



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

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

**ABSENT:** K. Geraci, Alternate

**S. Bogert called the January 21, 2014 meeting of the Laconia Zoning Board of Adjustment to order at 7 pm.**

**MINUTES:** The minutes from the December 16, 2013 ZBA meeting were discussed. The motion to approve the minutes was made by O. Gibbs and seconded by D. Greski with all voting in favor of approval, 5-0.

O. Gibbs recused herself from the first hearing. S. Bogert seated D. Robitaille in her place. R. Smith, Alternate, recused himself as well.

**EXTENSION REQUEST:**

**Application # 2012-0010  
P. & J. Waligora**

**MSL # 230-477-1.24  
15 Hackberry Lane**

**RS Zone  
Extension**

The applicant is requesting a one year extension to run from April 16, 2014 through April 16, 2015 for a variance to allow the 17 foot setback previously approved at the meeting of April 16, 2012.

**Applicant:** Peter Waligora, property owner, appeared for the application. He stated that he lives next door, at 31 Hackberry. He is asking for a one year extension. There have been no changes in the proposal and no changes in the property since this was granted two years ago. Without the variance, only a 20 foot wide home would be permitted here.

The map submitted with the request shows the buildable area without the variance, as well as the area with the 17 foot setback, which allows for a 28 foot wide home.

They have not been able to build. They have not been able to sell. They initially wanted to build a home for his mother in law but she has since had health issues and decided not to move.

He has had the property for sale for 2 years. The failure to sell is partially because the market is slow. He thought it was sold last summer and had a buyer come 4 times to view the property. Unfortunately he had a specific set of plans he wanted to build to, and the lot was not sufficient. He purchased another lot in the development.



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

P. Waligora said he talked to a local builder to put up a spec house, and was hoping to do that this spring but the builder has 3 other large projects going so they are unsure of timing with him.

Even with the variance it is a difficult lot to sell or build on. Without the variance it is almost impossible to do. When he purchased the lot he would not have bought it without the variance. The narrowest home in the development is 28 feet and most are 30 feet or wider.

D. Greski said that he feels the board understands the application and asked the property owner to discuss the 3 factors for the extension.

D. Greski said the first is the time period. Per 235-81 (D) (1) (a) states that the approval has not yet expired. This is current until April of this year so remains in good standing.

235-81 (D) (1) (b) states that the applicant has proceeded with due diligence and in good faith. It seems that he has. He purchased the lot with one intention, which fell through. He tried to sell the lot or to build within the time frame and has been unable to do that.

235-81 (D) (1) (c) states that the facts submitted as part of the original application have not changed. The applicant has stated that nothing has changed.

S. Perley said that she feels all of the conditions to grant the extension request have been met.

P. Waligora said the facts have not changed. He would be extending the same thing; all information remains the same.

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

**Board:** There were no further board questions of the applicant so S. Bogert closed the hearing to the public.

D. Greski said on the first criteria there is no issue.

On the second, he asked for clarification. He asked if putting the house on the market is doing due diligence and S. Bogert stated yes, he feels it is. The applicant had the house on the market and thought they had an active buyer, who backed out. S. Perley said he also contacted a builder on putting up a spec house, so he has maintained his interest. She feels he meets the second condition.

D. Greski said that all of the facts submitted originally remain the same.

**Motion:** S. Bogert moved to approve application 2012-0012. He said that all of the criteria established at the time of the approval has remained the same.



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

The approval has not expired and is current.

The applicant acted in good faith. He contacted a builder to have the lot built on; he also sought to sell the property, and a potential buyer backed out.

None of the facts have changed from the original approval.

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

**O. Gibbs was re-seated as a full board member. R. Smith returned to the table.**

**REQUEST FOR RE-HEARING:**

**Application # 2013-0026**

**MSL # 162-248-16**

**CR Zone**

**C. Gulbicki**

**1193 Weirs Blvd**

**Special Exception**

The applicant is requesting a re-hearing of a request for a Special Exception from Laconia Zoning Ordinance Section 235-26, Uses Permitted by Special Exception, in order to add the use of pre-owned car sales to their existing site.

**Board:** S. Bogert let the public know that there is no public input for this application. This is all board discussion to determine if the application should be re-heard.

S. Perley said she feels the applicant did not present any new evidence and there has been no change in the facts. This is not an approved use in the district, and what is there was approved some time ago so there is already an approved use which is not conforming. She doesn't want to add another use that is not permitted in the district and make the site more non-conforming.

D. Greski said he wasn't here for the original hearing so wants to verify that no new information was submitted. S. Perley said they submitted the approval from S. Saunders and some new pictures. She said that the board can override Saunders' approval, and they overrode that at the previous meeting.

