



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

**Minutes**  
**Approved June 4, 2012**

**I. Roll Call**

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

**Absent:** Jim Hanson

**City Staff:** Tracey Hutton; City Planner; Jane Taylor, City Attorney, Kelly LeBlanc, Administrative Assistant

**II. Review Public Meeting Minutes from March 19, 2012**

**Motion:** to approve the minutes from March 19, 2012

**Made By:** Mr. Russel

**Second:** Ms. Towle

**Vote:** Unanimous

**III. New Business**

- **(ZO2012-0009) Elizabeth and Wayne Bugbee, Claremont, NH-** The applicant is seeking a variance from Section 22-229, Yards, to allow for the reconstruction and enlargement of a single family residential detached garage. Property Location: **174 South Street**, Tax Map 132, Lot 162, Zoning District R-2.

Mr. Russel recused himself due to a conflict of interest.

Mr. Worcester will sit in for Mr. Russel for this application.

Mr. Caouette will sit for Mr. Hanson.

The applicant is seeking a variance from Section 22-229, Yards, to allow for the reconstruction and enlargement of a single family residential detached garage. The current and proposed use of the property is single family residential. The proposed 30 foot by 36 foot garage is to be used upstairs for extra living space for their family. The R-2 district requires 25 feet from the front and rear, 10 feet from the sides and a 10 foot building separation. The proposed structure is proposed to be (at its closest dimensions as measured from ClaremontGIS, subject to field verification by the applicant) 2 feet from the west side line (this is an existing non-conformity), 10 feet from the north rear line, 55 feet from the east side line, and 60 feet from the southern frontage. The buildings will be almost 9 feet apart as they are now.

The current garage is 576 square feet in ground floor area, while 1080 square feet is proposed. The family is growing and the children would like a place away from the main home for recreation. The living space above the garage will not be a dwelling unit. The applicant has been advised that they may not add a kitchen. A bathroom is proposed. The garage is currently non-conforming with respects to setbacks.

Chair Hurd inquired about the existing square footage of the home and then incorporating the addition, how much property will be lost. Ms. Hutton stated that the driveway does not count as lot coverage and the owners would be in compliance. There will be a side yard, a back side yard, and a building separation that play into the needed Variance.

Elizabeth Bugbee, owner, stated that there is no outside traffic that will be directed to her home. The addition is for a recreation room above the garage so the children have room to play. The extra bay will allow for an additional car in the future when the children earn their license.

Wayne Bugbee, owner, stated the existing garage is approximately 24' x 35'. Chair Hurd asked if the lots in question have been surveyed. Mr. Bugbee stated that granite markers currently exist on the property.

Ms. Towle asked if the new garage floor plan will have any closets. Mr. Bugbee stated that there will be a utility closet in the bathroom. Mr. Caouette inquired about the distance from the house to the lot line on the opposite side of the property on the other side of the driveway. Mr. Bugbee stated it is approximately 20-30'. Mr. Caouette was concerned about potential emergencies and the ability for emergency vehicles to access the property.

Ms. Hutton stated that the definition of set back does not include entrance steps, marquis or roof overhands.

Chair Hurd stated more dimensional information is needed from the applicant. If there is a variation of space to the property line and X amount of feet is the designated set back, the board needs to know that all setbacks are met. If the three points can be marked, delineation can be made.

Chair Hurd asked about making the building smaller if needed.

The lot coverage with the new garage would be at 26%.

### **Open Public Hearing**

No abutters present

### **Close Public Hearing**

**Motion:** to continue the application to the next meeting of the Zoning Board of Adjustment

**Made By:** Mr. Caouette

**Second:** Mr. Rock

**Vote:** Unanimous

- **(ZO2012-0010) John and Gale Luby, Hillsboro, NH-** The applicant is seeking a variance from Section 22-226 (2), permitted uses, to allow for the addition of another living unit in a residential property in excess of the density limitations. Property Location: **66 Mulberry Street**, Tax Map 119, Lot 98, Zoning District R-2.

The applicant would like to increase their density from 3 to 4 units on the property in excess of the density requirement of section 22-226(2). Currently the first floor apartment is 1,496 square feet, the proposal would separate 240 square feet for an efficiency unit.

