



ZONING BOARD OF ADJUSTMENT
MINUTES OCTOBER 20, 2014
ACCEPTED MEETING OF NOVEMBER 17, 2014

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

ABSENT: K. Geraci, Alternate; S. Saunders, Planning Director

S. Bogert called the October 20, 2014 meeting of the Laconia ZBA to order at 7 PM and welcomed everyone.

MINUTES: The motion to accept the minutes from the ZBA meeting of September 15, 2014, as written, was made by O. Gibbs and seconded by S. Perley, with all voting in favor, 5-0.

CONTINUED HEARINGS:

Application # 2014-0017
Randy Bartlett

MSL # 433-186-51
176 Pleasant St

RG Zone
Variance

The applicant is requesting a variance from Zoning Ordinance section 235-39 (D) in order to erect 6' fencing along a portion of the Gale Street frontage. Per the ordinance fencing is not to exceed 4' in the front yard setback areas.

Applicant: Randy Bartlett appeared for the application. S. Bogert let the other ZBA members know that Mr. Bartlett is back to clarify the design, height, and location of the fencing. Mr. Bartlett said he changed the verbiage and submitted a clearer plan.

R. Bartlett said the plot plan depicts the location of where he is asking for the increased height. The stone wall is 8 feet, and if you look at the plan the long part of the "C" shape is city sidewalk. When you are standing in the pool area, you are looking over a 5' fence, while the neighbors will look at a 6'. There are varying grades all over the property.

S. Bogert said the property steps up and down and he explained to the other board members how the ordinance works per the fencing. M. Foote asked what the setback is and R. Bartlett said 15'. He said this is a highly traveled area, and the fence will prevent people from walking by and looking into the yard.

D. Greski said he was not at the last meeting but did read the minutes, and he didn't understand this at all. He asked R. Bartlett if he didn't think about the fencing before he installed the pool and R. Bartlett said yes; if this is not approved they will use something else. He said they want to go a good job as this is a nice neighborhood. They want it to look good for the neighbors. He said that people can still see over a 4' fence.

D. Greski asked about the decorative medallion and R. Bartlett said they removed that element. He said the center is 8' with 6' on the outer portion but that it does depend on the grade. It will be a different height if you are in the yard.

S. Bogert said they could also use landscaping for privacy. M. Foote clarified that the center is 8' with a 6' outer portion and was told yes. S. Bogert said those heights could become part of the motion. R. Bartlett said that the current concrete section is now 4', but it will be 8'. He said it is not aesthetically pleasing to step a fence down from 6' to 4' as Laconia's ordinance requires.

D. Greski asked what the special condition is that distinguishes this from others in the neighborhood and R. Bartlett said the pool and the fact that people can see into the property and pool area from the street. He said that anyone with a pool could have the same issues. He said his neighbors have a pool but it cannot be seen as it is located behind the house. He said it is not in the public interest for people to be walking by and looking into the pool area.

M. Foote asked how big the side walls are and was told on one side 6' but the other varies. D. Greski said there doesn't seem to be a difference between this property and others in the neighborhood. He said that R. Bartlett said he just said this is the same. The write up said there is only one place to put a pool, and a low fence will expose the community and public to private activity. D. Greski said he still doesn't understand the hardship.

S. Bogert said a 4' fence going into a pool area is a safety issue. It is not hard to climb over fencing of that height. D. Greski said he is not questioning that – he agrees – but he wants an explanation on the criteria for this property. R. Bartlett said it is special to this property but could also apply to others, too. He is unable to put the pool out of public view and others could ask for the same variance. This makes this property unique but others could have the same hardship.

O. Gibbs said we are looking for something that is specific to this lot. R. Bartlett said that is correct; O. Gibbs said he just stated that others could have the same hardship.

