



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

PRESENT: S. Bogert, **Chairman**; S. Perley, **Vice Chair/Secretary**; D. Greski; O. Gibbs; M. Foote; R. Smith, **Alternate**; D. Robitaille, **Alternate**; K. Geraci, **Alternate**

ABSENT:

STAFF: S. Saunders, **Planning Director**; K. Snow, **Zoning Technician**

MINUTES: The minutes from the July 15, 2013 ZBA meeting were voted on. The motion to accept was made by D. Greski and seconded by O. Gibbs. All voted in favor of approval, 5-0.

S. Bogert announced that there would be a few changes in the agenda this evening in order to allow all of the applicants time to appear. Each applicant will be permitted 15 minutes to present their proposal; the public gets 5 minutes each. Other than that change the agenda will remain the same.

He announced that the final application, the amendment for The Gables, is being tabled as the City is currently in a lawsuit over this application. This hearing will be re-scheduled pending the decision on the court case. D. Robitaille and K. Geraci were seated for Application 2012-0025.

Motion: S. Bogert moved to table Application # 2012-0025 until after the court case is determined. S. Perley made the second with all voting in favor of tabling, 5-0.

S. Saunders also mentioned that there was a question on the abutter notices, so prior to being heard, that issue will be resolved and the application will be re-noticed at the time it is heard.

D. Greski said he will ask to be recused from Application # 2013-0020. O. Gibbs recused herself from Application # 2013-0017. R. Smith recused himself from the 2 hearings for 640 Elm Street.

CONTINUED HEARINGS:

Application # 2013-0017
Brick House LLC

MSL 139-127-17
425 Lakeside Ave

CR Zone
Variance

The applicant is requesting a variance from 235-33, Density, in order to have a 3 unit building, using the existing foundation. The lot is 0.32 acres, 13,939.2 SF; the zone permits 6 units per acre. 21,780 SF of land would be required for the 3 units.

Applicant: R. Mailloux and K. Mailloux appeared for the application. A copy of the eviction notice was given to the city for the files. The board members discussed the paperwork they received with this month's packets. The previous owner applied for a building permit back in 2003, it was issued, the foundation was put in, but the owner did not go forward at that time so the permit expired.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

S. Saunders said she was unsure whether the foundation did exist at that time or this was proposed. D. Greski: asked for clarification on the memo written on September 12, 2003, by Stephanie Verdile which mentioned 2 frontages. S. Saunders said the property does have 2 frontages and they left off the proposed deck at that time so the addition met the setbacks. S. Bogert said it got approval back then. He asked if the criteria had changed since the original approval was issued.

S. Saunders said the zoning ordinance has not changed, but the building code has and been updated. She said she is not sure if what was submitted previously meets the current building code but setbacks have not changed, and the height requirement remains the same. S. Bogert asked if this proposal meets our criteria and was told yes.

D. Greski said we had a question on the DES permit at the previous meeting as well as the question on the rental unit, and asked if the DES requirement had been addressed, either now or earlier. S. Saunders said yes, probably not earlier but yes today as the corner of the property runs through the shoreland. K. Mailloux said he e-mailed the permit to S. Saunders about 2 weeks ago, and she asked him to resubmit to her. S. Bogert said the density is the only issue here, as this meets everything else.

D. Robitaille asked for the hardship to be clarified. The property can conform to the ordinance as originally submitted. S. Saunders said the previous proposal was residential accessory, not an additional residence.

S. Bogert said that is technically true of anyone adding to their house. He said that all homes could self sustain themselves as a single family home so that could be applied to every property that comes forward. D. Robitaille asked when you draw the line and say it isn't a hardship. S. Bogert said that is an individual opinion.

S. Saunders said the hardship has to be property related; about the property itself - what makes it different from other properties. We need to think if this proposal is appropriate to this area as compared to other areas. Look at the character of the area that it sits in.

D. Greski clarified that the main difference between then and now is that this wasn't an issue previously because they said it was a barn. S. Saunders said yes, it was not proposed as a residence at that time. D. Greski asked K. Mailloux if this will be any different from the foundation as it was presented previously. K. Mailloux said no and D. Greski clarified that this is just the "inside" being talked about.

The previous meeting had been closed but S. Bogert asked K. Mailloux to speak so technically he reopened it so the public should be permitted to speak as well.

Public: Rod Dyer: R. Dyer stated he is the attorney for the Gentile's. He pointed out that the majority of the residences here are single family homes. For this proposal each dwelling must have at least 7000 sf per dwelling. This has 14,000, so the lot could support 2 units. They feel there are 2 there now. The unit in the basement is fully set up, with a bathroom and kitchen.

The property is not unique when viewed within the context of the neighborhood. The predominant use here is single family use. They feel this application is incomplete, as they presented no plans showing the proposed structure. They believe that is an integral fact.

The applicant himself made an issue regarding the view. There is no view easement, but this is part of the value of the Gentiles' property. Anyone with lake views is aware of that. That is a factor in appraising a property.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

There are alternative uses for the property. They feel this can be used in other reasonable ways, such as a garage, deck or patio, or a storage facility with a roof. There are a variety of uses that are not single family. Monetary gain is not a hardship.

