

**Place:** Raymond High School Dining Area  
**Call to Order:** 7:30 p.m.

**Members Present:** Chairman Paul McCoy, Sharon Weldy, Joyce Wood, Charles White and Nick Moccia

**Staff:** Code Enforcement Officer Mailhot and Bette Patterson Administrative Assistant

### **Pledge of Allegiance**

Chairman McCoy announced that the ZBA meeting was originally scheduled for February 14<sup>th</sup>. Due to a major snow event the meeting was cancelled. The original notice provided a contingency date of tonight, February 21, 2007.

### **Approval of Minutes**

**MOTION:** Joyce Wood made a motion to approve the minutes of 01/10/07 as amended. Nick Moccia seconded. Voted unanimously in the affirmative.

**MOTION:** Joyce Wood made a motion to approve the minutes of 10/11/06 as amended. Sharon Weldy seconded. Voted unanimously in the affirmative.

### **Group 5 Partnership Accurate Crane Service Inc. Use Variance**

An application for a Use Variance from David Bruce/Group 5 Partnership Accurate Crane Service Inc. requesting permission to establish a non-conforming two family residential use in a C.1 Zone, more than 5 years after the removal of the former residential use, single family building. The property is shown on Map 18, Lot 5 on the Raymond Tax Map, Fremont Road.

David Bruce explained that this was a grandfathered residential lot with a building. The building burned down five years ago. The zoning is currently C-1. It would make the most sense to put a home on it because it's surrounded by residential homes. He stated he believes the board has set a precedence by granting variances to other owners like Dana Brown.

Joyce Wood stated the function of the ZBA is for you to convince us that your property meets the hardship criteria. The applicant needs to show the board that there is a hardship related to this property.

David Bruce stated that there is no hardship. It's better to put a house on this lot.

Joyce Wood asked if this is a two-family.

David Bruce stated it was a one family originally but there is a possibility it could be a two family so I was advised to put that on the application. The property is slightly over two acres. The frontage for the lot is on Route 102. The question is

should the lot be residential or commercial? All the properties around it are residential. The commercial value is greater but it makes more sense to have it residential.

Chairman McCoy stated there was an old house on the lot. The frontage is on Rt. 107 but accessed through Rt. 102. He asked if there were wetlands on the lot.

Code Enforcement Officer Mailhot replied that there are wetlands out there and that is on the report from the DES which the board has a copy of.

David Bruce stated he is in compliance with the letter.

Mr. Rogers, an abutter, stated the wetlands were recently filled. It was a seasonal cottage on the property. It's more of an issue if there are wetlands there. This is in a single family area and I think putting in duplexes would be a concern.

Chairman McCoy asked Mr. Rogers if he would like to see a commercial use there.

Mr. Rogers replied that he thought it was a non-conforming residential use.

Mrs. Rogers pointed out where the wetlands have been filled over the past 15 to 20 years.

David Bruce stated that RSL left out a deed in 1984 when the first survey was done. The only filling was done by the Rogers dumping brush there.

Mrs. Rogers stated the Mr. Bruce filled it the day after Christmas. Her only concern is if he put a building in any where else but on one area in the lot, otherwise it would be in a swamp.

Chairman McCoy stated that the Board cannot change the zoning, the board could only grant a variance for residential use.

David Bruce stated that the septic would be for six bedrooms.

Joyce Wood questioned the amount of frontage shown on the plan as 98 feet.

David Bruce stated the frontage total is 103 feet. The other four feet of frontage is off Route 102.

Joyce Wood asked Code Enforcement Officer Mailhot if there were commercial uses for this property.

Code Enforcement Officer Mailhot stated that it's impossible to tell without engineering the site. There are a number of permitted commercial uses that are listed in the Zoning Ordinance.

Charles White read the letter from DES stated that there are a number of deficiencies. There are things that have not been done.

David Bruce stated that everything on the letter is being handled by a wetland scientist in a timely manner.

Dick Fisher, a representative for Mr. Bruce, stated the gentleman from the State came to the property and filled out a report that there is historical fill as well as new fill. Mr. Bruce applied for a minimum impact permit to cut wood and this permit is for access to the back of the property to get to where he wants to do the cutting. A wetland scientist was hired to determine how the property will be graded, to determine the drainage plan and other items that may be impacted by the proposed access across the wetland. There is a lot of work to this and will not be done until after the ground thaws out. We are admitting that the area we want to fill is wetland. It's minimum impact to get to the back land. Mr. Bruce bought this property six days after the grandfathered status expired. The property is more valuable as a commercial use but Mr. Bruce would like to build a residential home.

### **Deliberative Session**

MOTION: Joyce Wood made a motion to enter deliberative session. Nick Moccia seconded. Voted unanimously in the affirmative.

