



Zoning Board of Adjustment Meeting  
Monday, June 6, 2016 7:00 PM  
City Hall Council Chambers

**MINUTES**  
**Approved 7/7/2016**

**Call to Order by the Chair**

**I. Attendance/Roll Call**

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

**Absent:**

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

**II. Minutes of Previous Meeting – May 2, 2016**

**Motion:** To accept the minutes of May 2, 2016 as written.

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

Mr. Russel asked that his name be struck from the list of attendees at the site visit on May 2<sup>nd</sup>.

**Vote:** Unanimous in favor

**III. Old Business**

**A. (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. (Cont. from 5/2/2016)

Mr. McCrory stated that the applicant had requested that the hearing be continued to the next meeting.

**Motion:** To continue the application to the next meeting.

**Made by:** Mrs. Pope      **Second:** Mrs. Towle

**Vote:** Unanimous in favor

**B. (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. (Cont. from 5/2/2016)

**Planner's Report**

Mr. McCrory stated that at the previous meeting the board had requested road specifications for Caajm Roosevelt and Paddy Hollow Roads. Mr. Sweet (DPW Director) had stated in a letter (dated 4/5/2016) that these roads are posted in the spring, and that so long as there was not a substantial increase in the truck traffic on them and if the heaviest equipment is kept off of them during posting (or a bond is posted), there shouldn't be a problem.

Mr. McCrory stated that there is sufficient evidence to indicate that Caajm Road had been built to City specifications. He said he could not confirm the specifications of the other roads along the possible routes to and from the Caajm Road site. Mr. McCrory surmised that any of the City-owned roads that could form a route to/from the Caajm Road property are also posted during the spring and Mr. Sweet's comments would likely apply to them as well.

The Board had no further questions for Mr. McCrory.

### **Applicant's Presentation**

Mrs. Pope asked if any of Mr. Zullo's trucks exceed the weight limit for the posted roads on his travelled routes. Mr. Zullo said yes, the two ten-wheelers exceed the limit, but he doesn't run them on the roads during the posted season. Mr. Zullo said he has alternative locations to store the trucks during that time.

The board had no further questions for Mr. Zullo.

### **Public Hearing Closed**

Mr. Hurd asked if anyone else wished to speak on the application. Mrs. Pope said some people had told her they thought the board was "dragging their heels" by having Mr. Zullo return to the board. She said she wanted to assure everyone that this was not the case; that the board was just trying to be thorough.

No one else wished to speak, so Mr. Hurd closed the public hearing.

Mr. Hurd said he had visited the site on his own as he was unable to attend the site visit with the board. He asked for confirmation that the site plan needs to go to the Planning Board.

Mr. McCrory said the planning board had seen the same plan that the zoning board had received. The planning board refrained from acting on the plan until the variances were decided by the zoning board. The planning board expressed satisfaction with the plan as it had been presented and had asked Mr. McCrory to share their sentiments with the zoning board.

**Variance from Section 22-166**, Permitted Uses in the RR Zoning District, to allow construction of a salt shed and maintenance building for a commercial use.

**Motion:** To grant the variance from section 22-166 to allow construction of a salt shed and maintenance building for a commercial use with the following conditions:

1. This approval is for the operation of a landscaping or similar business on the site as presented in this application. This variance is void if the approved use is abandoned for 12 consecutive months.
2. Any change in use or expansion of use will require zoning and Site Plan review. The property owner shall consult with the Zoning Administrator regarding change in use or expansion of use prior to commencing said change.
3. Tax Map 35, Lot 2 and Tax Map 35, Lot 2-1 shall be voluntarily merged.
4. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments. This includes:

- a. Site Plan Approval from the Claremont Planning Board.
- b. Necessary State and/or Federal permits for storm water management and erosion control or statements of compliance with said regulations.
- c. Documentation from NHDES Subsurface Systems Bureau amending the septic system design to commercial/maintenance garage use.

No work is permitted to commence until such plans and permits, or appropriate statements of compliance with state and federal regulations, are submitted and approved by the Planning and Development Department.