R. Dyer stated there is nothing unique about the property. It has not been proven that granting the variance won't diminish values of other properties. This property has no burden that is different from others in the area. R. Dyer stated that there is a reason why the City Council and the City of Laconia set land area standards. It is to prevent light, air and noise pollution; the ability to prevent undue crowding; appropriate use of the land; and to comply with the goals of the Master Plan. There is a solid basis for that. The burden of proof is on the applicant, and the Gentiles' do not have to prove a negative.

Donna Gentile: 430 Lakeside Avenue: They reside across the street from the proposed structure. When the Brickhouse was rented there were some serious issues, and many police visits. They have a concern with a rental property and parking. When the Brickhouse was recently rented there were 4 cars, then 3 the following week. If the proposed structure is rented, there could be 9 cars. People are currently parking along the street and in this drive way while visiting the restaurant.

Two years ago the applicant called J. Gentile over to show him a picture of the red barn they might build. Pat Mailloux told them they would not build for at least 10 years. The existing structure is already being rented, and they are not living there, after they were told they would be. She asked the board to consider them and their neighbors. This proposal will affect the views drastically.

No one else spoke for or against.

Applicant: K. Mailloux said there has been a common theme which has nothing to do with the density, which is why they are here. At the previous meeting the abutter said he didn't care about there being additional units, just don't affect his view. They can build up to 35 feet high no matter what. The structure will affect their property, but the Gentiles have known that since 2003, and they chose to build after that. They still park their trailers on this property.

S. Perley asked if they are living there and K. Mailloux said his parents live there in the summer. S. Perley asked about the illegal apartment; will that be removed? K. Mailloux said he talked to S. Saunders about what to do after they get the tenant out. They were told to remove the kitchen, but they can have bedrooms and a bathroom. They need a demo permit, and the building inspector checks that out.

D. Robitaille asked how many parking spaces they will have and was told there is an existing double garage, a large paved area, a large gravel area, and a grassy area to the right of the garage. At 2 spaces per unit, there will be ample parking. K. Mailloux said they are a big family.

D. Robitaille asked what happens on the weekends when visitors come and was told they can park 12-15 vehicles with no problem but when doing rentals they restrict parking passes. D. Greski asked how many spaces are required and S. Saunders said per unit 1.5 so 5. K. Mailloux said they have 3 inside the garage now.

D. Robitaille asked if there is a crosswalk going in across from Scenic and was told no, but they are in discussion on that.

K. Mailloux said they are here just for the density, not the view, and thanked the board for their consideration.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

S. Bogert closed the hearing to the public.

Board: D. Greski clarified that the proposed structure is the same size as what was proposed in 2003, and that the only difference is the inside. He was told yes. He said there is an issue regarding the view, and that he does sympathize with the abutters but since they don't have a view easement, that should not be considered. The foundation is there and they knew it was going to be a barn previously.

D. Greski said he is leaning towards permitting 2 units. That would meet the ordinance. S. Perley said this would be 3 units total. D. Greski said the old structure is one, they could make the new one all one unit, permitting 2 total. 7260 sf is needed for one unit so 14,120 is required for 2. They would be a little short. S. Perley said once the building is up, it doesn't matter if it is one or two units. She said the parking will be covered. She said she feels that if the new structure becomes just one unit the intensity of use would be higher than permitting 2 additional units.

D. Greski said he was thinking of just the density but S. Perley is correct. The size of the building remains the same whether one or two. K. Geraci said they can still erect a structure of the same size without coming before the board.

D. Greski said this was previously approved for a 28' x 50' building, and no higher than 35'. S. Saunders said it was approved with no variance then, as it was not presented as a residence, so there was no density issue. D. Robitaille said he feels the density is not much of a factor as just up the street is a brand new 10 unit structure with more going in so this is not really a single family area. S. Perley reminded the members that this is a CR zone.

D. Robitaille said parking seems to be an issue on weekends, and that needs better management. S. Saunders said the applicant would have the correct amount of parking to meet the requirement. D. Greski said any parking issues in the area have to be enforced by the police.

S. Bogert said to look at the total size of the building, approximately 3000 sf, two levels. He asked if Fire would have any issues and S. Saunders said that would be reviewed under the building permit. D. Greski said there were no issues in 2003, and S. Saunders said that would be different now as life safety codes come into play this time.

S. Bogert reminded the board members that we are only talking about the density. D. Greski said view is not a consideration and density doesn't impact the views.

Motion: S. Perley moved to approve application # 2013-0017 to permit a two unit structure to be erected using the existing foundation.

The variance is not contrary to public interest and the spirit of the ordinance is observed. The proposal does not violate the basic zoning objectives. This permits 3 units on the property, which is consistent with the CR Zone.

There is no substantial change in use that is being proposed and it is a residential use. There is no threat to the public safety, health, or welfare.

