



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

CALL TO ORDER: Steve Bogert called the October 19, 2015 meeting of the Laconia Zoning Board of Adjustment to order at 7 pm.

ROLL CALL BY CLERK, Kristine Snow: Steve Bogert, **Chair – Present;** Suzanne Perley, **Vice-Chair – Present;** Orry Gibbs – **No Response;** Roland Maheu – **Present;** Michael Foote – **Present;** Kate Geraci, **Alternate –Present;** Gail Ober, **Alternate – No Response**

Members Absent: O. Gibbs, G. Ober

Staff Present: Shanna Saunders, **Planning Director;** Kristine Snow, **Zoning Technician**

Kate Geraci was seated as a full board member for all of the hearings for the evening.

Minutes: Roland Maheu moved to accept the minutes from the September 21, 2015 meeting, as written. Kate Geraci seconded and all voted in favor, 5-0.

CONTINUED:

Application # 2015-0024	MSL # 274-178-17	RS Zone
L Rubin	90 Paugus Park Rd	Variance

The applicant is requesting a variance from 235-35 (A) & (B), front and side setbacks, in order to allow a 96 SF shed to be placed within the setbacks.

Applicant: Rod Dyer appeared for the hearing along with the applicant, Larry Rubin. They are looking for a variance from the front and side setbacks. The property is located in the RS zone, as well as in the SPOD. The Rubin’s purchased the property in 2004. They have 4 children. When the children were younger there was a jungle gym in the location where the shed now is. As the children got older, they decided to remove the jungle gym and purchase a shed for storage. They went with one that is 96 sf. When they purchased it they asked the vendor if there were any permits needed, and was told no by them. After they installed the shed they received a letter stating the shed was in the front setback and they were also later reminded of the side setback as well. It is located approximately 10’ from the edge of the traveled way, and within 2’ of the sideline.



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

R. Dyer passed out pictures showing the location. The first is the profile of the property and showing the location of the shed. The second picture shows the sidelines of the property with twin rows of pines on each side of the building, which are located on the property line. It is not possible to relocate the shed to either side of the building. The remainder are random shots of Paugus Park Road to show the neighborhood as it looks and what is on the ground there presently.

Supreme Court decisions have been made that say you can look at the current character of the neighborhood when making a determination on a variance.

R. Dyer this is not contrary to public interest as there are a number of properties which maintain sheds, garages and other structures within the front setback and in the side setback as well. In this neighborhood, it is more customary than not. The City's interest is not significantly affected as this is not a main, busy road. It is for the people who live there and is a dead end on either side; this is not a through road. Nobody is just driving by.

On the spirit of the ordinance, there are numerous other properties here which have encroachments. The shed, in its current location, doesn't make the property look congested or overbuilt. It looks like it belongs where it is. It was intended to blend in with the main structure. It is physically impossible to move it to another portion of the land. Neither sideline works. There is not enough land to place it behind the house and there they would run into the shoreland setbacks, both local and state.

Substantial justice is done in granting the variance as requiring him to remove the shed would not significantly involve any major interest of the community. There are already a substantial number of encroachments in the setback in this neighborhood.

The property values of adjacent properties won't be affected as this is a small shed.

The small size of the lot makes a hardship as there is no physical way to comply with the setback regulations and fit anything on the property. If not granted, they would have to remove the shed.

The purposes of zoning states that the ordinance is designed to: lessen congestion in the streets, secure safety from fire and other dangers; provide adequate light and air so permitting this small shed won't violate any of the general principles under 235-(2) (B).



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

The location of the shed is consistent with others in the area. There is no reasonable alternatives; they would have to remove it. What is the basic community interest if the shed is permitted to stay here. If we deprive him of the ability to have a shed, what is the overriding principle this would trump?

Mr. Rubin is entitled to equal protection. It is not fair to deny him the same use that is enjoyed by so many of his neighbors. R. Dyer said you must take into consideration the community. The pictures that were submitted showed sheds and actual residences located in the setback areas.

Larry Rubin, the property owner, stated that the lots here are small. They did have the swing set in the same area. He purchased the shed at Eased Edges. They went out and looked at locations. He ordered this shed to match the house so it looks nice. He has told by the vendor that no permits were needed and then got the letter from the city. He called and said he could not move it 25'. It would block propane tanks. He was told he would need a variance.

He stated that his neighbor is here in support. He submitted a letter from another abutter in support which he gave to S. Saunders for the file.

R. Dyer said L. Rubin has been very forthright. He called immediately after receiving the letter, and then contacted R. Dyer for the variance. He relied on what he was told by the vendor and acted in good faith.