5. The City may inspect the site for compliance with applicable permits and statements of compliance at any time.
6. This variance shall be recorded in the chain of title.

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

**Discussion on the motion:**

Mr. Hurd said this is an expansion of a small business, something that the City needs. He said that this is a perfect location for the business and that in speaking to neighbors and others about the project, no one was objecting. He said it would help the tax base.

Mr. Russel said a lot of people had approached him in the previous two weeks and asked why the board was “dragging their feet”. He wanted to assure everyone that this was not the case, that the board was just being thorough. Mr. Russel agreed that it was the perfect location to allow for expansion, and said not only was no one objecting but that one of his neighbors had testified in favor of the application.

Mr. Hurd referenced the fact that Mr. Zullo owns most of the lots in the subdivision, that there is a swamp on the backside of the property to offer a buffer, and the other neighbors are in favor of the project. Merging of the lots will create a lot big enough for the proposed use. He said there shouldn't be a public safety issue as Caajm Road is better constructed (in his opinion) than the City roads leading to it.

Mr. Hurd said the hardship is the location of the property. Mr. Russel agreed.

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

**A variance from Section 22-169**, Yard Requirements in the RR Zoning District, to allow construction of a salt shed in the 50-foot setback to the Caajm Road right-of-way and front yard.

**Motion:** To approve the variance from Section 22-169, Yard Requirements in the RR Zoning District, to allow construction of a salt shed in the 50-foot setback to the Caajm Road right-of-way and front yard with the following conditions:

1 This approval is for the placement of structure within the setback and front yard as described in Section 22-169 of the Claremont City Code. The structure is depicted as “Existing Sand/Salt Shed” in the plan titled, “Site Plan Final Conditions, Jeremy R. Zullo, Caajm Road and Paddy Hollow Road, Claremont, New Hampshire,” dated May 2, 2016 and prepared by Paton Land Surveying of Springfield, Vermont.

2 This variance is void if the subject building is demolished and not replaced within 12 months of the demolition.

3 This variance shall be recorded in the chain of title.

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

**Discussion on the motion:** Mr. Russel said he dislikes that the board sees these after-the-fact applications all too often. He said in this case, the setback issue is from the right-of-way of a road the applicant owns. He said it won't impact other properties or decrease any property values. It is shielded from view at most angles

Mr. Hurd said there are no safety issues. The location of the salt shed is the only flat spot on the property to build on. Mr. Russel agreed that the chosen location was the only level area on the lot without blasting.

Mr. Russel and Mr. Hurd questioned possible environmental impacts arising from drainage from the salt shed. Mr. McCrory said staff had discussed storm water issues with the applicant several times and recommended that Mr. Zullo confer with DES. Drainage may be discussed during site plan review.

Mrs. Towle said that when an applicant presents an application, they are required to present the hardship to the board. She said that when she reviewed this application, she did not see any statement of hardship. Mr. Russel said that Mr. Zullo had told the board he had built the shed in that location because of the ledge and because it was the flattest location on the lot (without having to blast). Mr. Russel said that, to him, that was the hardship. Mr. Hurd said that blasting would make the project too costly; that there is no other land available in the commercial districts on which to build, and that the leach field has to be down slope of the buildings.

**Vote on the motion:** Petrin, Russel, Hurd and Collins voted in favor; Mrs. Towle voted against. Motion carries.

**C. (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 (Cont. from 5/2/2016)

Mr. Hurd read the public notice. Mr. Petrin recused himself. Mr. Hurd asked Mrs. Pope to sit in for Mr. Petrin for this hearing.

### **Planner's Report**

Mr. McCrory referenced a letter to the board from Mr. McCutcheon (dated May 27, 2016) regarding the traffic safety study that the board had requested at the previous meeting. Mr. McCutcheon has contracted with a consultant to do the study. Mr. McCrory reiterated that anything to do with access design and layout would typically be the purview of the Planning Board under site plan review.

### **Applicant's Presentation**

Mr. McCutcheon distributed a plan showing "Before" and "After" drawings of the access to his property.

