



ZONING BOARD OF ADJUSTMENT
MEETING OF SEPTEMBER 16, 2013
MINUTES APPROVED OCTOBER 21, 2013

Present: S. Bogert, Chair; S. Perley, Vice Chair/Secretary; M. Foote; O. Gibbs; D. Robitaille, Alternate; K. Geraci, Alternate

Absent: D. Greski; R. Smith, Alternate

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

S. Bogert called the meeting to order at 7:00 pm and welcomed everyone to the ZBA meeting for September 16, 2013. He asked D. Robitaille and K. Geraci to sit on alternate applications in the absence of D. Greski.

MINUTES: The motion to accept the amended minutes from the August 19, 2013 ZBA meeting was made by S. Bogert and seconded by M. Foote. All voted in favor of approval, 5-0.

PUBLIC HEARING: The ZBA will be hearing public input for the proposed changes to the city ordinance to allow chickens in certain residential zones.

S. Perley went over the ordinance that was drafted and that each ZBA member had in their packet. Chickens are not currently permitted in residential areas of the city. She outlined the highlights. A person would be allowed to have up to 5 chickens, no roosters. They cannot sell eggs, but can share them with friends. They cannot have commercial activity. They cannot be housed in front yards and must be kept in structures and fenced areas; they cannot roam free. The structures cannot be located within 20 ft of a lot line and must be 10 ft away from the owners house.

There are 7 standards within the guidelines. They cannot disturb neighbors with noise or odors. All feed must be stored so as to not attract predators. No coops or manure storage is permitted within 50' of the shoreland protection overlay district or within any wetland, waterbody or wetland/waterbody buffers.

This would be permitted by a Special Exception in certain zones. The applicant must come before the ZBA to determine if they meet the requirements that have been set up. It will be permitted in the RS, SFR, and RG, by Special Exception. It will not be permitted in the AI, where agriculture is currently permitted. It is currently permitted in the CR but that will be changed to permitted by Special Exception.

S. Bogert opened the floor to Laconia Residents:

Karen Barker: She resides at 120 Lane Road which is in an RR district so they can have chickens now. She is involved in the Lakes Region Food Network, and they have a program called "What's on Your Plate" which deals with concerns with the local food system - where it comes from, how prepared, etc. They are concerned with how to have more control over the source of your food, like eggs.

She said she has done a lot of research herself on ordinances and feels the ordinance as presented is quite fair. The restrictions are pretty much in line with the rest of the country. She stated she is concerned with the application fee. She did not find any city with such a large fee. She thinks that is a burdensome charge.

She said she is not sure how much a dog license costs. S. Bogert said it is \$7.00. K. Barker said dogs annoy her a lot more than chickens do. She said she agrees that it is a good idea to know where the chickens are located but feels that is a large fee. If there problems with how they are being kept the neighbors will let you know. She



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said to look at using the city's time more effectively. There must be a certain level of trust to be responsible. If a person is motivated to have chickens they will be responsible, as the neighbors will let us know if there are issues. She thanked the board for their work on this as she knows there are other issues to be dealt with.

Non-Laconia Residents:

Jon Rokeh: He stated that he lives in Chichester where there is no ordinance controlling animals. He has 3 chickens and his children hand feed them and they have a lot of fun. He thinks it is a good idea to permit them.

Board Discussion: D. Robitaille asked about the fee and who sets it. S. Saunders said she thinks it is the City Council. D. Robitaille asked if it goes back into general revenue and was told yes. S. Bogert said the fee of \$125.00 is the cost of the Special Exception. D. Robitaille asked who will enforce the ordinance and S. Saunders said K. Snow is enforcement at this time.

S. Perley said nothing can be done about the fee and D. Robitaille said they could ask for a waiver of the fee. K. Geraci said she feels that is rather high, as well. S. Bogert said it is up to the board to determine the fee to recommend to the City Council.

S. Saunders said we are doing this to have some oversight. She said the ZTF wanted to make sure that people will take care of the chickens properly, and the fee would signify that the person was invested in the proposal, and would be responsible and would be caring for the chickens properly.

S. Bogert asked if everyone would have to request the Special Exception and was told yes, if they want to have chickens. O. Gibbs said it is essential to have some oversight. M. Foote said the reality is a bob house can be built for around \$100.00 but a chicken coop costs around \$900.00.

S. Bogert clarified that if permitted the applicant would have to get the Special Exception and pay the fee and was told yes. K. Geraci asked if we know how many lots might meet the criteria and S. Perley said we don't know how many this might affect.

S. Saunders added some language to item 6 about limited common area. Permitting chickens in a cluster development was discussed.

S. Saunders said we are just dealing with chickens tonight, not the definition of agriculture. S. Bogert said the use of agriculture does include chickens and was told yes, if permitted by the underlying district. A cluster could permit the use if their rules allow. S. Bogert said that could already be covered and S. Saunders said she doesn't feel it is covered to the extent we want.