R. Smith said he feels that the swimming pool is what makes this lot unique. The safety is the issue here. R. Bartlett said the building permit says 48" high for the fence and S. Bogert said he wonders what the insurance carrier's requirement is and R. Bartlett said he hasn't been asked. R. Bartlett said a 4' fence will be easy to jump over.

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

S. Bogert said we had received letters at the last meeting and the church came to the last meeting and said that they had worked out their issues.

There were no other questions from the board, and no closing comments so S. Bogert closed the hearing to the public.

Board: S. Bogert said he drove by the property. The applicant has the right to install a pool. The city likes the smaller fence in the city, as it looks nicer, and is more friendly and pleasing. He asked if having only one spot on the property to place a pool make this property special and said that he thinks it does. Without the pool there would be no need for the higher fence.

D. Greski said was surprised that the approvals weren't done before the pool was installed. He said this is a first class fence with pillars. This is very nice, not fly by night, but is after the fact. The fencing issue was known ahead of time and he feels people should apply before installing the pool. Right now this does meet the requirement for safety at 48". Mr. Bartlett could put in the 4' fence and install arborvitae to provide screening. He said he doesn't think that most insurances will accept a 4' fence around a pool. If the insurance company said he needs a 6' fence, then he would have a safety issue versus a visual issue.

S. Bogert said a 4' fence around a pool doesn't make common sense. He doesn't feel it is safe.

O. Gibbs said she can see the 6' but she questions the 8' on the street. M. Foote said the level on the inside is higher than the street level. He said he feels this is starting to wall off the neighborhood. He asked if there is a gate and was told no, this is a solid section.

S. Bogert said above ground pools don't require fencing at all.

D. Greski said there are 2 options for the board to look at. We could go with landscaping or what the applicant has presented. They serve the same purpose. This is a first class fence and will complement the property. He could easily have done a chain link fence with the weaving. This is complimentary to the property and will

increase the safety. He said that he feels in the future people should apply for the fencing variance at the same time they apply for the building permit.

S. Bogert said that Randy Bartlett said he would abide by what we determine. M. Foote said would we say not to exceed 8' over road grade and was told yes, just in the center section. The fencing is just in the pool area, not all around the house.

Motion: D. Greski moved to approve application 2014-0017 for a variance in order to install a 6' fence across a 30' span with a center portion which will be 8' in height.

The variance will not be contrary to public interest from a safety standpoint as this improves safety for the pool area. While it does meet the town ordinance this improves that area.

The spirit of the ordinance is observed as there is no substantial change in the use being proposed. The major portion of the fencing meets the requirement, and the applicant has installed the portion that doesn't require a variance.

Substantial justice is done in granting the variance as the proposal doesn't harm the abutters. The benefit to the applicant outweighs any negative impact to the general public.

The value of surrounding properties will not be diminished. This is a high end fencing project which won't have a negative effect on adjacent properties and should cause an increase in value.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. This doesn't alter the essential character of the neighborhood or affect the health, safety or welfare of the public.

While the fence is different for the area it is high end, and should have no impact on public health, safety or welfare. The applicant is installing a better product than what is required.

The use is reasonable and is permitted in the zone.

The board also added a condition that the 30' span cannot exceed the 6' or 8' portions.

O. Gibbs seconded the motion.

M. Foote wants to recognize that the elements between the 6' and 8' are curved. S. Bogert placed verbiage stating that the non-concrete portion is no higher than 6', with the width no greater than 11'. A proper drawing is to be submitted with top portion of the arch omitted for the city's records.

S. Bogert suggested changing the wording under value of surrounding properties. That should state this project should improve the house values, and it could cause an increase in value, not will.

D. Greski agreed to the changes, with O. Gibbs seconding. All voted in favor of approval, 5-0.

NEW HEARINGS:

**Application # 2014-0020
NH Signs (for Valvoline)**

**MSL # 227-220-10
1147 Union Ave**

**C Zone
Variance**

The applicant is requesting a variance from Table IV, Table of Sign Regulations, in order to add an additional 11 SF to their existing freestanding sign. The property is currently permitted at 129.27 SF, which would bring the total to 140.27 SF. The maximum allowed on this site is 129.27 SF.