**Motion:** To accept the drawing submitted by Mr. McCutcheon

**Made by:** Mr. Russel                      **Second:** Mr. Collins  
**Vote:** Unanimous in favor

Mrs. Pope repeated her request that when materials are being presented to the board, that there be enough copies for everyone to have their own (there were not enough copies).

Mrs. Towle stated that anything presented to the board during the hearing may cause the board to delay taking action because of insufficient time to absorb the new material. Mr. McCutcheon said he had received the drawings from his traffic safety engineer at the end of last week.

Mr. McCutcheon described the plan to the board. The plan shows the portion of Washington Street between the Garrow and West properties. The “Before” plan shows the existing conditions. The “After” plan shows the same stretch but with a 12-ft. wide left-turn lane for access to the McCutcheon property. Mr. McCutcheon has provided an easement across the front of the former Thibeault property to accommodate the necessary widening of the road for the turn lane. The easement would be conveyed to the City. There is a second easement across the front of the McCutcheon property for the same purpose. It, too, will be conveyed to the City as it is within the compact area. No additional property will be needed for the widening.

Mr. McCutcheon asked that further study of this matter be deferred to the Planning Board.

Mr. McCutcheon said additional catch basins will be installed on the northwest side of Washington Street. Washington Street is crowned in the center of the drainage, not the traveled way, so the drainage will be on the McCutcheon side.

There will be 14 duplexes and 60 apartment-style units plus the McCutcheon house for a total of 75 units in the condominium association. He said he wants to build the project in two phases – the 14 duplexes first (which will pay for the road) followed by the 60-unit building in the second phase. The utilities will be installed when the road is constructed. Washington Street will not have to be disturbed as the utility lines are already 10 feet onto the McCutcheon property. Electricity will also be underground. The board had no further questions.

**Motion:** To grant the variance from section 22-186, Permitted Uses, to develop a 74-unit Planned Residential Development at 492 Washington Street with the following conditions:

1. This variance shall permit construction of no more than 74 new residential units with a residential density no more than 1 unit per 10,000 square feet. Final computation of the proposed residential density shall be reviewed during Planning Board review of the development proposal.
2. The permitted residential development types include duplex and multifamily residential structures. New construction on the subject property shall otherwise conform to the provisions of the Claremont City Code.
3. This variance shall be recorded in the chain of title.

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

**Discussion on the motion:** Mr. Hurd said he thought this is a great use of property for something the City needs. The project will be owner-financed and the owners will be responsible for the property. He said Mr. McCutcheon had successfully resolved all issues raised by abutters at the first hearing. The project is in the public interest. The project should help surrounding

property values. The size of the property in this zoning district makes it unique.

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

**Motion:** To grant a variance from section 22-188, Lot Size and Area in the RR-2 District, to develop a 74-unit Planned Residential Development at 492 Washington Street with the following conditions:

1. This variance shall permit construction of no more than 74 new residential units with a residential density no more than 1 unit per 10,000 square feet. Final computation of the proposed residential density shall be reviewed during Planning Board review of the development proposal.
2. The permitted residential development types include duplex and multifamily residential structures. New construction on the subject property shall otherwise conform to the provisions of the Claremont City Code.
3. This variance shall be recorded in the chain of title.

**Made by:** Mrs. Pope **Second:** Mrs. Towle

**Discussion on the motion:** The board agreed that granting this variance would be in the public interest and that it would be consistent with the spirit of the ordinance. Mr. Russel said that if all 74 units were to be in duplexes, the land would be overcrowded and hence not in the spirit of the ordinance. But with the proposed layout, overcrowding will not result and the project complies with the spirit of the ordinance. The board agreed that the proposed use would not degrade surrounding property values. Substantial justice would be done and there would be no threat to public health, safety or welfare. The board agreed that denying the variance would result in unnecessary hardship to the applicant.

