



Zoning Board of Adjustment Meeting
Monday, April 3, 2017 7:00 PM
City Hall Council Chambers

MINUTES
Approved 5/1/2017

NOTE: The Board conducted a site visit to 83 Case Hill Road at 6:00 PM this evening.

Mr. Hurd called the meeting order at 7:00 PM and asked for a roll call.

I. Attendance/Roll Call

Present & Participating: Richard Collins, Michael Hurd, Carolyn Towle, James Petrin, Abigail Carman, Tracy Pope, Patrick Howe

Absent:

City Staff: Michael McCrory, City Planner

II. Minutes of Previous Meetings

A. February 6, 2017

Correction: Change this sentence on page 6: *Ms. Taylor disagreed.* To read: *Ms. Taylor disagreed because it does not fall within the definition of a Home Office.*

Motion: To accept the February 6th minutes

Made by: Mr. Petrin **Second:** Ms. Carman

Vote: Unanimous in favor

B. March 6, 2017

Motion: To accept the March 6th minutes

Made by: Ms. Carman **Second:** Mr. Petrin

Vote: Unanimous in favor

III. Old Business

A. ZO 2017-00003 Scott and Beth LaCaillade, 83 Case Hill Road: Applicants are seeking a variance from Sect. 22-166, Permitted Uses in the Rural Residential Zoning District, of the City Ordinance to permit a commercial use on a residential property that exceeds the standards of a home occupation. Map 159, lot 55. Zoning District: RR (Cont. from 3/6/2017)

Mrs. Towle stepped down from this hearing. Mr. Hurd appointed Mrs. Pope to sit in Mrs. Towle's seat.

Mr. Hurd read the public notice. He asked Mr. McCrory for new information following the Board's site visit to the subject property.

Mr. McCrory said that everyone in attendance at this meeting was in attendance at the site visit. He said there will be notes from the visit, but he believed everyone was clear about the site and its conditions. He said if there were any questions from the site visit, now was the time to ask them.

Mr. Hurd asked for a copy of last month's staff memo.

Mr. Hurd asked the Board if they had anything to add. No one did.

Mr. Hurd asked if anyone from the public wanted to speak. No one did. Mr. Hurd closed the public hearing.

Board Discussion

Ms. Carman noted that the Board's request for screening along the property boundaries was not addressed in the conditions provided in the staff memo. She asked if there should be a time frame in which it should be done. The Board discussed possible time frames (6 mos., a year, before next snow, etc.).

Mr. Hurd said the applicants stated that a lot of the material being stored there now is being used for their own stone wall. Mrs. Pope asked what that space would be used for once all of that stone is gone.

Mr. Hurd said the Board had not discussed any limitations on how much product (overages, pallets, etc.) could be stored on the site and felt that it should.

Mr. Hurd asked if there should be a designated storage area. Mrs. Pope said the storage unit is very visible, but the area behind the garage is less so. She asked if it was possible to move the items stored around the storage unit to behind the garage or if it could be screened in some way. Mr. Hurd said that if an evergreen barrier is put up, that won't be seen from the road.

Mr. Hurd said the Board should address the concerns of the abutter who spoke at the last meeting (Brenda Ranney) – the evergreen wall should be up where the pine trees are between the Ranney property and the site. The evergreen wall should also be along the road where the rocks are now being stored. Other locations and manner of screening were also discussed (e.g. along the back to provide screening for the mobile home park).

Mr. Hurd said he assumed that the trailer park had been notified of this hearing and they weren't in attendance, so screening for the park wasn't a priority.

Mr. Hurd said the commercial use is what the zoning board was reviewing. He said the commercial use was the storage. Mr. McCrory said he would consider the storage pod as part of the commercial use.

Mr. Hurd called for a motion.

Ms. Carman said Mr. Hurd had called for a limit (on the storage) and asked him what he thought would be a reasonable limit. Mr. Petrin suggested a limit of no more than 25

loaded pallets. Mr. Hurd felt that was too much. He felt a 10, 12, or 15 pallet limit would be better.