M. Foote asked about cluster developments. He said is it assumptive that they will all have associations or could they be done by each individual lot and S. Saunders said that each do require an association.

S. Bogert asked if the other ZBA members are ok with the added language that S. Saunders suggested regarding cluster developments and condo associations.

S. Saunders said she doesn't see anything on the application or the fee chart that explains the waiver of fees. She will do some checking and see where this is discussed.



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S. Saunders said we have to have another public hearing if language is changed substantially and she feels this is enough of a change that we should set another public hearing. Do we want to schedule this for the next meeting for the revised language?

S. Perley said she did a lot of research and S. Bogert said the work done is commendable.

D. Robitaille asked about enforcement and was told that K. Snow will be the enforcement person. A person could appeal the interpretation made by S. Saunders administratively if they don't agree with it. S. Bogert said the next meeting is October 21st.

Motion: S. Bogert moved to continue the hearing until the October 21 meeting so the public hearing can be re-noticed. O. Gibbs seconded, with all voting in favor, 5-0 of continuing the hearing.

CONTINUED HEARING:

Application # 2013-0018
C. Richer

MSL # 309-71-2
640 Elm St

RS Zone
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.

(Dennis Robitaille was seated for this hearing)

S. Bogert said we were in the midst of the board discussion at the last meeting. We asked the city attorney to provide a determination for a motion denying the application.

Motion: S. Bogert moved to deny application # 2013-0018 in order to reduce a buffer area from the required 40' to 30'.

S. Bogert read the motion, which was in favor of denial: Granting the variance is contrary to the public interest and the spirit of the ordinance. The purpose of the buffer requirement is to separate incompatible uses from one another and to provide privacy for the development. Retention of existing vegetation is required to be retained or enhanced. The present proposal is for the construction of a road within 30 feet of the property line, where 75 feet is required and for the removal of vegetation. This provides neither separation of uses nor for privacy for the development. Moreover, the abutters have testified that they already have issues with lights shining in their window from the property. The installation of a driveway so close to their property line to serve 13 new residences will only increase this problem.

Moreover, no unnecessary hardship will result from the denial of the variance. The applicant has demonstrated no special circumstances of the property which necessitate this variance. The variance is instead necessitated by the applicant's desire to develop the property with 13 houses in a cluster subdivision rather than design under a conventional subdivision.

The motion to deny was seconded by S. Perley and the vote was 5-0 in favor of denial.

NEW HEARINGS:

Application # 2013-0019

MSL # 462-21-053

RS Zone



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J. Aldrich

8 Mistwood Lane

Variance

The applicant is requesting a variance from 235-35 (A), front setback, in order to add a deck to the second floor. The required setback is 25 ft and this would allow a 14'10" setback.

(K. Geraci was seated for this hearing)

Applicant: John Aldrich appeared and said he is asking to add a 2nd story deck. It was on the original condominium plan at the registry of deeds. His residence is one of the last 2 without a deck. This would complete his home and it would look like others. There will be no stairs going down. This would be a continuation off of the sunroom. They limited the length of the deck to allow a gap between this and the street. They don't plan to make any further changes. The contractor will add 3 sono tubes.

S. Perley asked if this will be an open deck and J. Aldrich said yes, there will be no roof. This is just being extended from the sun room. J. Aldrich said the other decks protrude about 2 feet further, but he is keeping his further back. There are boulders on the lower level so he is keeping this about 2 ft in from the corner. He got approval from the condominium association. He must keep the deck up to their standards.

S. Bogert mentioned their letter approving the deck. S. Perley clarified the size is 11' by 14' and was told yes.

Public: No one from the public spoke for or against the application.

Board Discussion: There was no further discussion by the board so S. Bogert closed the hearing to the public.

Motion: S. Perley moved to approve application # 2013-0019. The deck won't be contrary to public interest and is in the spirit of the ordinance. The deck doesn't violate any basic zoning objectives. This will be an 11' by 14' deck, located in the rear on the second story. It will be flush with the existing building. The actual variance would be 10 ft.

Granting this variance does not threaten the public health, safety or welfare of the general public. The applicant presented a letter from his condo association permitting the deck.

Substantial justice is done in granting the variance as this is consistent with the current use and will fit the character of the neighborhood.

The values of the surrounding properties will not be diminished.

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property as this proposal doesn't alter the essential character of the neighborhood or threaten public health, safety, or welfare. There will be no stairs leading to the lower level. This makes the unit consistent with others in the association.

The use is reasonable and is allowed in the district.

M. Foote seconded the approval and all voted in favor, 5-0.

Application # 2013-0021
S. Gorse

MSL # 403-317-56
13 Birchwood Way

RS Zone
Variance



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The applicant is requesting a variance from 235-35 (A), front setback, in order to add a front porch. The required setback is 25' but the current structure is non-conforming. Adding the porch would still permit a setback of approximately 14'.

