



Zoning Board of Adjustment Meeting
Monday, August 4, 2014 at 7:00 p.m.
City Hall Council Chambers

MINUTES
Approved 9/2/2014

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

I. Roll Call

Present: Michael Hurd (Chair), Daniel Worcester, David Nichols, Jim Hanson, Richard Collins

Absent: Todd Russel

City Staff: Michael McCrory, Interim City Planner

Chairman Hurd appointed Daniel Worcester to sit in for Todd Russel for this meeting.

II. Review Public Meeting Minutes from:

o **May 5, 2014**

Motion: To approve the minutes of May 5, 2014

Made by: Mr. Worcester **Second:** Mr. Hanson

Vote: Unanimous in favor

o **June 2, 2014**

Motion: To approve the minutes of June 2, 2014

Made by: Mr. Worcester **Second:** Mr. Hanson

Vote: Unanimous in favor

III. Old Business

There was no old business to discuss.

IV. New Business

Chairman Hurd chose to review the All Seasons application first, because it was less complicated than the Cumberland Farms application.

- o ***(ZO2014-00007) All Seasons Construction Corp., 329 River Rd** – seeks a variance from Section 22-320 of the City Zoning Ordinance for construction of a 1,750 sq. ft. addition in the rear setback at 329 River Rd. Tax Map: 163, Lot: 4, Zoning District II.

The abutters' roll was read.

This project is for expansion of an existing building that is currently being used as an office and warehouse facility in the Industrial-1 district. The applicant seeks a variance to expand the building within the rear setback.

Mr. McCrory stated that the proposed addition will not encroach any closer to the rear property boundary, but a portion of it will be within the rear setback. The expansion will enhance circulation on the site and limit encroachment on the front.

Chairman Hurd noted that Thomas Rock, Chair of the CDA, authorized the applicant to pursue this application (CDA owns the property).

Ted Chivers, President of All Seasons Construction, presented the application. All Seasons is the Agent for Fulling Mill Fly Fishing. Mr. Chivers explained that the southwest corner of the building is already in the setback. The addition will actually move away from the setback toward the south. The proposed location for the addition is the only logical place for it to go. It is needed for storage.

Approximately 20% of the proposed addition will be within the setback. The propane tanks that are currently near the southwest corner of the building will be relocated. There will be no change in the manner of offloading. There will be two new wall-mounted, cut-off light fixtures on the addition.

Dana Dodge, General Manager with Fulling Mill Fly Fishing stated that deliveries to the site will not change in the near future (UPS and US Mail deliveries only).

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

Board Discussion/Fact Finding

Mr. Hanson stated that the degree of encroachment becomes less toward the southern end of the addition and that there will be no obstruction of views or traffic issues.

Mr. Hurd said that it is the only logical place for the addition to go.

The addition is to an existing building.

There was no one at the hearing to object.

Mr. Hanson said that the project is located in a section of Town in which the Town encourages growth and that this is an expansion of an existing business.

If the addition were moved out of the rear setback (toward the east), it would cause the loss of part of the driveway and the parking area and the handicapped parking needs to be retained.

Mr. Worcester stated that the applicant would suffer more of a hardship if the variance was not granted.

Mr. Hurd said that there would be no impact on the surrounding properties and that the proposal is reasonable.

Motion: To approve the variance for 329 River Road, Fulling Mill Fly Fishing, Map 163, Lot 4 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 variance shall be recorded in the chain of title.

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

- ***(ZO2014-00006) Cumberland Farms, Inc., 121 & 111 Pleasant St, Claremont, NH** – seeks variances of the City Zoning Ordinance as follow for expansion of the gas station and convenience store at 121 Pleasant St:
 - (a) from Section 22-387 to permit A use not otherwise allowed by the zoning district;
 - (b) from Section 22-389 to permit placement of structures more than 15 ft. from the front property line;
 - (c) from Section 22-604(6)(a) to permit signs in excess of the number and size allowed in the MU zone.Tax Map: 131, Lot: 57 and Tax Map: 119, Lot: 307. Zoning District: MU.

The abutters' roll was called.

The applicant is looking to consolidate the lots at 121 and 111 Pleasant Street and redevelop them for Cumberland Farms. There is an existing Cumberland Farms at 121 Pleasant Street (at the corner of Pleasant and Summer). The size of the lot will double as will the convenience store and fueling station. The City determined that a variance is needed because the complete removal of the old building and construction of a new building on a new footprint cannot be considered simply an expansion of a nonconforming use. (Current zoning does not allow this type of use.)