Mr. McCrory said that if the Board feels this is getting to a level of detail beyond where the Board feels comfortable, the Board could refer the application for site plan review. Mr. Hurd didn't feel that was necessary because of the size and scale of this project.

Mr. Hurd said the applicant had already moved several pieces of equipment permanently from the site (in response to complaints).

Mr. Howe asked who would monitor any limits set by the Board.

Mr. Petrin said that 25 pallets would only take up 100 sf of space (10 ft x 10 ft).

Ms. Taylor asked the Board to remember why the application is before the Board while they were discussing conditions. She said this is in a residential zone and it is not an existing residential use. The Board's conditions should potentially try to "marry-up the two" in order to have (if the Board saw fit) a commercial use that works within a residential neighborhood.

Motion: That the Board approve the applicant's application seeking a variance from section 22-166, *Permitted Uses in the RR Zoning District*, to operate a commercial use on an existing residential property at 83 Case Hill Road with the following conditions:

1. The commercial use shall be maintained to be accessory and subordinate to the principal residential use of the property and operated by the property owner, for whom the subject property is his/her primary residence.
2. Materials or equipment stored on the subject property shall be stored inside a building or stored off-site on a parcel appropriately zoned for such storage. Materials or equipment stored outside shall not diminish the residential character of the property or surrounding properties.
3. For screening, the timeframe for Stage 1 which would be vegetative screening, evergreens, along the front to the pine trees and then back towards the storage unit be completed within 6 months, before the next snow. Stage 2 which will be shrubs or screening to their specifications – your choice - be done along the back-property line and on the side going toward the road from the mobile home park.
4. This variance is void if the accessory commercial use is abandoned for more than 12 consecutive months.
5. The quantity of product limited on your property be no more than 25 pallets.
6. That the stone wall be completed before snow.

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

Fact-Finding

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

Mr. Hurd said he thought the public interest “is going to be addressed to the fact that what is going to be there will now no longer be visible to the eye. He has removed the bigger stuff and said it’s not going to be there; he has located it elsewhere for storage.” Mrs. Pope said the applicants said they will work with their neighbors.

Mr. Hurd asked Ms. Taylor if this motion was for this type of business only, that the variance couldn’t be used by another type of business on this property. Ms. Taylor said her understanding of the motion is that it is limited to this commercial use with these owners. Mr. McCrory said if the business and house were sold together, it could apply, but not if the character of the use substantially changes. Ms. Taylor agreed.

2. Would granting the Variance be consistent to the spirit of the ordinance? Mr. Hurd said, “We have had this before. There is no place for this. There is no specific location. The way the City is designed there isn’t anything designed for this. So, you’re sticking with the spirit because you’re maintaining, but you’re adjusting.”

3. Would granting the variance, as requested, do substantial justice? Mrs. Pope said, “They have had their business there. It’s an existing business, that when they came for the permit to build the garage, they moved forward not knowing that they didn’t have the proper paper-work. When it was brought to their attention they came forward and they are just trying to correct the situation. I think that granting the variance will do substantial justice to them.”

Mr. Hurd said, “It is a reasonable use of the property. There is enough land. We’re not a postage stamp trying to cram something into it. We have enough property for it.”

4. Does the proposed use maintain the value of surrounding properties? Mr. Hurd said, “As far as surrounding values, there’s the trailer park behind it. I don’t see how it’s going to affect the surrounding property values. The proposed use is a reasonable one. This is one of the things we’re going to see more and more of, unfortunately, the way the City is designed ... there is no place to put it.”

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner? Mr. Hurd said, “The unnecessary hardship... the gentleman has a pre-existing business; he has an established thing that’s already gone through the City for different things that state, and this is I guess the icing on the cake, this is going to be the end of it to make sure the paper is all in order. Under section A(ii), it is a reasonable use. I still state that.”

Mr. Petrin said, “He thought he did everything right.”

Vote on the motion: Unanimous in favor.

