



**Zoning Board of Adjustment Meeting**  
Monday, February 6, 2012 at 7:00 p.m.  
City Hall, Council Chambers

**Minutes**  
**Approved March 19, 2012**

**I. Roll Call**

**Present:** Tom Rock, Carolyn Towle, Mike Hurd, Todd Russel, Jim Hanson, Dan Worcester (alt)

**Absent:** Ed Friedman (alt), Pierre Caouette (alt)

**City Staff:** Tracey Hutton; City Planner; Jane Taylor, City Attorney

**II. Review Public Meeting Minutes from January 3, 2012**

**Motion:** to approve meeting minutes from January 3, 2012

**Made By:** Mr. Hanson

**Second:** Ms. Towle

**Vote:** Unanimous

**III. New Business**

- **(ZO2012-0002) Frank and Catherine Sullivan, Claremont, NH-** The applicant is seeking a variance from Section 22-206, Permitted Uses, to allow for establishment of a residential and kennel. Property Location: **21 Hartford Street**, Tax Map 133, Lot 94, Zoning District R-1.

City Planner Tracey Hutton provided background on the application. Catherine Sullivan is contracted by the City of Claremont for animal control services. The applicant would like approval of a type of animal shelter for both feline and canine animals for short term housing that she impounds. Impounding of such animals is subject to Section 4-40<sup>1</sup> of the Claremont City Code.

This property is in a residential neighborhood comprised of primarily ¼ acre lots. The applicant has proposed use of the basement and outside fenced areas for the keeping of the animals.

Ms. Sullivan spoke in favor of her application and explained the shelter operation. Approximately, 10% of the animals taken in are not claimed by their owners.

There will be in-ground disposal for dog waste/stainless steel dog septic tank and the lawn will be sprayed for odor control. Ms. Sullivan has been doing this for 6 years and has a Department of Agriculture inspection every 6 months.

Animals are kept on site no more than 10 days. Those not claimed are adopted out. Ms. Sullivan said she has also applied for non-profit status for the shelter, that she works with the elderly and disabled in the community and that students frequently volunteer to help out.

Mrs Towle asked about the type of animals that will be kept. Ms. Sullivan stated that there will be stainless steel cages in the sick ward for dogs; other dogs will stay in the sick ward during the day and in the house at night. Cats will also be caged. All other wildlife goes to Henniker.

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<sup>1</sup> The original report contained a typographical error; the correct reference should be to Section 4-30.

Mr. Russell asked why she was applying for the variance now if she has been doing it for 6 years. Ms. Sullivan said she was unaware of the zoning issue and has been providing services to the City for 3 years. She is paid \$250 per month by Claremont to handle the dogs, cats and other small animals.

Michele Parker spoke in favor of the application and said her daughter volunteers with Ms. Sullivan and they are a necessity to the community.

Jane Beoder, Sullivan County Humane Society Executive Director, has worked with Ms. Sullivan and supports the application.

Joyce Phelps, previously worked at Staples Veterinary Clinic, stated that Ms. Sullivan helps a network of clinics and shelters. Ms. Sullivan holds the rescued dogs 7-10 days, as required by state law, before adopting them out. There is a huge number of cats that people leave at the cemetery.

Amanda Parker, a volunteer, stated that at 9am every morning she cleans cages and helps Ms. Sullivan.

Corey Breakstone stated that Kathy is an extra set of hands looking for lost dogs and the Police Department depend on her and that help needs to continue.

CarolColeman spoke in favor of the application. She said Ms. Sullivan placed an animal with her disabled husband.

Denise Powers favored the applications and said Ms. Sullivan is a valuable asset to the community. Ms. Sullivan helps placement of animals as she has connections that go beyond Claremont and also has helped local businesses retrieve animals that had gotten into their stores.

Public Hearing Closed

Chair Hurd and Mr. Russel stated they have been helped by Ms. Sullivan and to their knowledge there have been no neighbors complaining. Mr. Hanson was impressed at the support.

The Board members discussed the distinctions between kennels and animal shelters and that the Claremont City Code does not address anything other than dogs.

#### **IV. Review Criteria**

When considering this application, the following Variance criteria should be considered. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

**Variance** To review a Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Would granting the Variance be in accord with the public interest?

**Mr. Hanson stated that this is a huge benefit to public because of the need to get strays off the streets. Yes, public interest is secured.**

2. Would granting the Variance be consistent to the spirit of the ordinance?

**This variance would allow a need not in the ordinance.**

3. Would granting the variance, as requested, do substantial justice? (Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?)