Joyce Wood stated how can we grant this? The applicant, by his own admission, has stated that there is no hardship. We have criteria and we have no evidence that this property cannot be used for commercial purposes.

Paul McCoy stated that there are problems with the property. The Rogers' property is a large colonial. The use would make more sense to use this site as residential. The request is for a duplex. Mr. McCoy stated he didn't believe that people would like a machine shop in there.

Joyce Wood stated the applicant has a duty to make his case and he has not done that.

Charles White stated he agreed with Joyce Wood. The applicant has not presented a case and maybe the board should continue this until the paperwork is in order. There are other issues that should be in front of other boards.

Sharon Weldy stated that she has not seen any evidence to support the request.

Code Enforcement Officer Mailhot stated the septic plan review was denied because it was residential. The board should be making two decisions. 1. If the board will grant a variance for residential use and 2. If so, can a duplex be placed on this lot. He stated he is not sure what evidence you would need regarding the grandfathered use.

Joyce Wood asked why is this is a hardship.

Chairman McCoy stated that the board should go out and look at the site. It could give us a chance to not create a major problem.

Sharon Weldy stated the problem is that there is no evidence needed to justify allowing a residential use.

Joyce Wood asked why don't we need evidence to allow a residential use?

Sharon Weldy replied because Mr. Bruce just missed the grandfathered use by six days.

Joyce Wood stated that she could see if the lot wasn't suited to commercial development but we do not have anything here to say that it's not suited for commercial use. She stated she is having a hard time seeing a hardship.

Paul McCoy stated that the Board has to look at the whole picture.

Joyce Wood stated she would like to hear from the applicant and if they are willing to come back and be prepared to make a case.

MOTION: Charles White made a motion to come out of deliberative session. Nick Moccia seconded. Voted unanimously in the affirmative.

Charles White asked the applicant if he owns other property in the area.

David Bruce replied yes. He stated when he bought it he was under the impression that it was a residential lot. He stated he didn't do his do diligence and that is why we are here. The land will be used commercially if the Board doesn't allow us to put a house there.

Paul McCoy asked the applicant if he would like the option to come back with more evidence.

David Bruce stated that he's not even sure if he's building a duplex. He put that on the application in case he wants to put that in. He stated he would just as soon go forward. After tonight, if the board denies the residential use then you are denying the neighborhood of staying residential.

**VOTE ON THE CRITERIA FOR A USE VARIANCE**

1. The proposed use (would – **would not**) diminish surrounding property values

Nick Moccia	Would not	Paul McCoy	Would not
Sharon Weldy	Would not.	Chuck White -	Would not
Joyce Wood -	Would not		

2. The granting of this variance (would – **would not**) be of benefit to the public interest

Nick Moccia	Would not	Paul McCoy -	Would
Chuck White -	Would not	Joyce Wood -	Would not
Sharon Weldy –	Would not		

3. Denial of this variance (would – **would not**) result in unnecessary hardship for the owner

Nick Moccia	Would not	Paul McCoy -	Would
Chuck White -	Would not	Joyce Wood -	Would not
Sharon Weldy-	Would not		

a. Zoning restriction as applied to this property interferes with its reasonable use. **(True – False)**

Nick Moccia -	False	Paul McCoy -	True
Chuck White –	False	Joyce Wood -	False
Sharon Weldy –	False		

b. No fair and substantial relationship exists between the purpose of this ordinance and the specific restriction on this property. **(True – False)**

Nick Moccia -	False	Paul McCoy -	True
Chuck White –	False	Joyce Wood-	False
Sharon Weldy –	False		

c. The variance will not injure the public or private rights of others. **(True – False)**.

Nick Moccia -	True	Paul McCoy -	True
Chuck White –	True	Joyce Wood -	True
Sharon Weldy -	True		

4. Granting the variance (would – **would not**) do substantial justice.

Nick Moccia -	Would not	Paul McCoy -	Would
Chuck White -	Would not	Joyce Wood -	Would not
Sharon Weldy -	Would not		

5. The proposed use (**would** – would not) be contrary to the spirit of the ordinance.

Nick Moccia -	Would not	Paul McCoy -	Would not
Chuck White -	Would not	Joyce Wood -	Would
Sharon Weldy–	Would not		

MOTION: Joyce Wood made a motion to deny the Use Variance from David Bruce/Group 5 Partnership Accurate Crane Service Inc. requesting permission to establish a non-conforming two family residential use in a C.1 Zone, more than 5 years after the removal of the former residential use, single family building. The property is shown on Map 18, Lot 5 on the Raymond Tax Map, Fremont Road. The reason for the denial is that there is no evidence the parcel cannot be used for a commercial project. Nick Moccia seconded. Voted unanimously in the affirmative.