Applicant: Peter March appeared for NH Signs. He said that Valvoline is attempting to add a small reader board to their already approved Valvoline sign. The business is located in the Commercial Zone and the owner is upgrading the brand image to the site, so the signage is being replaced.

They already applied for and received a permit to replace both the wall and freestanding signs, but want to add this small manual reader board to the freestanding sign. The top portion has already been permitted, but not installed. This would add an additional 11 sf.

P. March said that the property is unusual as it is shared by 2 distinct businesses, with 2 owners. These businesses compete with each other. They share the sign allotment. Total 129.7 SF, Mike's has 70.97 SF, and Valvoline gets what is remaining.

This type of business is unusual, and a lot of the business is done as a spur of the moment decision to have an oil change done. This is a volume business, and success is based on the number of customers getting into the site and turning them over. Other people have joined the market, so it is getting crowded. They need to compete with other companies. Meineke, VIP, and other motor vehicle dealers are offering the same service so they need to attract as many customers as they can.

This would not be contrary to the public interest as the proposed addition is very small at 11 sf. The entire sign is much smaller than Mike's and others in the area.

This is one lot but people don't realize that. The general public views this as 2 lots so expect to see 2 signs.

The spirit of the ordinance is observed as it was not written taking into consideration that 2 businesses will be on the same lot competing for same business. This is a very unusual case.

Substantial justice is done in allowing them to add this small increase in signage in order to present their wares as others on this street currently do. That is a fair and reasonable use.

The values of surrounding properties are not diminished as the new signs are much more attractive. They don't have the visual bulk, and would be brand new, with aluminum covers. They will look nice. Adding this small reader board is not aggressive. There is no benefit to the public in not allowing this small change and this should enhance the value of the property and the street.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as this site has 2 businesses that compete with each other. Variable messages are very important to advertise specials. Their business volume is based on the day of the week and Friday – Sundays are busy. They want to attract business on the other days and offer heavier discounting then.

They haven't had a reader board before this. They are asking for it now as the market is becoming more cluttered. It is a tougher business and this would help them to survive. The increase in the size of the sign would have no effect on the public, and will help to grease the wheels of Valvoline.

D. Greski clarified that this will be a manual reader board and was told yes, with 6" easy change letters. D. Greski asked if they plan to use it to advertise their specials and was told yes.

S. Perley clarified that they actually have to manually change the letters and was told yes. She said that is also considered a changeable copy sign. M. Foote asked if the sign will be lit and was told the letters will be back lit. D. Greski asked for clarification on the lighting and was told it is internally lit. S. Perley said this is located in the Commercial district, with no residences nearby. P. March said the current sign is lit and the portion already permitted will be lit.

S. Bogert said they are making this bigger so Mike's can come in for an increase and the next business can come in. He wondered how big is big enough? Where does this stop? M. Foote said this is nicer than the a-frame signs. S. Bogert mentioned people that stand outside a business waving flags around as well.

P. March said this is very modest, especially next to Mike's. S. Perley said she has no problem with this proposal at all. S. Bogert said he doesn't either but does wonder where these requests will go in the future.

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

There were no closing comments from the applicant so S. Bogert closed the hearing to the public.

Board: D. Greski asked if the applicant has already been here once for increased square footage, and got the approval for it, do we now give them more and was told it was not Valvoline, it was Mike's.

S. Bogert said the signage hardship will be used up after this as both Mike's and Valvoline will have asked for an increase. M. Foote asked what the distance is between the 2 signs and S. Bogert said it is about 25 feet. S. Perley reminded the other members that is not for discussion.

S. Bogert asked if a manual copy sign is placed here what issue does it cause.

Motion: S. Perley moved to approve Application # 2014-0020 for an additional 11 SF of signage to install a manual reader board. She said this is not contrary to public interest and the spirit of the ordinance is observed.