Substantial justice is done as this use is consistent with the current use and character of the neighborhood. There is no harm to the general public.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

Property values are not diminished as this is consistent with the uses in the CR Zone.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property as this proposal doesn't alter the essential character of the neighborhood or affect the public safety, health or welfare of the residents.

The proposed use is allowed in district so is reasonable.

The board set a condition of approval that the Applicant must submit the DES permit prior to approval.

D. Greski seconded.

S. Bogert added the condition that the basement apartment has to be removed and inspected prior to the CO being issued for the new structure. There is to be no further expansion and this will remain at 3 units total on this site. S. Perley agreed to the amendment.

D. Greski seconded the amendment and all voted in favor of approval, 5-0.

S. Saunders said to open both applications at once for the 640 Elm Street and hold the discussion for both but do individual motions.

Application # 2013-0013
C. Richer

MSL # 309-71-2
640 Elm St

RS Zone
Variance

The applicant is seeking a variance from 235-40-(B) (6) (c) in order to allow clustered housing on a plot smaller than the required 10 acres.

Applicant: J. Rokeh and P. Bordeau appeared for the application. J. Rokeh passed out plans. He said these are the same items that the Planning Board had received for their packets. He let the ZBA members know that no one had done a cluster development under the new ordinance, so this is the first.

J. Rokeh said that in planning you have a 3 step process. First you look at the lot as it exists. You identify natural features, special features, and what the high value features are, preserving the high value features. They identified 11 on this site. There is a wetland near the lake. All of Mallard Cove drainage enters.

On features 2 and 3 by the lake is a small cottage, a camp area, with dock and storage. That would be an amenity for this site. There is a scenic vista. The old growth pines by the water will be preserved. There is an old paved pathway all down the side of the property. They saved that as amenity to get to the shore.

The existing sewer line benefits Mallard Cove and they are preserving everything to do with that. In the middle of the lot are more wetlands, and each has a different function. The middle one has good infiltration. The top wetland is a mowed field which is growing in now but underlying it is a wetland. They have seen deer signs. That is being preserved.

Along the entrance way is an old stone wall, with trees along the wall and the driveway. They are trying to lay this out to preserve the wall and trees. There is a large contiguous area along the wetland buffer, leading to the shore. There is a huge open area going down to the lake. The closest house is about 600 ft from the lake. Nothing will change by the lake at all. There are some steep slopes near the lake.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

The second process is to layout the area of the units, with the buffers. There is a 40' buffer for cluster ordinance, with a waiver which can be granted by the Planning Board. The distance cited in the ordinance is 75' but the Planning Board can do a waiver down to 40'. In addition to the 40', each unit has to be 10' away, so all are at least 50' from the property boundary, one is a bit closer but that is nearest to Elm Street, not to a house. The normal setback is only 15' so a typical single family could be 15' away.

The third phase is the infrastructure. This site has municipal water and sewer. The water currently exists in the road and they can connect into the sewer that is on the property now. J. Rokeh said he has gone through and done the engineering to make sure it all works. There were 14 units, but they eliminated one, so are down to 13. Normal density could be 24 units. Wetlands are not removed from the calculations. They are proposing only 13 units, with 20' between each. They are trying to separate the units out more. He said the drainage works, and there is a detention pond, which all goes to the center of the property, so they are not shedding water off the property. There would be no additional flow.

J. Rokeh said they feel this is an appropriate lot to not have the full 10 acres. They meet the conditions of the cluster ordinance. They have done the design work, and this can easily be taken care of in the acreage that they have with no issues. He said to look at the building plans, as they are unique. The building pads all have the same shape and size but 5 different plans can be built on the foundation.

P. Bordeau said there are 2 footprints, and he showed the 5 building plans, which are mirror images. These are 30' x 60', 2 plans, with different elevations, different rooflines, but the interiors are the same. On the other 3 there is the same footprint but they are a little different inside. This won't be a cookie cutter neighborhood. These can look like 13 different homes here with just these variations.

P. Bordeau said that ordinance section 235-61 speaks to the density. They could have 24 units here. They left 20' between the structures, so removed a unit. They feel there is an unnecessary hardship with the special conditions of the land, due to the string of wetlands coming up from the lake, and the high value features. The property is adjacent to Elm Street so they can protect the land down to the shore.

They need a second variance to allow the driveway where it is shown, a little closer to Elm Street as they want to use 10' for maintenance. P. Bordeau said he believes the project will be an addition and be similar to Mallard Cove and the other developments in the area. Re-sales don't occur often in those areas. This won't be overcrowded. Amenities exist on the site now.

D. Robitaille asked the applicant to explain the drainage. J. Rokeh showed the detention pond. They are taking the drainage into the catch basins and putting it into the center of the site.

J. Rokeh showed the existing site plan to the public.

D. Greski asked if single family homes are constructed on the site, how many would be permitted. P. Bordeau showed the buildable area, and said they could put 2 down by the water. This is a permitted use, and they would meet setbacks.

