



Zoning Board of Adjustment Meeting

Monday, July 2, 2012 at 7:00 p.m.

City Hall, Council Chambers

MINUTES

Approved 8.6.2012

I. Roll Call

Present: Mike Hurd, Carolyn Towle, Todd Russel, Tom Rock, Jim Hanson, Pierre Caouette (alt)

Absent: Dan Worcester (alt)

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

II. Review Public Meeting Minutes from June 4, 2012

Motion: approve minutes from June 4, 2012 as amended

Made By: Mr. Hanson

Second: Ms. Towle

Vote: Unanimous

III. New Business

- **(ZO2012-0015) Albert C. Blake 1997 Revocable Trust, Claremont, NH-** The applicant is seeking a special exception for a Home Occupation, Section 22-167. Property Location: **335 Winter Street**, Tax Map 73, Lot 6, Zoning District RR.

The applicant is seeking a Special Exception pursuant to Section 22-167, Permitted Uses, to allow for the establishment of a Home Occupation. This business uses the home for invention R&D and a workshop.

This property is in a Rural Residential District on Winter Street. This business will be contained within a residence.

Mr. Albert Blake, applicant, was present to discuss his application. He already has a patent for his device that will assist those in the boating industry. He has created a mooring line/hook so that one does not have to lean over the bow of the boat. This business is just a temporary situation at the house. When he gets more business he will move to another location and building. Mr. Blake anticipates being at the house for up to three years in total. Mr. Blake will not be selling his device on the property; he will sell at marinas only. UPS/FedEx will deliver items needed.

Mr. Rock confirmed that this is set up like a hobby shop and that there would be no expansion. Mr. Blake stated everything is inside and no noise will be heard outside. All welding will be contracted with an outside company. Mr. Blake's house is built like an L so the hobby shop is off the base of the house. There would be no large machinery.

Chair Hurd confirmed that this is not a business yet. There is a patent and therefore the merchandise just needs to be produced. Ms. Hutton clarified that the intent is to be a business and he is taking the proper actions. Mr. Blake stated he has already had product delivered and it has all come in UPS or FedEx.

Open Public Hearing

No Abutters Present

Close Public Hearing

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, the business is not invasive.

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

No property values affected.

(3) No nuisance or unreasonable hazard shall result;

No hazard predicted as all work would be completed inside.

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

No traffic impact, only UPS/FedEx truck occasionally.

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

Yes, all work will be inside.

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

Yes, the house is so far back this is not a concern.

(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.

Yes, this site will not burden the City as it has private services (well and septic).

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

No, it would not be detrimental.

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

Yes, it is in harmony because it protects health, safety, and welfare of the public.

Motion: to grant the Special Exception from Section 22-167 with the condition that the applicant shall obtain and receive approval for all necessary permits as determined by the Local, State and Federal governments.

Made By: Mr. Russel

Second: Mr. Rock

Vote: Unanimous

- **(ZO2012-0016) Scott and Beth LaCaillade, Claremont, NH-** The applicant is seeking a variance from the front yard setback for an addition to the living area, Section 22-169. Property Location: **83 Case Hill Road**, Tax Map 159, Lot 55, Zoning District RR.

Ms. Towle recused herself due to conflict of interest; Mr. Caouette will sit in.

The applicant would like to build a 384 square foot addition on this single family dwelling. The addition would be 38 feet from the front property line whereas 50 feet is required by Section 22-169.

Currently the home is 54 feet from Case Hill Road's right-of-way. The proposed addition would be 38 feet from the Case hill Road right-of-way. There will be four bedrooms in total. The septic will be revised as it is only currently approved for a three bedroom dwelling.

Mrs. Beth LaCaillade was present to discuss her application. The property line is actually 53 feet from the road. Ms. Hutton stated that the board could say 'no more than' or 'no less than' to give the applicant options. There is a garage set back from the property. The driveway prevents adding on to the side of the house. Chair Hurd stated that they are looking for a 12 foot variance.

Open Public Hearing

No abutter's present

Close Public Hearing

Mr. Rock stated where the right of way starts is important. Chair Hurd stated that specifying that no addition can be closer than 33 feet to the property would give the applicant ample room.

