



Zoning Board of Adjustment Meeting  
Monday, April 4, 2016 7:00 PM  
City Hall Council Chambers

**MINUTES**  
**Approved 4/19/2016**

**Call to Order by the Chair**

**I. Attendance/Roll Call**

**Present & Participating:** Michael Hurd, Todd Russel, Carolyn Towle, Abigail Carman

**Absent:** Richard Collins, James Petrin

**City Staff:** Victoria Davis, UVLSRPC, standing in for Michael McCrory; Jane Taylor, City Solicitor

**Motion:** To recess the meeting to have a meeting with legal counsel.

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

**Vote:** Unanimous in favor

Mr. Hurd reconvened the meeting. He asked Ms. Carman to sit in for Mr. Petrin. Mr. Hurd informed each of the applicants that they have the right to ask for their application to be continued to the May 2<sup>nd</sup> meeting due to the lack of a five-member board.

**II. Minutes of Previous Meeting – March 7, 2016**

**Motion:** To accept the minutes of March 7<sup>th</sup>.

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

**Vote:** Unanimous in favor

**III. Old Business**

- A. (ZO 2015-00017) Ian & Tonia Gates, 8 Bessie Avenue** – seek a variance from Section 22-209, R1 District Yards, of the City Zoning Ordinance to permit a deck within the side yard at **8 Bessie Avenue**. Tax map 129, Lot 66. Zoning District R-1.

Mr. Hurd read the public notice.

Ms. Davis said that the survey that the board had requested had not been delivered. The applicant was not present at the meeting. After consulting with Attorney Taylor regarding the options for the Board, Mrs. Towle motioned to deny the application.

**Motion:** To deny application.

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

**Vote:** Unanimous in favor.

- B. (ZO 2015-00018) Ian & Tonia Gates, 8 Bessie Avenue** – seek a variance from Section 22-114, Nonconforming Structures, and Section 22-209, R1 District Yards, of the City Zoning Ordinance for an expansion of a nonconforming structure making it more nonconforming at 8 Bessie Avenue. Tax map 129, Lot 66. Zoning district R-1.

**Motion:** To deny the application for lack of information.

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

**Vote:** Unanimous in favor

- C. (ZO 2016-00003) Hal Wilkins, Winter Street Commons** – seeks a variance from Section 22-387, Table of Uses, of the City Zoning Ordinance, to construct two self-storage buildings at Winter Street Commons. Tax map 108, lot 71. Zoning District CR2.

Mr. Hurd read the public notice. Ms. Davis said that the applicant has requested that the hearing be continued to the May meeting. Ms. Taylor confirmed that there had been a death in the applicant's family, necessitating the request for a delay.

**Motion:** To continue to May 2<sup>nd</sup>.

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

**Vote:** Unanimous in favor

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

- A. (ZO 2016-00006) Wayne & Jean McCutcheon, 492 Washington Street** – seeking variances from Section 22-186, Permitted Uses, and from Section 22-188, Lot Size and Area, of the City Zoning Ordinance to create a Planned Residential Development of 66 condominium units on 18.2 acres at 492 Washington Street. Tax map 146, lot 2. Zoning District: RR2

Mr. Hurd read the public notice. Ms. Davis said that the application had been improperly noticed so it cannot be heard tonight. She said the applicant is hoping to do it again at the May meeting. The abutter who had not been properly noticed was at the meeting as they said they were not informed that the hearing would not be going forward at this meeting. Mr. Hurd said he thought that a special meeting was being called for April 19<sup>th</sup>. The special meeting had not been confirmed however. Attorney Taylor said she would get confirmation of the April 19<sup>th</sup> meeting. Ms. West, the abutter who was not properly noticed, asked if the other abutters had been notified that the hearing would not go forward. It was noted that the cancelation had been published in the Valley News, but there was no knowledge that the other abutters had been notified. Mr. West said that Mrs. West had been called at work by the City and asked if she would sign a waiver of the notice requirement. Attorney Taylor stated that a waiver can be signed by parties who have not been properly noticed and thereby allow a hearing to go forward, but they are under no obligation to do so. Mr. West said that if there was time to call someone at work there was time to mail them a letter notifying them that the hearing had been canceled. The board asked Attorney Taylor to get Mrs. West's mailing address to assure that she would be properly noticed for the next hearing.

Because the hearing was improperly warned, the application was not opened.