Mrs. Towle resumed her seat on the board. Mrs. Pope resumed her seat as an alternate member.

IV. New Business

A. ZO 2017-00004 Old High Bridge Properties LLC, 16 Old High Bridge Road:

Applicant is seeking a variance from Sect.22-186, RR2 Permitted Uses, of the City Zoning Ordinance, to construct a second single family dwelling at **16 Old High Bridge Road**. Map 56, Lot 2. Zoning District: RR2

Mr. Hurd read the public notice and asked for an abutters' roll call. Mr. McCrory read the roll.

Planner's Report

Mr. McCrory said there has been a history of use on the property but current conditions as we know them -there is a residence on the property with green houses. The proposal is to put a second residence for a family member to live on the property. The applicant has sufficient land in the zoning district to subdivide. The property owner opted for the variance option for the second residence. Typically, we don't allow two primary residences on one property.

Mr. McCrory said the Board had seen this type of request before on property on Chestnut Street.

Mrs. Pope said that the property already has a house and greenhouses on it and asked if the second house wouldn't actually be a third use? Mr. McCrory said yes. He said, specific to the history of that, he imagined that if the greenhouses had needed a permit, they would be permitted as an accessory commercial use in keeping with the agricultural/residential use. He said the proposed location for the house is shown on the site drawing in the Board's packet.

Ms. Taylor cautioned the Board not to reference an earlier decision regarding two residences on a single parcel, because each case must be decided on its own merits.

The Board had no further questions for Mr. McCrory.

Applicant's Presentation

Jason Grady, property owner, presented his case to the Board. Mr. Grady said he owns 9 acres, "lots of space", the business in the greenhouse, and he wants to put another house on the south end of the property, which is 5 open acres, for his mother.

Mr. Howe asked Mr. Grady why he isn't subdividing the property. Mr. Grady said the business could still expand throughout the 9 acres and the property and the house are still going to be his anyway. He said he wasn't going to give his mother 4 acres. He said the property and its buildings will remain under the same corporation. He said he bought the property two years ago, and doesn't know where the business will go. He said the entire 9 acres could be used for cut flowers. Mr. Howe asked, "If you were to subdivide, you would still be the owner, correct?" Mr. Grady replied yes. He said he didn't understand the need to subdivide if he was retaining full ownership.

Mr. Hurd said, “The stumbling block that I have is the hardship factor. You have more than enough property to do a subdivision, and you only need one acre for the subdivision.”

Mr. Grady said, “Then the state charges you...”

Mr. Hurd said, “Unfortunately the financial aspects are not a concern.” Mrs. Pope said, “We can’t take that into consideration.” Mr. Grady said, “Finances aren’t hardships?” Mr. Hurd and Mrs. Pope said no.

Mr. Grady said, “Still, when it’s subdivided and then I want to do something on the south 4 acres, what’s the process?” Mr. Hurd and Mrs. Pope asked why he wouldn’t just subdivide one acre. Mr. Grady asked, “In what kind of fashion? In some kind of jigsaw fashion?” Mr. Hurd said, “Whatever it takes to get you an acre and have a right-of-way for your driveway.”

Mr. Grady said, “I wouldn’t know. Just why would you want me to do that rather than...my very first thing with the variance that I’m going for...doesn’t the ordinance itself say ‘dwellings’, plural, were part of an RR2?” Mr. Hurd said, “One primary residential dwelling.” Mr. Grady said, “Permitted Uses, 22-146 (5) Single Family Dwellings.” He asked if he was misinterpreting the ordinance.

Mrs. Pope said the ordinance allows one dwelling per lot. She offered to find the actual language in the ordinance for him.

Mrs. Towle, said, “Can I make something really clear for you? The variance is based on the hardship. That’s what has to be proved in this discussion. I think it’s admirable that you are building this for your parents, but I haven’t heard the element of hardship here.”

Mr. Grady replied, “That’s fine. Again, before I address kind of what you’re saying – because you’re saying that there’s something in here... to get a variance I have to prove a hardship...I guess I’m questioning even before that, the premise of this variance, that does have plural in it. If you can explain it to me that’s fine, then I can try to overcome the hurdle.”

