



Zoning Board of Adjustment Meeting  
Monday, August 7, 2017 7:00 PM  
City Hall Council Chambers

**MINUTES**  
**Approved 10/2/2017**

**Call to Order by the Chair**

**I. Attendance/Roll Call**

**Present & Participating:** Richard Collins, Michael Hurd, James Petrin, Abigail Kier, Tracy Pope, Patrick Howe

**Absent:** Carolyn Towle

**City Staff:** Michael McCrory, City Planner

**II. Minutes of Previous Meeting - July 11, 2017**

**Motion:** To approve the minutes of July 11<sup>th</sup>.

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

**Vote:** Unanimous in favor

**III. Old Business**

- A. (ZO 2017-00012) Real Property Options LLC, 31 Pleasant Street:** Application for a variance from Sect. 22-389 of the City Zoning Ordinance to permit a 3<sup>rd</sup> residential unit at **14 Spruce Avenue**. Tax Map 119, Lot 316. Zoning District: CR2 (Cont. from 7/11/2017)

Mr. Hurd appointed Mr. Howe to sit in for Mrs. Towle for this hearing.

Mr. Hurd read the public notice. He said he and Mr. Collins and Mr. Petrin had viewed the subject property with Mr. McCrory. Mr. McCrory had written a summary of the notes from the visit for the board members to review.

Mr. McCrory said he had consulted with Assistant Fire Chief, Bryan Burr, at Mr. Hurd's request, regarding fire safety codes for the building. Mr. McCrory assured the board that there are uniform fire safety codes that are applied, but that such issues are essentially outside of the purview of the zoning ordinance and not an issue for this board. At issue in this application is whether adding a third dwelling unit will overcrowd the lot and whether the proposal meets the five variance criteria.

The board can consider whether there is sufficient area for the total parking needs, but specifics would be addressed by the Planning Board at a site plan review.

The occupancy history of the building is not known. What is known is that it is listed by the assessing department as a two-family house.

According to the applicant, the garage may be converted to secure storage and a coin-op laundry for the tenants.

The first-floor unit (Unit A) is 1570 SF (including stairwells). The upstairs unit (2<sup>nd</sup> and 3<sup>rd</sup> floors) is 2300 SF. The proposed studio unit would be 600-700 SF. (The zoning ordinance requires a minimum area of 550 SF for a dwelling unit.)

No abutters were present.

The buildings to the right and left of the subject property are both four units each.

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

**Motion:** To approve the application for a variance from Section 22-389 of the City Ordinance to waive the maximum density requirement to permit a 3-dwelling unit at 14 Spruce Avenue, Tax Map 119, Lot 316 with the conditions noted in the memo from city staff:

1. The Owner shall abide by information provided in the Variance Application for ZBA Case No. ZO 2017-00012 and testimony during the public hearing for said case.
2. This variance shall be recorded in the chain of title.

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

**Discussion**

The project will improve a building that “has seen better days” and make it usable in a neighborhood that is predominantly large, multi-family homes.

The spirit of the ordinance is to not overcrowd, but with the size of these lots and the size of these homes, there won’t be overcrowding, particularly with the square footage being allotted to each unit.

The value of the building will be increased because it will be done right.

It will have a higher assessed value when the project is done and bring in more income for the City.

It is a reasonable use of the property.

Granting the variance will do substantial justice.

**Vote:** Unanimous in favor

**IV. New Business**

- A. (ZO 2017-00015) Joseph Alva, Charlestown NH:** Application for a variance from Sect. 22-209, Yards, to permit construction of a front porch within the front setback at **5 Bessie Avenue**. Tax Map 129, Lot 77. Zoning District: R1.

Mr. Hurd asked Mrs. Pope to sit in for Mrs. Towle for this hearing.

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

Mr. McCrory said the porch was being constructed within the front setback. It was not discovered until the project had already begun. Mr. Alva was instructed to stop construction until the variance could be verified. Mr. Alva has been working with the department to provide information for the variance application, including photos of the porch and similar porches along the street.

The porch imposes on the front setback, but not the sides so there is no injury to the immediate neighbors. The dimensions show 21 feet 8 inches from the porch to the curb.

Mr. McCrory said he is considering whether the current setback requirements are appropriate for this type of neighborhood where the lots are small. However, the current ordinance is what must apply, which is 25 feet from the front property boundary (generally measured from the inner edge of the sidewalk).

There are a lot of front entry areas in this neighborhood and some front porches. Some of them are allowed under current zoning and some appear to be in violation but also appear to have been there for a while. The photos and drawing provided by the applicant show the porch in the context of the neighborhood. If the board finds, in its assessment of the neighborhood, that a variance is not necessary, the board can overrule the staff determination that a variance is required and dismiss the case.

