



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

**MINUTES**  
**Approved 11 4 2012**

**I. Roll Call**

**Present:** Todd Russel, Tom Rock, Carolyn Towle, Mike Hurd, Jim Hanson, David Nichols (alt)

**Absent:** Dan Worcester (alt)

**City Staff:** Mike McCrory, Interim City Planner; Jane Taylor, City Solicitor; Danielle Coolidge, Minute Taker

**II. Review Public Meeting Minutes from September 3, 2013**

**Motion:** to approve the meeting minutes from September 3, 2013

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

**III. Old Business**

- **(ZO2013-0005)** Ling Ling Horton, Claremont, NH - The applicant is seeking a special exception to operate a home occupation, Section 22-207. Property Location: 264 Chestnut St, Tax Map 145, Lot 15-2, Zoning District R-1.

Mr. Russel recused himself. Mr. Nichols will sit in for Mr. Russel

The applicant is seeking a special exception in accordance with Section 22-207, Special Exceptions, to allow for the establishment of a home occupation on the property.

The October 7<sup>th</sup> Zoning Board packet provided the Assessor's report of the property which detailed that there eight (8) bedrooms; three (3) full bathrooms, three (3) living room/dining room combinations, and two (3) kitchens.

Ms. Towle requested a recess for a brief legal consultation with Ms. Taylor.

Meeting recessed at 7:06 PM. Meeting called back to order at 7:18 PM.

Mr. Hurd asked Ms. Horton if she had any additional information she would like to present concerning the application.

Ms. Horton stated that she did not have any additional information and acknowledged receipt of the assessor's report.

**Open Public Hearing**

No Abutters Present

**Close Public Hearing**

Mr. Hanson stated that it is hard to decide if Ms. Horton's business could fit in the definition of a home occupation because there are multiple rooms in the house that could be being used for the business and also addressed the safety concern for the public.

Ms. Towle stated her concern for the public's safety because there is no form of egress on the lower floor near a wood stove. She questions if this would be a fire hazard.

Mr. Rock questioned the issue of the septic system since the current septic tank is designed for a four (4) bedroom house and Ms. Horton's house is an eight (8) bedroom. He questions the impact of the additional sewage that a home occupation would bring on the septic system.

Mr. Hurd questioned safety issues concerning: driveway setup, customers entering from the rear of the building, fire hazards concerning the wood stove, public safety, and septic concerns.

#### **IV. Review Criteria**

To approve a Special Exception the ZBA shall find favorably to the applicant on all the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that the proposal meets the following criteria.

(1) The specific site is an appropriate location for such a use;

**Not an appropriate use for this site.**

(2) Property values in the district will not be reduced by such a use;

**No reduction of property values.**

(3) No nuisance or unreasonable hazard shall result;

**Safety concerns raised over lack of fire egress. Nuisance is possible.**

(4) No adverse traffic impact will result from such a use;

**No traffic impact if there is only one customer at a time.**

(5) Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use, including water, sewer and parking;

**Appropriate sewer requirements do not exist for the proposed use. Multiple cars could raise safety concerns and parking issues.**

(6) No adverse impact on the view, light and air of any abutter will result;

**No impact will result.**

(7) The 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;

**Tax revenue minimally impacted**

(8) Such a use would not be detrimental to the public health, safety and general welfare;

**Lack of fire egress and inappropriate sewer requirements pose threats to public safety and general welfare.**

(9) Such a use would be in harmony with the general purpose and intent of the zoning ordinance.

**No, the proposed site plan would not be in harmony with the current ZO.**

**Motion:** to DENY the application for special exception to operate a home occupation

**Made By:** Mr. Hanson

**Second:** Ms. Towle

**Vote:** Unanimous

Mr. Russel returned to the board. Mr. Nichols recused himself to present his applications.

## V. New Business

- **(ZO2013-00015)** David Nichols, Claremont, NH - The applicant is seeking a Variance for size limitations pertaining to a home occupation, Section 22-1. Property Location: 7 Hunter Circle, Tax Map 159, Lot 33, Zoning District RR.
- **(ZO2013-00013)** David Nichols, Claremont, NH - The applicant is seeking a special exception to operate a home occupation, Section 22-167. Property Location: 7 Hunter Circle, Tax Map 159, Lot 33, Zoning District RR.

The applicant is seeking a variance from Section 22-1, Definitions, to have a home occupation that occupies an area greater than 20% of the principal residence on the property.

The applicant is also seeking a special exception in accordance with Section 22-167, Special Exceptions in the RR Zoning District, for a home occupation for an auto repair service.

Ms. Taylor explained that the two applications could be discussed together, but that they must be voted on separately. She also explained that the Special Exception is contingent upon the approval of the Variance and therefore the Variance must be voted on first.

Mr. McCrory stated that the site does not meet the definition for home occupation because the use cannot be greater than 20% of the total living area. The garage is approximately 1280 sq. ft. and the residence is approximately 1200 sq. ft., according to the City Assessor's property database.

Mr. Nichols stated that the garage is a secondary building and is non-essential to the building. He also stated that when he constructed the garage in 2009, that he obtained all the necessary permits from the City of Claremont.

Mr. Hurd asked if Mr. Nichols planned on working forty (40) hours per week at the proposed home occupation and if there would be any outside storage.

Mr. Nichols stated that he would be working by appointment only and that he did not intend on working full time at the home occupation. He stated that his intent was to have something to keep him busy in his retirement. He also stated that he would not have any outside storage.

