



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

**MINUTES**  
**Approved 2/6/2017**

**Call to Order by the Chair**

**I. Attendance/Roll Call**

**Present & Participating:** Michael Hurd, Carolyn Towle, James Petrin, Abigail Carman, Tracy Pope

**Absent:** Richard Collins, Todd Russel

**City Staff:** Michael McCrory, City Planner

**II. Minutes of Previous Meeting - October 3, 2016**

**Motion:** To accept the minutes of the October 3, 2016.

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

**Vote:** Unanimous in favor

**10/17/2016 Site Visit Notes**

Mr. Hurd asked if the Board needed to accept the site visit notes. Mr. McCrory said to accept them as an addendum to the minutes. He then said the board could accept them as minutes of the site visit.

**Motion:** To accept our package of information for the record

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

**Vote:** Mrs. Pope abstained because she did not attend the site visit; all others voted in favor

**III. Old Business**

- A. (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 at **154-156 North Street**. Tax Map 107, Lot 280. Zoning District PR. (Cont. from 10/3/2016)

Mr. Hurd read the public notice.

**Planner's Report**

Mr. McCrory said that the zoning board and planning board had conducted a site visit. Based on the photos and the site visit itself and also input from a couple of the members of the planning and zoning boards, we followed up with the applicant on building code, life safety code, items that might be addressed after the variance and special use permit are received. (He said just so you know, building permits are generally not submitted until after zoning and planning approvals are received. It's actually by law and city code

that way; that building permits cannot be issued without planning and zoning permits.) There might be considerable code issues (with this building), so prior to the planning and zoning permits, Mr. McCrory consulted with the Fire Department and the Chief Building Inspector. He said the board received in their packets a copy of an email (dated October 26<sup>th</sup>) addressed to the applicant stating what would need to be done and options of what could be done to the building to meet building and life safety codes.

After considering what needed to be done, the applicant decided that it “wasn’t in the cards for him right now to continue, so he withdrew his application for the variance as well as withdrawing his application for the special use permit.” He still has the option to apply again in the future as no decision was made on the variance. For now, he will continue to maintain the property as two units. He has been advised that even with two units, he has building code issues to resolve.

Mrs. Pope asked what would prevent the applicant from living in the third unit himself? Mr. McCrory said there is nothing to prevent him from doing that. He said the applicant has said he will combine the proposed third unit with one of the other apartments to resolve the issue. Mrs. Pope repeated, what would prevent him from not doing what you just described. Mr. Hurd said City staff following up would do it. Mr. McCrory said fire and building code have said they want to do a walk-through with him and they have it on their list of things to do. It is especially important as there is a stop work on the property so the departments need to resolve the issue.

Mrs. Towle asked if buildings with rental units in them have to have a certificate of occupancy prior to renting the units? Mr. McCrory said the concern in this case was the third unit. He said he suspected that in light of recent events, the inspectors will be looking at the existing units. The CO would have applied to the third unit.

Mrs. Towle said that didn’t answer her question. She said when a new owner takes over a home with rental units in it, there has to be a certificate of occupancy. Mr. Petrin said you get that when you buy the place. Mr. McCrory said that the general practice, for commercial property, “we” like to see a CO for each new occupant. It doesn’t necessarily mean that there’s a change in the building – it’s just a check to make sure everything is ok. Two unit- residential is not considered commercial and therefore a CO is not required.

#### **IV. New Business**

- A. (ZO 2016-00019) Jonathan Harford, Claremont, NH** – The applicant is seeking a variance from Section 22-189 of the City of Claremont Zoning Ordinance to construct an addition to the single-family home in the front yard and setback at **13 Old High Bridge Road**. Tax Map 55, Lot 4. Zoning District RR2.

Mr. Hurd read the public notice and asked for an abutter roll call. Mr. McCrory read the roll. Mr. Hurd said the only people present were the applicants and the property co-owners.

Mr. Hurd appointed Ms. Carman and Mrs. Pope to sit in the vacant seats. Mrs. Pope said she wanted to disclose that she has been a friend of Jane Hunter, the property owner, for many, many years and if Mrs. Hunter wanted her to recuse herself from this application, she said she would. Mr. Hurd said he should ask the same question as he, too, knows both owners. Attorney Taylor said we must acknowledge that it's a small town and everyone knows everyone. However, if there is anything that will interfere with board member's judgement of the case, then that's really the standard. There didn't seem to be any such issues.

### **Planner's Report**

Mr. McCrory clarified that the proposed addition would be to the left of the existing house as viewed from the street. The variance request is from Section 22-189, because there is a 50-ft yard and a 50-ft setback from the right-of-way in this district. He said, in his opinion, this is an unusual parcel for this district.