The granting of the variance is not contrary to public interest as the applicant wants to add a manual reader board, non-electronic, to their approved sign to advertise specials. This doesn't violate basic zoning principles. The business is located in the Commercial strip where all of the businesses advertise with similar signs.

Substantial justice is done in granting of the variance as this is consistent with the current use. The benefit to the applicant outweighs any negatives to the general public. There is an existing sign and this is a small increase to what was already approved.

The values of surrounding properties are not diminished as this proposal is consistent with other businesses and other signs located in this commercially zoned area.

There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. There are two businesses located on the same lot, and they are vying for the same customers. This does not alter the essential character of the neighborhood as this is a Commercial zone and this provides needed advertising of specials to the applicant.

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

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

Application # 2014-0025

MSL # 456-3-11

RG Zone

Doug Dichard

59-61 Adams Street

Variance

The applicant is requesting a variance from Zoning Ordinance section 235-35 (B), side setbacks, in order to construct a fire escape which is required for life safety. This will be constructed over the existing roof line, which currently is 7' from the property line, in a zone which requires a 15' side setback. This will infringe no further into the setback than what is currently there.

Applicant: Doug Dichard appeared for the application. He said he lives in Nashua and said he recently purchased this 4 unit structure. He called Code and Fire to look at it and evaluate it so he could bring it up to code. He was given a determination by Steve, in the Code Department, and by the Deputy in Fire.

The property was an eyesore previously. Fire requested the 3 third floor fire escape egress. This is a 4 unit building. There are 2 windows on each side, where the third floor bedrooms are located. They suggested he go from window to window, rail it, and make a proper egress. S. Bogert asked if this is the same apartment, and was told no. They are on opposite sides of the building per D. Dichard, one on each side. They won't be tied to each other. He said there was no egress in the past. This building had problems with Code in the past and was vacant for some time.

D. Dichard said when he received the information he immediately built the escapes as he had people working on all of the floors and needed to build these in case of any issues. After he built them he received a call saying that one side fell into the setbacks so he would require a variance. There is an existing porch that projects 3.5 feet into the side setback. The fire escape projects no further into the setbacks.

He said this won't hurt property values in the area. He spoke with the neighbors and said that they were all excited about this property being fixed up. They have removed a lot of debris, cleaned the property up, put on new vinyl siding, and added new windows. They brought the structure up to code, put in hard wired detectors, and now need the board's blessing to get the variance approved. They have a meeting with Code this week to ensure that everything needed has been done.

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

There were no further questions from the board and no closing comments so S. Bogert closed the hearing to the public.

Board: D. Greski said this is the right thing to do. He asked why this permit got approved and then the applicant was told about the variance. K. Snow said the building permit came to her for approval and she found the infringement then and let the applicant know that they needed the variance.

Motion: M. Foote made the motion to approve Application # 2014-0026 for the infringement into the side setback. The fire escape will not infringe any more into the setback area than it currently does. Not having safe egress for residents is a safety issue and granting the variance brings the property into compliance with Fire and Code. This is a reasonable request.

The granting of the variance is not contrary to the public interest. This provides egress to the tenants on the third floor but does not add to the current infringement.

The spirit of the ordinance is observed as this does not add to the current encroachment. It does bring the roof line up a bit but this addition is needed.

Substantial justice is done as granting the variance brings the property into compliance with Code and Fire. The owner will be able to obtain the needed Certificate of Occupancy for the property.

The values of the surrounding properties are not diminished by the granting of this variance and should increase the value of this property.

Literal enforcement of the ordinance would result in unnecessary hardship to the property owner as the infringement into the setback currently exists. The proposal does not project any further into the side setback area and is required by Code and Fire to make the property compliant with today's codes. Without this fire escape the third floor of the structure could not legally be rented out and the property owner needs to be able to use the entire house.