- B. **(ZO 2016-00007) Michael Lemieux, 519 Jarvis Hill Road** – seeks a Special Exception for a 76+ acre gravel pit at 149 Alden Road. Tax map 182-3. Zoning District: RR

Mr. Hurd read the public notice.

Ms. Davis said the application is incomplete due to a lack of information and inaccuracies in the information that was provided.

Mr. Hurd said the application would be continued to May 2<sup>nd</sup> once the appropriate paperwork had been filed.

**Motion:** To continue it to the May 2<sup>nd</sup> (meeting).

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

There was an exchange between the board and the audience members regarding who was responsible for the situation. Attorney Taylor said it was the applicant's responsibility and Mr. Hurd said it was an application that should not have been allowed to get this far – that the City should have caught the errors sooner.

**Vote on the Motion:** Mr. Russel, Mr. Hurd, Ms. Carman voted in favor; Mrs. Towle was opposed. Motion carries.

- C. **(ZO 2016-00008) Jeff & Sarah Barrette, 14 Bailey Ave** – seek a variance from Section 22-604(6), Signs in the Mixed Use District, of the City Zoning Ordinance to permit signage in excess of 42 SF for the Ink Factory at 13 Water Street. Tax map 120, Lot 24. Zoning District: MU.

Mr. Hurd read the public notice.

Mr. Russel said he does business with Mr. Barrette (the Ink Factory does shirts for Mr. Russel's business). He asked if the applicant or anyone else had a problem with him sitting in on the case. Mrs. Towle said she also had had shirts done by the Ink Factory. She said she thought she could make a fair and just decision on the case. There were no objections.

#### **Planner's Report**

Ms. Davis said Mr. Barrette is proposing to exceed the dimensions for signage that is currently allowed in this zoning district. The proposal is similar to what was approved for Red River. The City is working on a revised sign ordinance including the Mixed Use district. This proposal mimics what is currently on the Common Man Restaurant on Water Street.

#### **Applicant's Presentation**

Mr. Barrette presented a scaled drawing of the various building elevations showing the proposed signage. He said the current ordinance is inadequate for larger buildings.

**Motion:** To accept the scaled diagrams.

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

**Vote:** Unanimous in favor

## **Public Hearing Opened**

Ms. Davis read the abutters roll.

Mr. Barrette said he is looking for approval of 232 SF of signage. The current ordinance allows 16 SF without ZBA approval and up to 42 SF with a Special Exception permit. He said he has three frontages on this property. (Mrs. Towle noted that the application states 234 SF.) Mr. Russel clarified that the three frontages involve Water Street, Crescent Street and Broad Street. Mr. Barrette said there will be three businesses in the building – the Ink Factory, which will occupy 80% of the first floor; a second business (unidentified) that will occupy the remainder of the first floor area, and a mini-self-storage facility on the second floor accessed via Crescent Street.

Mr. Russel asked if the signage allowance is “per business” or “per building”. The answer was “per building”.

Mrs. Towle asked how the signs were going to be made and affixed to the building. Mr. Barrette replied that all but one will be made of wood (the round sign on the Broad Street side will be made of steel) and affixed to the building with lag bolts. The round sign will be affixed several inches from the building with LED lights on the back. (The lights will be pointed toward the building.) Most of the other signs will be lit from above with goose-neck lights. The long narrow “Ink Factory” sign on the Broad Street side will not have any lighting. There will be a hanging sign on the Crescent Street side where the former Reliable Paper had their sign. The signs on the west side of the building will mimic what is on the Common Man.

The board had no more questions of the applicant.

Mr. Hurd called for public comment. Attorney Taylor asked Mr. Barrette if his project required HDC approval. Mr. Barrette said he will be before the HDC on April 12<sup>th</sup>. He added that this project has applied for National Park Service tax credits and therefore must meet their standards. He said they have approved his sign proposal.

## **Public Hearing Closed**

There were no other comments. Mr. Hurd closed the hearing.

**Motion:** To grant a variance from section 22-604 to allow construction of multiple exterior signs totaling approximately 234 SF and located on non-frontage building facades at 13 Water Street with the following conditions:

1. This variance approval is valid for the signs and sign locations as depicted in the referenced variance application. Alteration to the size or location may be permitted only after review by the Zoning Administrator and determination of compliance with this variance and/or the Claremont City Code in effect at the time of the alteration.
2. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal Governments. This includes a Certificate of Appropriateness from the Claremont Historic District Commission.