Mr. McCrory said that the existing location of the structure is one of the circumstances (of this application). He said, "The expansion of the structure – we discussed this during the consultation, it wasn't really flushed out that much in the application, but I think it is pertinent to this case. When looking at a variance, you try to find alternatives that have less of an impact or would not require a variance at all. In this case, expanding to the back might be considered. There are some logistical issues to that in this case. For one, the land slopes away in the back to a pond. This is a substantial issue in terms of the layout and orientation of the property and ease of construction. The addition will extend more toward the road than the existing house, but not more than the front entryway porch." It is close to, but does not cross, the property boundary.

Ms. Carman asked if the distance to the road is known. Mr. McCrory said there is no specific survey information to assist. There was a pin located in the field, but Mr. McCrory did not make measurements. The existing structure is approximately 11 feet from the property boundary. The addition will be about three feet wider, so it will be about eight feet from the property boundary. The house actually skews away from the property line. Mr. Hurd said with the house not being parallel to the boundary line, the addition will actually be further from the boundary than the eight feet.

The distance from the shed to the road was unknown.

Mr. McCrory said that the indicators on the ground are that the boundaries shown on GIS are generally consistent, but no survey information was provided. He said he defers to the board in these types of cases.

Mr. McCrory said (the proposed location) seems to be the most functional and easiest design alternative for this expansion.

The board had no questions for Mr. McCrory.

### **Applicant's Presentation**

Mr. Hurd asked the applicant and co-owner if they wished to present any additional information.

Leo Hunter said that the addition is necessary because the family size has grown. He said he hoped the board would give them consideration “on that”. He also said that the bigger house would bring in more taxes (for the City).

Mr. Hurd asked if the shed was still on the property. Mr. Hunter said yes, that it is actually a one-car garage with a concrete floor. It was built in the early 1950s. The house was built in 1920.

Mrs. Towle asked, “What is to the right side of the home?” Mr. Hunter said there is a fenced play yard for the kids. She asked about the deck on the back, which Mr. Hunter confirmed. He said the deck wraps around to the left side of the house and provides another access to it. He said this part of the deck would have to be removed and the addition would be built between the existing house and the garage. He confirmed that the addition would not come any closer to the road than either of the existing structures.

Mr. Hurd asked if this application needed to go to the planning board, to which Mr. McCrory said no. He asked if a new septic system would be required due to the increase in the number of bedrooms. Mr. Hunter said that the system was built by Bobby Woodman, is registered with the state and was designed for four bedrooms. Mr. Hurd advised Mr. Hunter to make sure that the septic system is designed for the number of bedrooms that will result from the addition. Mrs. Towle asked how many bedrooms are currently in the house. Mr. Hunter said it depended on what one considers a bedroom. He said that when he first moved into the house, there were four bedrooms. He said right now it is being used as a two-bedroom house. There will be two bedrooms in the addition.

Mr. Hurd said that, “The plan looks like the existing porch – the addition is coming out how much – if you were to draw a plane from the front porch – is it two feet that it’s going to come out closer to the road on that corner of the house?” Mr. Hunter said it would be two feet stepped back from the existing porch so it won’t be closer. Mr. Hurd said if you draw a line from the existing house and you go with the face of the house, that “V” gets bigger. He asked, “Is the corner closest to the porch from the existing house, how far are we coming out from the house towards the road?” He said it appears to be about half of the front porch or roughly two feet. He said the other corner will probably be 3-4 feet back.

There were no further questions for Mr. Hunter. Mr. Hurd asked if anyone else wished to speak in favor or against (the application). There was no one, so Mr. Hurd closed the public hearing. He called for comments or discussion amongst the board members.

Ms. Carman said that as she read through the materials the only question she had was what is the hardship – what is unique about this parcel of land. But after hearing about the topography and what kind of land is behind the house, she said she felt a little bit more confident in that.

**Motion:** That the applicant be granted a variance from section 22-189, Yards, to permit expansion of the primary residential structure within the 50-ft front yard and 50-ft public Right-of-Way (ROW) setback at 13 Old High Bridge Road.

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

**Discussion on the motion**

Mr. Hurd said he felt that the hardship in this case is in the topography. If the addition were located to the west side of the house, it would be closer to the edge of the ROW and the property, whereas putting it on the left, it will be further away. He said believed that if this plan were actually going to be, the far corner is going to be further away.

Mrs. Pope asked, “Isn’t hardship #5? Don’t we have to go through #1, 2, 3, 4 then 5?”  
Mr. Hurd said, “No, it’s fact finding and as long as we touch on them, because we’re not doing a roll call.”

Mr. Hurd said that in his opinion it is going to be a benefit to the taxes, because it is going to add to them. He said it won’t diminish any of the surrounding properties. If anything, it will beautify the neighborhood by having a nicer, more attractive looking home there.

Mrs. Towle said it will increase the value of the home and the others around it. Mrs. Pope agreed.

Ms. Carman said she didn’t think it conflicts with the spirit of the ordinance. She said there wouldn’t be any overcrowding based on the lot size and the number of people living on it.

Mrs. Pope said she didn’t think it conflicts with the zoning ordinance and granting it would be in the public interest because that house has existed before zoning and now they want to put an addition on it that won’t come any closer to the road. She said she agreed with everything that had been said. She said she thought it would enhance the value of the properties in the surrounding area; that the hardship is definitely in the lay of the land, especially with the swamp in the back; there is no other way that the addition could be put on.

