



Zoning Board of Adjustment Meeting
Monday, October 3, 2016 7:00 PM
City Hall Council Chambers

MINUTES
Approved 11/7/2016

Mr. Hurd called the meeting to order at 7:00 PM.

I. Attendance/Roll Call

Present & Participating: Richard Collins, Michael Hurd, Carolyn Towle, Abigail Carman, Tracy Pope

Absent: Todd Russel, James Petrin

City Staff: Michael McCrory, City Planner

Mr. Hurd appointed Ms. Pope and Ms. Carman to sit in for Mr. Russel and Mr. Petrin.

II. Minutes of Previous Meeting

A. September 6, 2016

Motion: To accept the September 6th minutes as read.

Made by: Mrs. Towle **Second:** Mrs. Pope

Vote: Mrs. Pope abstained from voting as she was not present at the meeting; all others voted in favor of approval

B. September 12, 2016

Motion: To accept the minutes of September 12th as read

Made by: Mrs. Towle **Second:** Ms. Carman

Vote: Unanimous in favor

III. Old Business

- A. (ZO 2016-00015) Claremont Speedway LLC, 425 Washington St** – seeks a variance from Sect.22-166, RR District Permitted Uses, of the City Zoning Ordinance, to permit development of a seasonal campground as a second principal use at **282 Thrasher Road**. Tax map 71, Lot 4. Zoning district: R1. (Cont. from 9/6/2016)

Mr. Hurd read the public notice. He stated that the public hearing on this matter has been closed. Mr. McCrory stated that as this is a deliberative session, no new information could be received. Mr. McCrory offered to go through the summary of information on the case (as presented in his memo to the Board for this meeting), review the process, the proposed permit conditions, and/or elaborate on the variance criteria for the Board.

It was established that the proposed conditions were based on the findings of fact and that copies of the memo had been made available to the public and the applicant. At the request of Mrs. Towle, Mr. McCrory read the list of conditions out loud, pausing to allow discussion as needed. There was considerable discussion about how many times a camper could be removed and brought back, and about fencing. The Board then reviewed with Mr. McCrory how voting results on the individual variance criteria affects the outcome of the decision for the variance as a whole. Because this would be the first time the Board would be voting this way and because the process was complicated, Mr. McCrory asked for a few minutes to think it through.

Motion: To take a five-minute recess.

Made by: Mrs. Towle **Second:** Mrs. Pope

Vote: unanimous in favor.

When the meeting reconvened, Mr. McCrory explained the process. (1) There are five variance criteria. (2) Each criterion must have a majority vote. (3) The vote on all five criteria must be positive.

Motion: To approve the variance from Section 22-166, Permitted Uses in the RR Zoning District, to allow a seasonal campground as a second principal use with the attached twelve conditions as discussed ¹.

Made by: Mrs. Pope **Second:** Mr. Hurd

Discussion on the motion

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?

Mrs. Pope voted no. This is a second nonconforming use on a property that has an existing nonconforming use and therefore it is contrary to the public interest.

Mrs. Towle voted no because it is a significant new use being added to a major long-standing nonconforming use.

Ms. Carman said she was having trouble with this criterion. She said she thought it was trying to be a lower impact on the neighborhood; they have addressed the health and safety issues that were raised; it is not negative in terms of the general welfare of the public. She voted yes.

Mr. Collins voted yes.

Mr. Hurd voted yes. He said he agreed with what Ms. Carman had said. Additional issues will be addressed through site plan review.

Mrs. Towle changed her vote to yes based on what Ms. Carman had said. She agreed that the applicant had consistently tried to look out for the health and safety of everyone.

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

Mrs. Pope voted no because she felt the spirit of the ordinance is not being observed. It's a nonconforming use. Not only do they have one nonconforming use that is grandfathered and long-standing, but now they would add a second nonconforming use in the middle of a rural residential area. She didn't think this

was in the spirit of the ordinance. If the racetrack should fail, there would be another nonconforming use there to take its place. It's not what we have a zoning ordinance for.