3. Sign illumination shall comply with the Claremont City Code.
4. Any hanging signs shall be constructed in such a manner to prevent a safety hazard to passing vehicles or pedestrians.
5. This variance shall be recorded in the chain of title.

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

Mr. Russel said the current code is antiquated for larger buildings. He said granting the variance is in the interest of public safety and that the signs will not harm anyone's property values. Mrs. Towle said granting the variance does substantial justice with the goals of a 79E project. Mr. Hurd said the fact that the project must be approved by HDC and has already been approved by the Park Service speaks to the uniqueness of the building and its location. Mr. Russel said the hardship is the property's location. He said he was pleased to see the old buildings being brought back to life and that these signs will tie in with the Common Man. Mr. Hurd agreed.

**Vote on the Motion:** Unanimous in favor

- D. **(ZO 2016-00009) Leo Roy, 188 Old Newport Road** –seeks a variance from Section 22-167(2A), Special Exceptions, of the City Ordinance, to permit a temporary use: processing and recycling asphalt and construction material at 716 Washington Street. Tax map 136, lot 2. Zoning district: RR.

Mr. Hurd read the public notice and called for an abutter's roll call. Ms. Davis read the roll.

Attorney Taylor gave a brief background of the project. When the State redid that section of Route 11 they made arrangements with the landowner to dump the reclaimed asphalt on the landowner's property, which was a zoning violation. The landowner sought and received a variance as relief from the violation in 2009. The variance granted one year for the material to be removed from the property. The material was not removed from the property, but continued to sit there until this year when crushing activities started. The activity was brought to the City's attention and the landowner has come back to seek another variance. Mr. McCrory's staff report recommends setting a time limit on any variance issued by the board.

Mr. Hurd asked if this project really involves crushing in the same sense as rock crushing. Attorney Taylor deferred to the applicant. She said it is asphalt recycling – there is no new material involved.

Ms. Taylor reminded the board that all variances now carry a time limit automatically – activity allowed by the variance must be started within two years of the approval date or the variance expires. However, the Board can set its own limit for completion of activity under a variance.

#### **Applicant's Presentation**

Mr. Roy said that he was unable to do the recycling since the 2009 approval because of financial constraints. He is now in a position to get the project done and cleaned up.

Mr. Hurd asked if the recycled material was going to be stockpiled on the property. Mr. Roy said he wanted to retain some of the material for his own use. Mr. Hurd asked Ms. Taylor if there is a limitation on the volume of material that can be legally stockpiled. Ms. Taylor said that this application does not anticipate storage and storage of the material is not a permitted activity – hence the need for the variance (in addition to the fact that crushing will take place less than 300 feet from the nearest residence, in conflict with section 22-167). She added that the board could ask the applicant to come back to the board with a request to store a specific amount of material for constructing a driveway on the property. (The City could also handle this violation under code enforcement instead.) Mr. Hurd asked Mr. Roy how much material he thought he would need to store. Mr. Roy said he would like a few hundred yards. Mr. Hurd asked Mr. Roy if he would be willing to keep the pile out of view of neighbors and the road and to comply with setbacks. Mr. Roy said he thought he could do that.

Mrs. Towle said she wanted a definite number of yards that would be kept. Mr. Hurd said that could be a condition on the variance.

Mr. Russel reviewed the conditions of the 2009 variance with Mr. Roy. He asked if Mr. Roy had made a storm water and erosion control plan, to which Mr. Roy replied that the condition just required him to follow “best management practices”. Mr. Russel asked if a bond were posted as required in the conditions. (He did not get an answer to the question.) Mr. Roy said the state access permit has been completed.

The board discussed what additional information they felt they needed. They discussed the exact volume of what was to be stockpiled, how long it would be on the property and where it would be kept. Mrs. Towle said she would like to see a plan and that she was stuck on the word “removed”. The plan was for the materials to be removed and now he is asking for a temporary stockpile. She wanted to know how long “temporary” would be. She said she envisioned this as getting the material processed and then removing it. Ms. Carman read the last condition from the 2009 variance:

*“Upon completion of the processing, all asphalt-related material on site shall be removed with the exception of any material that is to be used on-site.”*

There still remained the question of how long Mr. Roy would have to complete the project and how much material would be left on-site for on-site use. Attorney Taylor said it was up to the board to decide those points and to clarify them in its decision. Mrs. Towle said it was a strong consideration that the original condition was never acted upon and that it should be completed within one year.

