual screen. It is the opinion of Staff that this addition will not negatively impact aesthetics on this or adjacent parcels.

According to the City GIS database the project is within 250 feet of the bank of the Sugar River and is therefore subject to the NH Department of Environmental Services Comprehensive Shoreland Protection Act. It is within the 100 year flood plain. Review will be carried out by the building inspector.

Open Public Hearing

Matt Traffie presented for Cheshire Oil. Due to the constraints of public safety and flow of the traffic for this site, this is the best and safest location on the site for the equipment building. This will not change the character of the building and will be approximately 28' long.

This room will be strictly for storage of equipment. It will be heated and the only lighting will be an exit light. There won't be any sound or noise coming from the building.

Bernie Ferland spoke to say this would have all the mechanisms to run the car wash contained within the building such as electrical boxes within the building and all maintenance could be done inside the building.

Public Hearing Closed

V. Conditions

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

1. The Applicant shall obtain a determination from the Zoning Administrator whether Site Plan Review is required for the proposed addition.
2. The Applicant shall obtain all applicable building permits from the City of Claremont prior to construction.
3. The Applicant shall obtain all applicable State and Federal permits prior to construction.
4. This Variance shall be recorded in the chain of title.

V. Motion: Approve the variance Sec 22-299 for Cheshire Oil to build a structure beside the existing car wash with the above conditions listed.

Made By: Jim Hanson

Second: Mike Hurd

Vote: Unanimous

Review Criteria

Variance

1. Would granting the Variance be in accord with the public interest?

Mike Hurd: It is not in the way and avoiding an already congested area.

Jim Hanson: It looks like a good fit to the site, it is a safer operation.

Pierre Caouette: It s an improvement to the site.

Carolyn Towle: Yes, there would be nothing detrimental to the public interest.

2. Would granting the Variance be consistent to the spirit of the ordinance?

Mike Hurd: Yes, it would be consistent with the spirit because it addresses a public safety issue.

Jim Hanson: Demonstrates that the spirit would be adhered to based on the reasons for the specific site placement as outlined in the application.

Pierre Caouette: Yes, there would be no detriment to the side yard.

Carolyn Towle: It would be in the spirit of the Ordinance with no dramatic difference in pre- and post-construction conditions.

3. Would granting the variance, as requested, do substantial justice? (Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?)

Mike Hurd: There is no threat to the public and will be an improvement and remove electrical systems from a wet environment and create a safer environment.

Jim Hanson: Yes, it does do substantial justice. The benefits of the improvement outweigh the encroachment on the side yard.

Pierre Caouette: Yes, there is no harm to the public.

Carolyn Towle: Granting the variance is a positive thing for substantial justice. It does not affect public health, safety, and welfare.

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

Mike Hurd: It blends into the existing site and the plan will maintain screening.

Jim Hanson: Yes, it fits well with the existing structure.

Pierre Caouette: It maintains and increases the value of the building.

Carolyn Towle: Yes, it does.

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.

Mike Hurd: It would create a hardship because there is no other place to place it. This is the best fit for the site.

Jim Hanson: It would result in unnecessary hardship because of the configuration of the shed and traffic flow and the placement/denial would negatively affect site circulation.

Pierre Caouette: Denial of the variance would create an unnecessary hardship because there are no detriments from this project.

Carolyn Towle: Denying the variance would cause unnecessary hardship because the proposal considers the health and welfare of its employees.

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. Correspondence – No new correspondence.

VI. Other – Mike McCrory informed the ZBA that the approval by the ZBA in August for a Variance to allow an emergency egress in the side yard setback at 61 Mulberry Street has lapsed with no work completed on the site. Specifically, the conditions of approval for the variance stipulated that work was to be completed within 30 days of approval. The Planning and Development Department will issue a letter to the property owner informing him that the Variance is no longer valid.

VII. Adjournment

Motion to: Adjourn

Made by: Jim Hanson

Second: Carolyn Towle

V o t e : U n a n i m o u s

Meeting Adjourned 8:30 PM

Respectfully Submitted,

Katrina Spaulding