(D. Robitaille was seated for this hearing)

Applicant: Steve Gorse appeared and stated he wants a porch on the front of the building. Has a small one now, and asked the board to look at the photos submitted with the application. He has a problem with water coming off the roof so he wants to add a farmer's porch, which will make the front useful, and fix the water issue. He feels this will add to the area, as it will be a nice looking porch.

S. Bogert asked if it will be located where the stakes are shown in the picture and was told yes. There will be 5 sonotubes. There is a 15 ft setback to sidewalk, which isn't built. S. Bogert asked if he is extending the roof out to that area, too, and was told yes.

S. Perley asked if this will be an enclosed porch and was told no, it will remain open. S. Bogert asked if it will be stopping just past the bay window and was told yes – from the roofline from the left hand side of the building to just beyond the bay window.

Public: Steve Lockland, 49 Audrey Lane. He stated he has been in this house for 11 years. His property is located in the back and is contiguous to the applicant's. For 25 years prior he lived on Holman Street which is right around the corner. He said he requests that the board approve this request.

D. Robitaille asked if there are steel beams in the basement and was told no. He said he understands the issue the applicant is facing. S. Perley asked if his statement in his application about the setback coming into place after house was built is correct and S. Saunders said it was about that time frame.

Board Discussion: There was no further discussion by the board. S. Bogert closed the hearing to the public.

Motion: O. Gibbs moved to approve application # 2013-0021 to allow the applicant to add a farmer's porch to the front of the house.

This will not be contrary to public interest. Granting the variance would allow an 11' ft encroachment, in order to build the farmer's porch on the front. This will be constructed to match the existing structure and other homes in the neighborhood. There will be no threat to the public safety, health or welfare.

The spirit of the ordinance is observed as the front setback was established after the house was built. This is one of the older subdivisions in town, and these lots are closer to the setback. The addition would be in keeping with the character of the general neighborhood. This addition won't interfere with sidewalk if it is ever built. The addition will enhance the house and the neighborhood.

Substantial justice is done in granting of the variance as the purpose is to keep water from entering the basement. This will increase property values, and allow for a dry safe basement.

Property values will not be diminished as this will increase the value of this property and of others in the neighborhood. This will increase the quality of the basement.



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There is no fair and substantial relationship that exists between the general public purpose of the ordinance provision and the specific application of the provision to the property as this is a small encroachment into the setback. There are special conditions that make this variance request reasonable and it won't alter the essential character of the neighborhood.

The use is a reasonable one and permitted in the zone.

S. Perley seconded the motion and all voted in favor of approval, 5-0.

Application # 2013-0022
Mountain Lake Village, LLC

MSL # 470-128-2
Mile Hill Road

RS Zone
Variance

The applicant is requesting a variance from 235-40-b (6) (n) (C) in order to permit a street longer than 1000 ft. The applicant is proposing a street with a length of 1736' at the furthest point.

(K. Geraci was seated for this hearing)

Applicant: Jon Rokeh and Phil Brouillard appeared for the application. P. Brouillard stated he is the principal for Mountain Lake Village. He said they won't permit chickens here and that most clusters don't permit them.

He said they had the original subdivision was approved in 2005. That was a 77 lot subdivision which crossed town lines. There were 18 residences in Belmont. The approval was extended on several occasions.

There have been changes made to the ordinance for the cluster so they decided to re-do the application. **(NOTE:** The Planning Board actually revoked the approval for inactivity and because several ordinances had changed including cluster, steep slopes, wetlands, and impact fees.) They are eliminating the lower road. They spoke to Fire, Conservation and to Planning. The Fire Department was the driver in the restriction on the length of the cul de sac; fire protection is due to the length of the hose. They agreed to sprinkle the Laconia homes, as they have high pressure water. They met with Fire on that and were told there were no problems if they were sprinkling the homes.

S. Bogert asked how many houses are in Laconia and was told there are 18 in Belmont, and 47 in Laconia. Under the old proposal there were 56 units in Laconia

J. Rokeh said there were 77 units proposed initially, with 59 in Laconia; there are now 47.

S. Bogert asked how many Belmont homes are on the 1700 ft stretch, and J. Rokeh said there is one off of the 1700 ft length. That starts at about 1100 ft. There is a reason why this is now a long dead end cul de sac. There used to be a secondary road located just past the loop. That went all the way around. There are 35 acres in Laconia, with 107 acres total.