The proposal is reasonable and necessary.

S. Perley seconded the motion with all voting in favor of approval, 5-0.

Application # 2014-0026
Regions First

MSL # 329-232-2
206 Washington St

RS Zone
Variance

The applicant is requesting a variance from Zoning Ordinance section 235-28 in order to allow a two family home in a zone where two family homes are not permitted. They purchased this as a two-family and verified that it was a two-family with the Assessing Department before the purchase. After purchasing it they discovered it was not changed with Zoning and want to bring this into compliance with all City departments.

Applicant: David Moore appeared for Regions First. They bought this as an income property, and checked with Assessing, who verified it was a 2 family. There are other two-family houses in the area so this is in keeping with the neighborhood. They did not check any further. The property has changed hands twice in the last ten years. Their insurance company is being extra cautious and requested that the circuit box be moved from its current location. The electrician went to Code to get a permit. If they had not done that, they would not have known it wasn't legally a two-family and would not be here tonight. This has been a two family for some time.

The variance will not be contrary to public interest as it is currently a two family structure and it has been for some time. There are others nearby. They have cleaned this up and made it much nicer. It was bank owned.

The spirit of the ordinance is observed as this structure looks like others in the area. There are a number of rentals here and they are not changing the looks of the exterior, except to clean it up and improve it.

Substantial justice is done as the insurance company will be very happy with the new location of the electric meter. It is now in a better location, which will be better from their perspective.

Property values won't be diminished as the structure is well kept, and there are other multi-families close by, including 199 Washington, and 154 Washington which are both 2 families.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. This is an existing two-family and has been for some time so using this as a two-family doesn't alter the essential character of the neighborhood. A denial of the variance may reduce income by 50% and could also cause an issue with the insurance company.

D. Moore said they relied on the information from the Assessing Department and thought they had done their due diligence. This has been taxed as a two family for years.

D. Greski said that he went on to Vision Appraisal recently to look at a property with a friend and assumed it was listed correctly, but found out it wasn't. O. Gibbs said she went on line and found 11 residences listed in this area as multi-family residences. She said that the use was there, and wondered if they have variances?

Public: No one from the public spoke for or against the proposal. There were no further comments from the applicant.

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

Motion: O. Gibbs moved to approve Application # 2014-0026 to allow a two family structure in a zone where only single family homes are permitted.

This will not be contrary to the public interest as there are many other homes in this area and on the street which are already multi family. This will provide affordable housing in the area and it will be well maintained. This will be an improvement to the prior bank owned property. This fits into the area, both in appearance and the fact that it is a multi-unit home.

The spirit of the ordinance is observed in the granting of the variance as there will be no harm to the public. The structure will be used as it has been for at least the last 10 years.

Substantial justice is done as there will be no harm to the public. The property owner did their due diligence and had the use verified by the Assessing Department. This does not alter the character of the neighborhood.

The value of the surrounding properties should not be diminished as the neighborhood is actually a mix of single and multi-family homes.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as this is clearly laid out as 2 family. The owner purchased this with the understanding it was a 2 family and that information was confirmed by the Assessing Department. There is no variance on record granting the use. To enforce that at this time would be a hardship, and this is designed to be a two family.

This is a reasonable use. The house has been used as a two family for some time, and the neighborhood is made up of other multi-family units.

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

Gail Ober asked why, if there are so many others in the area, this is zoned for just single family homes. She went and looked at the property and it appears that this was a garage, and was at some point turned into a mother-in-law unit and then probably sold. The next person just assumed it could be used as a two unit and it became a rental.

D. Greski said he thinks this is something that should be looked at. How do we stop this from happening?

OTHER BUSINESS: ZBA Rules Approval: S. Perley said she is still working on these and they will be continued until the next meeting.

Adjournment: S. Bogert moved to adjourn, with the second by M. Foote. All voted in favor, 5-0, and the meeting adjourned at 8:45 pm.