P. Bordeau said they know this does not meet the 10 acre requirement for the cluster but there are 10 acre lots in the city where this would not work. It does here. This lot is unique in the sense that if the lot was reversed and they couldn't preserve the high value features or have a large open space, they would not meet the criteria.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

This lot works and meets the criteria. He said they are not setting a precedent if they go through the requirements and they are met. If a project meets the criteria, the variance should be granted.

Public: Allan Beetle, Hickory Stick Lane: He said he sees no hardship in doing this. He said this is sensitive land. He is part of the Lake Opechee Association and he doesn't see a hardship here. This is not the required 10 acres, and has only about half of what the ordinance says. He asked why this would even be considered.

Dave Clark: He said he lives at Mallard Cove and when that was built there was a requirement to have a fire truck be able to come in and turn around. He said he doesn't see how they could do that on this site.

Maureen Wilkins, 23 King Court: She said hers is a small development. She doesn't see a hardship except a monetary hardship. There is a sale pending sign which is contingent upon this. She said this should not be overbuilt so someone can make money. She stated she is not against this being developed, but with only 4 or 5 homes. She said she wants to see plans for the waterfront area which they said would not be changed but wonders what it would actually end up being. She said this is unrealistic with 13 homes.

The paved road to beach area abuts and crosses over property lines so she is totally against that as this is not all on their land. She said she is unsure of why they are even here but guesses they have the right to be heard. Monetary issues should not be a hardship.

Julie Schneckenburger, 630 Elm Street, said that even with Claude Richer's current visitors she has lights shining into her house. She feels this development would diminish her property values.

Alan Gauthier said he is not an abutter but lives on Lake Opechee. He belongs to the Lake Opechee Association volunteer group. He said that one of the worst situations for milfoil is at the northern end of the lake, by the brook by the country club. He said this lot is not really 5 acres of land, since there are wetlands. He pointed out that the City seal says "City on the Lakes" and asked what happens when the lake is gone. He said we need to preserve what is there now; that is why we have regulations. He is speaking for the lake and the loons. We need to preserve them. Putting 13 homes here is too many. There will be too many vehicles, and too many boats and jet skis. He said we must be guardians of the environment.

Jim St Pierre, Morningside Drive: He said he has concerns with the health of the lake. He said to think about where the hardship will fall. It will be on the lake and on the neighbors.

Tom Brown, 674 Elm, Mallard Cove #3, stated they sent in a letter. The application is not within the spirit and intent of the ordinance. The applicant can show this will work on paper with the 5.6 acres but they are about 44% short. He said that Mallard Cove and Country Club Estates had to comply with the requirements. He said if this is granted you will have changed the minimum requirement for a cluster development. He pointed out how you can make a footprint work and flow properly but feels this is putting the cart before the horse. The proposal remains 44% short in land, so he asked the board to please deny the application.

Bob Chase said he is the president of the board of Mallard Cove owners. He said that points have been discussed and this is not typical of the homes in the area. This is closer, denser, and will have visual impact to Mallard Cove owners. When leaves drop in the fall there will be a high visibility issue.

He said we have no clue what the condo regulations will state. He said that Mallard Cove owners pride themselves on their appearance. They already have drainage issues here, so he is not sure this won't affect those. The sewer line was put in by Mallard Cove and then was taken over by the City. Do we know we can



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

add more to it and be handled properly. We haven't seen the plans. He said he has been at Mallard Cove for 15-20 years and during that time has seen the changes in the lake. He doesn't feel this should be approved. Mallard Cove is not in favor of this.

Ken Brock, Mallard Cove, said he has been there almost 25 years. This land meets less than half of the requirement. Country Club Estates was cited as example of cluster and they meet the 10 acres. When you consider the wetlands taken out, you are putting homes on less than 3 acres of land. They are concerned with water runoff from this property now. When you begin adding roofs and roads, that will probably increase. What about their association rules? Mallard Cove has rules about boats and trailers being stored on the property; will they? We have been told that they will have rules, too, but rules can be changed.

Light pollution was already mentioned. Noise pollution will become an issue. He feels the density will decrease their property values. People who live on the lake will want to boat on the lake, and there is no frontage for boat moorings here.

Ella Brown, Mallard Cove, said this is like living in paradise now. It is peaceful, and they are right next to the woods at 640 Elm Street. She sits on the deck and hears the birds, and the wind, but all the extras that come with 13 houses, would upset the peacefulness felt now in Mallard Cove.

S. Bogert read the letter from the Conservation Commission into the record.

Paul Bordeau: He said they are glad so many people are here but he wished they had addressed him on this before the meeting. He said they have a misunderstanding of the facts and of the law. He doesn't disagree that the issues are issues for Zoning. This does meet the rest of the requirements. The density allows 24 units and this is half of that.

The unnecessary hardship is not financial. Unnecessary hardship is defined by the law. There are special conditions of the property that distinguish this from others in the area.

Two cases come to mind. The Harborside case addressed this issue. This is not a use variance, this is permitted by right so was an area variance. Harborside dealt with the size of signs on a building, but the ZBA found that there were special conditions, the sheer mass of the building and the fact that it was a hotel. Whether a sign or 10 acre minimum, you meet it or you don't. That is why they are here. The lesson here is the special condition. The signs were not unique but the building was, as it was a hotel.