J. Rokeh said for the Planning criteria they have to have 50% of buildable area as open space in one contiguous parcel. This is the only way because of steep slopes and wetlands. They eliminated the entire lower section of road which leaves one large area of open space, which is contiguous, and which meets requirements of the new cluster ordinance. They cut off the end of the road, and made it longer than 1000 ft. which ends up being better. This leaves about 400 ft from the bypass to the nearest cleared area. You won't be able to see it from the road. There is more overland flow, and the detention ponds are being redesigned. This leaves more area for



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overland flow now. This proposal preserves corridors. The entire Belmont open space is decided to the town of Belmont, and continues into open space in Laconia.

P. Brouillard said they went and spoke with C. Roffo and if they sprinkle all of the homes in Laconia, he said he won't object to the longer road length. The houses are a minimum of 20 ft apart. These lots are narrow and longer in depth and they are planning for mixed home styles.

S. Perley asked why the Laconia homes are closer together and the ones in Belmont are further apart and J. Rokeh said that is the purpose of the cluster development. You put the homes closer together and allow for open space for them to use. Belmont will have different styles of homes, some have views, which will be the higher end homes.

S. Bogert asked if the top portion on the Laconia side meets the cluster development except for the road length and was told yes.

S. Perley clarified that this meets the rest of the requirements and S. Saunders said it hasn't gone before other boards yet. Nothing else has been identified as yet. P. Brouillard said this has gone on for a long time, and all of the permits are in place. The road was there before. They are just now ending it and adding the cul de sac. The lots all back up to woods, although they are small lots. The homes are being built so that that only one will be visible from other homes on Mile Hill. All will have their own water, and sewer. This is high pressure water. They are preserving the slopes, the wetland corridors, and designing this around an 100 ft public service area. They are setting aside about 18 acres in Laconia, and giving some to Belmont.

S. Perley asked if any roads exist now and J. Rokeh said there is an access road for public service now. It is like a woods road. There is nothing at the top entrance.

S. Bogert said the Belmont portion will probably be responded to by Laconia Fire Department. That is beyond the 1000 ft on the larger lots with the larger homes. P. Brouillard said those have hydrants in Belmont. In Belmont the homes are further apart, but he thinks probably both fire departments will respond. There is high pressure water in the road.

S. Saunders said we are only looking at the area in Laconia. P. Brouillard said the portion in Belmont is all approved. S. Bogert said this will add expenses to Laconia. P. Brouillard said there is an inter-municipal agreement. S. Bogert said this is still beyond what our department says is safe and that he feels that 99% of the time it will be Laconia responding. He said he knows this isn't our city, but finds it silly to say if you cross this line, the sprinkler isn't required.

J. Rokeh said Belmont looked at all of this and had their input. P. Brouillard said those are larger homes, and there are hydrants there. J. Rokeh said Belmont has definitely looked at this and had their say on all of it.

S. Bogert asked if there will be one home owners association and P. Brouillard said this is all designed to town specifications so it can be turned over in the future. S. Bogert asked if fire alarms are required and was told no, the previous approval did, but they are not required with sprinklers.

P. Brouillard read his criteria responses to the board.



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1. The variance will not be contrary to the public interest:

- (a). Granting this variance would not be contrary to the public interest and granting the requested variance will provide a benefit to the general public.
- (b). The proposed Cluster Development Plan conserves 50% of the land area of the Cluster Subdivision over 17 acres in Laconia and over 70 acres of 100 acres overall in Belmont and Laconia.
- (c). The proposed plan encourages environmentally sound development of land by preserving steep slopes, wetlands and preserves open space, to protect natural resources to create attractive living environments.
- (d). By providing sprinklers to all houses in Laconia, the main reason for cul de sac length limit is addressed. There is also Laconia City Water and hydrants along the road.
- (e). By allowing this variance, the houses are located at least 400' feet +/- from the Laconia By-Pass right of way and the houses will hardly be visible from the By-Pass, preserving this scenic wooded corridor along the By-Pass.

2. The spirit of the Ordinance is observed:

- (a). The Cluster Development encourages environmentally sound development of land, to preserve open spaces, to protect natural resources and to create attractive living environments.
- (b). By allowing this variance and sprinkling the houses, the Plan preserves usable contiguous open space, tree cover, scenic vistas and keeps the houses to built over 400' from the By-Pass, making them hardly visible from the By-Pass and limiting road noise from the By-Pass.
- (c). Fire protection concerns about the length of the road are addressed by sprinkling the houses and providing fire hydrants along the road serviced by the Laconia Water Works.

3. Substantial justice is done:

- (a). Granting the variance would do substantial justice because the primary reason for the restriction on the length of a road to a cul de sac is fire protection and life safety, which is addressed by sprinkling the houses and providing fire hydrants along the road with municipal water supply. Perhaps the only guiding rule as substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. 15 P. Loughlin, New Hampshire Practice, Land Use and Zoning 524.11 at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1991)). In this case there is no harm to any abutter, there is no evidence that this variance will harm any land, wetland, aquifer and granting the variance encourages the permitted use of single family residential housing, by means of an



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environmentally sound, innovative Cluster Subdivision Plan that preserves open space, steep slopes and wetlands, which is allowed in the RS Zone. To deny this variance and force Applicant to re-design the Plan, road, drainage and be forced to abandon existing engineering, wetland and Site Specific Permits would be a huge loss and injustice to Applicant, which is not justified and necessary, since the Plan meets all other requirements of the Cluster Subdivision Ordinance.