**Mr. Hanson noted that this is a benefit to public safety. Yes public health safety and welfare would be protected.**

4. Does the proposed use maintain the value of surrounding properties?

**Mrs. Towle noted that there might be impact on the neighborhood. Mr. Rock said that there has not been any report of a detrimental impact since the use began. Having a kennel or shelter might impact property values, but no abutters have complained. The property will be inspected by the State and there will be no animals wandering free around the property.**

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?

- A. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:

- (i) The Applicant has demonstrated that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property.

- (ii) The Applicant has demonstrated that the proposed use is a reasonable one.

**Mr. Rock noted that the use is reasonable. No monetary benefit, reasonable use and needed use. Mr. Hurd stated that this is one of those rare occasions where the variance did not necessarily have a "substantial relationship" to the property because the use requested is internal to the structure.**

Alternatively, if and only if the criteria in the above subparagraph cannot be established

- B. Has the Applicant demonstrated the special conditions of the property that distinguish it from other properties in the area prevent reasonable use in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property?

**Motion:** to grant a variance to allow Catherine Sullivan to shelter canine and felines short term with the following conditions: (1)The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments, (2) Approval shall be limited to the use as an animal facility by the current applicant, (3) Noise levels produced by the keeping of domestic animals must comply with Chapter 22, Division 3 of the Claremont Zoning Ordinance, and (4)The variance will lapse as soon as the applicant no longer provides animal control services to the City or upon sale of the property by the current owners, whichever occurs first.

**Made By:** Mr. Rock

**Second:** Ms. Towle

**Vote:** Unanimous

- **(ZO2012-0003) Erwin and Roselyn Caplan, Claremont, NH-** The applicant is seeking a variance from Section 22-604(5)c.3 and 22-598(3), Signs, to allow for the placement of a

second freestanding sign on the property which will have a 0 setback from the right of way.  
Property Location: **42 Summer Street**, Tax Map 132, Lot 8, Zoning District B-2.

City Planner Tracey Hutton provided background on the application. The applicant is seeking a variance from Section 22-604(5)c.3 and 22-598(3), Signs, to allow for the placement of a second freestanding sign on the property which will have a 0 setback from the right of way.

This property is in a Business 2 District, similar to Washington Street. The structure is quite close to the sidewalk and had a landscaped ADA accessible ramp in the front yard. The combination of the 2 signs on the property does not exceed the square footage allowed for signage in the district.

Mrs. Towle asked for physical details on proposed sign. Mrs. Caplan did not have these available for the meeting.

The board inquired about the height of the sign from the ground. Ms. Caplan stated that the sign would be 5'-6' off the ground. Mrs. Caplan said that the sign needs to be where it is because of the limited space between the City's right-of-way and the handicapped ramp. Mr. Rock asked if the board could condition the height. Mr. Hanson stated that if the sign were in the right of way, the sign would have to be 7' off the ground. Where this is quite close in proximity to where the street and sidewalk clearing equipment would be operating, so the proposed height seems to be too low.

Mr. Hanson asked why the signs for the two businesses in the building could not be combined, especially on such a small property. Mr. Rock, Mr. Hurd and Mr. Russel felt that two signs would be OK but they agreed with the concern over the height. The sign was deemed aesthetically pleasing and a unique situation due to the location being a rental and professional property. Mr. Hanson stated this sign is practical in the B-2 district.

#### **IV. Review Criteria**

When considering this application, the following Variance criteria should be considered. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

**Variance** To review a Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Would granting the Variance be in accord with the public interest?

**Yes. Mr. Russel stated that it makes sense to have a sign for each business in this district to have its own sign because the businesses were in different parts of the building. Mr. Hurd agreed.**

2. Would granting the Variance be consistent to the spirit of the ordinance?

**Combined the signs do not exceed the square footage allowed for a single sign.**

3. Would granting the variance, as requested, do substantial justice? (Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?)

**Yes, the identification of the businesses does the public justice.**

4. Does the proposed use maintain the value of surrounding properties?

**Mr. Hurd stated that there would be No impact on other properties. All abutters are businesses.**

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?

A. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:

(i) The Applicant has demonstrated that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property.

(ii) The Applicant has demonstrated that the proposed use is a reasonable one.

**One of the business is a tenant, makes more sense for them to have their own sign.**

Alternatively, if and only if the criteria in the above subparagraph cannot established

B. Has the Applicant demonstrated the special conditions of the property that distinguish it from other properties in the area prevent reasonable use in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property?

