



Zoning Board of Adjustment Meeting
Monday, May 4, 2015 7:00 PM
City Hall Council Chambers

MINUTES
Approved 6/1/2015

I. Roll Call

Present: Richard Collins, Michael Hurd, David Nichols, Todd Russel, Carolyn Towle, Amy Richardson

Absent: Daniel Worcester

City Staff: Michael McCrory, Interim City Planner; Jane Taylor, City Solicitor

Chairman Hurd appointed Mrs. Towle to sit in for the vacant seat.

II. Review Public Meeting Minutes from April 6, 2015

Motion: To accept the minutes of April 6, 2015

Made by: Mr. Nichols **Second:** Mrs. Towle **Vote:** Unanimous in favor

III. Old Business

- **(ZO2014-00008) Diana Gauthier, 198 Bible Hill Road** – seeks a variance from Section 22-189 of the City Zoning Ordinance for construction of an addition to the house at **198 Bible Hill Road**. Tax Map: 166, Lot: 41. Zoning District: RR2. (cont. from Jan. 5, 2015)

A corrected survey has been submitted to the board as requested. The survey also shows how the deck would be modified so as to encroach no more than existing structure (4.1 feet from the road right-of-way). The variance request needed to be changed to reflect the altered dimensions of the deck.

The Board had no further questions of the applicant.

Mr. Collins asked to be recused from the proceedings. Mr. Hurd appointed Ms. Richardson to sit in for Mr. Collins.

Mr. Hurd re-opened the public hearing to take comment from Mrs. Gauthier. Mrs. Gauthier wanted clarification of the design changes shown on the plan. She had nothing further to add. There were no other public comments. Mr. Hurd closed the public hearing.

It was the consensus of the Board that the applicant has complied with all of its requests.

Motion: To grant a variance from Section 22-112 to allow construction of, or addition to, a building within 15 feet of the property line and 35 feet of the adjacent road centerline with the following conditions:

1. The completed porch shall not encroach any further toward the public right-of-way than as shown on the submitted plan, "Boundary Survey for John T. and Diana L. Gauthier, 198 Bible Hill Road, Claremont, NH" revised April 24, 2015.
2. New construction or additions to the existing residence or new structures shall not commence without prior written approval by the Claremont Zoning Administrator and/or Building Inspector, as appropriate.
3. The applicant shall obtain all necessary permits and approvals as determined by the Local, State and Federal governments.
4. Two (2) mylars in a form suitable for recording at the Sullivan County Registry of Deeds shall be provided to the Claremont Planning and Development Department.
5. This variance and referenced boundary survey shall be recorded in the chain of title.

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

Discussion of the Board:

- Safety is not an issue.
- The deck will not encroach any more than the existing house.
- The entire house is in the setback.
- The deck will increase property values in the area.
- The use is reasonable.

Vote: Unanimous in favor.

Motion: To grant a variance from Section 22-189, Rural Residential Two Yard Requirements, to allow construction of a porch within 50 feet of the public right-of-way with the following conditions:

1. The completed porch shall not encroach any further toward the public right-of-way than as shown on the submitted plan, "Boundary Survey for John T. and Diana L. Gauthier, 198 Bible Hill Road, Claremont, NH" revised April 24, 2015.
2. New construction or additions to the existing residence or new structures shall not commence without prior written approval by the Claremont Zoning Administrator and/or Building Inspector, as appropriate.
3. The applicant shall obtain all necessary permits and approvals as determined by the Local, State and Federal governments.
4. Two (2) mylars in a form suitable for recording at the Sullivan County Registry of Deeds shall be provided to the Claremont Planning and Development Department.
5. This variance and referenced boundary survey shall be recorded in the chain of title.

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

The consensus of the Board was that the application met the criteria.

Vote: unanimous in favor

Mrs. Towle thanked Mrs. Gauthier for her patience and cooperation.

IV. New Business

- **(ZO 2015-00006) Phillip & Cynthia Howard, 33-35 Chapel Grove Place** – seek a variance from Section 22-206 of the City Zoning Ordinance for operation of a commercial garage at **33-35 Chapel Grove Place**. Tax Map: 128, Lot: 9. Zoning District: R1

Mr. McCrory read the abutters roll. (Mr. McCrory noted that the mailing address of the property is 39 River Road.)

There were two houses already on this property when the garage was built in 1995. Since the garage was built, it has been taxed as a commercial structure. The City has received complaints about how the property has been maintained and operated. City staff advised the applicants to seek this variance. The use is above and beyond a use that would be considered accessory to a residential use, so the staff see it as a commercial use on a residential property.

Chairman Hurd asked for conflicts of interest on the Board and if the applicant objected to anyone on the Board. There were no conflicts and no objections.

Board discussion:

- the feasibility of dividing the lot into a commercial area and a residential area as shown on the plan submitted with the application
- How would the commercial area be described?
- How far away is the next zoning district?
- What is the effect of 20+ years of taxing the property as commercial?
- Fact – the building is being taxed as commercial, but not the land or the residential buildings
- Fact – the building received a variance for its location when it was built
- The building permit for the garage stated that the building was to be “an oversize garage”.
- The current use of the building is not allowed in the zone in which it is located
- An unpermitted use in a legal building

The applicant was invited to present his case to the board. Mr. Howard said he has been running various businesses that he owns out of the building for the last 20+ years. He now wanted to “straighten things out with the City”. Mr. Howard said he had been led to believe that he could run a business out of the garage when he got the permit to build it. He produced nine signed statements from neighbors in the area in support of the application.

Motion: To accept the letters submitted by the applicant as part of the application.

