



Zoning Board of Adjustment Meeting  
Tuesday, September 8, 2015 7:00 PM  
City Hall Council Chambers

**MINUTES**  
**Approved 10/5/2015**

- I. Call to Order by the Chair**
- II. Attendance/Roll Call**  
**Present & Participating:** Richard Collins, Michael Hurd, David Nichols, Todd Russel, James Petrin, Carolyn Towle, Amy Richardson  
**Absent:** Daniel Worcester  
**City Staff:** Michael McCrory, Interim City Planner
- III. Election of Officers**  
**Motion:** To appoint Mr. Hurd as chair of the board.  
**Made by:** Mr. Russel      **Second:** Mr. Nichols      **Vote:** Unanimous in favor
- Motion:** To appoint Mr. Nichols as vice-chair of the Board.  
**Made by:** Mrs. Towle      **Second:** Mr. Collins      **Vote:** Collins, Hurd, Nichols, Petrin, and Towle voted in favor; Mr. Russel opposed. Motion carries.
- IV. Minutes of Previous Meeting – June 1, 2015**  
**Motion:** To accept the minutes.  
**Made by:** Mr. Nichols      **Second:** Mrs. Towle      **Vote:** Collins, Nichols, Russel, Towle and Richardson in favor; Hurd and Petrin abstaining. Motion carries.
- V. Old Business**  
None.
- VI. New Business**  
a. **(ZO 2015-00010) Fernand & Marguerite Cyr, 2 First Street** – seek a variance from Sections 22-296 & 301 of the City Zoning Ordinance to permit additional dwelling units at **2 First Street**. Tax Map: 121, Lot: 50. Zoning District: B2

Preliminary Matters

Mr. Hurd read aloud the name of the applicant, the type of appeal, and the property/issue that is the subject of the appeal.

Mr. McCrory read the abutters roll.

### Order of Presentation

#### **City staff**

Mr. McCrory stated that earlier this year the Zoning Administrator determined that there were too many dwelling units on this property. There had been an earlier approval for a duplex for this building, but upon review of the property the City found that there are four units on the site. The applicant wishes to keep the four units and thus is asking for a variance. The zoning ordinance allows for 10,000 SF per dwelling unit in this district; the site itself is 10,000 SF. The site is in the B-2 district; it was formerly a commercial site, later converted to residential, which evolved into a 4-unit multi-family. The applicant owns an adjacent lot at 4 First Street. Initially the applicant had proposed merging the two lots, but has since desired to maintain the two lots as separate entities (after the staff memo was written and distributed to the Board). This has an effect on the variance request. Recommended “Condition of Approval #2” would need to be eliminated if the Board approves the request. [Note – the variance requested is from the lot density requirements.]

The Board had no questions for Mr. McCrory.

#### **Applicant**

Marguerite Cyr stepped to the podium. She did not make any presentation, but said she was available for questions.

Mr. Hurd asked how long there had been 4 units in the building. Ms. Cyr stated that they had begun work on it in “the early 2000’s”.

She stated that it is their wish to not merge the lots at this time.

Mr. Hurd asked for the location of the parking for all four units. Ms. Cyr said that at this time they have separate parking for “the side unit”, but that they have “plenty of parking” on the paved pad directly in front of the main structure. She said the “majority of the tenants” park there. She said there is space for more than six (vehicles) on the paved pad alone.

Ms. Cyr said there is one 2-bedroom unit; the other three are 1-bedroom.

Mr. McCrory stated that the zoning ordinance requires 1 ½ parking spaces per dwelling unit; not per bedroom. Thus six spaces would be required for the four units.

Ms. Cyr said there is “opportunity” for six parking spaces on Lot 1 without making any changes. She said they would be willing to stripe the spaces on the pavement to ensure all six spaces could fit on the paved pad.

The Board had no more questions at this point.

Mr. Hurd asked for an indication of how long this property had been taxed at this number of units. Attorney Taylor stated that the tax card indicates three units. She said there are no building permits listed on the tax card. The card shows the property was measured and listed

in 2006 and 2010, each time as a 3-family. It is unknown when the property went from a duplex to a three-family.

Mr. Russel asked Ms. Cyr for a timeline of when the building went from being a two-family to a four-family “with no permitting along the way”.

Ms. Cyr admitted that no building permits were sought for the work that was done. Mr. Russel asked what year did it become a 2-bedroom? Ms. Cyr said she doesn’t have exact dates because it was a long process - because “we were taking where we moved into – that was originally a business – that took – I couldn’t even tell you how long it took to turn it into a living space.” She said she didn’t know when she originally applied for the permit or when she actually moved in – she estimated early 2000’s. She guessed that about four years after they moved in they converted the building to a three-family (possibly 2004-05). She guessed that the last unit was finished around 2010. Mrs. Towle asked how long the fourth unit had been occupied. Ms. Cyr said, “Initially when we did that it was our - we had the whole one side. So it wasn’t a separate unit. And then we put a kitchen in and we actually had a tenant who came to us and asked us if we had a place for them to live.”

Ms. Cyr said that the fire department inspected the property for the first time in June. The assessors and building inspector have also been through the property.