**Motion:** to grant the Variance from variance from Section 22-604(5)c,3 allowing the 2<sup>nd</sup> freestanding sign at 42 Summer Street 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.

**Made By: Mr. Russel**

**Second: Mr. Hanson**

**Vote: Unanimous**

Motion by Mr. Russel, seconded by Mrs. Towle to reopen the public hearing to ask Mrs. Caplan questions regarding the nature and dimensions of the proposed sign.

#### **IV. Review Criteria**

When considering this application, the following Variance criteria should be considered. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

**Variance** To review a Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Would granting the Variance be in accord with the public interest?

**Mr. Hurd commented that any public safety issues would be resolved with a condition on the height of the bottom of the sign Mr. Hanson noted that this is an issue for safe passage and safe clearing of the sidewalk because of the zero setback.**

2. Would granting the Variance be consistent to the spirit of the ordinance?

**All abutters are businesses.**

3. Would granting the variance, as requested, do substantial justice? (Is the loss to the applicant outweighed by the benefit to the public if the variance were denied; would granting the variance threaten the public health, safety or welfare?)

**The sign serves a business need and all abutters are businesses.**

4. Does the proposed use maintain the value of surrounding properties?

**No impact on other properties.**

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?

**The use is reasonable and there is no other location for the sign.**

- A. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:

- (i) The Applicant has demonstrated that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property.

- (ii) The Applicant has demonstrated that the proposed use is a reasonable one.

**ADA ramp and small lot size hinder alternative location for placement.**

Alternatively, if and only if the criteria in the above subparagraph cannot established

- B. Has the Applicant demonstrated the special conditions of the property that distinguish it from other properties in the area prevent reasonable use in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property?

**Motion:** to grant the Variance from variance from Section 22-598(3) allowing the 2<sup>nd</sup> freestanding sign at 42 Summer Street to be placed at a 0’ setback with the following conditions: (1) The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments, (2) the bottom of any sign to be no lower than 7’ in height from the ground.

**Made By: Mr. Hanson**

**Second: Ms. Towle**

**Vote: Unanimous**

- **(ZO2012-0004) Donald Chabot, Claremont, NH-** The applicant is seeking a variance from Section 22-266, Permitted Uses, to allow for the establishment of an animal adoption facility. Property Location: **8 Tremont Street**, Tax Map 120, Lot 47, Zoning District B-1.

Mr. Russel disclosed a potential conflict as he might have a future business relationship with the applicant. The Board determined that this did not rise to the level of a conflict.

City Planner Tracey Hutton provided background on the application. The applicant is seeking a variance from Section 22-266, Permitted Uses, to allow for the establishment of an animal adoption facility for cats only by the Sullivan County Humane Society. This facility would also include accessory office and educational outreach components.

With the absence of canines, this facility is more analogous to a business use than an agricultural one as described in Chapter 22 of the City Code. The City Code describes a kennel as housing 4 or more dogs, with no mention of feline facilities.

Ms. Bromley – President, Sullivan County Humane Society, Danielle Morse – Vice President, Sullivan County Humane Society spoke in favor of the application. Other programs they hope to offer will include spaying/neutering of animals and low cost veterinary assistance to be performed at other facilities.

Mrs. Towle asked if any floor plans are available. Ms. Hutton indicated that no details on any fit-up have been received and that the applicant has asked for a waiver of a site plan from the Planning Board. According to Ms. Bromley, no schematics have yet been done because there is no rental agreement. The shelter will meet national association guidelines. They hope to have one office, a sign ward and storage on the ground floor, with 2 adoptions areas on the 2<sup>nd</sup> floor.

Mr. Hanson asked how many cages would be involved. Ms. Morse said she thought there would be a maximum of 20 but it would depend on the available space. Ms. Morse will be the shelter manager. Mrs. Towles asked about waste disposal. Ms. Morse said that everything would be removed from the site. They talked to the Department of Public Works and there will be no anticipation sewer/water increase. Mr. Rock asked if there would be state licensing and inspections. Ms. Morse said there will be similar Department of Agriculture inspections for this shelter license as the prior application of Ms. Sullivan.

This is a step 1 trial – with 20 cages maximum, set up to must meet American Association of Shelter Guidelines. They would eventually like to purchase their own facility for both dogs and cats. Ms. Morse the shelter vet guidelines are all that is available. There is currently no law on felines, they are free roaming. A Cat cage must have 3’ of distance from water/food, litter box, and bed. Approximately 20 cages will fit upstairs. This means 1 cat per cage or 1 cat with kittens up to 4-6 weeks.