The property is on City services, but is only 9,583 square feet. The City Code would require 40,000 square feet, or just shy of an acre. Eight parking spaces are required for this proposal; the applicant has supplied a plot plan and floor plan. The applicant has spoken with the building inspector already.

Gale Luby, owner and applicant, was present to discuss the application. She stated that there was additional space in the lot. The first floor apartment is hard to manage for tenants because heating costs were over \$6,000.00 last year. The goal is to create 2 units to alleviate the burden on the tenants.

Chair Hurd asked about the parking and reiterated that the standard parking space is 19 feet.

John Luby stated that there is a fence along the adjoining property that skirts one side of the parking for the cars. This terminates where the garages start. There is a turnaround space. Chair Hurd stated that 19 feet plus an additional 19 feet for the turn. Ms. Luby stated that it is 26 feet wide from the porch to the fence. Chair Hurd stated the cards need to be more than 26 feet away from the building. Mr. Luby stated the extra land in the rear is the turnaround.

Mr. Caouette asked about the amount of bathrooms. Ms. Luby stated that there is currently one bathroom in each unit. A fourth bathroom would be added.

### **Open Public Hearing**

Nelson Fontaine, abutter, stated that he is not in favor of the change. There is trash piled against the fence, loose dogs, and a fire escape against the property line. There has already been a problem with this property and adding more tenants would be a concern. Ms. Towle asked if the issues have been addressed with the Mr. and Mrs. Luby. Mr. Fontaine stated no, they are absentee landlords and he does not have their contact information. Mr. Fontaine stated he contacted the police department about the issue and was directed to contact the Building Inspection. He has not received a call back to date. Photo testimony from the abutter was presented to the board. Mr. Fontaine stated that the graffiti on the property has been present for a few years.

Ms. Luby stated that the furniture was broken up Wednesday per their request. The Luby's admit that things did get out of hand and the kids staying at the house are in trouble with the police. The house is considered a 'safe place' and the hope is that the two destructive boys are moving to TN. Ms. Luby stated that she comes in weekly and there are 'a million things on the property.' Mr. Luby stated Mr. Fontaine's yard has an equal amount of rubbish. The fire escape is to code per the owner and one of the tenants in the apartments was moving out May 7, 2012.

Chair Hurd stated that whether or not the owner and abutter have contact, these issues need to be taken care of. The issue remains that only 9,500 SF of land is present and 40,000 SF is required. This regulation was created to prevent the overburdening of property. Therefore, the house does not meet zoning requirements as 10,000SF is needed per unit.

Mr. Towle stated that when the board looks at plans, they like to see more conclusive plan sets versus a hand drawn plan. The board also typically gets a plot overview of the applicant's land, the abutter's land and plots.

Ms. Luby stated that in the back of the yard had a garage with bays and room for a space.

### **Close Public Hearing**

Mr. Caouette stated that he reiterates what Chair Hurd stated and the criteria #2. It is not consistent with the spirit of the ordinance as 40000SF is needed and less than 10000 SF exists. Ms. Towle and Mr. Russel Agrees. Mr. Rock stated adding parking to the driveway may not be in the best interest of the neighborhood. Chair Hurd stated there is a financial hardship but this cannot be used.

## **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?

**No, life and safety concerns are an issue.**

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

**No, 40,000 SF is needed for four units and under 10,000 exists.**

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?)

**No, there are life and safety concerns and thus a threat to the public.**

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

**No, the manageability of the property could become a greater issue with an additional unit.**

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

**No, monetary concerns cannot be taken into account.**

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.

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 deny the Variance from section 22-226(2) of the Claremont City Code which would allow an additional dwelling unit to be added to 66 Mulberry Street. The Variance was denied for the following reasons: (1) There are emergency and life safety issues pertaining to access to the building the way the parking is proposed, (2) The spirit of the ordinance is to not allow overuse or over burdening of lots. (3)The manageability of the density, as heard in the public hearing, is already an issue. Surrounding property value will be affected if the property cannot be managed effectively, and (4) There are no special conditions which constitute an undue hardship.

**Made By:** Mr. Russel

**Second:** Mr. Rock

**Vote:** Unanimous

**Motion:** 5 minute recess

**Made By:** Ms. Towle

**Second:** Mr. Caouette

**Vote:** Unanimous

- **(ZO2012-0011) Rand Block LLC, Hopkinton, NH-** The applicant is seeking a variance from Section 22-266, permitted uses, to allow for the establishment of a pawn shop. Property Location: **32-40 Pleasant Street**, Tax Map 120, Lot 79, Zoning District B-1.