If the use is permitted as a right, and it meets the criteria, then that is the special condition.

In the case of Leonard Vigant vs. Hudson, again it was an area variance. They wanted to build a 5 unit family building instead of a duplex. It was going to be one long structure, connected by either garages or porches. This was in a business district, and 3 or more units were a permitted use. The court said that the parcel was long and narrow, only 1.6 acres. It required setbacks but because of wetlands it could not meet the 50 ft setback so they applied for a variance to allow construction. It was denied for the 5 as the ZBA felt it too intense a use. The Court applied the Simplex test, and the use was permitted. They could not deny the request. Because the setbacks interfered with the use of the property, this was overturned. A zoning restriction as applied interferes with the use of their property. There is no fair and reasonable relationship if the property can meet the objectives of the ordinance. This has been proven that it can meet those.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

Here the area variance is needed. Without the wetlands they could build right down to the lake. They passed out plans of what this could look like. He said there is not another method to use in this case. If this is an area variance, not a use variance, it should be granted.

S. Bogert said that the plans passed out just now are concepts and should not be considered in making a decision tonight.

S. Bogert asked S. Saunders about the paved road and asked if that does go onto other properties. S. Saunders said yes. S. Bogert said we don't have complete plans to look at this, and are the plans received adequate for this and S. Saunders said these are fine.

S. Bogert asked if 24 units could be built here and was told yes. They could do about 4 units per acre. S. Saunders said density doesn't take into account the buildability of the lot initially. Within the 10,000 sf there is a requirement as to what an engineer can fit on the lot given the site conditions.

D. Greski asked about the Conservation Commissions letter and the numbers mentioned in it. S. Saunders said she did not confirm their numbers.

S. Bogert closed the hearing to the public. The board took a brief recess.

S. Bogert called the meeting back to order.

Board: S. Perley said this is a difficult application to work with. The board has been asked to make a huge reduction in what is required for land. At the last meeting we specifically asked for a better design that showed the total impact of everything that will happen on the site. She said she doesn't feel that was provided. She lives in a development similar to this one and they have problems with snow removal, plowing, and trash trucks so she knows this will become a problem here.

D. Robitaille asked about the impact on the lake. He wondered how boat moorings work. How do they get those? M. Foote said they have to apply to the state. D. Greski said they come and check the property and they have a whole list of criteria that have to be met.

D. Greski said he has a concern with the land area. This is just taking the entire 10 acres off the table. Only 2 plus acres are really buildable. The Conservation Commission doesn't like the proposal, and he doesn't see a hardship. The owner can sell the property for reasonable residential properties. He is concerned with how the runoff would work, and feels there will be a significant amount of runoff flowing into the lake.

S. Saunders reminded the board that there are two variances on the table and that they need to deal with both. S. Bogert said if first one is turned down, the second is moot and S. Saunders said no, the first could be appealed so they should hold discussion on both and vote individually.

Motion: D. Greski moved to deny application # 2013-0013.

The application is contrary to public interest as this violates the basic zoning objective, which is to protect natural resources and water quality, to provide open space, and encourage environmentally sound development of the land. If variances were granted there would be a cumulative effect which would negate the purpose of the ordinance..



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

The spirit of the ordinance would not be observed. The purpose of the cluster development is to protect natural features; protect environmentally sensitive areas of the site; preserve agricultural land, and open space; minimize non point source pollution by reducing the impervious surfaces on site; encourage savings costs on infrastructure and maintenance by decreasing the area that requires paving and by decreasing the distance that utilities need to be run. A primary purpose is to create more area for open space, recreation and for more social interaction.

Granting the variance would not do substantial justice. Building up to 13 homes on the 5.6 acre lot which contains significant wetlands, would directly affect the wetland areas due to the close proximity of the development to the wetland areas. There is also the potential for Lake Opechee to be impacted from storm water runoff and other hazardous wastes. Lake Opechee needs to be considered. The Conservation Commission submitted a letter in opposition to this proposal. The benefit to the general public is far outweighed by any negative impact to the applicant.

The applicant has failed to demonstrate any unnecessary hardship here. Their argument that lot size doesn't become an issue doesn't work. The ZBA doesn't feel this upholds the ordinance. The lot size is severely below the minimum standard. They cannot satisfy the burden by showing this is lot uniquely suited to this use. They spoke to the high value issues, which all make this totally unsuitable for this development.

They need to provide adequate open space on highly sensitive land.

A fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property. Granting this variance would frustrate the purpose of the ordinance in protecting environmentally sensitive parcels of land from this intensity of development. The intent of the ordinance is to provide for adequate open space so that development can minimize the impacts on the highly sensitive environmental areas of a tract of land.

The use is not a reasonable one. Single family housing is permitted but the cluster requires 10 acres. This proposal will alter the essential character of the neighborhood and have direct impacts on the wetland areas and on Lake Opechee. The owner can use the property in conformance with the ordinance, so there is no hardship. He has the ability to sell the property for more reasonable residential purposes and is not being deprived of all beneficial uses of the property.