Mr. Cyr said four years ago the building inspector and the fire department went through the building because a pellet boiler system had been put in. This was shortly after the building had been converted to a four-family. [A permit was obtained for the pellet boiler.]

Mr. Russel asked Mr. McCrory if there was any documentation from the building inspector. Mr. McCrory said he didn’t have the property file with him, but that he remembered seeing documentation regarding the pellet boiler. He said the planning department was notified by the fire department of the existence of an unpermitted dwelling unit following their walk-through in June. This action led to the variance request tonight. He said he believed that there were other building permits on file, but he did not remember specifically what they were. He said there are efforts to get the property up to code, particularly fire code.

### **Abutters**

No comments were heard or received from abutting property owners.

### **Other members of the public**

Eric Curtis came to the podium. He stated that he has lived in one of the units for “a couple of years”. He said there is ample parking and the property is very well maintained – “the grass is always mowed, the snow is plowed in the winter, if anything breaks inside, Fred is always good about fixing it right away. It’s a nice place to live.”

**Applicant rebuttal**

None.

**Other rebuttals**

None.

As there were no other comments, the Chair closed the public hearing.

*(Discussion amongst the Board)*

Mr. Hurd said the property is nicely kept. He said he thinks they have done “a nice job” with the building.

Mr. McCrory stated that the building footprint is approximately 3600 SF; the lot is 10,000 SF, so the building covers 36% of the lot. The second lot is also 10,000 SF with a garage on it. 40,000 SF of land is needed for this building to comply with the B-2 zoning requirements.

**Motion:** To re-open the public hearing.

**Made by:** Mrs. Towle

**Second:** Mr. Nichols

**Vote:**

Mr. Hurd clarified that only the five regular members of the Board would be voting on the application. He stated that alternate members were welcome to participate in the discussions.

At the request of the applicant, the Board re-opened the public hearing by consensus.

Mr. Cyr returned to the podium to say that he stores 20 tons of wood pellets on the second lot in a plastic storage structure.

Mr. Hurd said combining the two lots would provide the same density for the four units as the one lot provided for the two units.

Mr. and Mrs. Cyr agreed to merging the parcels if the variance was approved,

Mr. Hurd closed the public hearing again.

**Motion:** To grant the variance with the conditions:

1. The applicant shall obtain Site Plan Approval for a four-unit multifamily building within one year of the date of this approval. Failure to obtain Site Plan Approval within one year will make this decision void.
2. The applicant shall voluntarily merge 2 & 4 First Street (Map 121, Lots 50 & 51).
3. The applicant shall obtain all necessary permits and approvals as determined by the Local, State and Federal governments.
4. This variance shall be recorded in the chain of title.

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

### *Discussion*

Findings of Fact on each criterion

Mr. Hurd stated that if the lots were merged, there would be the same density ratio and the public interest would be served because there would be no increase in density. There does not appear that there would be any change in the property value. There are no abutters present, so it does not appear that the neighbors are unhappy. The building is not in violation of codes, except for needing CO detectors.

Ms. Richardson asked what happens to the building if the variance is denied and whether it meets the community's housing needs.

Ms. Towle indicated that by putting the 2 lots together it brings it closer to meeting the spirit of the ordinance.

Mr. Russel stated that the lot coverage/density requirement is to prevent overcrowding, so merger of the 2 lots helps meet the spirit of the ordinance by not making it more dense.

Mr. Russel also stated that he did not think the use was necessarily reasonable, as there is no indication that the building was purchased with the intent to use it as a 4-family building. He also said he would like to see more indication of a hardship and that the issue could have been avoided if the owners had gone through the proper permitting process.

The Board members discussed that while there might be some financial hardship to the owners to take out one or more dwelling units, but itself, that was not enough to meet the requirements of an unnecessary hardship.

The Board also discussed that the property has City water and sewer and, as it is in the B-2 district, it could be used for something else.

After further discussion regarding the size of the units and the fact that one unit is owner occupied, Mr. Hurd suggested the motion be amended to add a condition that one of the dwelling units must be owner occupied.

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**Amendment to the motion:** Add condition #5 to read, “The building is to be owner-occupied.”

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

Ms. Towle indicated that she still was struggling to find the hardship. There was consensus that criteria #5 – unnecessary hardship – had not been met.

**Vote on the amended motion:** All were opposed to the motion. The motion fails.

**Motion:** To take a five minute recess.

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

- b. **(ZO 2015-00012) Jodi Bailey, 394 Hanover Street** – seeks a variance from Sections 22-169 and 22-469 of the City Zoning Ordinance to permit construction of a 26 ft x 28 ft garage within the front setback at **394 Hanover Street**. Tax Map: 60, Lot: 10. Zoning District: RR.

Preliminary Matters

Mr. Hurd read aloud the name of the applicant, the type of appeal, and the property/issue that is the subject of the appeal. Mr. Hurd asked if the hearing should be re-warned because the public notice said the variance was for building within the front setback and said nothing about building within the streambank setback (even though both ordinance citations are given). Attorney Taylor stated that the notice was sufficient in her opinion.

The Chair has the roll of abutters called and determines for the record if any are present. Mr. McCrory read the abutters roll.