Mrs. Towle voted no.

Ms. Carman felt the campground was not far outside the "spirit" of the RR zoning district when examined in relation to the other uses that are allowed in that zone.

Mr. Collins voted yes.

Mr. Hurd agreed with Ms. Carman, citing the opportunity for something bigger under the zoning in that district. He did not think this use is a high impact when compared to what could go there. He voted 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?)

Mrs. Pope voted no, because of the testimony from the abutters and because financial arguments cannot be considered.

Mrs. Towle voted yes, because the applicants had done their "homework" on everything the Board had put to them as far as the public issues.

Ms. Carman voted yes because she felt substantial justice should include all of the City's residents, not just the abutters and this will add to the tax base to the benefit of everyone.

Mr. Hurd agreed with Ms. Carman and voted yes. He said because of the application, the review process, the willingness of the applicants to accommodate the abutters, the bigger picture of the whole community and not the gain of the applicant.

Mr. Collins agreed with previous statements and voted yes.

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

Mrs. Pope said this one was hard because the applicant had a realtor who said the project won't affect the values at all. Then the abutters brought forth a realtor who said it would. She said she had learned about a subdivision across the street from the racetrack and none of them have sold. It made her question why. She thought that the campground would make those lots even more unattractive. She voted no.

Mrs. Towle said she didn't think the value of the properties of the surrounding area will be diminished. She felt the applicant would do everything in their power to make the whole project aesthetically acceptable; he has to put a lot of investment there; and she thought the values would not only decrease, but may actually increase.

Ms. Carman agreed that the property values probably would not be diminished.

Value judgment is subjective and in her opinion the race track is more detrimental than the campground will be. She said if the campground is constructed as they have testified that it will be, it will be beautiful.

Mr. Collins said he didn't think the values will go down at all.

Mr. Hurd acknowledged the opposing opinions of the two realtors. He said it is hard to predict what real estate values will do because values can change unpredictably. If the campground is constructed as proposed, it will bring a little bit

more of a traffic impact, but it will improve the community as a whole. He said the Board doesn't have anything that addresses this idea.

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

Mr. Hurd said no. He said he didn't foresee the hardship factor in this.

"Unnecessary hardship owing to conditions" – he said he didn't see the special conditions that are there.

(Mr. McCrory offered some guidance to the Board on applying/interpreting this criterion.)

Mrs. Pope said there is already a race track there. She said yes, it is a huge lot and the race track doesn't use all of it, but the Board doesn't have to give a variance so the applicant can put a second use there. She did not think the applicant has a hardship. She voted no.

Mr. Hurd said the concept of hardship has changed so much from what it used to be. He felt the campground was a reasonable use, but there is already a nonconforming use on the property.

Ms. Carman said under this part, "there is an attempt to balance the public good resulting from the application of the ordinance against the potential harm to the private landowner."

Mrs. Pope didn't see a potential harm to the landowner because they already have the use of the land. Mr. Hurd asked what would be the harm to the landowner? Ms. Carman said if you talk about subdivision – how would you do that? There is a steep hill down one side, conservation land on the other side; there is one road that comes through a parking area – there's no access to it. Mr. Hurd said he would assume that the subdivision wouldn't happen unless the race track was gone. It wouldn't work with the existing topography. Mrs. Towle said along with that, this is the best alternative for the continued economic growth of that piece of property. It carries the lower impact of the use. Ms. Carman said considering the race track separately, just this parcel of land, what can be done with it? It couldn't be divided just as it is. You would have to include the race track. She said she wasn't saying the applicant needs to use all of his land, but is that a reason not to think about it? Mr. Hurd said that the race track and the campground will only use 40% of the land. Ms. Carman corrected this saying the campground would use 35-40% of the lot. Mr. Hurd repeated that he still could not see the harm to the landowner.