Current city center/MU zoning also calls for a “build-to line” meaning that buildings must be no further than a prescribed distance away from the property lines. The “build-to line” is associated with the frontage of the property. The proposed project puts the canopy and the new building more than 15 feet from the front property line on Pleasant Street. Mr. McCrory explained the purpose of the build-to line as a means of promoting the pedestrian-oriented street front that is Pleasant Street.

Mr. McCrory stated that under current zoning, one 16 square foot (SF) sign, affixed to the building, and one 16 SF free-standing sign, no taller than 8 feet, are allowed in this district. The proposal calls for five signs on either the building or the canopy and one free-standing sign, well in excess of the allowed square footage.

Atty. F.X. Bruton and MFH Design Engineer, Chris Tamoula, presented the application to the Board. Cumberland Farms is looking to upgrade its facility at 121 Pleasant Street for both aesthetic and functional reasons. They want to increase safety for pedestrians on the lot by improving traffic flow. Adding more fuel dispensing pumps is necessary for financing the project. Moving the pumps further from the convenience stores relieves conflict between store customers and gas customers.

The design of the layout represents the culmination of discussions with the Planning & Development Department, the Technical Review Committee, the abutters, and the Planning Board. The minutes of the Planning Board meeting reflect the Planning Board's support of the variance the applicant would need to proceed.

Chairman Hurd asked about the alley-way behind the building. He was assured that the alley-way would never be used by vehicles other than in case of an emergency.

Signage on the front of the building above the entrance will be lit – “push-through lettering” (letters only). There will be signs on the front and both gable ends of the building. All of the signs have the same type of lighting. There will be two 11-SF signs on the island. The canopy signs shown on the Board's copy of the plans were incorrect. The signs will be on the “short sides” of the canopy, not the long sides as is shown on the plan. Mechanicals for the building will be on the back side of the building, screened by a fence. They are accessed from inside the building.

The applicant is willing to eliminate the sign on the Summer St. gable end of the building. They are also willing to reduce the size of the sign on the north-side gable end as well. The remaining signage is critical to the business.

There was discussion regarding the actual square footage of the signs and how the number was derived.

Mr. Hanson was concerned about the noise from the mechanicals and how it will affect the abutters to the rear of the building. According to the engineer, the fans will blow upward and not toward the abutting property. The mechanicals will also be set further into the building than they currently are. (The mechanicals are on the roof of the current building.)

Mr. Hurd stated he was concerned about street and site noise, not just the mechanicals and that the impact of noise and light are among the criteria the Board has to review. He also said he was concerned that the information in the allocation regarding the signs is different from what is now being discussed.

The applicant addressed the five variance criteria.

(1) Granting the variance would/would not be contrary to the public interest because:

- The plan design has been vetted by the Technical Review Committee and the Planning Board and is a good design.
- The requested signage is in line with what's in the area already.
- The building is located where the abutters asked it to be, thus replicating what is already on the site.

(2) The spirit of the ordinance would/would not be observed because:

- The intent of the ordinance is to prevent overcrowding of land and to promote the health, wealth and safety of Claremont. The applicant believes their plan demonstrates that.
- More green space will be created.
- The number of buildings currently on the two parcels will be reduced.
- Traffic flow will be better.

(3) Granting the variance would/would not do substantial justice because:

- Calls for a balance between good and harm.
- The site will be used as it is now.
- Aesthetics will be much improved.
- The design is based on what the abutters and the Planning Board would like to see.

(4) The values of the surrounding properties would/would not be diminished because:

- The site would be much cleaner and nicer.
- The current site is a 30-year old gas station that is no longer attractive.

(5) Unnecessary hardship:

- The lot will be unique because of its size (largest in area).
- This is expansion of an existing use.
- The zoning ordinance changed 12 months ago. Prior to that this expansion would have been allowed without the variances. To deny the variances would cause unnecessary hardship to the applicant.
- The proposed signage is consistent with what's already there.
- The requests are reasonable given the extent to which the applicant has worked with the abutters and the City.

Mr. Tamoula said the proposed pylon sign will be higher than what is there now.

Height of the building is 32' 10". Canopy height is 21-22 ft. The pylon sign will be a little higher than that. It will be comparable to the Mobil sign across the street.

Donna Montenegro, direct abutter, expressed her gratitude to both the Zoning Board and Cumberland Farms, whom she described as a “good neighbor”.

Ernest Montenegro, direct abutter, wondered if an additional sound barrier in front of the mechanicals would be possible or necessary.

Mr. McCrory urged the Board to consider continuing the hearing on the sign portion of the application because what was presented did not match what was in the plans that the Board received. He wanted the Board to be very clear on what the variance is addressing.