Order of Presentation

□ **City staff**

Mr. McCrory stated that the applicant is proposing to put a garage on the property. He said the existing house and accessory structures are all within the 50-ft. front setback. He reminded the Board that this applicant had recently received a variance from the Board to rebuild the front entrance to the house and to add a carport to the side of the house – all within the front setback. The house sits between the road and a brook that bisects the property. The neighboring property is also close to the road. He said that, although these

properties are in the RR zone, they don't "look like RR properties." There is also a 50-ft setback for structures from the stream bank. The stream does not have a mapped flood zone. According to FEMA and the FIRMs, this stream is not at risk of overflowing its banks.

According to the site plan submitted with the application, the garage would be 15 feet from the road right-of-way; the adjacent house is 12 feet from the right-of-way. The garage would be 15 feet from the brook. Mr. McCrory clarified that two variances are need for this project – one from the front setback requirement and one from the stream bank setback. Mr. Russel asked if the setbacks for the garage could be increased if the garage was oriented differently. Mr. McCrory said the applicant would speak to that.

**Applicant**

Jody and Bob Bailey stepped to the podium. They stated that the driveway will not be changed. They confirmed the two 15-ft. setbacks for the garage. Mr. Bailey said he needs the garage to be oriented the way it is shown on the plan so he can back trailers into the garage off the existing driveway without having to come in off the highway and without being too close to the house. He will be building it with a 10 ft. x 9 ft. door. It will have a trussed roof. The garage will match the house – same siding, same overhangs, and same roof pitch.

The Board questioned the actual setback distances if the garage has a 2-ft. overhang all the way around. Mr. McCrory quoted from the City Ordinance, "Setback shall mean the distance from the public or private right-of-way or lot line to the wall of that part of the structure. It does not include ... roof overhangs."

**Abutters**

Mr. McCrory read a letter from Robert Porter that was addressed to the Board. Mr. Porter abuts the Bailey property on the south side. He acknowledged the difficulties posed by the nature of the Bailey lot and stated that he had no objections to the project. He urged the Board to approve it.

**Other members of the public**

Mr. Hurd asked if anyone else wished to speak for or against the project. No one spoke, so the hearing was closed.

**Applicant rebuttal**

None.

**Other rebuttals**

None.

*Discussion*

*Decision*

**Motion:** That we grant the variance for Jodi Bailey, 394 Hanover Street, with conditions as presented:

Conditions of approval:

1. The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments.
2. The applicant shall obtain and receive approval for all necessary permits as determined by the City of Claremont Planning and Development Department. All building permits applied for from the Planning and Development Department will be reviewed under the Building/Fire Codes in place at time of application regardless of the date of this approval.
3. This variance shall be recorded in the chain of title.

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

Mr. Hurd said he had walked the property and had seen that it was “a tight situation” that would make it difficult to “put anything there.” He said the brook is the hardship and the applicant has demonstrated that there is no other place to build the garage. He stated that the purpose is reasonable and that the building will increase the property value.

Ms. Towle said the proposal was in the public interest because it would improve the property and not have a negative impact.

Mr. Russel also indicated that the impact would be small as the building would be no closer to the road than the neighboring house, even though it will be closer to the road than the house on the property. Also, it will not require an additional driveway.

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

**Motion:** To take a five-minute break.

**Made by:** Mr. Russel

**Second:** Mr. Hurd

**Vote:** Unanimous in favor

**The Board took a recess for legal consultation.**

- c. **(ZO 2015-00013) Jill Paulson, 6 Martha Street** – seeks variance from Section 22-206 of the city Zoning Ordinance to allow keeping of livestock at **27 Ainsworth Road**. Tax Map 128, Lot 6. Zoning District: R1.

*Preliminary Matters*

- Mr. Hurd read aloud the name of the applicant, the type of appeal, and the property or issue that is the subject of the appeal.
- The Chair had the roll of abutters called and determined for the record if any are present. Mr. McCrory read the abutters roll.

#### *Order of Presentation*

- **City staff**

Mr. McCrory stated that the applicant wishes to keep livestock for non-commercial use. The property is in the R1 zone. According to the zoning ordinance, keeping of livestock is limited to RR and AR zones. The applicant was thus directed to seek a variance. It is a 2-acre property. It abuts rural residential zones.

Mr. McCrory asked to change condition #1 in the *Recommended Conditions of Approval* to read: *Keeping of livestock shall be in accordance with NH Department of Agriculture Best Management Practices.*

Mr. McCrory said the practices provide guidelines on the optimum density of animals for a particular property.

Mr. Hurd confirmed that Brenda Vigneault, current owner of the property, had given written permission for Ms. Paulson to pursue a variance for the purpose of keeping livestock on the property at 27 Ainsworth Road and authorized Ms. Paulson to act as agent for Ms. Vigneault for the application. It is understood that Ms. Paulson intends to purchase the property at a later date. Ms. Paulson was present at the hearing.

- **Applicant**

Ms. Paulson said she has two pet goats, originally purchased for her daughters 5 years ago as a 4-H project. She liked the property at 27 Ainsworth Road because of its size and because it has 20,000 SF of unobstructed land. She said the plan is not to have a herd of goats – the goats are pets.