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

**D. (ZO 2016-00011) Gertrud Holl Revocable Trust, 28 Monument Hill, Springfield, VT-** seeks a variance from Section 22-533 of the City Zoning Ordinance to reduce the required number of parking spaces for a restaurant at **214 Washington Street**. Tax map 121, lot 46. Zoning District B2. (Cont. from 5/2/2016)

Mr. Petrin re-joined the board. Mr. Hurd recused himself because he has done work for the Plaza and did not want to appear to be in conflict. Mr. Russel said he had done work for Mr. Hurd's brother also at the Plaza and likewise recused himself. Mr. Russel asked Mrs. Towle to sit in his place.

**Motion:** To take a recess for legal consultation.

**Made by:** Mrs. Pope **Second:** Mrs. Towle

**Vote:** Unanimous in favor

When the board returned from the recess, Mrs. Towle read the public notice and asked to make a correction before proceeding further. Mrs. Towle said that at the last meeting, the board had asked for a site plan, meaning a plan showing the location of the existing structures and all of the parking spaces. Mrs. Towle asked that the abutters roll be called. Mr. McCrory read the roll.

### **Planner's Report**

Mr. McCrory said the applicant had provided some new information regarding the site layout – specifically how many spaces would the site accommodate and how many spaces the variance would require. For 100 seats in the restaurant, 25 spaces would be required. It is staff's understanding that the site cannot accommodate 25 spaces – hence the variance application. The applicant has provided three proposed layouts – (1) the plan stamped May 3, 2016 showing 23 spaces; (2) the plan stamped May 26, 2016 showing one-way circulation with vehicles going clockwise around the building and one-way exit at the southern end of the restaurant; (3) the plan stamped May 26 that does not have the southern exit point.

The Planning Department and DPW have discussed how these layouts might work. During these discussions a request was made for a new driveway/exit point at the south end of the building. Mr. McCrory said he would let the applicant expand on the details, but said there is a planning policy not to increase the number of curb cuts in that stretch of Washington Street. The Dunkin Donuts redevelopment reduced their number of curb cuts from three to one in compliance with this policy. Because this proposal calls for an increase in the number of curb cuts, DPW referred to the Traffic Advisory Committee. The Committee said that the single entrance/exit was acceptable. They prefer the “right-in-right-out” pattern for traffic safety. If the second access point was created, they wanted a right-turn exit only. Nothing has been finalized and no driveway permits have been issued.

The Planning Board has deferred its decision on this project until the zoning board has made its decision on the variance. The applicant has applied for a waiver for the requirement to submit a site plan.

Ms. Carman asked for clarification regarding the plans, the number of seats and the variance request. Mr. McCrory said he has been working with the presumption that there would be 100 seats.

Mrs. Pope said that drawing submitted are all based on the 1995 drawing that the board had asked to have updated.

The board had no further questions for Mr. McCrory.

### **Applicant's Presentation**

Ms. Holl said to disregard the first drawing. Ms. Holl said she wanted to go with the plan showing 24 spaces (the plan with the #2 on it) and then ask for a variance for just one space so she could have the 100 seat restaurant.

She disliked the right-in-right-out restriction; however, as she felt it would be bad for business.

She said she would need a variance of five feet in the front of the building (reducing a twenty-foot requirement to fifteen feet). Mrs. Towle said the variance application is for reducing the required number of parking spaces for a 100-seat restaurant – there is no mention of twenty feet. Ms. Holl said she thought she could just explain what she needed to the board.

Mr. McCrory said the plan with the #2 on it was received by the board's deadline, had been mailed in the board's packet, and was the plan that Ms. Holl would speak to.

Mrs. Towle asked for questions from the board.

Mrs. Pope said she had asked for a new drawing, prepared by a professional, showing existing structures and specific parking spots. Ms. Holl said she didn't want to spend a lot of money. She said that Wayne McCutcheon told her he couldn't get the parking – there was no parking. She said he was a professional and he could not come up with the parking and the curb cut. But she came up with it herself. She didn't understand why the board doesn't consider her a professional. Mrs. Towle said the board wanted the plans to be stamped with the seal of a professional.

Mr. Petrin asked where the dumpsters and grease box would go. Ms. Holl said they would take out the dumpsters and have the garbage picked up daily. She said the grease pit is in the basement.

