



**Zoning Board of Adjustment Meeting**  
Monday January 7, 2013 at 7:00 p.m.  
City Hall Council Chambers

**MINUTES**  
**Approved 2.4.13**

**I. Roll Call**

**Present:** Mike Hurd, Tom Rock, Carolyn Towle, Todd Russel, Jim Hanson

**Absent:** Pierre Caouette (alt), Dan Worcester (alt)

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

**Election of Officers:**

**Motion:** nomination of Mike Hurd as Chair and Jim Hanson as Vice Chair

**Made By:** Mr. Russel                      **Second:** Ms. Towle                      **Vote:** Unanimous

**II. Review Public Meeting Minutes from December 3, 2012**

**Motion:** to approve minutes from December 3, 2012.

**Made By:** Mr. Hanson                      **Second:** Ms. Towle                      **Vote:** Unanimous

**III. New Business**

- **(ZO2013-0001) Loretta Evans, Cornish, NH (Owner); Gerald & Annette Ouellette, Claremont, NH (Applicant)** - The applicant is seeking a Variance to establish second hand retail, Section 22-357. Property Location: **40 Union Street**, Tax Map 107, Lot 13, Zoning District MUM.

The applicant is seeking a variance to establish an antique store featuring furniture, local crafts, and related goods in the building formerly occupied by Esersky's Hardware Store.

The property is currently vacant. The current Zoning Ordinance contemplates secondhand and antique stores as allowable uses in zoning districts other than MUM and, therefore, requires a variance to allow the proposed use. It is important to note the planning consultant for the Claremont City Center Project has developed a draft version of the revised Zoning Ordinance that would permit retail and secondhand establishments in a new "Mixed Use" district that includes the subject parcel.

Mr. McCrory stated that 40 Union St. is in the Historic District which would be factored in with local, state and federal permits.

Ms. Rosalyn Caplan, agent, was present to discuss the application. This applicant is a backup to the purchase and sales agreement currently in place with another buyer who is set to close in a few weeks. If this original sale falls through, the Ouellettes' would like to move forward with their business plan.

Gerald and Annette Ouellette, applicants, were present. They would be making furniture and selling antiques. Mr. Ouellette stated he makes kitchen islands and cabinets.

**Motion:** accept photos into the record

**Made By:** Mr. Russel

**Second:** Ms. Towle

**Vote:** Unanimous

Chair Hurd asked if this Variance would apply to the potential owners with the pending purchase and sales agreement. Ms. Taylor reported that the Variance goes with the property. If the sale goes through and the use is the same, there is potential that the owners would be able to use the Variance. Chair Hurd asked if the Variance could be a condition with the purchase by the Ouellettes. Mr. McCrory stated that from his perspective, granting a Variance is granting a Variance and it would go with the property. Chair Hurd stated it would be recorded with the state. Ms. Taylor followed-up informing the board that the other alternative would be to continue the application until a purchase and sales is established.

Ms. Towle asked why the applicants are before the board given that they are second in line for a purchase and sales agreement. Ms. Taylor stated that state law requires an application is to be heard no more than 30 days from its filing date and the Ouellette's submitted their application on 12/17/12.

Chair Hurd recommended the City holds in filing the official paperwork until they know if the Ouellette's have the property. Mr. McCrory stated that what follows after a Variance is approved or denied is under the discretion of the applicants. The applicants gave permission for the Variance to be filed because the Variance goes with the property.

Ms. Caplan inquired if the first applicant (with the pending purchase and sales) was planning to sell used items, would this variance allow them to do so and waive their variance application. Mr. McCrory stated it is the decision of the planning staff to decipher if the first applicant falls into the approved Variance category. There is a possibility that the slated purchaser of this property would fall into the variance.

### **Open Public Hearing**

No Abutter's Present

### **Close Public Hearing**

## **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?

**Yes, the use would remain retail even if the retail was used goods. Public interest would not be impacted.**

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

**Yes, the Variance does not vary significantly from the current zoning.**

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?)

**Yes, it is a reasonable use and close to the current approved uses. There would be no increase of traffic.**

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

**Yes, it fills empty space and the antique shop fits the historic district.**

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

**Yes, this building would remain empty.**

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?

**Motion:** to approve the application for a Variance to establish second hand retail store, Section 22-357 with the following conditions: (1) The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments, and subject to HDC approval as applicable, (2) This Variance shall be recorded in the chain of title.

**Made By:** Mr. Russel      **Second:** Mr. Hanson      **Vote:** Unanimous

#### **IV. Adjournment**

**Motion:** to adjourn

**Made By:** Ms. Towle      **Second:** Mr. Rock      **Vote:** Unanimous

Meeting adjourned at 7:40PM

Respectfully Submitted by, Kelly LeBlanc