Ms. Paulson said that under Colorado laws, she was required to provide 9,000SF of unobstructed land per goat. She said she did not know what New Hampshire requires.

Mr. McCrory said that the UNH Cooperative Extension program has housing guidelines for livestock which call for 0.2-0.3 acre of pasture area per goat. The consensus of the Board was that this property met the standard.

Mr. Hurd said he was concerned with the terminology “livestock” and asked if the applicant had any problems if the number of goats were to be limited. Ms. Paulson indicated it would not be a problem.

Ms. Towle and Mr. Russel were concerned about the amount of area that would be required per goat, so were unsure how to limit the number of goats.

□ **Abutters**

**Paul LaCasse** said he owns most of the land behind the subject property. He said he didn't have "a huge problem with it".

**Todd Geil** said he owns the property to the west of the subject property. He said his only concern would be a precedent for all of the R1 zone if the variance were to be approved. He said he was concerned about the consequences if the lot should be subdivided, with livestock being allowed on a smaller parcel after subdivision.

Attorney Taylor said the variance requested is for the use – not the size of the parcel. However the Board could clarify as a condition that the variance is for the lot in its current configuration.

The Board assured Mr. Geil that each case is determined on its own merits and does not create a precedent.

Mr. Geil asked if there were setback requirements for the animals from the property lines. Mr. Hurd said there are no setbacks for fences. Mr. Geil said his only other concern was to be assured that the goats will be properly cared for.

**Kenneth Aldrich** said the fenced area on the lot is all woods – no pasture there. There is a small section of grass. Mr. McCrory said that an exercise area where the goats are properly fed is sufficient to meet the standard. Mr. Aldrich also asked about possible setbacks of the animals from his property lines. He also wanted to be assured that there would be a limit on the number of goats allowed on the property.

Mr. McCrory read from the UNH Coop. Ext. Housing and Space Guidelines for goats: One goat requires 25 SF of housing; exercise yard of 50 SF per animal (this could be in the trees); pasture area of 0.3 acre per animal (but this can be substituted if there is proper management of their feed); enclosed barn with removable side panels or windows with a setback of 50 feet; fencing – electric woven wire.

Mr. LaCasse returned to the podium. He said he didn't know how much waste a goat generated, but there is large aquifer under this property. Mr. Hurd said the guidelines probably address manure storage.

□ **Other members of the public**

None.

Mrs. Towle asked Ms. Paulson to describe how she would care for her goats on this property. Ms. Paulson said she would put a door on one of the two existing (doorless) sheds to house the goats, the other to be a tack room; she would “somehow configure a fence;” the waste would be composted in a part of the wooded area and then burned; (she was informed by Mr. Russel and Mr. Hurd that this property is in a “no-burn zone”); she feeds the goats hay, vegetable scraps and treats every day; their living area is not picked every day as it is not necessary.

Mr. Russel asked for a site plan showing the buildings and how they would be used, where the fencing would be; and a management plan etc. before making a decision. After discussion with the Board, Mr. McCrory and the applicant, it was decided that this could be made as a condition of approval.

**Mr. LaCasse** returned to the podium. He said he didn’t know why this land and his aren’t zoned as agriculture. He said the land across the street is all farmland. He did not object to the proposal, but he admitted his house is several thousand feet away.

Mr. Hurd called for any last comments. There were none, so the public hearing was declared closed.

There were no further questions from the Board.

#### *Decision*

**Motion:** To grant a variance from section 22-206 to keep livestock, i.e. 2-3 goats maximum, on the property for non-commercial use with the special conditions:

- Conditions of approval:
  1. The keeping of livestock shall not be for commercial purposes. Keeping of livestock shall be in accordance with NH Dept. of Agriculture Best Management Practices and UNH Cooperative Extension Housing and Space Guidelines for Livestock. The applicant shall submit a livestock management plan for review and approval by Planning and Development Staff.
  2. Livestock living on the premises shall be owned by the property owner only if this property is the owner’s primary residence.
  3. Livestock shall not be kept on the property if the residence is vacant.
  4. If the City determines living conditions for the livestock as inhumane and/or the keeping of livestock is causing a nuisance to neighboring residential properties or a public safety hazard, then the City shall issue a Notice of Violation to the property owner with an appropriate period of time to abate the issue. If, after receipt of the

Notice of Violation, the property owner does not abate the issue, then this variance is void and all livestock shall be removed from the property as directed by the City.

5. This variance shall be recorded in the chain of title with the property boundaries in the current configuration.

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

*Discussion*

Mr. Russel said that the zoning of the property creates a hardship because it is zoned R-1 and it is surrounded by property that is zoning RR-2; the property is rural in nature and that the proposed use is reasonable for the property.

Mr. Hurd said that he did not believe that 2 animals would have a negative impact on this or the surrounding property. He said abutting properties could have animals, so it was not an issue here. He said that it is in the public interest because safety is not an issue and because of the conditions on the variance.

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

- d. **(ZO 2015-00014) Michael & Elizabeth Lemieux, 519 Jarvis Hill Road** – seek to appeal an administrative decision requiring a Special Exception Permit for a gravel pit/quarry operation and an Earth Excavation Permit at **149 Alden Road**. Tax Map 182, Lot 3. Zoning district: RR.

