



Zoning Board of Adjustment Meeting

Monday, June 4, 2012 at 7:00 p.m.

City Hall, Council Chambers

Minutes

Approved 7/2/2012

I. Roll Call

Present: Mike Hurd, Carolyn Towle, Todd Russel, Tom Rock, Jim Hanson,

Absent: Dan Worcester (alt), Pierre Caouette (alt)

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

II. Review Public Meeting Minutes from May 7, 2012

Motion: approve minutes from May 7, 2012 as amended

Made By: Mr. Hanson

Second: Ms. Towle

Vote: Unanimous

III. Old 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 163, Zoning District R-2.

Mr. Russel has recused himself from hearing this application.

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 applicants have changed their plans and now propose only a 30' x 24' garage. This structure will be, as noted on the revised plan, 4 feet from the westerly line, 13 feet from the rear, and 9 feet from the house. A new plot plan has been produced. The back stairway has been eliminated and two egress windows will be used in place of the stairway. The garage layout will be the same, just to a smaller scale. The house does not need to be fire rated at 9 feet.

Mr. Hanson stated the front set back is improved and the back and the side set backs will remain the same. The board confirmed that there will be no kitchen in the new structure, only a bathroom. Ms. Bugbee stated she will be going back to LaValley's tomorrow to follow up with the plans. Chair Hurd stated it might be best to leave the interior open as the next owners could try to turn this into an apartment even though it was intended as a recreational space. Mr. Rock stated that the original plan would have looked like an apartment with a bathroom and kitchen space available. A condition could be made stipulating that the space cannot be a living unit. Chair Hurd recommended having LaValley's take out the walls on the plans.

Open Public Hearing

No Abutters present

Close Public Hearing

Ms. Towle stated the first time the case was heard, there were questions. Hearing the revision, the improvement was significant.

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 neighbors would not be in direct site of the house.
2. **Would granting the Variance be consistent to the spirit of the ordinance?**
Yes, the ordinance is trying to improve the neighborhood and this building does that.
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 egress has been addressed, the fire wall has been addressed and building code will be met.
4. **Does the proposed use maintain the value of surrounding properties?**
Yes, it will increase the value of their property and surrounding properties.
5. **Would denial of the variance by literal enforcement of the ordinance result in unnecessary hardship to the owner under either condition below?**

Yes, this is a special condition because it is not a square piece of property.

- 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 approve the variance from Section 22-229, Yards, to allow for the reconstruction and enlargement of a single family residential detached garage 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 garage shall not be used as a dwelling unit, the applicant shall bring in the new plan in to City Staff showing there are no partitioned walls upstairs, the bathroom will be closet-type versus a full bath, and (3) This Variance shall be recorded in the chain

of title.

Made By: Ms. Towle

Second: Mr. Hanson

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 in a residential property in excess of the density limitations. Property Location: **183 Main Street**, Tax Map 107, Lot 226, Zoning District R-2.

Motion: to accept the overview of the property and first floor.

Made By: Mr. Rock

Second: Ms. Towle

Vote: Unanimous

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 legitimize one additional unit and leave the third floor as storage.

Ms. Hutton confirmed that there are five bedrooms total and seven total parking spaces are needed (9 x 19 spaces are required). Ms. Towle asked about the dimensions of the parking lot. Mr. Ramirez stated it goes in fairly deep. The board agreed that the view of the site must be taken into consideration. Mr. Russel inquired about putting parking in the back of the lot. Chair Hurd suggested parking in the rear near the neighbor's garage.

Ms. Hutton stated some communities allowed someone to build lesser parking so long as he/she could accommodate additional parking in the future if the need presented itself. The board questioned if there is legitimate room for 4 parking spaces. The board agreed that to accommodate getting to the back lot for parking, front spaces might need to be eliminated.

Mr. Rock suggested a condition stating if the need arose, 3 additional spaces could be constructed. Ms. Hutton stated the deed shows from the corner of 107-227 to the curve on Main Street is approximately 66 feet.

Chair Hurd asked about paving. Mr. Ramirez stated they plan to leave screening.

Ms. Hutton stated by building 2 spaces per unit (4 total), the board could be assured that back space is available. Mr. Hanson stated the distance is speculative and not confirmed. The parcel has approx 9,000SF and 20,000SF is needed for two dwelling units.

Mr. Ramirez is restricting the amount of cars per unit. Mr. Rock confirmed that there were originally 5 units. Mr. Ramirez is planning for 2 units. Chair Hurd asked if they should wait to hear more about egress due to set backs. Ms. Hutton stated the egress variance would be a separate application. The parking is related to the amount of cars, units and people.