Ms. Carman voted yes. Mrs. Towle voted yes. Mr. Collins voted yes. Mr. Hurd changed his vote to yes. Mrs. Pope voted no.

Vote on the motion: Ms. Carman, Mr. Collins, and Mr. Hurd voted in favor; Mrs. Pope and Mrs. Towle voted against.

The motion passed and the application was approved.

Mr. Hurd said there is a 30-day appeal period. The application can go to the Planning Board when the applicant is ready.

- B. (ZO 2016-00018) Farhan Yaqoob, Claremont, NH** - The applicant is seeking a Variance from Section 22-389 of the City of Claremont Zoning Ordinance to convert an existing two-family home to a three-family home. Property Location: **154-156 North Street**, Tax Map 107, Lot 280, Zoning District PR. (Cont. from 9/12/2016)

Mr. Hurd read the public notice.

Planner's Report

Mr. McCrory said there are standards and minimums set in the zoning ordinance with regard to multi-family housing and conversions. The applicant has provided floor plan diagrams for each of the units (existing and proposed). Mr. McCrory's memo provides the square footage of each unit based on the diagrams. They meet the minimum standards for the zoning ordinance. The lot is approximately 10,500 SF; the (proposed) density for each of the three units would be approximately 3,500 SF; the zoning ordinance requires 5,000 SF per unit. The variance is requesting to increase the density to one unit per 3,500 SF, a 30% increase.

This project will require a Special Use permit from the Planning Board. The site conditions will be reviewed under the Special Permit provisions. The Zoning Board will need to focus on how this fits on the site, whether the density is appropriate for the site, whether it meets the criteria for the site.

Mr. Hurd asked if anyone has a problem with him sitting in on this application as he has been into some of the businesses owned by the applicant. No one saw a conflict.

Ms. Carman asked about the stop work order for electrical and plumbing. Mr. McCrory said all of that work is in abeyance. The final CO is on hold until this process is completed. He acknowledged that work has already been done on the third unit, principally by the prior owner. He said the P & D department had been tracking this situation for about a year, encouraging the prior owner to mediate the situation. Instead he sold the property to the applicant. The applicant was aware that the third unit was illegal. He (the applicant) approached the department and asked how to make it legal. This is the process to do that.

Mr. McCrory read the abutters roll. No abutters were present.

Applicant's Presentation

Mrs. Pope asked the applicant – when you bought the property knowing that third unit was illegal, did you have any kind of conversation that lead you to believe that you would

just have to go through paper work and that it was no big deal; did you consider what you would do with that property if you didn't get the variance?

Mr. Yaqoob said when he initially tried to buy the building almost a year ago, he did not know the third unit was illegal. [Even still, he said, there is a place where there used to be a third electric meter on the outside of the building, although there is no third meter there now.] He applied to the bank; the bank sent an assessor and they said no, they're having a problem with this – there is no back history of a third unit. At this point he came to the P & D department and met Mr. McCrory and Ms. Merrill. They explained the situation. He stopped the deal at this point. He did not want to buy it (in March). In June, "things clear". "He (the prior owner) submitted an application", so Mr. Yaqoob agreed to buy the property. Mr. Yaqoob wanted the property for investment purposes only. He did not want to live there himself. The bank approved two units only. Mr. Yaqoob agreed to transfer the (variance) application into his name and pursue approval. At this point he discovered that the prior owner had never submitted the variance application as he had claimed he had.

The third unit is unoccupied. The other two units are occupied. The third unit is a one-bedroom apartment. He said he was undecided about whether he would live there or rent it out. He is not pursuing legal action against the prior owner. Mr. Yaqoob took the word of the prior owner that the variance was being pursued, because the prior owner showed Mr. Yaqoob the completed variance application.

Mr. Hurd theorized that the third meter may have been for a hot water heater and not for a third apartment.

Mr. Yaqoob felt that there may have been a third unit there before because the entrance to it is separate.