Mr. Russel questioned if there would be any vehicles stored outside or parked outside awaiting repair and if that would be considered outside storage of trade and stock.

Ms. Taylor clarified that this application did not constitute outside storage of trade and stock because of the transient nature of the drop off – pick up of each vehicle. She suggested making limitations on the amount of time a car could be waiting for repair and to include specifications on drop off – pick up times.

Mr. Hanson asked what kind of hardship Mr. Nichols is facing for why he cannot fall into the current ZO rules.

Mr. Nichols stated that he could not make his residence larger to fall within the current ZO rules.

Mr. Russel asked for clarification that all building permits were obtained.

Mr. Nichols confirmed that he did obtain all the appropriate building permits to construct the garage in 2009.

Mr. Hanson asked about the intended hours of operation.

Mr. Nichols stated that he intended to have the hours of operation from 8 AM to 5 or 4 PM.

Mr. Hanson asked if Mr. Nichols thought there would be noise nuisance created by the home occupation.

Mr. Nichols does not foresee any noise nuisance created by the business because he stated that the garage doors are always closed when he is working on vehicles.

Ms. Towle questioned if the pick-up and drop-off would create multiple cars onsite.

Mr. Nichols stated that he would only accept cars at time of service and did not foresee a problem.

Mr. Russel stated that he would want to put limitations on the hours of operation and number of vehicles allowed on site.

Mr. Hurd discussed signage requirements and stated that this approval should not run with the land.

Mr. Hanson asked about the type of work intended.

Mr. Nichols stated that he does a variety of work but would not be changing engines or painting.

Mr. Russel asked about waste oil from oil changes and how Mr. Nichols planned on disposing it.

Mr. Hurd stated that motor oil is a universal waste.

Mr. Nichols stated that he built a large barrel that he can fill and load on his truck to deliver the waste offsite.

## Open Public Hearing

Mr. Jache stated that he feels Mr. Nichols application is the same as his previous application that was denied to run a lawn mower repair business from home. He stated that he feels that if he is not allowed to run a lawn mower repair business, then Mr. Nichols should not be allowed to run a vehicle repair business directly across the street. He also stated that the air tools are very noisy.

Mr. Hurd stated that Mr. Jache's application and Mr. Nichols application are different and must be reviewed individually. He also stated that Mr. Jache was given a list of reasons for why his application was denied and if he resolved the issues he could reapply and present it to the board.

Mr. Jache stated that he still feels the two applications are the same and that he sleeps during the day because he works a second shift job. He stated he is concerned that the noise from the air tools will disrupt his sleep because he hears the noise even with the garage doors shut.

## Public Hearing Closed

## VI. 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. (HOME OCCUPATION) 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 garage already exist and all proper permits were obtained.**

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

**Yes, because there would not be any outside storage and all repairs would be inside the garage with doors shut.**

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, there is no impact on public safety, health, or welfare.**

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

**Yes, no change in 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?

**Yes, the applicant cannot make his residence larger in order to comply with the current ordinance.**

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?

**Motion:** to APPROVE a variance for size limitations pertaining to home occupation Section 22-1 with the following conditions: (1) This variance is void if the applicant discontinues the home occupation for 12 consecutive months and (2) This variance relates to the activity of the applicant and does not run with the land

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

## VII. Review Criteria

To approve a Special Exception the ZBA shall find favorably to the applicant on all the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that the proposal meets the following criteria.

(1) The specific site is an appropriate location for such a use;

**Yes, the site is appropriate for this use.**

(2) Property values in the district will not be reduced by such a use;

**No reduction of property values predicted.**

(3) No nuisance or unreasonable hazard shall result;

**No nuisance, noise, or hazard shall result. Conditions on hours of operations and limitations on pick-up and drop-off of vehicles.**

(4) No adverse traffic impact will result from such a use;

**No adverse impact will result.**

(5) Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use, including water, sewer and parking;

**Appropriate facilities are provided**

(6) No adverse impact on the view, light and air of any abutter will result;  
**No impact will result.**

(7) The 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;

**No burden of City services.**

(8) Such a use would not be detrimental to the public health, safety and general welfare;

**No adverse impact predicted.**

(9) Such a use would be in harmony with the general purpose and intent of the zoning ordinance.

**Yes, the use will be in harmony with the ZO.**

**Motion:** to approve special exception to operate a home occupation, Section 22-167 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 (2) In the course of operating the home occupation, the applicant shall meet all Local, State, and Federal standards and best management practices for an auto repair and service establishment, (3) The applicant, in the course of operating a home occupation, shall not create any nuisance (visual or otherwise), odor, noise, glare, or vibration noticeable off premises, (4) On-premises retail sales are prohibited, (5) Storage or display of work products, equipment, or materials and parts observable from a public right-of-way is prohibited, (6) The home occupation shall be incidental and subordinate to the principal residential use of the property. (7) The applicant shall obtain a new driveway permit from the Claremont Department of Public Works for the garage access, (8) This special exception relates to the activity of the applicant and does not run with the land, (9) The applicant shall not have more than two vehicles stored outside waiting to be picked up or dropped off, and (10) Hours of operation for home occupation will be Monday to Friday from 9 AM to 5 PM for business related financial gain.

**Made By:** Mr. Russel

**Second:** Ms. Towle

**Vote:** Unanimous

## **VIII. Adjournment**

**Motion:** to adjourn

**Made By:** Mr. Russel

**Second:** Mr. Hanson

**Vote:** Unanimous

Meeting adjourned at 8:26 PM

Respectfully Submitted by, Danielle Coolidge