### **Public Hearing Closed**

Mr. Hurd closed the hearing when there were no more questions for the applicant.

Mr. Russel said he wanted to see a plan of when this project would be done, what’s going to happen to the material, and that the original conditions of the 2009 variance should be re-established with this decision. He is concerned about what the project will look like – the crushing, the selling, etc. He said he wanted a plan of hours of operation, how the selling operation will look, how much exactly will he stockpile for personal use, where will it be

stored, how will it be used, what the plan is for putting a road in down front, fixing the soils, and a definite timeframe. He suggested that Mr. Roy meet with the Planning Administrator to work out the plan. He said he had no problem with Mr. Roy keeping upwards of 400 CY of material for his own use and that a one-year time frame was reasonable. He did not want to see the material simply go from one pile to another. He asked to have the hearing continued until the board had a clearer plan of what was being proposed.

Mr. Hurd asked for a motion for a continuance to give Leo Roy thirty days to next month's meeting to bring to the board a plan to specify with the prior approval, with the new approval so that everything is spelled out.

Mr. Russel said because of the two parts of this process – the crushing and the processing, the plan should show the layout of exactly how far away it is (from property lines, nearest dwelling, etc.), the location of the crushing, the processing, the entrance to the property, the stockpile location, the location of the pile being sold, etc. Mr. Hurd reminded Mr. Russel that the hearing was closed and there could be no further discussion with the applicant.

**Motion:** To continue To May 2<sup>nd</sup> for more information and a plan.  
**Made by:** Mr. Russel                    **Second:** Ms. Carman

Mrs. Towle asked if the hearing could be continued to the special (unconfirmed) meeting on April 19<sup>th</sup>. Attorney Taylor said the motion would have to specify the date.

Mr. Russel agreed to amend his motion to include the April 19<sup>th</sup> date; Ms. Carman agreed.

**Motion:** To continue To April 19<sup>th</sup> or May 2<sup>nd</sup> for more information and a plan.  
**Made by:** Mr. Russel                    **Second:** Ms. Carman  
**Vote:** Unanimous in favor

- E. **(ZO 2016-00010) Jeremy Zullo, 86 Windy Hill Road** – seeks a variance from Sections 22-166 and 22-169 of the City Zoning Ordinance, Permitted Uses and Yards, to permit construction of a salt shed and a maintenance building on two lots on Caajm Road. Tax map 35, lots 2 & 2-1. Zoning district: RR.

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

### **Planner's Report**

Ms. Davis said there is a salt shed on the property that was built within a setback without a permit. It is not mentioned in the variance application and no reason is given in the application as to why a variance should be given.

Attorney Taylor reminded the board that there are two separate variances in this application – the unpermitted shed that was built within the setback in violation of the ordinance and a commercial use on the property which is not permitted in that zone - and they must be considered and voted on separately, although they could be discussed together.

Mrs. Towle asked Ms. Davis – to clarify her statement because the application states “maintenance building and salt shed”. Ms. Davis said the application gives does not address any of the variance criteria for the salt shed.

Mr. Hurd asked Mr. Zullo if he had any problem with a four-member board or with anyone on the board. Mr. Zullo said no.

### **Applicant’s Presentation**

Mr. Zullo said he didn’t know there were setback requirements for a private road. (He owns seven of the nine building lots.) He said he also didn’t realize he needed a permit to build the shed. He said he can’t apply for the permit for the shed until he has a variance. He said he has engaged a structural engineer and done all of the engineering for the salt shed. He said he built the salt shed close to the road because it would be shielded from view from Paddy Hollow Road by a group of trees. This way it will not be an eyesore to neighbors or abutting properties. Mr. Zullo said Caajm Road is private because it was never developed for the City to take over.

Attorney Taylor said the developer was unable to decide if he wanted the road to become a City street or not (at the time of the subdivision), so the process for a road to be taken over by the City was never completed. It remains a private road. Ms. Taylor also stated that setbacks must still be honored, even if the road is private.

Mr. Hurd asked if the road is a private road or a driveway. Ms. Taylor confirmed that it is a private road that is part of an approved subdivision. The subdivision developer did not dedicate the road so therefore it was not accepted as part of the subdivision approval and is not a City street.

Mrs. Towle said there is much information missing from the application and that she is worried about the salt shed and the topography of the land. Mr. Zullo said he had a set of engineered drawings for the board.