Mrs. Towles asked if Ms. Morse had a copy of state regulations. Ms. Morse said she did not.

**Mr. Russel stated a plan was needed. He also wanted to know if there were any residential units in this building that might be impacted. Mrs. Towle said this was different from the last application because the applicant had not checked with the state and the only guidelines appeared to be from a national veterinary society. Mr. Hurd was concerned because there were so few details on how the cats were to be housed. Mr. Hanson said it was hard to review the variance criteria without any details.**

**Motion:** to continue to March 5<sup>th</sup> meeting for more info.

**Made By: Mr. Russel**

**Second: Mr. Hurd**

**Vote:** Unanimous

It was confirmed the applicant may still proceed to the Planning Board next Monday.

#### IV. Old Business

- **(ZO2011-0019) Nassau Broadcasting Holdings, Inc., Princeton, NJ-** The applicant is seeking a Variance from Section 22-655 to allow for the replacement of a telecommunications tower within 1500 feet of other towers and within the boundary line setback. Property Location: **153 Cat Hole Road**, Tax Map 75, Lot 1, Zoning District AR.

City Planner Tracey Hutton provided background on the application. Currently the 160 foot guyed tower is 620 feet from the existing tower to the South and 1400 feet from the existing tower on the East. Section 22-655 (b) 3 requires a distance of 1500 feet between towers. The proposed new self-supported tower will be approximately 50 feet to the east of the existing tower. Much of the existing infrastructure and accessory structures will be used for the replacement tower.

As you may recall, in October, the applicant sought a Variance from Section 22-655 to allow for the replacement of a communications tower within 1500 feet of other towers and within the boundary line setback. The proposed 180 foot self-supported communications tower will replace a 160 foot guyed tower. The proposed tower will be 620 feet from the existing tower to the south and 1400 feet to the existing tower on the east. The Design Standards require a 180 foot setback from any boundary line, at its closest point the proposed tower would be 105 feet from the boundary line.

With no success, the applicant attempted to negotiate an agreement with the objecting abutter. As you can see from the January 27, 2012 correspondence, the applicant now seeks a decision from the Zoning Board of Adjustment.

The parcel the existing tower lies on is a 180 foot radius circle, and as such, a 180 foot lattice tower could not be constructed to meet the setback requirement of Section 22-655 (b)1 of 100 percent of the height of the tower. The difference in the type of tower and additional height are being requested to accommodate the communication needs of residents and visitors of Claremont.

Chair Hurd noted that Dan Worcester be voting in Place of Mr. Russel as Mr. Worcester was present for the first Public hearing

Ms. Hutton noted that two variances are being sought: 1. from Section 22-655(b)(1), setbacks; and 2. from Section 22-655(b)(3) height and distance from other towers. She asked if the Board would like to consider the applicant's engineering report, which has not been submitted within the time required by the Board's By-laws. On a motion by Mrs. Towle, seconded by Mr. Hurd, the Board accepted the engineering report.

Mr. Hurd asked if Ms. Hutton had found any information on tower failure. Ms. Hutton indicated that this was the reason for the applicant submitting the engineering report. Evidence of failure of this type of tower is minimal.

Attorney Thomas Hildreth, McLane Law Firm, represented the applicant. He stated that the existing tower needed to be replaced because of its age and because of the explosion in wireless use that made the current tower incapable of meeting the needs for service. He also described the unique lot and that the current tower pre-dates the federal Telecommunications Act of 1996. He noted that this area has long been the site of multiple towers. He also noted that the Claremont ordinance requires that a setback is met and not a fall zone. The tower will be relocated 50' to the East of the existing tower, and the applicant intends to remove all other towers. New tower would bring 4G LTE. This amounts to a \$750,000 replacement project for the applicant. Telecommunications Act of 1996 allows municipalities limited powers, there including buffers and fall zones.

Moving the location of the tower loses 10' in elevation, so the net impact of the new tower will be an increase in height over the old tower of 10'. The setback intrudes on a total of 2 acres of 37 of the abutters land. There is nothing for the tower to damage if it comes down. The entire site will not be fenced, just the compound where the tower and equipment sit. The construction staging area will accommodate requests but do not need to use abutter's property. He stated that the proposed use is reasonable, it would not alter the essential character of the area, the property is unique in topography

and shape and that it will further the public interest by providing improved wireless service. He said the applicant would be prepared to insure the abutter for liability for loss in the event of tower failure.

Mr. Rock asked questions regarding the engineering report and when this type of tower was first designed and put into service. Atty. Hildreth stated that this is not new technology and that he thought it had been in use since at least 1994.