*Preliminary Matters*

- Mr. Hurd read aloud the name of the applicant, the type of appeal, and the property or issue that is the subject of the appeal.
- Mr. Hurd had the roll of abutters called and determined for the record if any are present. Mr. McCrory read the abutters roll.

*Order of Presentation*

- City staff**  
Mr. McCrory stated that there had been a zoning determination for this property associated with gravel excavation and processing. That determination was issued last month stating that the property had lost its grandfathered status and directing the property owner to obtain a Special Exception for gravel extraction and processing with the Zoning Board as well as a

getting a permit for expansion from the Planning Board. The applicant is appealing that administrative decision. According to the applicant, the operation is grandfathered since about the 1970s. Staff has been in communication with the applicant since June, attempting to figure out the history and evolution of the property. Staff has relied on aerial photos back to 2003, meeting minutes and past Planning Board actions regarding this property. Staff has also researched the deed history of this property. The best documentation that could be found in terms of use of the property and the first notation of there being gravel operation on the site, aside from anecdotal evidence, is a 1995 subdivision application where the lot in question was created. Minutes from that meeting are in the packet for this meeting. The then owner of the property, who was the subdivider, stated at that meeting that the gravel pit had not been used for the past several years. The “grandfathering” was thus lost with this lapse in the use.

In the AR and RR zoning districts, gravel extraction and processing is allowed by Special Exception. The appellant was directed to get a Special Exception from the Zoning Board to get this use into compliance with the zoning ordinance.

The zoning determination also directed the appellant to get an excavation permit from the Planning Board because of the expansion of the gravel operation. These are separate issues to be considered by this Board. Zoning determination on the grandfathering is one issue. The determination on whether the excavation permit is necessary is the other.

Assessing records document estimates of the amount of gravel that was extracted from the site in 2006 - 2007 up to an estimate for 2014-15. This data indicates that there has been a steady increase in extraction from the site. In 2014, there was blasting on the site that was permitted by the fire department. This yielded more material to be processed and sold from the property, instead of just being hauled off-site. This indicates a clear expansion of the operation. From 2003 – 2014, there has been an increase of disturbed area on the property by approximately 150,000 SF, based on aerial photos.

There has also been a change in the access to the property. The property’s legal access and street address is Alden Road. In 2012-2013 there was a USDA grant to improve a “farm access road” for access to adjacent farm fields. This road, which is owned by the applicant, goes from the gravel pit to Spring Farm Road. It has become the principal access for truck traffic. The planning staff sees this as one part of an expansion/modification of use.

In June, it came to the planning staff’s attention that the applicant was planning to put scales on the property to weigh and measure material leaving the property. This is also seen as a modification and expansion of the use.

It is the staff's opinion and Zoning Administrator's determination that all of this activity warrants an excavation permit review by the planning board. Much time has been invested in research to make a fair assessment of this property.

Mr. Russel asked if a permit for extraction is granted only once. Mr. McCrory replied that it is granted once unless the operation is expanded substantially. Under state law, if one has a permit for just extraction and one changes to processing, a new permit is required.

Mr. Hurd asked how expansion is determined. Mr. McCrory said the Department of Revenue Administrative considers "expansion" to be an increase in disturbed area. DES refers to the increased area of disturbance. If it exceeds a certain area, they need to see permits for it. For the staff assessment, the increased area of disturbance, the new access, and data showing the estimate of remaining material has increased substantially to over 2.5M cubic yards in recent years; back before 2009 it was almost 100,000 cubic yards. This demonstrates clear intent for and an increase and expansion of the site.

Mr. McCrory stated that it is possible to determine from the aerial photos whether land has been clear cut only or if it has been excavated. The City flew aerial photos in May of 2014. Google Earth flew aerial photos in September of 2014. The September 2014 photos clearly show the blasting activity. It is substantially different from the photo of May of 2014. Aerial photo analysis indicates that the amount of disturbed area increased from 7.3 acres in 2003 to approximately 10.8 acres in 2014, an increase of 3.5 acres. (Roadways are included in this acreage.)

Mr. McCrory stated he tried to obtain aerial photos dating back to the 1970s from both DOT and Regional Planning, but was unsuccessful.

Mr. Russel asked to have copies of the aerial photos (2003, 2008 and 2014) without the coloring on them entered into the record. Mr. McCrory was able to submit 2003 and 2014 photos as requested and said he would obtain 2008.

**Motion:** To accept into the record the unaltered aerial photos from 2003 and 2014.

**Made by:** Mr. Russel

**Second:** Mr. Hurd

**Vote:** Unanimous in favor

Mr. Hurd asked for the area of the road. Someone from the audience stated it was  $\frac{3}{4}$  of an acre. Mr. Hurd subtracted the road from the 3.5 acres of expansion as he felt the road should not be considered as part of the expansion.

Mr. Russel said the road doesn't look any different between the 2003 photo and the 2014 photo. Mr. McCrory said the road was a 10-ft wide path in 2003 and a 20-ft wide road in 2014.

There were no more questions for Mr. McCrory. Mr. Hurd opened the public part of the meeting.