Ms. Carman asked if the plan included the required 5-ft setback for parking spaces. Ms. Holl didn't know about the five-foot setback and said others in the neighborhood don't have it either. She said if she has to meet the setback, then she cannot get any parking. Mr. McCrory said relief could be sought from the setback requirement.

Ms. Holl said one of the two gas tanks shown on the plan would have to be removed to facilitate circulation around the site.

Mr. Petrin held up a 2016 Google Earth photo of the property and said it did not match the plan being presented. He pointed out the differences to Ms. Holl.

Ms. Holl said that if the board wouldn't accept her drawing then she was giving up. Mrs. Towle asked Ms. Holl to state for the record whether or not she was withdrawing her application for a variance. Ms. Holl said she would give the plan to the board for their review, that she would need the variance of the five feet and the variance for the parking. She said she didn't have the money to provide the plan to the board that they are asking for. She said she would consult with her brother about providing the plan – that it would be his decision.

Mrs. Towle asked to have the abutters speak.

Paul Bauer, attorney representing Claremont Plaza Associates (CPA), said his client requests that the board deny the variance request. He said the plan submitted by the applicant falls far short of what the board requested. It contains no measurements to show that the plans are realistic or even possible; no indication that there is sufficient space for ingress or egress; and no space shown for a dumpster or grease trap. The plan does not give the board a legally sufficient basis on which to grant a variance.

Mr. Bauer stated that the applicant has not addressed the five criteria for which a variance can be granted. He claimed that the Bricker variance conflicts with the ordinance because it will cause overcrowding of land. Without a professional plan there is no reliable basis for determining how many spaces BJ Brickers will be able to provide on their own property. He stated that the applicant claimed that they will be relying on abutters' parking to satisfy their own parking needs.

Mr. Bauer claimed that the variance can be expected to cause overcrowding on CPA's parking and other abutters' parking areas thereby negatively impacting CPA's tenants and customers.

Without knowing how many spaces Brickers will be short, the applicant is asking the board to suspend the parking requirements, which clearly violates the spirit of the ordinance.

Mr. Bauer further stated that the board must respect and uphold the property rights of others in addition to those of the applicant. He stated that this variance offers no clear gains to the public and that losses to CPA and its tenants would be certain; the status of private property rights would be put into question; CPA tenants would not have full access to the CPA parking area that is guaranteed under their leases; and customers would have difficulty parking in front of certain stores. He stated that this in turn causes a diminishing of surrounding property values.

Mr. Bauer claimed that there is no unnecessary hardship in this case; no special condition has been presented by the applicant; and that having a restaurant without sufficient parking is unreasonable, especially if that restaurant is relying on others' land to satisfy its own parking needs.

In conclusion, Mr. Bauer claimed that Brickers has not addressed or satisfied any of these factors, despite having two opportunities to do so and asked that the variance be denied at this meeting.

There were no questions from the board.

Debra Holl asked the board to clarify what the board wanted. Mrs. Towle repeated the board's request for a professionally done, up-to-date plan that shows all of the structures on the property and the location of all of the proposed parking spaces. It needs to be done by a design professional who will put their seal on it. Ms. (Debra) Holl agreed to provide the requested plan and asked the board to continue the hearing so she could get it done.

**Motion:** to continue the hearing to the next regularly scheduled meeting to give the applicant time to get the (professionally drawn) plan of the site showing existing structures and showing all of the parking spaces.

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

**Vote:** Unanimous in favor

**Motion:** For a recess for consultation with legal counsel.

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

**Vote:** Unanimous in favor

Mr. Hurd returned to the board and called the meeting back to order following the recess.

#### **IV.        New Business**

**A.        Ian Gates, 8 Bessie Avenue** – Request for the board to consider rehearing of variance applications #ZO2015-00017 and #ZO2015-00018, which were both denied on April 4, 2016. Tax map 129, lot 66. Zoning district: R1.

Mr. Hurd read the public notice. He stated for the record that this was not a public hearing.