Chairman Hurd said the Board’s consideration would be for the free-standing sign, the signs on the canopy and building gables and the sign on the front of the building. (85 SF, 2 x 11 SF, 37 SF). (The current ordinance allows 16 SF for affixed signs and 16 SF for a free-standing sign.) Cumberland Farms is willing to submit an amended plan to the Board as a condition of approval of the variances. Attorney Taylor stated her concern that what was being discussed didn’t match the application.

There was much discussion regarding the plans submitted vs. the plans being discussed.

Attorney Taylor wanted the Board to understand that the variance from section 22-387, Table of Uses, is a variance of the allowed uses in this district rather than expansion of a nonconforming use because of the construction of an entirely new building and expansion of the use onto an adjacent lot.

Motion: To take a 5-minute recess.

Made by: Mr. Nichols

Second: Mr. Worcester

Vote: Unanimous

When the Board re-convened, Mr. Montenegro asked the Board to ensure that the gate to the alley-way between the back of the building and his property line be locked.

Jason Farrell, treasurer of the Way School Condominium Association, said that headlights from cars parked near the outside seating area will shine into the second floor condos in his building. He would like to see more trees and denser vegetation to provide screening. The applicant stated they would address landscaping and buffering under site plan review.

The public hearing was closed.

Variance from the Use Table to Allow a Use Not Otherwise Permitted (22-387)

Motion: To grant the variance under section (a) with the following conditions:

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 variance shall be recorded individually in the chain of title.
- (3) The applicant shall secure the fence behind the building.
- (4) A buffer should be established along the property line with the Way School Condominiums.
- (5) Every reasonable effort shall be made to minimize the noise impact on neighboring residential property.

Fact Finding

Mr. Hurd said that a hardship exists because there are currently businesses on both sites and the applicant cannot do what they want (to upgrade the business) because of the change in the zoning and the shape of the lot.

The upgrade will enhance the value of neighboring properties.

The proposed building is a nice building. Its appearance is compatible with the neighborhood architecture.

Mr. Hanson said that the proposed conditions will address any issues of the public interest.

Green space will be added. Two buildings will be replaced by one. The use is reasonable considering the history of the property and in light of abutters' concerns.

Denial of the variance would result in unnecessary hardship.

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

Variance from the 15-ft. build-to line for the new store and the canopy over the gas pumps (22-389)

Motion: To grant the variance to allow the building of the structure more than 15 feet from the property line with the standard 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 variance shall be recorded individually in the chain of title.

Fact Finding

Mr. Hurd said it is not possible to build on this lot and meet the 15-ft. build-to line because this is a gas station. The hardship is due to the new zoning, the shape of the lot and the location of the building.

Mr. Hanson said it is an existing gas station that is being modernized and surrounding property values will not be affected by this project. Granting the variance is reasonable when the business needs are weighed against abutters' concerns.

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

Variance to allow five affixed signs with a total area of 115.2 SF and one freestanding sign with a total area of 85.19 SF and 25 feet tall (22-604(6))

Motion: to accept the variance from Section 22-604(6)(a) of the zoning ordinance by allowing the proposed signage according to the plan CFGO 4.0 with a revision of 7/16/14 with the elimination of two end (building gable) signs 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 variance shall be recorded individually in the chain of title.
3. This variance will allow two signs mounted on the canopy as shown in plans CFGO 4.0 last revised 7/16/2014.
4. This variance approval allows one building-mounted sign as shown on the front elevation on drawing A3.1 last revised May 8, 2014.
5. The total area of the building-mounted sign shall not exceed 60 SF.
6. This variance approval allows one free-standing sign as shown on plan CFGO 13.0 dated 5/25/2014.

Fact Finding

Mr. Hurd said that branding and signage are a very important part of a business and certain signs are required.

Mr. Worcester stated that the applicant is willing to keep the signs at a minimum and the illumination will be subtle.

Mr. Hanson stated that the public interest will be served by eliminating the gable end signs, which will make the building more aesthetically pleasing to the neighborhood.

The applicant has demonstrated that the use is a reasonable one.

The amount of signage requested is not out of scale with the size of the project.

Mr. Hurd indicated that the sign issue does not impact public health.

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

V. Correspondence

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

VI. Other

Chairman Hurd asked for updated binders for all of the members and for the alternates. He also asked for a “refresher class” for updating everyone’s training.

VII. Adjournment

Motion: to adjourn the meeting.

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

The meeting adjourned at 9:15 PM.

Respectfully submitted,
deForest Bearse
 Resource Coordinator