Made by: Mr. Hurd **Second:** Mr. Russel

Donald Limoges, a neighbor of the applicant, stated that he did not want his property value to decrease because of the condition of the applicant's property. He said the applicant has many junk cars and an old motor home on the property. He said the applicant cleans up the property in response to complaints only to let it get junky again. He wanted to know where the hardship is and called this proceeding "spot zoning".

Thomas LaCasse (not an abutter) spoke in support of the applicant.

Mrs. Towle asked for appoint of order – she asked who was sitting in for the vacant seat during this hearing. Mr. Hurd appointed Mrs. Towle to sit in.

Mrs. Howard contested Mr. Limoges' accusation that the property is not neatly kept.

The Board requested time to consult with legal council, which was granted. The Board took a short break.

When the meeting was reconvened, the Board asked for additional information on the history of the property. Mr. McCrory said that the Howards have been cited for the violation. They were offered the remedy of applying to the Board for this variance. He also stated that the zoning has never been commercial in that area.

Motion: To continue the hearing to next month:

- so as to assemble a complete history of the property;
- to provide the board with a copy of the original plan for the building, and
- to schedule a site visit to the property.

Made by: Mr. Russel

Second: Mrs. Towle

Vote: Unanimous in favor

- **(ZO 2015-00007) Donald & Amber Menard, 312 Old Newport Road** – seek a variance from Section 22-186 of the City Zoning Ordinance to establish an auto body/repair business at **312 Old Newport Road**. Tax Map: 137, Lot: 1. Zoning District: RR2

Mr. Hurd appointed Mrs. Towle to sit in the vacant seat for this hearing.

Mr. Hurd stated that the words "auto body" are to be removed from this application. (Commercial auto repair garage)

Mr. McCrory read the abutters roll.

Mr. McCrory explained that this property had been previously granted a special exception permit (1985) for auto body and repair. This application is for auto repair only (mechanical work, not exterior repairs). The applicant would also like to establish an inspection station and to be able to sell cars on the property, but not as a principal use of the site. In 2000 – 2003, the auto body shop was vacated. The property is now residential with a garage that is fitted up for commercial use. The owner wants to re-establish the auto repair portion of that use.

Mr. McCrory said that city staff is examining ways to change the zoning to address these types of home-based auto garages, but at the present the use is not allowed in the residential zone in which this property is located. Therefore a variance is more appropriate for this application than the special exception (home occupation). The home occupation standards have too many restrictions that don't apply to this kind of land use (the size of the garage, the need for outdoor storage, etc.)

Mr. Menard said he has been working on cars as a hobby, but now would like to turn it into a business. He said the only cars he would sell are those he buys and fixes. He said he would not have a used car lot and would not display the cars that are for sale near the road. (He referred to the layout on the site plan.)

Tom Dombroski presented the Board with a new plan dated April 23rd.

Motion: To accept the plan dated April 23rd as part of the application.

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

Mr. Dombroski said the new plan shows a screening area of evergreens in the back. He also pointed out the area where cars for sale would be displayed. The plan says there would be a maximum of five cars. He said there are no floor drains in the buildings.

There were no further comments. Mr. Hurd closed the public hearing.

Board discussion:

- There were no complaints from abutters.
- There was a permitted business on the property before.
- The buildings were built previously for business.
- There are other auto-related businesses in the neighborhood.

Motion: To grant a variance from Section 22-186, Permitted Uses in the RR2 Zoning District, to operate a commercial auto repair garage and inspection station on an existing residential property at 312 Old Newport Road 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. Such approvals include Site Plan Approval from the Claremont Planning Board.
2. The principal residence on the property shall be owner-occupied.
3. The approved use shall be conducted entirely within the existing garage.
4. The approved use shall employ no more than two persons who are not residents on the premises.
5. Screening shall be maintained to block the view of stored vehicles and equipment. There shall be no roadside display of vehicles or equipment.
6. The property shall be maintained in accordance with Claremont Code of Ordinances. Junk and salvage vehicles and equipment, waste, and associated

materials shall be removed from the premises and disposed off-site in a timely manner.

7. The approved use shall create no nuisance to neighboring properties or the public including, but not limited to odor, noise, glare, vibration, or safety hazard.
8. The sale of vehicles at this property shall be incidental and accessory to the approved use and no more than five (5) vehicles for sale at one time.
9. The approved use shall not be expanded or substantially changed without issuance of appropriate permits and approvals as determined by the Local, State and Federal governments at the time of the proposed expansion.
10. This variance shall be void if the approved use is abandoned or discontinued for at least twelve (12) consecutive months.
11. This variance shall be recorded in the chain of title.

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

Mr. Hurd asked Mr. Russel to amend his motion to include a twelfth condition addressing the storage of unregistered vehicles on the property.

Amendment to the Motion: Condition 12:

12. There shall not be more than ten (1) unregistered vehicles in the yard at any one time, including vehicles for sale or vehicles being worked on.

Made by: Mr. Russel

Discussion by the board:

- The public interest is being served (no abutters complaining).
- There was a business on this property before.
- The business is more clearly outlined.
- The number of vehicles in the yard is limited (by the conditions on the permit).
- The vehicle storage areas are limited.
- There are other permits that the applicant must obtain.
- Screening is being added.
- The property value will be maintained.
- It will not affect surrounding property values.
- Public safety will be unaffected.
- It's reasonable use of the property.
- The property does not use city water or sewer.
- There shouldn't be an increase in traffic to affect the abutters.

Vote: Unanimous in favor.

V. Correspondence

VI. Other

VII. Adjournment

Motion: To adjourn the meeting.

Made by: Mrs. Towle

Second: Mr. Russel

Vote: Unanimous in favor.

Respectfully submitted,
deForest Bearse
Resource Coordinator