Motion: 15 minute recess

Made By: Mr. Russel

Second: Chair Hurd

Vote: Unanimous

Open Public Hearing

No Abutters Present

Close Public Hearing

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 Variance would take a situation where there are excess apartment units to a manageable number of 2.

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

Yes, the ordinance is put it place for density restrictions and this variance corrects having 5 units (not meeting density requirements) to a more conservative 2 units.

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, there will be less strain on city services and previously illegal situations will be corrected.

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

Property values would increase and there would be less traffic.

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

Yes, a variance is needed for use of the property.

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 approve the 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 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) Third floor to be used as storage only, with the kitchen and bathroom dismantled and not used as living space (4) leases to include restriction to 2 vehicles per unit, and (5) 4 parking spaces to be delineated off Spring Street, with additional parking for 3 vehicles in backyard if condition 4 is not met or if Spring Street parking area is determined to be traffic hazard by the Planning & Development and Police Department.

Made By: Mr. Russel

Second: Mr. Hanson

Vote: Unanimous

IV. New Business

- **(ZO2012-0013) Joyce A Hines, Claremont, NH-** The applicant is seeking a special exception for a Home Occupation, Section 22-207. This would allow for the creation of an electronics recycling business. Property Location: **40 Twistback Road**, Tax Map 106, Lot 6, Zoning District R-1.

The applicant is seeking a special exception for a Home Occupation, Section 22-207. This would allow for the creation of an electronics recycling business. This parcel, located in a R-1 zoning district, was originally 2 separately deeded parcels as seen in the plot plan provided by the applicant. They have been merged for tax purposes and are now one, being 40 Twistback Road.

This business proposed is an electronics recycling business. The applicant proposes to construct a 50 foot by 60 foot accessory structure to in which to place their Home Occupation. There are 2 employees who not do reside in the home. There will be no outside display. The property is located adjacent to an Industrial-1 zoning district.

Mr. Hanson and Chair Hurd asked about obtaining state, local, federal permits.

Kenneth and Joyce Burke are present to discuss their application. The intent is to find a suitable place in Claremont for computer recycling. They are currently working in Newport. The operations proposed would go along with tree clearing and be located below the culvert with the blind drive.

Chair Hurd confirmed that Joyce Hines is Joyce Burke. Ms. Burke confirmed.

Mr. Hanson asked about registration with the state as a recycling facility. Mr. Burke stated they are registered with the state. Chair Hurd asked about a DES solid waste permit. The state has changed many rules and regulations have changed in the last 18 months. Mr. Hanson stated that if they are classified as universal waste, it is less restrictive than solid waste, etc. The Burke's will look into possibly permitting.

Ms. Burke stated they joined the NRRA. Chair Hurd suggested contacting DES. Mr. Hanson asked how their items will be collected. Mr. Burke stated that they pick up the items and there will be no customers dropping off items. Mr. Burke stated that the commodity items will go out via truck (approx. 4x a year). Mr. Russel confirmed that everything will be done inside the building. Mr. Hanson stated that being on the industrial line; there are already trucks in and out of the area.

Mr. Burke stated they have a bailer for plastic, but no machinery.

Ms. Burke stated that they will make certain a tractor-trailer will be able to pull in and turn around on site.

Mr. Hanson inquired about the aesthetics of the building. Mr. Burke stated the building will be steel. A new septic will be installed (there would be a bathroom and sink installed in the proposed structure). Exterior lighting will be added.

Mr. Russel asked about hazardous waste inside a computer. Mr. Burke stated the steps beyond what they would do are hazardous. Chair Hurd asked if there is an abundance of any pieces that could be hazardous if broken. Mr. Burke stated they break the monitors down to tubes, but the company the parts go to next completes the hazardous step. The CRT monitor glass is leaded but will not pose a concern.

A 16SF sign would be allowed.

Open Public Hearing

No abutters present

Close Public Hearing

No abutters present, contained within building, new septic

IV. Review Criteria

To approve a Special Exception the ZBA shall find favorably to the applicant on **all** the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that the proposal meets the following criteria.

(1) The specific site is an appropriate location for such a use;

Yes, this site borders an industrial zone.

(2) Property values in the district will not be reduced by such a use;

Property values will not be affected, borders industrial zone and the Burke's are their own neighbors.

(3) No nuisance or unreasonable hazard shall result;

No hazardous breakdown will occur on site. Only a bailer will be used for plastics.

(4) No adverse traffic impact will result from such a use;

The Burke's will pick up items for recycle, customers will not be dropping off items.

(5) Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use, including water, sewer and parking;

Yes, a new septic will be installed. There will be appropriate parking for a tractor-trailer to turn around.

(6) No adverse impact on the view, light and air of any abutter will result; and

No adverse impact.