4. The value of surrounding properties are not diminished:

(a). The proposed use is single family residential, which is an allowed use in the RS Zone, and is in keeping with the neighborhood. It is extremely doubtful that the new homes proposed by the Cluster Plan would be visible from existing houses in the neighborhood.

(b). The proposed road would locate the new houses further away from the abutters and the By-Pass and would isolate the new houses to be built from the existing houses and back up the new houses to undeveloped open space, land and woods.

(c). The new houses to be built according to the Proposed Cluster Plan for which a variance is sought will hardly be visible from Mile Hill Road and will not be visible from the Laconia By-Pass because of the extensive open space buffer created by allowing the road length variance for this Cluster Subdivision.

5. Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship.

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:

(a.) The road length specified in the Cluster Ordinance is driven by fire protection concerns. There is no other reason for this limitation, which is addressed by sprinkling the houses and fire hydrants with municipal water supply. The length of the road for which the variance is sought is necessary to meet other criteria of the Cluster Ordinance to preserve large amounts of open space and because the property has a 100' PSNH Row for transmission lines, ravines, wetlands, steep slopes and the road is necessary to access the developable land areas. Applicant has agreed to sprinkle all houses to be built in Laconia, which address the life safety and fire protection reason for the road length limit, thus no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to Applicants property.

ii. The proposed use is a reasonable use:

(b). The new homes to be built according to the proposed Cluster Plan for which a variance is sought will hardly be visible from Mile Hill Road and the Laconia By-Pass, because of the extensive open space buffer created by allowing the road length variance.



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(c). The Cluster Ordinance is a reasonable method to developing this parcel of land because it preserves open spaces, protects natural resources and creates attractive living environments.

(d). By allowing this variance and sprinkling the houses, the Cluster Plan preserves usable contiguous open space, tree cover, scenic vista's, ravine, wetlands and steep slopes as well as incorporating a 100' wide PSNH electricity transmission line into an attractive Cluster Subdivision Plan.

S. Bogert asked if when they say all of the homes in Laconia are to be sprinklered, you mean all of them and was told every last one. P. Brouillard said that alarms have become an issue in home owners associations. Sprinklers have to be maintained like furnaces. S. Bogert asked how they will be wired to call one fire department and not the other and was told they would probably have to call both once the alarm has been pulled. S. Saunders said both may respond anyway, as we have mutual aid.

M. Foote asked if a sprinkler goes off is there still an alarm somewhere that says there is an incident? Or if a sprinkler goes off, is there an alarm generated? S. Saunders said she is not sure, but will find out. She was asked to find out if someone still has to call 911 and if the resident is not home, what happens.

D. Robitaille asked if the sprinklers are automatic and pressurized? Does the truck pull up and hook up? Does Fire have to inspect them at certain times? He was told yes. S. Bogert asked him to explain the sprinkler head and was told this is a dry system, with no water in it until needed.

D. Robitaille brought up the original loop road, and asked if this would be the same distance as they are asking for now and was told yes.. D. Robitaille said the original loop is there so there is no difference in response time.

S. Saunders said the Fire Department's issue was not response time, but the second egress. D. Robitaille asked if the width of road has been compromised, and was told no, it was designed to city standards. J. Rokeh said that all of the engineering is the same as the original. He thinks it is 24 ft with a detached 5 ft sidewalk.

D. Robitaille asked about landscaping and J. Rokeh said there are street trees on one side. D. Robitaille asked if a fire truck can get around the area and was told yes. The ZBA was showed the common area where people could pull off if needed. J. Rokeh showed some other areas and said there is 9-11 ft before trees. This is a Cape Code berm, and they, could jump the curb if needed. S. Saunders said Fire told her verbally they are ok. We didn't get it in writing but she was told this is ok.

M. Foote asked regarding the southerly part going through Belmont, where the upper access is, does the water there also come from Laconia Water Works? He was told yes, it comes through from Apple Ridge, goes out Provençal Road, and into this area.

Public: No one from the public spoke for or against the application.

S. Bogert closed the hearing to the public.

Board Discussion: O. Gibbs said she feels this is a much better plan than the original plan. Sprinklers, city water, and hydrants are provided so this is a reasonable request. M. Foote said he thinks this looks like what we are hoping a cluster should look like. This is a positive with all of the open space and preservation.



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S. Bogert said the criteria was very well written, and couldn't say this any better himself. He asked if we use the criteria as provided by the applicant as the actual motion and S. Saunders said yes, we can do that. S. Perley said it was very clearly written, and O. Gibbs agreed that it was well put together.