D. G. asked that the Conservation Commission letter be submitted for the record.

August 5, 2013

Mr. Steve Bogert
45 Beacon Street East
Laconia, New Hampshire 03146

RE: 10 Acre cluster zoning requirement 235-40 (4)-5

Dear Sir:

The City of Laconia Conservation Commission (Con Com) reviewed the conceptual proposal to construct the Lakewood cluster subdivision located off Elm Street at tax map parcel 309/71/2 at their August 7, 2013 meeting.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

It was noted- that the parcel size was less than 10- acres with a buildable footprint of only two and one half acres. The remaining 3.1 acres consists of what appears to be non-buildable wetlands, wetland buffers, and steep slopes totaling roughly 5.6 acres.

Approval of such a variance would set a dangerous precedence allowing many congested areas of the community to exploit the density bonus at the expense of limited open spaces currently functioning as tree buffers, storm water filtration areas and aquifer recharge areas to maintain lake water quality.

The following quote is provided justifying the need for at least 10-acres of land to protect vital open space resources: "Cluster housing groups homes together on fairly small lots near one another, with **larger open spaces** in the same development left untouched."

Sincerely,

Dean Anson, Chair Laconia Conservation Commission

Cc: File

O. Gibbs seconded the motion to deny and all voted in favor of denial, 5-0.

NEW HEARINGS:

Application # 2013-0018

MSL # 309-71-2

RS Zone

C. Richer

640 Elm St

Variance

The applicant is requesting a variance from 235-40 (B) (6) (g) in order to reduce a buffer area from the required 40' to 30' to locate an internal street and driveways in the limited perimeter buffer area which is currently used as a driveway.

Discussion on Application # 2013-0018: S. Saunders said the ZBA needs to act on both as the first one could be appealed and be overturned. S. Bogert said the current buffer requirement is 75', and they are requesting 30'. They need to provide privacy for the abutter and developer.

S. Saunders said that some of the criteria here could be the same as the previous. She said the board has the option to continue this application to ask for advice from legal.

O. Gibbs said the only reason for the request is because they want 13 homes in this small area so cutting into the buffer creates the space they need. This doesn't help the privacy of the abutters, the Schneckenburgers, for example

D. Greski: mentioned the area where the road crosses onto the other property and S. Saunders said not to dwell on that as she was told they plan to rectify that issue.

S. Bogert said he feels this would be consistent with the spirit of the ordinance in that it creates openness while still providing buffers so there would be no intrusions on the neighboring properties. However we are not sure if the Planning Board would issue the waiver for the reduction. While this is in the spirit of their development in shifting things closer to the property lines, it is not beneficial to the abutters as they are moving things closer



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

to them. They are removing trees. While there is substantial justice to the development, it takes away from the abutters. We need to weigh both sides of the coin.

S. Perley said the buffer reduction impacts both the development and the abutters. The road is being moved closer to the abutters' property. This is right on the property line. There would be a minimal buffer. S. Bogert said the dotted line on the plan is the roadway.

D. Greski said he feels we need to continue to get legal input. S. Saunders said that is reasonable but we need a sense of which way they are leaning on this – approval or denial.

S. Bogert asked for clarification on the reduction from 75' to 40' to 30'. S. Saunders said that in reality he is asking for a reduction from 75' to 30', and cutting the Planning Board out. Since he could ask the Planning Board for the reduction to 40', he is asking to go another 10' to the 30'.

Motion: S. Perley moved to continue the hearing for application # 2013-0018 to the meeting of September 16 to get legal counsels input on a potential denial

O. Gibbs seconded, and all voted in favor of continuing until next meeting, 5-0.

Application # 0213-0015
K. Boylan

MSL 426-246-61
90 Winter St

RS Zone
Variance

The applicant is requesting a variance from 235-28, Table I, Permitted Uses, in order to retain the use of an existing apartment within a single family home. The residence is located in a zone where the use of a two family is not permitted; however this has been used in this fashion since at least 1980. The applicant did not maintain the use and the grandfathering lapsed. He is requesting a waiver for the fees.

Applicant: Ken Boylan appeared for the application. He said he is the second owner of the house. The house has been there since October of 1927; that is written on the wall in the house. The apartment is on the second floor. This is an in-laws apartment that was there when he moved in. The apartment was built with the house, which he purchased in 1998. His mother-in-law moved in and when she couldn't get mail delivered, they came to City Hall and got a letter from them so they could get mail. He thought this was grandfathered. He has been paying taxes every year for the in-law apartment. He said he wants to make this legal, as he wants to sell the home and move to Florida.

Across the street is a two unit. He could have bought the house next door when he was looking; it has an apartment. He said he doesn't necessarily want to use it and rent it now but wants the apartment approved. His mother-in-law passed away and he wasn't aware it would lose its grandfathering if the unit was not used.