Mr. McCrory said, “It’s a “semantic question. When we look through the list of permitted uses, it does say ‘Single Family Dwellings’. It says, ‘manufactured homes are permitted...on individual lots. There is this general sense of language; when this was written there was the anticipation that there would be single family dwellings throughout the district. By interpretation there is one single family dwelling on a lot.”

Mr. Howe said, “And 9 acres would be considered one lot?” Mr. McCrory said “Yes, in this case.”

Mr. Grady accepted this interpretation. He then asked for confirmation, that if he created the 1-acre lot for his mother’s house, that he would still be able to use all 9 acres

for his business. The Board confirmed that he could. Mr. Hurd went on to describe how the lot could be configured.

Ms. Taylor said that Mr. Hurd should not be advising the applicant. She also said that any subdivided lot would need 50 feet of frontage on a public road (Class 5 or better). She said that was for the applicant to figure out if he so chose.

Mrs. Pope asked if the applicant could apply for a variance of the frontage requirement. Ms. Taylor said that creating a lot without frontage is rather like creating one's own hardship.

Mr. McCrory said there are no dimensional restrictions on the configuration of a lot except for the frontage requirement and the width of the lot where the building is.

Mr. Hurd suggested that the Board continue the hearing and give the applicant a chance to re-evaluate his project.

Mr. Grady said this seemed like "a lot of hoops to jump through" relative to "spirit of the law, and justice and public interest and things like that". He said this is why he wanted to get the variance rather than have to "do these things".

Mr. Grady said he had learned about a history of second residences on farmland if that would help. Mr. Hurd said that the property is not in the agricultural zone. Mr. Grady countered by stating that he uses his land for agricultural purposes.

Mr. McCrory said there are cases where housing is allowed for farm help. He said this proposal is not the same. He said the property is in agricultural use so it doesn't matter that it is zoned RR2. (There is a close relationship between the RR2 and the AR zones, however.) However, this housing proposal is not for agricultural workers.

Mr. Hurd asked for some history on the property and what the permit requirements were for the greenhouses. Ms. Taylor said she could look into it.

Mr. Dombroski asked if there was a limit on the number of uses one could have on their property if they are all permitted uses. Mr. Hurd said one dwelling is permitted, not two.

Mr. Dombroski then offered to distribute copies of a proposed subdivision.

Motion: To accept the subdivision plan into the record.

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

Vote:

Mr. Petrin said he did not agree to accept the plan. Mr. Hurd said three voted yes and two voted no. (It is unclear who voted how on this motion.)

Mr. Dombroski said he could do what was shown on the plan or he would end up creating three lots.

Ms. Taylor said this discussion had gone beyond the application that was before the Board.

Mr. Dombroski said this is a unique piece of land with its combination of flood plain and higher ground. He said it is unique compared to what the neighboring properties have. He thought this was a pertinent point in the zoning discussion.

Motion: To continue this application to the next Zoning Board meeting on the 1st Monday in May.

Made by: Ms. Carman **Second:** Mr. Hurd

Vote:

Mr. McCrory asked the Board what they were looking for specifically. Mr. Hurd said he wanted to know “what we did for Mr. Petrin when he came; how we determined what his use was; did we put it in as a business? Or did we put it in as an accessory use?” He said he thought it was for a retail business. Mrs. Pope agreed that it was a retail business for flowers.

At this point, Mr. Grady said he was withdrawing his application.

Ms. Carman withdrew her motion to continue the hearing. The Board accepted the withdrawal.

V. Communications

The Board received the April/May issue of *Town and City* magazine.

VI. Other Business

There was no other business to discuss.

VII. Adjournment

Motion: To adjourn the meeting

Made by: Mr. Petrin **Second:** Mr. Collins

Vote: Unanimous in favor

The meeting adjourned at 8:00 PM.

Respectfully submitted,

deForest Bearse