M. Foote asked if we could find out if a sprinkler goes off, is there still an alarm? Not as part of this approval but he feels this is something we should know for the future. D. Robitaille said he thinks the fire signal goes off first before the system. J. Rokeh said a flashing red light goes off, and hopefully someone in neighborhood would see it.

Motion: S. Bogert made the motion to approve application # 2013-0022, to permit the length of the road to exceed the 1000 feet. We will use the responses to the criteria, as read above, that were supplied by the applicant. O. Gibbs seconded and all voted in favor of approval, 5-0.

Application # 2013-0023
Bodycote Thermal Processing

MSL # 440-233-4
187 Water Street

I Zone
Variance

The applicant is requesting a variance from 235-35 (B), side setback, in order to install a 10' diameter liquid nitrogen tank and pad. The setback requirement is 20' and the proposed tank would be located 14' at its closest point.

(D. Robitaille was seated for the hearing)

Applicant: Jim Boudreau, from Rist-Frost-Shumway, appeared along with Marty Lee and Steven Perniciaro. They are proposing a new 28 ft tall, 10 ft diameter liquid nitrogen tank, replacing an existing one. Also an evaporator, located adjacent to the new tank on a new pad. This is on the north side of the building, at the end of the loading dock, and there will be new fencing and bollards installed around the tank.

They tried to put it outside the setbacks, but it needs to go on this side, as the piping is there. They also have an argon tank there, and they work together. They could have done a smaller tank but it would be taller and over the height requirement, so would have required a variance as well. This will be 14 ft at the closest point. Bodycote talked to the neighbor about this, and they had no concerns. Their building is within the setbacks as well, within 4 ft of setback.

This is not contrary to public interest as this is at the end of the paved parking area which allows for safe truck access/delivery.

The spirit of the ordinance is observed as the side setback dimension is to prevent crowding. This would essentially keep it 16 ft from the side setback, while their neighbor encroaches into their setback now. This would allow them to use the property in a reasonable manner, and get fewer deliveries, which means less truck traffic. Currently they receive 3 deliveries a week but this would cut that to once every 2 to 2.5 weeks.

Property values are not diminished as this is in keeping with their use, and it would be unobtrusive. They looked at this many ways, and they feel this is the best location, as it is safe, and in keeping with similar tanks.

D. Robitaille asked if this is a refrigerant and was told yes. He asked what a worst case catastrophic problem might possibly be with this.



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Marty Lee is the project engineer. He said if a truck hit the tank and there was a failure, it would spill and vaporize into nitrogen gas. D. Robitaille said it would freeze, so could someone get freeze burned by this? He asked how far would it disperse before it evaporated and was told they are not sure. They are replacing a smaller tank and there are bollards around it now for protection.

S. Saunders asked if there is a lip and was told there are no requirements for containment but they know it vaporizes quickly. They said they have 60 locations around the country with no failures. S. Saunders asked if DES permits are required and was told no. S. Saunders said that Fire will look at this installation.

Steve Perniciaro said 70% of our air is already nitrogen. S. Perley said the use already exists on the site and clarified that this is just a new pad and a new tank and was told yes. M. Foote said if they are adding a new pad and tank, and then replacing the existing one and was told yes. The vaporizer needs a tank so they will use the existing one for that.

S. Perley asked about fencing and was told they will extend chain link fencing around this, and place a row of bollards around the tank as well.

S. Perniciaro said he is the general manager. D. Robitaille asked if any tanks have ruptured and was told not for their company. S. Saunders said she can look at this at the building permit time.

Public: No one from the public spoke for or against the application.

Board Discussion: D. Robitaille asked what happens if Fire says there is a 100 ft kill zone? S. Saunders said that would be covered in life safety, which is part of the building permit process. S. Bogert said we can make it a condition of approval that that have to meet fire department specifications, and that this remains nitrogen use. D. Robitaille said he is not sure if Fire has the answers he is looking for. It will depend on weather, too.

J. Boudreau said if Fire has a concern, they can install heavier duty bollards. He said there are other things that can be done, as well. S. Saunders asked about a lip and was told this sits up about 6" now. Marty Lee said increasing the strength of the bollards is a reasonable solution.

This is steel, concrete, 8" diameter, 4 ft tall, on a concrete foundation, with 3'6" in ground. This is located in a driveway, not a road, so the drivers are traveling at a slow speed. J. Boudreau said this is a narrow drive, perpendicular to Water St.

S. Bogert asked what is on back side and was told a drive way. D. Robitaille said he will rely on the Fire Department on this.

Motion: S. Perley moved to approve application # 2013-0023. The proposal is not contrary to public interest as the tanks are located at the end of a parking area, where it is safe for a truck to maneuver and deliver. The side setback is to prevent crowding on neighboring properties. This is located in an industrial area, and the tank will not be encroaching on residences.