D. Greski clarified that he bought this in 1998 and K. Boylan said he purchased this as having a mother-in-law apartment and that is how it was listed with the City at that time. D. Greski read the property card, which says this is a single family with an in-law apartment. S. Saunders said this is over the sq footage for the in-law apartment. He purchased it at that time as an in-law apartment, and it was already over that limit, so at the time of the sale it was legally a two family home. K. Boylan said it is over the 400 sq ft.

S. Saunders read the definition of accessory apartment and the limit is only 400 sf. Over that square footage it goes to duplex/two family. S. Bogert said it is listed with the City as a single family with the in-law apartment and S. Saunders said that Assessing has their own criteria, and she is not sure what their cut off for an accessory apartment is. They have their own dimensional requirements but under our code, 400 sq ft is the limit.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

D. Greski asked if this would be considered a duplex or a two family. Does it meet the building requirements for a two family? S. Saunders said we don't know that. This would need a Certificate of Occupancy. D. Greski said he looked at the map provided. On one side is the RS zone and on the other is the RG zone. Across the street a two family is permitted. This is laid between two zones.

S. Saunders let K. Boylan know if this gets approved tonight and he doesn't use this for a year, he loses the use again. K. Boylan said he doesn't think he would be using it and doesn't want that to happen; he doesn't want a renter, he just wants the use he always had. This is an old apartment which was there and he doesn't want to lose what was there. He wants to sell the property so wants the use to be permitted. His mother-in-law was there for 12 years and she loved it there.

K. Boylan said the City has been taking tax money for the extra apartment. D. Greski said it was not an in-law apartment. It was technically a two family, so he was paying at a lower rate.

K. Boylan said he wants to sell the property and move to Florida and if wanting to sell tomorrow, it has to be a two family.

S. Saunders said if he does get the variance tonight, he can come back in 12 months and ask for a continuation.

S. Bogert said we can make this a condition of approval.

K. Boylan said he asked for the waiver of fees because he had the use and it was taken away. He has been paying the taxes on the in-law apartment all these years. Code at one point told him he needs stairs for the apartment, but in the rear it is 3 stories high. He is a foot short on the line on the side to install stairs there.

D. Greski said he cannot change the size of the apartment. He explained the issues here. He let K. Boylan know that he will need a set of stairs to make the apartment compliant so he would need a variance for that as it would not meet the side setback.

S. Saunders said we could continue this, and allow the applicant to apply for the variance to do the stairs, too, then he would not have to come back.

After discussion with the applicant it was decided to table this with no certain date. There is a "for sale by owner" sign, which the applicant will be removing, so the house is not currently on the market.

S. Saunders asked the board if they want to make a decision on the waiver for the fee as well. S. Bogert said he doesn't see a hardship with the fee and that he feels it should be paid.

Motion: S. Bogert moved to table the application, allowing the applicant to amend the proposal and resubmit at a future date. S. Perley seconded, and all in favor of tabling, with no set date, 5-0.

D. Greski recused himself and K. Geraci was seated in his place.

Application # 2013-0020
M. Persson, Agent

MSL # 424-142-71
755 Main Street

P Zone
Variance



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

The applicant is requesting a variance from 235-48-E (2) and 235-48-G (1) which requires a 10 ft parking setback and a 10' landscaped buffer area. They are requesting a 7' setback on the north side and a parking area to be paved within 3' on the east.

Applicant: Steven Nix. He let the members know that the applicant has a Purchase & Sales on the property and that he holds a power of attorney from the owner. He passed out some photographs. He showed the property from the corner of Lyford Street and North Main Streets. There are a number of multi-family homes, here and businesses. The phone company is located across the street and there are medical offices in the area. They are proposing to convert a single family home to legal offices.

S. Nix said the driveway enters off of Lyford Street. The rest is lawn or landscaped. The building is located in the middle of the lot, with about 125' frontage on Lyford Street and about 100' on Main Street.,

This is one of the smallest lots in this neighborhood so it created issues when they tried to create parking. He asked the board members to look at the second page of the photographs, taken from Lyford Street looking in. The abutter's drive is located in this area and both drives are paved up to the property line. There has been a permissive use thing going on for many years.

The proposal is to leave that drive the way it is, and bring it around in one way fashion, to exit onto Main Street. In order to do that, and have the lot meet layout requirements, they are just short of the 10' buffer area. They are asking for that to be reduced to 7' in this area.

At the edge of space 6 there is 3' left to the property line. That area is used by the vehicles turning. They have plenty of maneuverability to enter/exit. There is an existing stockade fence, which will be retained and fixed. Trees will be retained, and there is plenty of room left in the 7' area for snow storage, as well as other areas to place snow. This is a pretty easy lot to plow.

The proposal is not contrary to public interest. Public interest is not advanced by denial of this variance because the purpose of the setback is for them to maintain the setback/buffer area and to provide snow storage. There would be ample room for the landscape buffer and for snow storage.

There are no public goals satisfied by denying the variance. Any issues presented by the layout can be solved.

The spirit of the ordinance is observed. If you meet the first criteria, the spirit of the ordinance is met as well..