**Turcotte/Bemis Use Variance**

An application for Use Variance from David Turcotte requesting permission to construct one residential home on each of the two individual lots that are currently zoned C.2. Residential single family use is not an allowed use in Zone C.2. The property is shown on Map 17, Lots 31-2 and 31-3, Batchelder Road. The property is owned by Gregory Bemis. A similar request was before the ZBA in 2003.

*Please note: Joyce Wood stepped down from this hearing because she is a friend of Greg Bemis, the property owner. Chairman McCoy disclosed that he once represented the property that is being discussed, however, that was a number of years ago and he has no pecuniary interest at this time. The Board Members had no problem with Mr. McCoy serving on the case.*

Chairman McCoy stated that there are only four members serving on the Board for this evening's meeting. Any decision made by the Board will require a minimum of three votes. The applicant may request that the hearing be continued to the next meeting or proceed with the hearing tonight. The fact that there is a four member board may not be used in any request for appeal.

Mr. Turcotte agreed to move forward with the appeal. He presented the Board with a letter of permission from the property owner (as presented with the application) and a copy of a letter from abutter John Richard who supports the request for a variance. Mr. Turcotte stated that the whole area surrounding this property is residential. There is a hardship because the property doesn't suit itself as a commercial property because of the location. We have tried to market it and it's not really feasible for a commercial use. He submitted several examples of cases that were very similar that were given variances by the ZBA. He stated that these few lots created as C-2 zoning were done so before the plan to develop Exit 4. This really is no longer any need for these lots to remain in a C2 zone.

Code Enforcement Officer Mailhot stated that when the Town of Raymond did the Master Plan this area was identified as C2 because there was very little C2 zoning available at the time.

**Abutter comments:**

Steve Allen, owner of Steve's Auto Repair located adjacent to this property, spoke against the proposal. He stated he did not think that there was a hard ship. The property is commercial and it should stay commercial. He stated if there is a single family home there and I start using my air tools, I'll probably get complaints.

Mr. Turcotte stated that this is not a good location for a commercial use.

**Deliberative Session**

MOTION: Sharon Weldy made a motion to enter deliberative session. Nick Moccia seconded. Voted unanimously in the affirmative.

Nick Moccia stated that the property owner knew that the zoning was C2 when he purchased it.

Paul McCoy stated that it would be better residential but there is no new evidence to support it. It should have come to the Town for a vote.

MOTION: Sharon Weldy made a motion to come out of deliberative session. Nick Moccia seconded. Voted unanimously in the affirmative.

Chairman McCoy and the Board reviewed the ZBA decision (dated July 2003) denying a variance for the same property. Counsel has been contacted as to the validity of hearing this case, however, the Chairman has not received an answer as yet.

Mr. Turcotte stated that he would like to withdraw his application with out prejudice.

**Albert & Gail Martin – Amendment to a Variance**

An application for an Amendment to a previously granted variance from Albert & Gail Martin. The Board previously agreed to allow creation of a 2.0498 acre lot with a 62 foot access way from Route 102 (Chester Road), conditional upon approval of the westerly abutter (Map 11, Lot 4) to a Cross Rights Easement Agreement relative to the existing common driveway. The abutter does not wish to enter into such an agreement, and the applicant now wants to amend the Variance so that the lot can be created with a common access way to be used both by proposed lot 11-5-1 and lot 11-5. The property is shown on Map 11, Lot 5 on the Raymond Tax Map, Chester Road.

Note: Joyce Wood returned to the board for the remainder of the meeting.

MOTION: Joyce Wood made a motion to continue this hearing to Wednesday, March 14, 2007 at RHS Room 101 at 7:30 p.m. The notice is to include a snow date of March 21, 2007. This is after the March Town Meeting vote so that the

results of the petitioned article for the property will be known. Sharon Weldy seconded. Voted unanimously in the affirmative.

**Other Business**

Code Enforcement Officer Mailhot suggested that the board adopt rules of procedures that would include a section on removal of members who no longer attend. It would be up to the Chairman to announce excused absences at the beginning of each meeting. The staff was requested to draft a document for the Board to review.

MOTION: Joyce Wood made a motion to recommend the appointment of John Page to a three year term as an alternate member, so long as he agrees. Sharon Weldy seconded. Voted unanimously in the affirmative.

MOTION: Sharon Weldy made a motion to recommend the following appointments: Nick Moccia – 1 year      Joyce Wood and Charles White – 3 years      Paul McCoy – 2 years.  
Joyce Wood seconded. Voted unanimously in the affirmative.

**Adjournment**

MOTION: Joyce Wood made a motion to adjourn. Sharon Weldy seconded. Voted unanimously in the affirmative. MEETING ADJOURNED AT 9:40 P.M.

Respectfully submitted,

Bette Patterson  
Administrative Assistant