Ms. Taylor stated the City Ordinance does not have Pawn Shop. There are elements of banking, retail sales, etc. If a municipality has a population of 40,000 or more, a local ordinance is needed. This is a gap in the code. Since there is no proper regulation in use, the best way to handle a Pawn Shop is through a Variance. The state law as written does not apply to us as we are under 40,000 people but it allows us to put our own regulation into effect.

The conditions for approval were discussed: (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, (3) This Variance shall continue only so long as the premises are used uninterrupted as a pawn shop and shall expire upon any subsequent other use, (4) No person shall receive in pawn, whether as security for any loan, transfer, service, undertaking, or advantage: (a) Anything of value from any minor or person in a visible state of intoxication from liquors or otherwise; (b) In excess of 4 motor vehicles or titles to motor vehicles, as defined in RSA 361-A:1, VII; (c) Any title or deed to real property, including mobile homes, condominiums and rights to interval ownership; (d) Any mortgage or any promissory note, including the pledge or assignment of any right to receive payments, rents, or revenue arising from such note; (e) Any article of clothing removed from the person at the place of business of the pawnbroker. (5) All property received in pawn shall be retained possession for a thirty (30) day period subsequent to the purchase thereof: provided, however, that any such item may be disposed of by the purchaser within such thirty (30) day period with the written permission of the Chief of Police, and (6) Property including jewelry shall be maintained in the condition in which they were received, and shall not be altered, damaged, or destroyed during the holding period for any purpose. Property must be maintained at the dealer's location during the holding period. The pawnshop would be monitored in the same sense that if the space is unoccupied as a pawn shop for over 12 months it will need to come back to the board.

The applicant would like to establish a pawn shop, a use not permitted in the B-1 zoning district. Currently the Rand Block houses an eating establishment. The pawn shop is proposed in the empty store front. A variance must be obtained for any use not permitted in a zoning district.

Many retail uses are permitted in the B-1 district. Pawn shops are not considered a general retail use under state statute, but are treated as a business subject to licensing and thus are not considered in with the general retail of the B-1 district. Licensing in communities with a population of less than 40,000 is left to the local municipality. Since Claremont does not have a local licensing requirement and does not consider pawn shops in its zoning ordinance, review of the location of a pawn shop is left to the zoning ordinance.

Mr. Rock asked about the second condition. How can it be recorded in the chain of title when the tenant is not the owner? If the use remains uninterrupted it can continue so long as the Variance is linked to the use.

### **Open Public Hearing**

Mr. Matthew Truell, applicant, was present. Chair Hurd asked about parking for units of sale he may take in (boat, car, etc). Mr. Truell stated he will not take large items. He will mostly take gold and silver, collectable items.

The space will be one in from the yoga studio. Mr. Truell stated he has communicated with the Chief of Police and that they will have access to the inventory 24 hours a day, 7 days a week via a program that will be installed. Chair Hurd stated that the State will require photos identification, paper trail and records. ADT is currently set up in the space and it is the applicants' intent to have a security system.

Mr. Vic Truell, Matthew Truell's uncle, would like to speak in favor of the pawn shop. He and his brother have been looking into this business for a while. The business will offer items on consignment as well. This is a viable solution for the space.

Mr. Caouette asked if a pawn shop covers retail. Ms. Hutton stated yes, retail is a viable use in Zone B-1.

## Close Public Hearing

Chair Hurd stated that his only concern is if the owner would like to pawn larger items in the future. The owner would need to make arrangements for additional parking for such large units. Mr. Rock stated any vehicle storage must be offsite.

### 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, the business would be a positive asset to the public as we do not have anything similar in the vicinity. The owner is also working with the Claremont Police Department.**

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

**Yes, it is a retail business which is allowed in the zone.**

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 owner would be working with the Claremont Police Department.**

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

**Yes, this is a retail business permitted in the B-1 zoning district.**

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

**Yes, the business proposed is a reasonable use to the area and it would be a hardship to not allow this new business.**

- 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.