The spirit of the ordinance is observed as the tank and pad will meet all Fire Department requirements.

Substantial justice is done as new bollards will be installed per Fire Department specifications to protect the tank from an 18 wheeler at drive way speed.



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The value of the surrounding properties are not diminished as this is an industrial area where side setbacks are already compromised.

There is no fair and substantial relationship that exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. Granting this allows the applicant to make use of the appropriate portion of the drive area. Deliveries will be cut so truck traffic will be reduced.

The use already exists on the site so the use is a reasonable one.

The board added a condition of approval:

The tank will remain a 9,000 gallon liquid nitrogen only, and this cannot be replaced with any other structure.

The second was made by M. Foote with all voting in favor, 5-0.

Application # 2013-0024
Advanced Auto Parts

MSL # 450-54-63-004
155 Court Street

BCI Zone
Variance

The applicant is requesting a variance from 235-58, Table of Sign Regulations, in order to allow 2 wall signs at 71 SF each. The total permitted in this zone for wall signs is 48 SF each.

(K. Geraci was seated for the hearing)

Applicant: Patrick Huyge appeared for the applicant. He is the sign agent for Advanced Auto Parts. They are requesting a variance for 2 wall signs, at 71 SF each, instead of the signage permitted at 48 SF each.

The company's name is long so that would restrict the height. They do follow the formula using one sq ft for each linear foot of frontage. The proposed sign makes it proportional to that.

They will not have a freestanding sign. As they can only have 2 signs, they feel these 2 wall signs are more beneficial. He passed out additional information and said this is a bit different than what had been submitted with the application.

Page 2 calls out the 2 wall signs. The building is going to be constructed on the corner of Fair and Court Streets. They feel it is a necessity to notify motorists on each of those streets.

On Court Street the sign will be proportionate to the building at only 4.5% of the side. The signage is minimal, clear, and legible. On the next page, on the Fair Street side, the sign is a little longer on that side, but uses only 3.8% on that side. They will adhere to the 1 ft for each linear ft of building frontage. You can see what the signs look like approaching the building. They are proposing vegetation on the site.

If you travel on Court Street, the sign becomes almost illegible using the decreased letter height. P. Huyge showed the sign they are requesting and said this makes it safer for people to see and access the appropriate driveway. The signage for Skate Escape is much larger and their illumination output is more.



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On page 8, note the Citgo signs on Court Street, which is a national chain like this business. It helps to be recognized, and motorists will receive advanced notification and won't have to slam on their brakes and make sudden turns. The colors are called out on the final page.

P. Huyge said they feel they have used the least amount possible of letter height and signage. Other businesses have more here. They don't want to clutter the property with another freestanding sign. They will keep it at the two wall signs.

S. Bogert clarified that the lighting is just to light the letters, with nothing projecting. He was told these are LED's, with an automatic dimmer. They will automatically dim, they won't glare, and won't flash. They will have a clean look. S. Saunders asked if the red stripe on the building is lit and was told no; it is either paint or a material. P. Huyge said he thinks this is stucco.

D. Robitaille said he assumes that market research was done as he thinks there is a lot of this type of business in Laconia already. S. Bogert said this is a new building, and is going where the propane tank is now. P. Huyge said there is fencing around it. K. Geraci asked about Skate Escape and was told the front is being taken back, and it will be flush with Little Caesars.

P. Huyge said they will only illuminate one hour before and after opening and closing. K. Geraci asked the hours and was told that most locations are from 7 am to 9 pm., He said he is unsure of what these hours will be, but will adhere to any restrictions they have. This is located on the same lot as Cross Insurance.

S. Bogert asked if the corner is being reconfigured and was told by S. Saunders that the applicant gave the city more ROW space. The reconfiguration is not happening at this time, but DPW is looking at this intersection to make upgrades; it is a priority site.

K. Geraci clarified that there will be a sign on the Court Street side and a sign on the Fair Street side. S. Perley clarified that the entrance faces Court Street.

Public: No one from the public spoke for or against the application.

Board: D. Robitaille asked if P. Huyge is authorized to speak for the business regarding the hours. P. Huyge said they traditionally only light the signs 1 hr before opening and 1 hr after closing. He has the authorization to speak for the applicant on the hours, and they can shut down and only be lit during business hours. S. Bogert said this is passive lighting, and that street lights provide more illumination in the area.

S. Saunders said they could condition this if residents complain. We can change the hours of illumination. K. Geraci asked if there are houses across the street and was told yes. There is a multi-family on the corner of Fair and Court. There is a multi-business building right across the street on Court as well as another multi-family on Fair. Then there are some single family homes.