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, this is the only logical location due to the garage and septic and property line.

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

Yes, the land would not be overburdened and they have a growing family so this is the best option.

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 are no public safety issues, the applicant has demonstrated the need for space and that this is the only logical location for the addition.

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

Yes, it will modernize and update the existing house.

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

Yes, denial would be a hardship on the family and this is a unique situation based on the make-up 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: approve the variance from the front yard setback for an addition to the living area, Section 22-169 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) This Variance shall be recorded in the chain of title, and (3) the addition shall be constructed not less than 33 feet from the front property line.

Made By: Mr. Caouette

Second: Mr. Russel

Vote: Unanimous

- **(ZO2012-0017) New Branch Properties, LLC, Claremont, NH-** The applicant is seeking a Variance from Section 22-269, Yards, to allow for the expansion of a deck on a proposed commercial building. Property Location: **40 Main Street** Tax Map 120, Lot 31 Zoning District B-1.

Currently a two family dwelling, the applicant would like to remodel the building and use it for a retail bakery/restaurant space.

The applicant would like to remodel a two-family dwelling. This construction project would include an expanded porch to be 4 feet or more from the proposed new property line. The setback in this district is 15 feet from the side lines according to section 22-269 of the City Code. This project will require Planning Board and City Council approvals if approved by the Zoning Board of Adjustment.

The only variance needed is on 40 Main Street although there are three lots involved. The line on the site plan is the new proposed property line. A variance, site plan, subdivision/annexation, and council motion will be needed. Ms. Taylor stated that the request is to acquire a portion of the City Property that is on the top of the retaining wall. This decision can only be made by the City Council.

Mr. Russel confirmed that this is all pending the approval of the other boards. Ms. Hutton stated that as long as the five conditions are used that have been recommended by City staff, everything is acceptable to progress.

Mr. Eugene Lattuga, applicant, was present to discuss his application. He assured the board that the house is going to be saved. The HDC has approved the proposed change. The ZBA was chosen to start the approval process because of set back requirements. Set back needs to be approved for the application to progress. The City currently has an easement that is not usable. New Branch Properties, LLC. has supplied the City with an Easement that would grant them use. The porch is needed for outdoor seating. The second floor will also be used as the restaurant. Handicap access is in the rear to disturb as little land as possible.

Ms. Taylor stated that staff cannot agree to change easements; this is a City Council decision.

Open Public Hearing

No abutter's present

Close Public Hearing

Chair Hurd stated that the preservation of the home is a good venture.

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 applicant is turning a dilapidated building into something beautified.

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

Yes, there is space for this proposal and no overcrowding.

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 no threat to public safety, health or welfare. There will be no hazards.

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

Yes, increase of surrounding property value and create jobs.

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 proposal would beautify the gateway into Claremont and denial would impede the city.

- 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: grant variance to allow for a set back of four feet from fifteen feet in accordance with Section 22-269 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, (2) Variance contingent of minor subdivision approval of the noted annexation between the City of Claremont and New Branch Properties, LLC., (3) Variance contingent on site plan approval for New Branch Properties, LLC., (4) Variance contingent on City Council approval of conveyance and approval, execution, and recording of deeds and easements between the City of Claremont and New Branch Properties, LLC. and (5) This Variance shall be recorded in the chain of title.

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

IV. Other

Claremont City Center Project Update – The Cecil Group from Boston has been hired as the Zoning Consultant. There will be a Zoning charrette Meeting on Saturday 21, 2012 from 8AM to 12PM at the Claremont Middle School. The week prior to the meeting there will be an Open Studio where Ms. Hutton and a Steering Committee member will take comments and ideas. The location has yet to be determined. 50% of Claremont’s population is in the City Center. Mr. Rock stated that CCCP feedback has been very positive, even from outside investors. The CCCP will wrap up in the Fall. The purpose of the charrette is to act as a visual aid.

V. Adjournment

Motion: to adjourn

Made By: Mr. Russel **Second:** Chair Hurd **Vote:** Unanimous

Meeting adjourned at 8:10 PM

Respectfully Submitted by, Kelly LeBlanc