**Motion:** To accept the engineering plans.

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

**Vote:** Unanimous in favor

Mr. Zullo distributed the plans to the board. The board took a few moments to look at the plans. Mr. Zullo said he assumed the road was a driveway. He has done some paving, some seeding and some excavating on the property already.

Mrs. Towle asked Mr. Zullo if he had checked into additional environmental permitting. Mr. Zullo said yes, he had spoken to NHDES about an alteration of terrain permit. He said there had been a permit that was closed out in 2006. As he is within a 10-year window, he can apply for an amendment to that permit. Mrs. Towle said she mentioned it because of the maintenance building, trucks, oil, etc. Mr. Zullo said the building will have a floor drain with a silt/oil separation tank that will be pumped out when it is filled. He did not have documentation of these items for the board.

Mr. Russel asked if the yard around the maintenance building will be paved, and Mr. Zullo said no, he could not afford it at this time.

Mr. Hurd asked if the salt shed lot and the maintenance building lots are separate or annexed (merged). Mr. Zullo said they are still separate but that he planned to merge them. Mr. Hurd pointed out that the maintenance building is on the lot line between both lots and asked if the lots had to be merged to resolve the issue. Ms. Taylor said the use is what the board must look at and the use will be on both lots.

The width of the road and its right-of-way was not shown on the plan and was unknown by Mr. Zullo. The closest point of the salt shed to the pavement on the road is 25 ft. The board asked for the side setback of the salt shed, but it was not available. There are existing stone lined ditches and culverts from the original subdivision.

The apron in front of the salt shed has been paved. Mr. Zullo said the base of the shed is constructed of waste concrete blocks with a pole barn on top. It is 24 feet high at the front. The shed is sitting on ledge with no foundation – hence the need for the engineered plans. Mr. Hurd asked if Mr. Zullo could pick up the shed it move it back 30 feet or so and rotate it – that way the paved apron would still provide access and the building would be out of the setback. Mr. Zullo said the floor of the shed is paved.

The board explored ideas for resolving the road setback issue, but nothing definitive resulted.

Mr. Hurd said this project is located in a remote area.

Mrs. Towle commented on the lack of landscaping on the plan. Mr. Zullo said he was hoping to just put in grass, but he would do more if it is required.

Mrs. Towle asked if there was any way the salt shed could be moved. Mr. Zullo said it would be a huge cost – that he had months of “guys” working to put it up. Mrs. Towle said she understood, but wanted Mr. Zullo to know that the board could not consider cost. Mr. Russel said there is room to put the shed in a conforming location according to the plan submitted. He said he wanted more information about how the business would occupy the property before making a decision – layout of the building, the size and number of trucks, etc. Mr. Hurd said one of the criteria the board must consider is burden on City services and asked if the road could withstand the truck traffic from the business. Mr. Zullo said he already discussed this with Scott Sweet, who wanted to know how the business operates when the roads are posted. (This project has been seen by the Technical Review Committee.) Mr. Zullo said the trucks leave from and return to the property empty, so they actually weigh less than the oil trucks or the trash trucks. (Paddy Hollow Road is posted for 6 tons.) Mr. Zullo said an empty 10-wheeler is 26,000 lbs (13 tons). Mr. Hurd said he would like feedback from DPW on what might be possible (on how the trucks could access the property or be parked during the time the road is posted). Mr. Zullo was also asked to provide documentation from the NHDES on the environmental piece. Mr. Russel asked for information on the type of building he was planning to build, what would be in it, what he has for equipment now, a more detailed description of the business. Mr. Russel also asked

to visit the property. The board agreed to the idea. Mr. Hurd asked that Mr. Zullo check the deed of the subdivision to see if it contains any restrictions.

**Motion:** To continue to the May 2<sup>nd</sup> meeting with a site visit at 6PM that evening.

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

**Vote:** Unanimous in favor

Mr. Russel said he would not be present at the May 2<sup>nd</sup> meeting. It was agreed that the board will meet at City Hall for the site visit.

## V. Communications

## VI. Other Business

Attorney Taylor said House bill 1203, voting on variances, –has passed the House and has been introduced in the Senate.

Mrs. Towle mentioned the upcoming OEP Spring conference and the number of excellent presentations that will be offered.

## VII. Adjournment

**Motion:** To adjourn the meeting.

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

**Vote:** Unanimous in favor

**Respectfully submitted,**  
*deForest Bearse*