S. Bogert said the meeting was held on November 18, 2013 and he reviewed the minutes of the meeting.

He verified that the other members still feel that the location is not appropriate for the requested use. O. Gibbs said she doesn't feel that any new information was provided for the request for the re-hearing.

R. Smith said that he made the original motion to deny, and based that on 235-70 (C) (2) G and H. He said that the board may want to review the other criteria this time, for the record.



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

S. Bogert read the criteria:

- a) **Is the use requested authorized in the chapter;** Yes, by the granting of the Special Exception.
- b) **The requested use will not create undue traffic congestion or impair pedestrian safety.** S. Perley said it could potentially cause congestion. There is a lot of truck traffic in/out of the site, and now they would be adding stationary cars so it would be adding some congestion, but that is not the main issue. This is already a congested area. R. Smith said that people stopping to look at a used car could have effects on traffic.

D. Greski said he was not at the original meeting, but the board only needs to look at the 2 items, G and H, that they were turned down on, correct? Do they only review the 2 items that were mentioned in the original denial?

S. Bogert said he doesn't feel it would hurt to go through all of the criteria. He said they can only do the original two but it doesn't hurt to touch on the other items. If someone is asking for a re-hearing, it doesn't hurt to make sure all items were discussed in the proper fashion.

S. Bogert said he agrees that the intersection is already congested and that stopping to look at a vehicle could cause an extra distraction. O. Gibbs said the area already has enough distraction.

- c) **The requested use will not overload public water, drainage or sewer or other municipal system, not increase stormwater runoff onto adjacent property or streets.** The use probably will not add to this.
- d) **The requested use will not create excessive demand for police, fire, schools or solid waste disposal services.** There should be no excessive demands, other than what the tow truck currently adds.
- e) **There are no special provisions for the use** but the current use is non-conforming and by approving this use it would become more non-conforming.
- f) **The requested use will not create hazards to health, safety, or general welfare of the public not be detrimental to the use or out of character with the neighborhood.** The use could potentially be a hazard with people attempting to stop in this already congested area. This is located in the Commercial Resort area, where there are a lot of condos, rentals, and businesses that cater to the public.
- g) **The proposed location is appropriate for the requested use.** The location has been discussed on numerous occasions. The area is not appropriate due to the scenic and water views. This is a gateway location.



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

**h) The requested use is consistent with the spirit and intent of the chapter and the Master Plan.** S. Perley said when the Commercial Resort district was set up, the businesses permitted were stated. The current use here was permitted some time ago, but is not allowed now. R. Smith said the Master Plan says to protect road ways. S. Perley said that 25% greenspace is required on the lot, and she doesn't think that is currently met. Everything now is right on the lot lines. While there are small setbacks in this district, it still has an impact.

S. Bogert asked the board members if they still find that the original denial was not in error, using criteria G and H, and that no new evidence was presented.

O. Gibbs said they made responses to criteria G and H, but the applicant is not presenting new evidence, just responding to the denial. They also mention Cumberland Farms and Benson's, but that is further up the road, and has different traffic conditions, especially at Benson's. M. Foote mentioned that Bensons is now gone.

**Motion:** S. Perley moved to deny based on the board discussion tonight. She said that no new evidence was presented and the ZBA did not err in their initial decision. O. Gibbs seconded and all voted in favor of denial of the re-hearing, 5-0.

**HEARINGS:**

**K. Snow let the board and public know that the application for 54 Windmill Lane was incorrectly listed as 2014-0001 and should be 2013-0028.**

<b>Application # 2013-0028</b>	<b>MSL # 374-293-34</b>	<b>RS Zone</b>
<b>R. Durfee</b>	<b>54 Windmill Lane</b>	<b>Equitable Waiver</b>

The applicant is seeking an equitable waiver from 235-35-B, rear setbacks. The required rear setback in the RS zone is 15 feet. The foundation was installed before it was determined that an error in measurement was made. The setback at the closest point is 14' 2 3/4".

**Applicant:** Robert and Joanne Durfee appeared for the application. R. Durfee said they own 54 Windmill, which is Lot 34 on the submitted plan.

S. Bogert let the board members know that this is the application we determined was not a variance but an equitable waiver so they have 4 criteria to meet.

R. Durfee mentioned the site plan. He prepared it himself and is licensed in the state of NH. He hired an architect, who laid out the addition based on the site plan/survey that Durfee provided him.



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

He confirmed the setback would be met, using that plan. They applied for the building permit and received that.

When the contractor began construction he said that the setback was close. R. Durfee told him he would double check, and when he measured straight back, it was close. However, when he measured on a radius he found he only has 14' 2 3/4" so he is here to apply for the Equitable Waiver. He said he made an honest mistake. His site plan was in error.