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 Section 22-266, permitted uses, to allow for the establishment of a pawn shop 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, (3) This Variance shall continue only so long as the premises are used uninterrupted as a pawn shop and shall expire upon any subsequent other use, (4) No person shall receive in pawn, whether as security for any loan, transfer, service, undertaking, or advantage: (a) Anything of value from any minor or person in a visible state of intoxication from liquors or otherwise; (b) In excess of 4 motor vehicles or titles to motor vehicles, as defined in RSA 361-A:1, VII; (c) Any title or deed to real property, including mobile homes, condominiums and rights to interval ownership; (d) Any mortgage or any promissory note, including the pledge or assignment of any right to receive payments, rents, or revenue arising from such note; (e) Any article of clothing removed from the person at the place of business of the pawnbroker. (5) All property received in pawn shall be retained possession for a thirty (30) day period subsequent to the purchase thereof: provided, however, that any such item may be disposed of by the purchaser within such thirty (30) day period with the written permission of the Chief of Police, and (6) Property including jewelry shall be maintained in the condition in which they were received, and shall not be altered, damaged, or destroyed during the holding period for any purpose. Property must be maintained at the dealer's location during the holding period.

**Made By:** Mr. Russel

**Second:** Mr. Rock

**Vote:** Unanimous

- **(ZO2012-0012) Ruben Ramirez, Claremont, NH-** The applicant is seeking a variance from Section 22-226 (2), permitted uses, to allow for the addition of another living unit is a residential property in excess of the density limitations. Property Location: **183 Main Street**, Tax Map 107, Lot 226, Zoning District R-2.

Currently a legal single family dwelling, the applicant would like to establish a second dwelling unit on the second floor of this property in excess of the density requirements of section 22-226 (2). The parcel consists of 9,148 square feet; 20,000 square feet would be required.

The applicant has provided a plot plan of the property showing where the structure sits on the lot. The City Planner and Building Inspector have visited the property; it appears as though this structure had been split into multiple units in the past, without permits. The new owner wishes to legitimized one additional unit and leave the third floor as storage.

This building was not condemned. Mr. Russel asked how many families are currently in the building. Ms. Hutton stated one family lives on site.

The violation from December 2010 was not abated. This violation dealt mainly with building issues. There was one permit pulled in 2005 to rewire the house.

Ms. Hutton stated there are three kitchens in this house. Chair Hurd stated that with three kitchens it would point towards a multi family property.

### **Open Public Hearing**

Chair Hurd stated that there is no floor plan. From life, fire and safety code, the board is not sure where things are laid out and they would need to know the finished product to make a determination. A parking plan is also needed. A continuance is recommended as there is not enough information to act on.

Mr. Russel asked about the third apartment and what currently there versus what will be there.

The board presented egress questions and fire escape concerns.

Mr. Caouette asked about the access. While Spring Street has a curb cut, the official curb cut is on Main Street.

Mr. Ramirez stated the third floor access will be eliminated completely.

Mr. John Hall, abutter next door, thanked Mr. Ramirez for cleaning up the area. It was Mr. Hall who tended to the property while it was foreclosed. At one point there were 5 units in this building. The center staircase was in the house was also removed; therefore the only egress was the back staircase. The property also had succumbed to squatters.

Mr. Hall's concern with this house as a two family is what it would do to his property value, the neighborhood, and also where the second egress could go that wouldn't interrupt this historic property. Mr. Hall stated that he grew up in the area, but as things change it would be harder to justify the commute to Manchester. He asked if it possible with the land available to have multiple units. Ms. Hutton stated that this is multi family for the Zoning Ordinance, but it is not multi family for building code until you hit 3 units.

The tax cards never listed this property as more than a single family.

Mr. Ramirez stated that he and his family live in Claremont, work in Claremont and own a business in Claremont. The expectation is that they can make this work, or the building will be for sale again. He would like to assure the board that they are selective in the rental process.

### **Close Public Hearing**

The ZBA stated that floor plans are needed.

If Historic District Commission approval is needed, the applicant will go forward in this process as well.

**Motion:** to continue this application to the June 4, 2012 meeting.

**Made By:** Mr. Russel                      **Second:** Mr. Rock                      **Vote:** Unanimous

### **IV. Adjournment**

**Motion:** to adjourn

**Made By:** Mr. Caouette                      **Second:** Ms. Towle                      **Vote:** Unanimous

Meeting adjourned at 9:15 PM

Respectfully Submitted by, Kelly LeBlanc