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

Mr. McCrory stated that the applicant is requesting a rehearing of the denial of two variance applications. While this is not a public hearing, the board can question the applicant directly. He said that there appears to have been a communication issue involved in the timing of obtaining and

supplying the requested survey to the board.

City solicitor, Jane Taylor, instructed the board that a request for a rehearing is a two-part process. The first part would take place at this meeting where the board must determine whether or not it should grant the request for a rehearing. The board must review each variance individually based on the request made by the applicant. The board is not required to hear from the applicant, but the board has the right to do so. There are four items the board must determine before it can grant the request for the rehearing:

- Was the request for rehearing filed on time? (Ms. Taylor stated that it was.)
- Does the request set out specific grounds that support the claim that the decision was not lawful?
- Has the applicant set forth grounds that support a claim that the decision was unreasonable?
- Does the request put forward any new information that the board had not considered previously?

The first variance request was from section 22-114, Nonconforming Structure. The applicant was seeking to expand and substantially alter a garage that was already within the side yard.

The second variance was from section 22-209, R1 Zone District Yards, for expansion of a nonconforming structure. The applicant was seeking an after-the-fact variance for a deck that was built without permits and was less than four feet from the northerly boundary. The minimum setback is ten feet from the side yard; the house is approximately ten feet from the property boundary.

Mr. Hurd asked Mr. Gates if he had anything new to present. Mr. Gates said no, he did not. Mr. Gates said he had intended to tell the board at the April 4<sup>th</sup> meeting that he had not yet been able to secure the requested survey, but he was unable to attend the meeting due to a last minute scheduling conflict.

Mr. Hurd said the board had given Mr. Gates a 90-day deadline. March 23<sup>rd</sup> was the last communication between Mr. Gates and Mr. McCrory (via email). Mr. Gates said he didn't realize that the 90 days was a "deadline".

**Variance request from section 22-114:**

The board acknowledged that the request was filed on time. Mr. Hurd read the remaining three criteria and said he was stuck on #4, that there is nothing new to add.

Mr. Russel said he didn't think the board's decision was unreasonable as Mr. Gates had been given more than the 90 days to produce a survey and then he had not attended the last meeting with no contact with the board. The board did not have the information it needed to grant the variance. And now there is still nothing new.

Mr. Petrin said that if Mr. Gates had attended the April 4<sup>th</sup> meeting and let the board know that a survey had been scheduled but not yet completed, he (Mr. Petrin) might have felt differently.

Mrs. Towle said that the outcome would have been different if there had been any communication at all from the planning department. She said she can't remember the board ever giving an applicant

90 days to “get the job done”. She concurred with the previous statements.

Mr. Collins agreed with everything that had been said.

Ms. Taylor said an applicant cannot re-apply unless the application is substantially different. Mr. Hurd asked if Mr. Gates could re-apply if he had a survey. Ms. Taylor said the board could make a decision that it would be reasonable to grant a re-hearing and accept the survey; however it is unknown if the survey has been completed or not. The decision to re-hear the case must be decided on the basis of what is in front of the board at this time.

Mr. Gates said he had been in touch with surveyors, but he not had it (the survey) completed yet. He said he did not understand that the survey would be considered “new information”. Mr. Gates said he had had a surveyor come to the property and the surveyor was unable to locate the pins. That was when he had asked if the board would accept a boundary line agreement with his neighbor. Mr. Hurd said no, the board would not accept an agreement in place of a survey. Mr. Gates countered with reference to state statute where it allows for such agreements in cases where boundary markers cannot be located, a copy of which he had included with his request for a re-hearing. Mr. Hurd and Mrs. Pope said that only applies in the case of a boundary dispute and would not solve the issue at hand. Ms. Taylor said there need not be a dispute to resort to a boundary line agreement; however the board is correct in that it has no jurisdiction over boundary line agreements. Mrs. Pope added that such an agreement had not been made or recorded as of this meeting.

Mr. McCrory stated that what the board is looking for is evidence of the boundary. Regardless of how that is produced, a surveyor would have to be involved. The applicant is seeking to provide that information. Mrs. Towle said that evidence was not produced by the applicant before and that the burden is on the applicant.

