



Zoning Board of Adjustment Meeting
Monday, June 2, 2014 at 7:00 p.m.
City Hall Council Chambers

MINUTES
Approved 8/4/2014

Chairman Hurd called the meeting to order at 7:00 PM.

I. Roll Call

Present: Michael Hurd (Chair), Daniel Worcester, Todd Russel, David Nichols

Absent: Carolyn G. Towle, Jim Hanson

City Staff: Michael McCrory, Interim City Planner

Chairman Hurd appointed Daniel Worcester to sit in for Jim Hanson for this meeting.

II. Review Public Meeting Minutes from May 5, 2014

Motion: To postpone review of the minutes of the May 5 meeting until they are complete.

Made by: Mr. Nichols

Second: Mr. Russel

Vote: Unanimous in favor

III. Old Business

There was no old business to discuss.

IV. New Business

- **(ZO2014-00002) Wayne McCutcheon, 548 Washington St, Claremont, NH** – seeks an Equitable Waiver of Dimensional Requirements from section 22-299 of the City Zoning Ordinance for a storage building at 548 Washington St, Tax Map: 134, Lot: 15, Zoning District: B2

City Solicitor, Jane Taylor, briefly explained the statutes regarding equitable waivers. Equitable waivers are intended to address situations where a good-faith effort was made to comply, but an error has occurred. The Board must find that the (1) no one realized that an error was occurring at the time of construction; (2) that there was an error made in calculations or interpretation of plans or some other similar type of error, etc.; (3) that the error does not lessen the value of the surrounding property; (4) that the cost of fixing the mistake outweighs any benefit that there would be to the public. All four criteria must be met for the Board to grant the waiver. The burden of proof is on the applicant.

Chairman Hurd called for an abutter's roll call. No abutters were present.

Chairman Hurd explained to the applicant that there were only four members present and asked if the applicant wished to continue this hearing until a full board was present, or to proceed with the members present this evening. The applicant stated that he wished to proceed.

Mr. McCrory stated that the building under review was constructed three years ago and is substantially complete. The error in its location was discovered during staff review for three new buildings on the lot. The building encroaches on the Roberts Hill Road setback.

Applicant, Wayne McCutcheon, stated that the building is thirty feet from the property line. The setback for this zone is fifty feet.

Owner, Val Somers, stated that the error was not made intentionally. He stated that none of the abutters are present to object to it.

There were no other comments or questions. Chairman Hurd closed the public hearing.

Discussion/Findings

1. Mr. McCrory stated that the setback line (along Roberts Hill Road) was not on the original (Phase 2) plans. It was added at Mr. McCrory's request during the staff review for Phase 3 of the project.
2. The application states that the error was not discovered until three years after the building was constructed.
3. The neighbors have not come forth to object.
4. In the opinion of the Board, the cost of removing the building would outweigh the benefit to the neighborhood.
5. The Board has allowed an adjacent building to be constructed within the Roberts Hill Road setback (via variance).

Motion: to approve the equitable waiver under RSA 674:33-a for 548 Washington Street, Claremont Properties, LLC, 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. This Equitable Waiver shall be recorded in the chain of title.

Made by: Mr. Hurd **Second:** Mr. Worcester **Vote:** Unanimous in favor.

- **(ZO2014-0005) Darlene Ball, 2 Slab City Rd** – seeks a Special Exception of the RR zoning ordinance to permit a commercial kitchen at 2 Slab City Rd. Tax Map: 73, Lot: 9, Zoning District RR.

Mr. McCrory stated that the applicant is seeking a Special Exception for a Home Occupation and not a Variance as stated on the agenda.

Chairman Hurd called for an abutter's roll call. No abutters were present.

Mr. McCrory stated:

- That the applicant produces a food product that is sold in area stores.
- The kitchen has been in operation without a permit since the 1980's after the Special Exception provision for Home Occupations was adopted.
- The Special Exception is sought to produce a clear record for the property.
- There is a commercial kitchen on the property.
- Deliveries are not an issue.

The applicant stated:

- That she had been inspected by Bob Riebard and Ken Staples and neither of them told her she needed any other permits.
- She did not have a written record of those inspections.
- That she needs to put in two more sinks, which her plumber is going to do next week.
- The water has been tested.
- She has talked to someone from DES who told Ms. Ball that her septic system is grandfathered.
- On-site parking is sufficient.
- The business operates two days a week.
- There are two part time employees.
- The area used by the kitchen is about 24 ft. x 36 ft.

Mr. Russel stated that the area used by the occupation must be expressed as a percentage of the total area of the home. This information was not included on the application. Mr. McCrory stated that he would look into this with the applicant to ensure that the project will be in compliance with the ordinance.

There were no other questions or comments. Chairman Hurd closed the public hearing.

Discussion/Findings

The consensus of the Board was:

- The business has been in existence for a long time.
- No one was present to complain about it.
- Traffic is not an issue.
- There is no burden on the city's facilities.
- The business has been inspected by the state.

Motion: To grant a Special Exception in accordance with section 22-167 to allow a home occupation on the property at 2 Slab City Road for the purpose of running a commercial kitchen 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. Ongoing operations of this home occupation shall abide by "Home Occupation" in Section 22-1 of the City Code.
3. The special exception approval is limited to the commercial kitchen home occupation in accordance with the operational parameters presented by the applicant. Expansion of the home occupation or substantial change in operations from the approved use shall require a permit from the Zoning Board of Adjustment.

Made by: Mr. Russel

Second: Mr. Nichols

Vote: Unanimous in favor.

V. Correspondence

The latest issue of *Town and City Magazine* has been received.

VI. Other

Chairman Hurd thanked the volunteers for their time.

VII. Adjournment

Motion: to adjourn the meeting.

Made by: Mr. Russel

Second: Mr. Nichols

Vote: Unanimous in favor.

The meeting adjourned at 7:43 PM.

Respectfully submitted,

deForest Bearse

Resource Coordinator