Substantial justice is done as this is an area that is heavily developed with professional office buildings and with an intense use of multi-family residences so this proposal is totally consistent with the area. This structure is located on a smaller lot, and is one of the few single family homes left. There is little to be gained by denying the variance. This is a tight site and they worked hard to get the parking correct here, which is why they went with the one-way flow.

The values of surrounding properties won't be diminished. By converting this to office building, the property will be kept up and the value of others in the area usually come up as well.

There is no fair and substantial relationship between the general public purpose of the ordinance and the specific application of the provision to the property. This is one of the smallest lots in area; the other lots are larger. The purpose of the ordinance is to allow for privacy, and snow storage, and they can do that in the 7'. In



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

the other area they mentioned the landscaping is already there. If required to be landscaped here it would be a detriment to the abutter as their ability to enter/exit is reduced.

The use is a reasonable one as they need adequate parking so they need this setback variance. The other option was to request a variance to obtain smaller parking spaces but they felt this is the better way to go.

Mike Persson appeared for the application as well. He said the area here is zoned Professional and this would be a small law office. The only way this can work is to provide adequate parking for any business. If the variance isn't approved, this will remain a single family home.

R. Smith asked if there will be an issue with the driveway cut to North Main Street and was told it does work but they haven't gone to DPW yet. They feel this one-way should make them happy.

D. Robitaille asked if the trees shown in the picture are on their property and was told they are on the property line and are staying. D. Robitaille asked if there will be additional asphalt and S. Nix said yes. There is a muddy area on the site, which he showed the members. D. Robitaille asked if the additional paving will affect the trees and S. Nix said he walked the site and didn't think it would be an issue, as they are still leaving an area for them which leaves the trees 5-7' away.

D. Robitaille asked S. Saunders if Planning will look at this. He was told this will go to Minor Site Plan for approvals. S. Nix said they have not completed the landscaping plans as of yet.

Public: No one spoke for or against the application.

Board: D. Robitaille asked if the Planning Board gets involved with additional run off and S. Saunders said yes, DPW will take a look at that.

S. Bogert closed the hearing to the public.

Motion: S. Perley moved to approve application # 2013-0020 to permit a reduced parking setback as well as the reduced landscaped buffer area.

The proposal is not contrary to public interest and the spirit of the ordinance is observed. This is a low impact use and is located in the Professional zone. The proposed use doesn't injure any public or private rights.

Substantial justice is done as the use is consistent with the current uses and character of the neighborhood. There is no harm to the general public, and the benefits to the applicant outweigh any negatives to the abutters.

Property values won't be diminished as the use will be consistent with other in the area. This is a low intensity use.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. This is a low impact use and as such will not alter the essential character of the neighborhood. Little is gained by the general public in denying the proposal.

The use is reasonable. This is a professional office, located in the Professional zone.



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF AUGUST 19, 2013
APPROVED MEETING OF SEPTEMBER 16, 2013

M. Foote seconded with all voting in favor of approval, 5-0.

AMENDMENT:

The final application was not heard due to a lawsuit and will be re-scheduled pending the courts' decision.

Application # 2012-0025
The Gables on Paugus Bay

MSL 244-430-32
388 Davidson Dr

RS Zone
Amendment

The applicant is requesting an amendment to the decision granted by the ZBA on February 19, 2013 to allow the increase of coverage from a minimum of 20% to a minimum of 30%. The amendment allows the size of decks and patios to increase but "would not extend outward away from any building any further than an existing deck or patio thereon and would not extend further sideways than the corner of any building than an existing deck or patio thereon".

OTHER BUSINESS: a) Zoning Task Force: S. Perley let the other board members know that they approved the language in the chicken ordinance and that will be here in front of them for public hearing and approvals next month. S. Perley said she surveyed cities in New Hampshire and not one city has had problems with chickens. She feels they have good language. There will be a brief public hearing at beginning of the meeting. She let the members know that it was determined that this use will require a Special Exception so the application does need to come in to make the request and pay the \$125.00 fee so we can keep an eye on the locations and have accountability. This will then go to City Council for final approval.

The ZTF also approved the flood plain language which was dictated to us by FEMA. That is going to Planning Board for final approval, as S. Saunders felt they dealt more with engineering issues, then to City Council for final approvals.

She let them know they are now working on sign issues, which is a lot more involved. We did some initial changes, and the members took the information home to give them time to think about additional changes and suggestions.

The ZTF meets again on September 5th.

S. Perley said the ZBA rules and regulations need to be updated so we will be working on them as well.

b) Any other business that comes before the board: S. Bogert said he will be taking a class so won't be here for the October and November meetings. O. Gibbs will be out in November for surgery.

S. Saunders let the board members know that the 640 Elm Street project did go to Planning Board for a Conceptual Review and were well received by them. She thinks they will appeal this decision.

ADJOURNMENT: S. Bogert moved to adjourn, with the second by M. Foote. All voted in favor, 5-0, and the meeting adjourned at 10:25 pm.

Respectfully Submitted,

Kristine Y. Snow, Zoning Technician