Mr. McCrory said that the email evidence he had provided indicated that things were not completed and asked if it would be reasonable to give Mr. Gates a second chance to complete the communication.

Ms. Taylor said the board can only re-hear the original applications if Mr. Gates had new evidence to provide. If not, he could re-apply with a substantially different application (one in which the boundary line has been established by a surveyor).

Mrs. Pope asked what happens to the deck if the board denies the re-hearing. Ms. Taylor said it would be up to the City to request that he remove it (and the work done on the garage).

Mr. Russel said he would be willing to re-hear the application if Mr. Gates came back within 30 days with the new evidence. He would not be willing to go beyond the 30 days. Mr. McCrory said the date of the re-hearing would have to be negotiated given the availability of surveyors at this time of year. Ms. Carman agreed that the board could move forward if new information was provided, but she said Mr. Gates could not meet the four criteria the board must satisfy to grant the re-hearing with the information provided in his request. She said the “reasonable” criterion may be open to discussion, but that there was nothing unlawful about the board's decision to deny the applications. She said if the request fails to meet all of the criteria, then the request must be denied. She said it might work in Mr. Gates' favor by giving him time to gather the information he needs for a new application.

Mrs. Pope and Mr. Russel agreed that Mr. Gates did not meet all four of the criteria. Mrs. Pope agreed with Ms. Carman that he could re-apply once he has his boundary line determined.

Mr. Hurd asked if the City would be willing to hold off ordering removal of the structures while Mr. Gates gets the boundary line evidence and re-applies. Ms. Taylor said she could not speak for the City. She then reminded the board that getting the boundary line issue resolved was only one of the two issues before the board. The second issue was the deck that was constructed within the setback and was not a pre-existing nonconforming use. Mr. Hurd said that that also requires knowledge of the boundary line – just a different boundary line. That was why he wanted a survey of the property. Ms. Taylor said just supplying a survey would not be enough of a substantial difference to support a new application. The board said they thought she had said it would. Ms. Taylor said demonstration of “a boundary line agreement”, which was not what the board originally requested. An agreement only applies to the line in question – it is not the same as a survey. The board realized that three agreements would be needed to resolve all of the issues relating to the garage and the deck. She said the question remains – did the board act reasonably when it denied the variances? The board concurred that it had.

The board went back through each of the four criteria once again. The board unanimously agreed that the request was filed on time, but that it failed the remaining three criteria.

**Motion:** To deny the request to re-hear the variance from section 22-114, Nonconforming structure (to enlarge the garage that was already built within the setback).

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

**Vote:** Unanimous in favor

#### **Variance request from section 22-209, R1 Zone District Yards**

**Motion:** To deny the request to re-hear the variance from Section 22-209, R1 District Yards, of the City Zoning Ordinance, to permit construction of a deck within the required setbacks at 8 Bessie Avenue. Tax map 129, Lot 66. Zoning district R-1.

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

**Vote:** Unanimous in favor

#### **I. Communications**

The only communication received by the board was the newest issue of *Town and City* magazine.

#### **II. Other Business**

Ms. Taylor updated the board on the status of House bill 1203. She said the bill was killed by the Senate, so the changes will not be in effect for this year.

Mrs. Towle said she had asked at the last meeting to get something together for hardship training for the board. Ms. Taylor said they had been unable to schedule anything so in the board's packets there should have been an article by an attorney that Ms. Taylor herself relies upon for advice regarding the standards for variances. She said she hoped that would provide some assistance. Mr. Hurd said the board would still like additional training, perhaps after budget season.

The next meeting of the board is scheduled for July 5<sup>th</sup>. Mr. Hurd, Mr. Petrin and Mr. Collins said

they would be absent. Mrs. Towle said she may have to recuse from one of the upcoming applications. There was discussion about scheduling a different date for the July meeting, but no alternative date was set.

### **III. Adjournment**

**Motion:** To adjourn the meeting.

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

**Vote:** Unanimous in favor

The meeting adjourned at 9:32 PM.

**Respectfully submitted,**  
*deForest Bearse*