S. Bogert closed the hearing to the public.

Board Discussion: S. Perley said while we would be granting a large variance, this is proportional to the size of the building. S. Bogert said this is passive lighting, not projected lighting. S. Perley said we have the ability to control the amount of the light if there are complaints. M. Foote said also we can address the hours of illumination. D. Robitaille suggested putting the passive lighting in writing as a Condition of Approval.



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S. Bogert said this proposal is less objectionable than a freestanding type of sign.

Motion: M. Foote moved to approve application # 2013-0024 to permit a variance to allow two signs to exceed the permitted 48 sf per sign in this zone to 71 sf each. The approval is not contrary to public interest as the area is Commercial now and this lighting is passive, not projecting.

The spirit of the ordinance is observed as they are keeping the 1 to 1 ratio, and the scale is appropriate for the size of the building.

Substantial justice is done as this is a clean installation, and the signage is reasonable for this area. There are already many signs in the area.

Property values are not diminished as this is a fairly commercial corridor and signage is needed to attract business.

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 clean installation, and the applicant can turn off lighting at the end of the business day so it won't be kept on all night. This will be shut down an hour after the close of business. Fair Street side of the building will be closed off at the end of business, and the Court Street side one hour after.

S. Saunders said the term passive is not clear, just say dimmer type of lighting. M. Foote amended his motion.

The board added the following condition:

The lighting on the Fair Street side of the building will be shut off at the end of the business day and the Court Street side one hour after the close of business.

S. Perley seconded the motion to approve and all voted in favor, 5-0.

OTHER BUSINESS: a) Zoning Task Force: S. Perley said they are currently working on signs. We have held 2 long meetings so far and the big issue is EMC's (Electronic Message Center), changeable copy signs. The committee wanted more information and are meeting again on the 25th. There are a lot of issues to be contended with. She wanted to stagger the EMC's, as there are many small lots, but the committee said they can't discriminate, and have been going back and forth. Their basic feeling is that on a two sided sign, it can have a different message on each side.

We want to reduce the time a sign is allowed to change; the feeling is that will change more often. We are getting pressure from the business community to allow it to change more often. There is a zone change from Commercial to Professional, and then back to Commercial, on both Court Street and Union Avenue, and the people in the Professional zone are affected by this.

S. Saunders said the changes won't please everyone. S. Bogert said the EMC's are expensive signs. Thurston's, Channel Marine, the Drive-In, and the former Wide Open Saloon are all right in a row and currently have them.

M. Foote said if buying a good sign, it does make a difference. S. Perley said the quality is changing all the time. S. Bogert said we should consider inviting the beast in, instead of controlling it. Make it across all zoning so all have the same. If people downtown have the money to invest, let them. S. Saunders said businesses on Court and Union want



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more signage while the downtown area wants less. S. Bogert asked about the library, as they want a sign they can program and show what they are offering.

M. Foote said Funspot changed from the color of their sign from red to amber and saved money.

b) Any other business that comes before the board. S. Saunders said she needs clarification on whether we permit stairs and walkways in the setbacks. We typically allow them in urban neighborhoods.

S. Perley said it makes sense as you need the walkway to access your home. S. Bogert asked why this has come up now and S. Saunders said people ask so she has to ask the question. S. Bogert said it makes sense, and he feels it should be permitted.

S. Saunders said that chimneys have come up a few times as well. The foundation footprint is close to the setback and the chimney butts into the setback. She said we have never paid that much attention to these, but it has come up. S. Bogert asked if that might encourage someone to build a larger house so they could build-out to the chimney. D. Robitaille said it is a structure. S. Saunders said it is structure, but not obtrusive. This is a small footprint with no windows or doors. D. Robitaille said most won't see a brick chimney anymore.

M. Foote said we did one of these recently. S. Saunders said it came up again, as the people got a foundation survey, but didn't include the chimney. S. Bogert asked who would review this and S. Saunders said Fire doesn't want to look at them, as they don't have the staff to do this. S. Bogert asked when do we take a step back and say this is too big, or too close to the neighbor. S. Saunders said if the chimney is that big, they would probably have a bigger lot. D. Robitaille said someone has to look at them.

S. Saunders passed out a picture and asked about boats and RV's stored in rear/side setbacks. She said that in the past we have defined any place behind the front façade. She asked about a specific issue on Court St. K. Geraci said if the garage was not there these people would not have an issue as this is behind the setback. M. Foote said some houses aren't square, either, and that could affect placement.

D. Robitaille said screening is key. S. Saunders asked what the side setback is considered. She asked the members to drive around and look. Read ordinance 235-41-L. Check into this and define what is the rear or side setback. We have to determine the intent of the ordinance and if the side of a building is considered front or rear.

ADJOURNMENT: S. Perley moved to adjourn the meeting of September 16. M. Foote seconded and all voted in favor, 5-0, with the meeting adjourning at 10 pm.

RESPECTFULLY SUBMITTED:

KRISTINE Y. SNOW
ZONING TECHNICIAN