Joseph Alva, applicant, said he feels the porch will increase the value of the property; that he didn't feel it endangers the public; and that it better matches the style of the houses around it. The house directly across the street from the project site has a covered deck on the front of the house (20.5 ft from the sidewalk); the house next to the project site has a covered entryway (21 ft from the sidewalk). The remaining properties have front steps of concrete measuring 4 ft x 6 ft.

There was no other public input, so Mr. Hurd closed the public hearing.

**Motion:** To approve the application for a variance from Section 22-209, Yards, in the Residential 1 zoning district to permit a roofed deck within the front yard setback at 5 Bessie Avenue, Tax Map 129, Lot 77 with the recommended conditions of approval:

1. The proposed structure shall be constructed substantially in accordance with the information provided by the applicant in the Application for a Variance for ZBA Case No. ZO 2017-00015 and testimony during the public hearing for said case.

2. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments. No work is permitted to commence until such permits, or appropriate statements of compliance with Local, State and Federal regulations, are submitted and approved by the Planning and Development Department.
3. This variance shall be recorded in the chain of title.

**Made by:** Mrs. Pope

**Second:** Mr. Petrin

**Board Discussion**

This will add value to the property. No one was present to contest the application. The house across the street and the house next door have similar structures. It is within the spirit of the ordinance as the deck won't impede on anything; it's in keeping with the character of other houses in the area. It will do substantial justice as it will add to the property value and the desirability of the home. It is a reasonable use. The special conditions in this instance is the "postage-sized lot". The lots in the neighborhood are consistently small. We are not overcrowding what we have. We are not going any closer than any of the neighbors. It is a reasonable request.

**Vote:** Unanimous in favor

- B. (ZO 2017-00016) Maple Avenue Real Estate LLC, 137 Maple Avenue:** Application for an equitable waiver of dimensional requirements to permit 1495 SF of encroachment of a parking lot onto the abutting property at **135 Maple Avenue**. Tax Map: 130, Lot 46. Zoning District: B2

Mr. Hurd asked Mrs. Pope to sit in for Mrs. Towle for this hearing.

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

1495 SF of the parking lot constructed for NFR encroaches onto the adjacent Baptist Church property. There are two ways the error could have been rectified – a lot line adjustment or an equitable waiver. The two parties chose the latter with a deeded easement.

Mr. McCrory said the staff felt the equitable waiver was preferable to requiring the owner to tear up the pavement.

The parking lot plan was presented to the Planning Board as a surveyed dimensioned plan for site plan approval. The contractor followed the approved site plan. Mr. McCrory said he understood that the contractor chose the wrong pin as the corner pin of the lot. The plan before the Board for this application shows the existing conditions, post construction. The correct pin was discovered after the pavement had been laid down.

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

**Motion:** To approve the Application for an Equitable Waiver from Sections 22-1 and 22-532 of the City Zoning Ordinance to maintain the parking lot at 137 Maple Avenue (Tax Map 120, Lot 86).

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

**Discussion**

The violation was not discovered until the majority of the project was done. It appears to have been a good faith error. The violation won't diminish the value of surrounding properties. The amount of land affected is minimal. The cost of correcting the error outweighs any benefit to the public.

**Vote:** Unanimous in favor

**V. Communications**

Current *Town and City* magazine; decisions made by the board at the previous meeting

**VI. Other Business**

Mr. McCrory asked the board to suggest ideas for small training sessions. Mr. Hurd suggested re-visiting zoning setbacks in the denser neighborhoods.

Mrs. Pope asked about the 8 Bessie Avenue issue. Mr. McCrory said he had reached out to the owner on several occasions with no response and that the matter was at the top of his to-do list.

Mrs. Kier asked if the City was planning to send any board members to the NHMA annual conference on November 15<sup>th</sup> and 16<sup>th</sup> this year. Mr. McCrory said it is something board members can always do. There is a line item in the budget to fund training at these conferences.

Mr. Petrin asked what had been done about the Hunter property off of Jarvis Hill Road. Mr. McCrory did not have any current information on it. The status of ownership is unclear (City-owned vs private). The consensus of the board was that there exists a violation that has persisted for too long and needs to be addressed. Mr. McCrory said that the City is following its process and following up on the complaints. He said the department has only recently been given the authorization to issue citations for violations and to work with the circuit court. These have been effective in addressing recent violations.

**VII. Adjournment**

**Motion:** To adjourn the meeting

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

**Vote:** Unanimous in favor

Respectfully submitted,  
*deForest Bearse*