Unit 3 is on the second floor.

Mrs. Towle said she had enough questions that she would like the hearing to be continued and to have a site visit.

Mr. Hurd said his viewpoint about this case had changed after hearing the applicant's testimony. Ms. Carman said that there are other buildings in the neighborhood that don't meet current zoning requirements based on information provided by the applicant.

Mr. Hurd said that at one time the density of residential units was too high. Hence the 10,000 SF requirement was adopted. In 2013, the 10,000 SF was reduced to 5,000 SF as part of the City Center project. The reduction was to accommodate the use of some of the buildings in this zone.

Motion: To continue this application until we can formulate a site visit and review this at the next scheduled zoning board meeting (November 7).

Made by: Mrs. Towle **Second:** Mr. Hurd

Vote: Unanimous in favor.

There was discussion about setting a date for the site visit, but no date was set. It was also suggested that the Planning Board be invited to the site visit as well.

IV. New Business

There was no new business.

V. Communications

The Board received the latest issue of *Town and City* magazine. There was discussion about the upcoming NHMA conference.

VI. Other Business

Mr. Hurd said that Mr. Russel intends to resign from the Board. Mr. McCrory said a letter had not yet been submitted to the department.

Mr. Hurd said he would like to work with Mr. McCrory to start scheduling monthly evening workshops at the Visitor Center to go over general practices of the Board and working through things that the Board might have forgotten, things that have changed, etc. Everyone was in favor of the idea and spent some time discussing various topic-ideas. A schedule was not set, however.

VII. Adjournment

Motion: To adjourn the meeting

Made by: Mrs. Pope Second: Mr. Hurd

Vote: Unanimous in favor.

The meeting adjourned at 9:12 PM.

Respectfully submitted,

de Forest Bearse

¹ Conditions as Discussed

Recommended Conditions of Approval

1. This approval is for the operation of a seasonal campground on the site as presented in this application, amended material, and testimony provided by the applicant.
2. Any change in use or expansion of use will require zoning and Site Plan review. The property owner shall consult with the Planning and Development Department regarding change in use or expansion of use prior to commencing said change.
3. The owner shall notify the Planning and Development Department in writing whenever there is a change to the Claremont Speedway Campground Agreement. This notice shall summarize the changes to the Agreement.
4. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments. This includes:
 - a. Site Plan Approval from the Claremont Planning Board.

- b. Necessary State and/or Federal permits for wastewater treatment, stormwater management and erosion control or statements of compliance with said regulations.

No work is permitted to commence until such plans and permits, or appropriate statements of compliance with state and federal regulations, are submitted to, and approved by, the Planning and Development Department.

5. The owner shall utilize the municipal water supply for the campground use. Use of a community well for any campground use without prior review and approval by the City and State shall void this Variance.
6. A full-time campground manager shall reside on-site for the purpose of overall campground maintenance and enforcement of individual campsites permits in accordance with the Claremont Speedway Campground Agreement. The owner shall notify the Fire and Planning and Development Departments if no campsites are occupied and a full-time campground manager is not present.
7. ~~RVs and Camper Units shall remain on-site for the season which they have a campsites permit.~~ Any campground activity that appears, in the opinion of the Planning and Development Department, to be contrary to the application materials, amended material, and/or testimony by the applicant shall be in violation of this Variance. Ongoing violations shall be grounds to void this Variance. RV's and camper units may be removed from the campground one time per season for which they have a campsites permit.
8. The City shall be given access to inspect the campground for compliance with applicable permits and the Claremont City Code.
9. This Variance is void if the approved use is abandoned for 12 consecutive months.
10. This variance shall be recorded in the chain of title.
11. The owner shall, through physical fencing or amendment to the campground agreement, restrict access to areas on the property and prevent trespass on neighboring properties.
12. There shall be no racetrack components, i.e. parts, cars, equipment, kept in the campground.