□ **Applicant**

Mr. Lemieux came to the podium. He said in 1996, Currier Logging came and clear cut “the plateau”. From 1996 to 2003, the cleared area grew over to poplars. He said the photos were very misleading and that he could survey the site and show that the footprint is not “a whole lot different”. He said a lot of the site had grown back in and he had it mowed (5-in trees – not mature forest) in 1996.

Mr. Lemieux had paperwork indicating quantities he had taken from the pit from 2006 to current.

**Motion:** To accept the paper work Mr. Lemieux has presented to the Board.

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

Mr. Lemieux stated that he has paid excavation tax every year since 1998. It is based on an estimate of how much material will be extracted. He said 2014 was “a good year” as they extracted 800 cubic yards for a job for Canam Structural. He said this year, there has been 2400 cubic yards. He said the quantity varies from year to year. He said all of the material leaving the site has been taken away in his own trucks. This spring the City had a problem on Spring Farm Road and they hauled material out with City trucks to improve the road.

Mr. Lemieux said he had letters from Mr. Clarke, the previous owner, and from Arnold Craig from C&I Construction. He said, according to Mr. Clarke, the Clarkes purchased the property from the Consic Farm and the pit was active in 1971. Mr. Lemieux had been hauling out of the pit prior to his purchasing of it – he was offered the property by Mr. Clarke and as part of his P & S, Mr. Lemieux asked for verification that he could continue the operation. On August 4, 1995, he met with Barbara Briggs in the Planning Office and asked her what the requirements were to continue digging gravel and stone out of the site – he said he was told that he was grandfathered. He closed on the property in August 1995. At “some point” Steve Snelling “made him update the amount of land that was out of current use”. He paid the tax penalty on it. He has paid almost \$200,000 in taxes on the property since he took ownership of it as a “gravel/rock pit”. He said it has been no secret. He said he wants to put in a scale to track accurately the quantity of material that comes out. He said it is a small portable scale that sits on a cement pad and has a scale house. No one else would be using it. He said he started using Spring Farm Road so he doesn’t have to go down Alden Road, out Sugar River Drive, past a lot more residences. From Spring Farm Road it is 350 feet. He has a letter from the Town (Scott Sweet) that says at his expense, the applicant could do a full depth reconstruction of the first part of Spring Farm road.

Mr. Lemieux said he didn't have a problem going to the Planning Board and giving them a closure plan outlining what the property will look like when he is done; what his hours of operation are going to be; the estimated number of trucks. He said the pit has been in continuous operation since at least 1971. He takes exception to "going back to the drawing board like the thing doesn't exist". He didn't believe there had been a lot of complaints over the years until this spring.

Mr. Lemieux said he expands the pit by 14 yds every time he hauls a load out of the pit. He is of the understanding that "expansion" constitutes moving the operation beyond the property lines (e.g. annexing adjacent property).

Mr. Lemieux stated that blasting has occurred in the pit in 1995, 1996, 2006, and in 2014. The blasting is to get bedrock for crushing and stone for stone walls.

Mr. Lemieux does not have the P & S agreement from 1995.

Mr. Hurd asked Mr. Lemieux for documentation regarding the blasting events.

Mr. Russel asked why Mr. Clarke said the pit had not been used for the past several years at the 1995 Planning Board meeting, but stated in a 2015 email that "there was an open gravel pit there at the time although it obviously was at a smaller scale." Mr. Lemieux said he asked Mr. Clarke about it and Mr. Clarke had said "I don't really recall".

□ **Abutters**

Mr. Hurd asked if Mr. Allard was present.

**Rock Allard** stepped to the podium and identified himself as an abutter and said he has extensive frontage with the applicant's property— "about 2000 feet of land that we're talking about". Mr. Allard said he had "issues with the operation." He said he is woken in the morning by the beeping of a piece of machinery that is sorting or crushing gravel; then another truck pulls in with another beeper. He says this starts at 8 AM and continues all day. He said there are the sounds of the track equipment at the site and periodically the blasting. Fallout from the blasting has landed on his land and damaged some of his trees. Mr. Allard said he works nights and sleeps during the day. Sometimes he can feel vibrations from the pit activity. He said trees on the pit property have been pushed over and the tops are on Mr. Allard's land. Some of the natural vegetation that used to grow on his land is now dead and gone.

The Board viewed a projected GIS map showing Mr. Allard's land in relation to the pit. He pointed out where his house and barn are located on his property. (This map was used to identify the location of the land of everyone who spoke at the hearing.)

Mr. Allard said he has lived on this land for 32 years and has frequently walked and snow shod all over it. He said he knows the land very well and said there “was a long time when this place did not operate” – that there was no evidence of it being operated. He said he knew both Mr. Clarke and Mr. Consit. He said Mr. Consit said that the “pit” was actually a graveyard for dead cows.

Mr. Allard said he would be happy if the operation was confined to Alden Road and not Spring Farm Road and if the noise could be eliminated. He said that Mr. Lemieux’s trucks are damaging the portion of Spring Farm Road that is being used to exit the pit. He said he hoped the Board would turn down the application.

**Motion:** To take a five-minute break.

**Made by:** Mr. Nichols

**Second:** Mr. Russel

**Vote:** Unanimous in favor

Mr. Hurd resumed reading the abutters roll and asking who was present.