He addressed the four criteria for the Equitable Waiver:

- a) This was not noticed until after construction was started. He found out in early December, told the Planning Department immediately and applied for the variance, and now the Equitable Waiver. He meets the setbacks on 3 corners, and meets side setbacks in all cases.
- b) The violation was not an outcome of ignorance of the law. R. Durfee said he knew what the setbacks were, and the architect was given those. This was simply a good faith error on his part. He said he is very embarrassed by this.
- c) The physical or dimensional violation does not cause a nuisance or diminish property values. The area in question is only 9 1/2 inches, so it won't affect the neighborhood or his addition. This won't affect street views.
- d) The cost to correct this far outweighs any public benefit. 30% of the construction is done, and they have spent about \$50,000.00. The foundation construction is done and the ground floor framed in. It would be a considerable hardship if he has to remove 9 inches of foundation and re-construct this.

**Public: Elaine Morrison** said she is a direct abutter behind Bob Durfee. She has no problem with this. He has constructed a fence, there are trees on the property line, and they are good neighbors. She said she would like to see him proceed.

S. Bogert clarified where her property is and she said she is located directly behind him, so this addition would affect her. There are no problems for her.

**Patricia Jameson** stated she directly abuts on the side and has no difficulty with the construction.

**S. Bogert asked the applicant for any closing remarks. There were no further questions from the board so he closed the hearing to the public.**

**Board:** R. Smith said a mistake was made, but the intent to comply was there. The violation is not that bad, and he brought to our attention immediately, and stopped construction. S. Bogert said the applicant acted in an honorable way.



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

D. Greski said the only violation is the 9 plus inches. He feels there is no negative impact and feels that the requirements are all met. He said that R. Durfee answered the criteria and meets the requirements of a-d.

S. Bogert went over the criteria. He said the violation was not noticed until construction was started.

The applicant thought he met the setbacks and knew what they were.

The violation is not a public or private nuisance, as the 9' is not that intrusive, and the abutters have no issues with the intrusion.

A substantial amount of money has already been spent which outweighs any public benefit as this is such a minor violation.

**Motion:** D. Greski moved to approve the equitable waiver based on the presented information. The setback will be permitted as present, 14' 2 3/4". O. Gibbs seconded the approval and all voted in favor, 5-0.

**OTHER BUSINESS: a) Election of officers:** S. Perley nominated S. Bogert to continue as chair, with the second by M. Foote. There were no other nominations. All voted in favor, 5-0.

Vice Chair: S. Bogert nominated S. Perley to remain as vice chair/secretary. D. Greski seconded. There were no other nominations and all voted in favor, 5-0.

**b) ZBA Rules/Procedures:** S. Perley let the other board members know that some updates were made to the document. She asked them to look at the procedures and it would be discussed at the next meeting.

This was done because our Attorney said that in the Gables case said we did not run the hearing in the right manner. We will discuss this next month when S. Saunders is in attendance. The document was reviewed by our attorney.

D. Greski said he would not be here next month. S. Perley said that he if has any concerns to forward them to either her or the department.

**c) ZTF:** S. Perley said the ZTF has not met for a month due to holidays and work schedules but that a meeting has been scheduled for next week to finalize the revisions to the sign ordinance.

S. Perley said that the process got bogged down. She feels the chicken ordinance got shot down because the Planning Board did not sit through the process or the public hearings and did not know what was going on. They did not understand what went on behind the scenes. We will hold public hearings at the Planning Board level since they have to approve changes and they will now be involved in the process.



**ZONING BOARD OF ADJUSTMENT  
MINUTES MEETING OF JANUARY 21, 2014  
APPROVED AT MEETING OF MARCH 17, 2014**

S. Perley said she will be going to the February meeting of the Planning Board to do a presentation on signs. They will schedule the public hearing. S. Perley said she will also provide information to the ZBA for their input as well.

S. Bogert asked about the light intensity, and S. Perley said she contacted Watchfire Signs. They manufacture and sell signs to sign vendors. He looked at the sign ordinance and gave her some input and also lumens information.

She said we are making progress, and have done the best we can do, and this now needs to be open to the public for discussion and input. We do want to control the amount of animation. In the Professional zone we will allow a sign to change copy but with no graphics.

We are proposing that Off Premise signs have to come before ZBA for a Special Exception. A sign will be limited to the business on the site now. An Off Premise sign is considered advertising on a site where the business isn't located.

On the double sided sign, each side can be different.

There was no further business.

**ADJOURNMENT:** The motion to adjourn was made by S. Perley with the second by M. Foote. All voted in favor, 5-0, and the meeting was adjourned at 8:10 pm.