(7) The use will not place a disproportional burden on the city's operational services in comparison to the anticipated tax revenue associated with the property/use in question.

No disproportional burden will be placed on the City's operational services.

(8) Such a use would not be detrimental to the public health, safety and general welfare.

No hazardous processing will take place onsite.

(9) Such a use would be in harmony with the general purpose and intent of the zoning ordinance

Yes, the use would be in harmony as the lot borders an industrial zone.

Motion: To approve the special exception for a Home Occupation, Section 22-207. This would allow for the creation of an electronics recycling business with the following condition: (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. Rock

Vote: Unanimous

- **(ZO2012-0014) Lee and Teena Hentschel, Claremont, NH-** The applicant is seeking an expansion of a non-conforming use, Section 22-113, to allow for the expansion of a commercial use in a residential district. Property Location: **82 Charlestown Road**, Tax Map 154, Lot 39, Zoning District R-1.

The applicant has an existing non-conforming commercial use in an R-1 zoning District. The applicant proposes to expand this use to include a hot dog concessions stand with outdoor seating. For many seasons the hot dog concession has existed, prior to this use there was take-out food on premise. The applicant would like to have several picnic tables and a bar with stools. As can be seen from the photograph provided, trash receptacles and other amenities are provided.

The enclosed plot plan from 2008 shows the applicants 7 parking spaces. The concession is a short term customer use and the parking should turn over quickly. The City Code only required 5 parking spaces for this current "restaurant" use. There is an extensive historical record on this property located in the Planning and Development Department files and can be inspected upon request, it will also be available at the meeting for reference. The applicant is in compliance with the Health Code.

There are 6 seats per picnic table (18" per seat).

Ms. Towle stated that it is a nonconforming existing use. Ms. Hutton stated that the hot dog concession wasn't originally approved but this is a take off of that.

Mr. Lee Hentschel, owner, presented his application. He purchased the property 5 years ago and the hot dog stand was opened 4 years ago for additional revenue. At this time he was informed he could have seating for 4 for this take out business. There are now 18 seats. He was told after a health inspection that he would need those 18 seats approved.

Ms. Towle asked who told Mr. Hentschel who could put in seats. Mr. Hentschel stated that he believes Ken Walsh, Terry Carter and the previous health inspector worked on the site for approval. Mr.

Russel confirmed that the health inspection and code have been appropriate for the last 4 years. Mr. Hentschel confirmed this to be true. Only after adding more seats that the property was red flagged.

The hot dog stand is only open from 11:30-2:30.

Chair Hurd stated that when the ice cream shop (retail business) went out of business, there was a delay in-between when Mr. Hentschel purchased the building and when it closed. They therefore lost their non conformity. Ms. Hutton stated that because the property was listed for sale it did not lose its non conformity. This is why this is an expansion of a non conforming use and not a variance. Mr. Hentschel stated at some point the building will be converted back to residential.

The applicant would like to keep the non conforming use, and keep the seating. The business will stay seasonal. He is looking for approval of an outdoor hot dog cart with outdoor seating. This is a non conforming use for takeout.

The non conforming use exists on the building, but the application is for the expansion of a non-conforming use.

Motion: 5 minute recess

Made by: Ms. Towle **Second:** Chair Hurd **Vote:** Unanimous

Ms. Hutton referenced Page 3 of the letter from the Zoning Administrator in 2010. Currently we are looking for an expansion to go from inside seating to outside seating. In June 2009 a food service license was granted. It was confirmed that the food service license is still active.

Close Public Hearing.

Chair Hurd reiterated this is from indoor to outdoor seating.

Mr. Hanson stated there are no abutters present to contest the application which is important.

IV. Review Criteria

To approve an Expansion of a Non-Conforming Use the ZBA shall find favorably to the applicant on **all** the following Findings of Fact. The burden of proof is upon the applicant to demonstrate that the proposal meets the following criteria.

- 1. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood;**

No neighbors objected, parking lot will be lined this year

- 2. There will be no nuisance or serious hazard to vehicles or pedestrians;**

Parking lot to be lined this year which will increase safety

- 3. Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.**

Parking will be striped.

Motion: to approve the expansion of a non-conforming use, Section 22-113, to allow for the expansion of a commercial use in a residential district with the following conditions: (1)The applicant shall obtain and receive approval for all necessary permits as determined by the Local, State and Federal governments and (2) No more than seating for 20.

Made By: Mr. Rock

Second: Mr. Russel

Vote: Unanimous

V. Adjournment

Motion: to adjourn

Made By: Mr. Russel

Second: Mr. Rock

Vote: Unanimous

Meeting adjourned at 8:53 PM

Respectfully Submitted by, Kelly LeBlanc