**Philip Mudge** commented on the email from Mr. Clarke to Mr. Lemieux. Mr. Mudge said the email states that there was “an open gravel pit there”, but does not state that there was continual operation of it.

Mr. Mudge said he lives at the end of Alden Road and that his land borders the upper side of the pit. He said he had built his house there 11 years ago, fully aware that there was a gravel pit there that was in operation to which he had no objections. He said things have changed a lot since then. He said the noise from the rock crusher in operation prevents him and his wife from being able to sit outside because the noise is unbearable. He said this is no longer a gravel pit, but a stone pit.

**Elwin Hood** lives at 85 Alden Road. He said he doesn’t like the big truck traffic on the road. He said his driveway is on a bend in the road, and he has to pull out quite a ways to see and it’s tight when the big trucks come down the road. He said there is a lot of noise and a lot of dust. His wife is handicapped and she doesn’t like the sound of the trucks “all the time”. He said he has lived there for 32 years. When asked how often trucks pass his way, he said at times, there is a steady stream of trucks (both directions). He said they start at 6:30 AM and run till 5:00 at night. Other days he said there are no trucks. When asked, Mr. Hood said there were times when there was no activity (at the pit).

**Michael Cooke**, who lives at 452 Chestnut Street, asked how close to the property line the excavation would be allowed to expand. He said he bought his property in 1998 or 1999. He said the noise is “pretty loud” and that it echoes because of being in a valley. He also said the dump trucks make a very loud sound when they hit the bridge near his house. He

said he could not speak to the continuity of the operations because he wasn't always there (summer residence only until recently). The Board was unable to answer at this time the question regarding setback of the operation to the boundary line.

**Edward MacGlaflin** said he bought his land from Mr. Clarke. He said Mr. Clarke told him there was an operating gravel pit on some of the land that was offered to him for sale (late 1994, early 1995). Mr. MacGlaflin said he had applied for and received the grant from NRCS to improve the farm road (out to Spring Farm Road) because he used it to haul out silage and manure. Mr. Lemieux did the work (of improving the road).

**Gary Herbert**, 16 Spring Farm Road, said he is a firm believer in everyone's right to do what they please with their land as long as it doesn't hinder other people's right to privacy or hurt the environment. Mr. Herbert read from a prepared statement, referring to the application as a "zoning variance application". He said the application was for a variance to open or run a quarry that had been in operation without oversight since the acquisition by the applicant. He said the application shows an address of Alden Road, which is on the opposite side of the quarry from where the majority of the construction activity takes place. He said there would have been much less negative impact on the environment and the abutting neighbors had this access been chosen by the requester. He said local regulations are in place to prevent certain types of activities being allowed without a formal approval process. He claimed that the requester has allowed the release of uncontrolled silt into a naturally flowing brook; impacted land that does not belong to the applicant; has moved trucks and machinery on the road at 4:15 AM that is restricted for weight; opened a business in a non-industrial site and has done so without getting permits for any of these activities. He said there has been no regard for these regulations, the abutters, or the environment. He felt the variance should be denied; and all work should cease until all regulations have been met and properly permitted. The existing access to Spring Farm Road should be closed and the Alden Road access be the only permitted access. No blasting or further excavation should be allowed without addressing the impact on local residents and abutters. The noise of blasting, crushing, compression brakes (used unnecessarily) on Spring Farm Road is unacceptable and will greatly reduce property values if allowed to continue. Spring Farm Road, because of its "geological inadequacies" should be posted against all commercial vehicles except those required for the health, safety and convenience of its residents. What is the impact of the blasting on the spring-fed water source? We won't know until it's too late because no hydrologic studies have been done. The proposed scale has a sump drain that discharges into a naturally flowing brook that has a vernal pool that is a trout hatchery and is also used as a secondary source of potable water. It is at risk of pollution from diesel fuel, anti-freeze, engine and hydraulic oil and brake fluid that may get into the drain in the proposed scale or leach through the short distance of soil between the proposed scale and the Spring Farm brook. This brook is part of the Connecticut River watershed. Regulations and laws are to protect all of the citizens and all of the citizens are expected to comply with

them. He felt that by allowing it to continue while not in compliance puts the City at risk of state and federal litigation. He urged the Board to deny the application.

Mr. Hurd informed Mr. Herbert that the application before the Board was not for a variance, but rather an appeal of an administrative decision. Mr. Hebert said a hearing such as this, with the abutters, should have been held in 1996, before all of this activity started.

**Michael Ruetz**, 30 Spring Farm Road, moved onto his property in 1984, bought it in 1986, built a house in 1999. To his recollection there had been no activity in this pit. There was a snowmobile/4-wheeler trail running through it that has since been shut off. He said his biggest concern is the devaluation of the properties in the vicinity of the pit. He said there are trucks going 100 feet by his picture window. He feels no one will buy his property because of the truck traffic. He concurred with the noise complaints – rock tumbler, rock crusher, a pounder, the jake brakes, - all day from 6:15 AM to 5:00 PM., except for weekends and holidays. He also mentioned concerns with the dust, condition of the road, reduction in wildlife (deer, turkeys). He used to see trout swimming in the brook, but not anymore – he doesn't see any fish at all. There is silt in the brook – there was no silt-fencing put in when the road was re-done. He doesn't understand why Spring Farm Road is being used. He expressed concern about the bridge that the trucks cross and asked who gave him a permit to build it. Mr. Ruetz said he watched them build the bridge. He said it is barely wide enough for the dump trucks and has no side rails. He believes it is very unsafe.