Attorney William Pribis and Attorney Mark Beaudoin, Cleveland, Waters and Bass, represented the abutting property owner James E. Manuel, who objected to the proposed variances. Attorney Pribis said he had tried to negotiate Mr. Manuel's concerns with the applicant, but they had not been successful. He submitted a written statement to the Board for the record, which outlined the Manuels' concerns with the project.

The Board discussed the failed settlement negotiations and determined that these had no impact on the issue before the Board.

Attorney Beaudoin addressed concerns that the applicant did not meet the criteria for granting a variance. He stated that it is too much tower for too little lot and that the setback's only logical reason was for a fall zone in the event of tower failure. Attorney Beaudoin said this is not an appropriate site for such a large tower and that the applicant had a self-created hardship. The only reason for the large tower was to maximize profits. He also said the plan underestimated the degree of encroachment on the setback. He also asked the Board to consider the encroachment into the utility zone setback, which had not been addressed by the applicant. Attorney Beaudoin also stated that there was no hardship as the applicant could still operate a tower and make reasonable use of the land without increasing the size of the tower. He also said that a larger tower would diminish the value of surrounding property.

Mr. Hurd asked if the applicant's willingness to take financial responsibility for tower failure would lessen any issue of public safety. Attorney Beaudoin did not agree.

Mrs. Towle asked if there had been any issues with the applicant's use of the existing access. Atty. Pribis indicated there may have been some conflict, but he did not have any specifics.

#### **IV. Review Criteria**

When considering this application, the following Variance criteria should be considered. The burden of proof is upon the applicant to demonstrate that all necessary criteria are met.

**Variance** To review a Variance in accordance with New Hampshire statutory criteria the ZBA must adopt the following **Findings of Fact** for each criterion:

1. Would granting the Variance be in accord with the public interest?

**The improved cell service would be in the public interest.**

2. Would granting the Variance be consistent to the spirit of the ordinance?

3. **Mr. Rock said the purpose of the setback in this instance is to protect the public, but there is unlikely to be anyone there to injure, plus there is a fence for protection against trespass. He also said that the impact aesthetically will be minimal and it will meet the purpose of the ordinance as set out in the Code.** Would granting the variance, as requested, do substantial justice? (Is the loss to

the applicant outweighed by the benefit to the public if the variance were denied; would **granting the variance threaten the public health, safety or welfare?**)

**Mr. Worcester stated that the public benefit of upgraded service far outweighs the minimal impact of any public safety issue.** Does the proposed use maintain the value of surrounding properties?

**Mr. Hurd said there was no evidence presented of catastrophic failures for this type of tower. It is all woods surrounding, there is unlikely to be injuries and the applicant is willing to take financial responsibility.**

5. Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?
  - A. For purposes of this subparagraph, “unnecessary hardship” means owing to special conditions of the property that distinguish it from other properties in the area:
    - (i) The Applicant has demonstrated that no fair or substantial relationship exists between the general public purposes of the Section(s) of the Ordinance from which relief is sought and the specific application of the Section(s) to the property.
    - (ii) The Applicant has demonstrated that the proposed use is a reasonable one.

**Mr. Hurd said the topography, size and circular nature of the property is unique. Mr. Rock noted that the applicant had sought to resolve the setback issue by negotiating with the abutter, but that since these were not successful, there was no other alternative.**

Alternatively, if and only if the criteria in the above subparagraph cannot be established

- B. Has the Applicant demonstrated the special conditions of the property that distinguish it from other properties in the area prevent reasonable use in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of the property?

Chair Hurd reiterated that if the tower falls they agree to insurance, etc.

Mr. Rock stated that the idea of the set back is to help the City to guide towers to use caution. There is a miniscule chance of collapse.

Chair Hurd stated that no research on collapse was found and the topography of the land makes it impassable.

**Motion:** to grant relief from Section 22-655(b)(1) and (3), distances and setback with the following conditions: (1) The applicant shall obtain and receive all necessary permits and approvals as determined by the Local, State and Federal governments, (2) This Variance shall be recorded in the chain of title, and (3) The applicant shall furnish the abutting landowner with property and liability insurance for the tower should it fail as long as the tower exists.

**Made By:** Mr. Rock

**Second:** Mr. Hanson

**Vote:** Unanimous

## V. Correspondence

## VI. Other

**VII. Adjournment**

**Motion:** to adjourn

**Made By:**

**Second:**

**Vote:** Unanimous

Meeting adjourned at 10:34 PM

Respectfully Submitted by, Tracey Hutton