Mr. Hurd said this is only a benefit to public interest. Mrs. Pope agreed. He said we will have a more “up to standard home when this is done; the safety factor for these folks and the next people who buy the home. It is a dead-end road. It’s not a traffic issue.” He said that it won’t create a density issue; that the lot is big enough and there is enough room.

**Vote on the motion:** Unanimous in favor.

Mrs. Towle said, “This was very well put together and I appreciate that.”

## V. Communications

Mr. McCrory said there were no newsletters or magazines received.

## VI. Other Business

Mr. McCrory said the board had received two letters appealing the recent board decision on the Claremont Speedway campground variance. He said he wanted to discuss the appeal process.

Ms. Taylor said the board will need to schedule a special meeting, because the appeal must be heard within 30 days of receipt of the request of re-hearing. (One letter was received November 1<sup>st</sup>; the other was received November 2<sup>nd</sup>)

Ms. Taylor said the appeal is a two-part (or step) process.:

### Step One

Step one is the board's decision whether or not it wants to re-hear. There are usually two reasons for which a re-hearing is given or even can be requested:

- (Reason 1) There is new evidence – something completely new that hasn't been presented to the zoning board at any of its prior deliberations. The board must create a record of reasons as to why it is making the decision it does.
- (Reason 2) Some sort of procedural matter and a re-hearing is viewed as the opportunity if procedurally the zoning board has made a mistake for it to correct itself.

Step 1 is not a public hearing. It is a public meeting where the board reviews the request(s) to re-hear; the board members talk amongst themselves, but do not take testimony. Frequently the person on the other side will submit something stating why that person thinks it's "a good idea, bad idea, or whatever." At the last re-hearing request, the board did take information from the appellant because the appellant submitted "new evidence" and the board had questions as to whether the "evidence" was in fact new. The people who request the rehearing can attend the step 1 meeting; they receive "courtesy" notice of it; the applicant in this case will also get notice of the meeting.

If the board decides not to grant a rehearing, "you're done". The appellants would then have the option of taking the matter to superior court.

### Step Two

If the board decides to grant a re-hearing, then a public hearing is scheduled where it re-examines components of the case. The board can adopt prior evidence that has been introduced as an administrative decision, thereby eliminating the need to revisit everything the board has already done. The board can take new testimony and try to determine whether or not the facts that have been presented as part of the rehearing request have merit and whether or not the board should reverse the decision, uphold the decision, or modify the decision that had already been made.

Mr. Hurd asked if the two parties understand that if a re-hearing is granted, it won't happen that night. He said he had "a funny feeling" they are expecting it that night. Ms. Taylor said that if they didn't already know, it would be explained to them. He said our regular meeting is five days after the 30-day deadline, and one appellant doesn't want to wait. Ms. Taylor said that if the board decides to re-hear it, the public hearing for the actual re-hearing would have to wait (until the

January meeting) because the board could not get legal notice out in that short a time. Mr. Hurd said that would mean the January meeting which falls on January 2<sup>nd</sup>. He said there may be difficulty getting a quorum for that date. Ms. Taylor said there are statutes that must be followed and the board should “plan on it” (meaning making it to a meeting on January 2<sup>nd</sup>).

Mrs. Pope asked if the two appeals can be combined for hearing. Ms. Taylor said they could not be combined, but they could be heard at the same hearing. They will have to be heard separately because they are not identical reasons (for appealing). Mrs. Pope then asked if the board will learn what those reasons are. Ms. Taylor said that information is contained in the requests for rehearing which they will receive.

Mr. McCrory suggested the board meet on November 21<sup>st</sup> to decide on Step 1. Mrs. Towle, Mrs. Pope and Ms. Carman said they could attend a meeting on that date.

Mrs. Pope asked if the people who voted on the application have to be the same people to hear the appeal. Mr. McCrory said no. Ms. Taylor said the presumption is that board members can read minutes, watch the videos, etc. of any meetings. Mr. McCrory said the department could provide copies as needed.

Mr. McCrory said staff will confirm a quorum and prepare packets for the board. It will be noticed as a standard public meeting.

Mrs. Towle said, “It is kind of hard because we don’t have the letters right now. That is my problem.” Mr. Petrin concurred. “They already have them, so why can’t we have them?”

Ms. Taylor and Mr. McCrory were going to figure out whether there is sufficient time to hear a possible rehearing at the December 5<sup>th</sup> regular meeting of the board.

Mr. Petrin said, if the staff already has the letters, why can’t the board have them now? Mr. McCrory said staff wanted to provide guidance with them and that wasn’t ready yet.

## **VII. Adjournment**

**Motion:** To adjourn the meeting.

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

**Vote:** Unanimous in favor

The meeting adjourned at 7:48 PM.

**Respectfully submitted,**

*de Forest Bearse*