Mr. Hurd asked for some data on the pattern of truck traffic. Mr. Ruetz said he couldn't give exact data, but said it has been considerably more in recent years. Mr. Ruetz concurred with Mr. Herbert on the unnecessary use of the jake brakes. He said he had tried to talk to Mr. Lemieux and had “gotten nowhere”.

Attorney Taylor clarified that a USDA grant was used to improve a “farm access road” defined as, “a travel way for equipment and vehicles constructed as part of a conservation plan ... for increased crop production or ease of harvest”. This would go to the abutting farm use. It was not intended for commercial use. It was built in 2011 and inspected by USDA (there were some erosion issues). This information was obtained in response to a query by Mr. McCrory. Attorney Taylor wanted to clarify the difference between the farm access road and the Class 5 portion of Spring Farm Road that was improved. The grant was for the farm access road only.

Mr. Herbert returned to the podium. He stated that the frequency of truck traffic varies. He said 1 ½ weeks ago there were 16 trips in and 16 trips out of the pit. He said some of the trucks don't stop when they turn onto Spring Farm Road and it's a semi-blind corner. Mr. Herbert bought his property in 2010 (later corrected to 2005) and was living there for two years before he bought it. He said during that time, the farm access road has evolved from a

farm road to a road that is better than Spring Farm Road. He said he has motion-activated security cameras that he had to turn off last year because he was overflowing his terabyte drive with truck traffic. He said he was also concerned with the trucks loaded with tree stumps, construction rubble, and covered loads of unknown materials going in.

□ Other members of the public

**Arthur Bastian**, 91 Spring Farm Road, said he used to live at the farm that Mr. Cooke bought (from age 7-18 when he enlisted in the military). He built his house on Spring Farm Road when he returned from the service. He said he used to fish in Spring Farm Brook and was able to bring home enough fish to feed his family. He fished it up until 2 years ago. He said there are no fish left in the brook because of the silt that “weeps” down from the gravel pit. He said he has hiked through the pit area numerous times and witnessed mobile homes being “stripped down” to the metal frames with the nonmetal materials being buried on site. He claimed Mr. Lemieux brings demolition waste into the pit and on two occasions has burned 20-30 ft. high piles of the materials. He said the ash covered his truck and fell on the land and water in the neighborhood. He said Mr. Lemieux has dynamited ledge – Mr. Bastian felt the ground shake ½ mile away. He said they have had to listen to pounding and crushing all day long. He said the neighbors are never notified of blasting events. He said Mr. Lemieux doesn’t use blasting mats to keep the stone contained – he has witnessed blasting debris landing in the cornfield. He wanted the operation to be shut down.

When asked to speak about the continuity of activity in the pit, Mr. Bastian said he couldn’t give exact dates, but said activity was not constant. If someone needed some gravel, Paul (Craigie) would get a bucket full, put it in a truck and take it away. He said it was never a steady stream of trucks. He refuted Mr. Lemieux’s claim that only Pine Hill trucks haul from the pit as he has seen other companies’ vehicles hauling.

**Jeffrey Andrews**, 464 Chestnut Street, said he has lived on his property for four years. He said is concerned about a well on the Lemieux property to which he has deeded access. He said he had witnessed the burning of construction debris that Mr. Bastian referred to.

Mr. Allard returned to the podium. He said he had pictures showing fallout from the blasting that he wanted to share with the Board.

**Motion:** To accept Mr. Allard’s photographs into the record.

**Made by:** Mr. Russel

**Second:** Mr. Hurd

**Vote:** Unanimous in favor.

Mr. Allard also told the Board that on three occasions he has had heavy items knocked from the walls of his house due to the blasting (heavy enough to dent his baseboard heaters in two rooms).

**Motion:** To continue the public hearing on the application to the next meeting on October 5, 2015 to allow the applicant and abutters time to gather more information to bring to the Board.

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

Mrs. Towle asked if activity was still being allowed on the site. Attorney Taylor said that no Cease and Desist had been issued. Mr. McCrory said that Mr. Lemieux has been asked to not expand activities on the site – no new equipment on the property.

Mr. Russel asked that copies of the blasting plan, Mr. Allard's pictures, whatever deed information is available, planning board meeting minutes pertaining to the subdivision that created the pit lot, extraction fees; and un-highlighted maps be sent to the Board members. Mr. Lemieux was also asked to provide additional documentation.

**Vote:** Unanimous in favor

**VII. Communications**

Smart Associates is doing an environmental assessment of the NH Routes 11/103 & Bowen Street safety improvements project. They are looking for comments. The Board asked for copies of the letter.

**VIII. Other Business**

**IX. Adjournment**

**Motion:** To adjourn the meeting.

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

Respectfully submitted,  
*deForest Bearse*  
Resource Coordinator