S. Perley clarified that this is for cold storage only and was told yes. She asked if this is affixed to the ground and was told no, it is on cinder blocks. She asked if there was electricity and was told no. She clarified with S. Saunders whether this is considered outdoor storage or an accessory use and was told accessory use.

R. Maheu asked if the building isn't anchored to a permanent foundation, should he be here and S. Saunders said yes. We interpret our ordinance as something affixed or not easily movable; this isn't easily movable. S. Saunders said he did not require a building permit because of the size and thinks that is where the initial confusion came into play.

S. Bogert asked if this is on city water and sewer and was told just sewer.



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

Public: Bill Maczko, from 82 Paugus Park Road, said he is the left facing the house so this shed is right up against his side of the property. He feels they have been very considerate, making it blend in. They also did landscaping to shield it. He thinks it looks great, and since the shed is used for storage, it reduces the amount of toys in the yard. It doesn't block his view getting out of his driveway.

No one else spoke for or against the application.

There were no further questions or any additional closing comments from the applicant so S. Bogert closed the hearing to the public at 7:25 pm.

Board: M. Foote asked the size where a building permit would be required and S. Saunders said 150 SF.

S. Bogert said he feels this looks like other properties in the neighborhood.

Motion: S. Perley moved to approve application # 2015-0024, to allow a 96 SF shed to be placed within the front and side setbacks. The shed is for cold storage only and shall not have electricity.

The variance will not be contrary to public interest as the proposal is current with other lots in the area.

The spirit of the ordinance is observed as many other properties on the street have the same situation due to the small size of the lots.

Substantial justice is done as there is no substantial change in the use of the property and this doesn't threaten the public safety, health, or welfare of the property or abutters. This is consistent with other sheds located in this area and doesn't alter the essential character of the neighborhood.

Property values won't be diminished as this will have no effect on adjacent properties. The abutters have no issues.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of the provision to the property. This use doesn't alter the essential character of the neighborhood nor threaten the health, welfare



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

or safety of the area. Accessory uses are permitted and this is a reasonable use of the property.

M. Foote seconded.

S. Bogert clarified the electrical use and S. P. stated that she included that language because that is how we are approving the property. S. Bogert suggested we make that a condition of approval.

S. Perley amended her motion, including the use of no electricity. M. Foote seconded the change and all voted in favor of approval, 5-0.

Rod Dyer introduced Bret Allard, a 3rd year law firm, interning with the firm He is graduating in May as a Webster Scholar so won't have to take the NH Bar. He will be declared by the Supreme Court to be a lawyer.

S. Saunders clarified the next application. We are not voting on 235- 41 J (1) or 235-67 (B). This is just for density to add the fifth unit, and parking. He also is asking for the Special Exception for the multi family unit. S. Perley said it makes sense to do the Special Exception first and get it out of the way.

E. Tarbell said he was just trying to make their job easier. He said he doesn't need the Special Exception to maintain the 4 units. What is triggering this is the desire to make the outbuilding into a usable apartment.

S. Saunders said we have seen nothing to show this is a legal multi family. E. Tarbell said if this is the case then he asks for a continuation for both applications.

S. Bogert said he needs the Special Exception cleared up first and E. Tarbell said he feels there is confusion.

If the board will accept his SE presentation tonight, and allow the evidence that this is grandfathered.



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

Grandfathering is an exception to the rules of the property. If this predated the zoning ordinance then it is grandfathered. He said it does not have to meet the current zoning standards.

E. Tarbell said he feels it is better to wait until the meeting of November 16 and S. Bogert said he would be placed first on the agenda. Both applications were continued.

CONTINUED: (NOT OPENED)

Application # 2015-0027	MSL # 442-11-36	RG Zone
E. Tarbell	33 Baldwin St	Variance

The applicant is requesting a variance from 235-33, Table II, Table of Dimensional Requirements, in order to permit an additional unit to be located on the property. The property would require 36,300 SF for the 5 units. It is currently non-conforming, requiring 29,040 SF and having only 17,424 SF for the existing 4 units. He is also requesting a variance from 235-67 (B), limits on a non-conforming use and 235-41 (J) (1), size of the accessory apartment, and 235-46, 47, 48 and 50.1, Parking.

HEARINGS: NEW

Application # 2015-0032	MSL # 442-11-36	RG Zone
E. Tarbell	33 Baldwin St	Special Exception

The applicant is requesting a Special Exception from 235-26 in order to permit a multi-family unit to exist on the property. The property is currently non-conforming with 4 units.

This was over at 7:45 pm

Application # 2015-0030	MSL 374-291-13	RS Zone
Linda Schmid	52 Morningside Dr	Variance

The applicant is requesting a variance from 235-19 F (2) (b) in order to construct a new residence that would be located approximately 39' from the shore in an area where 50' is required.

Applicant: Nicol Roseberry stated she is representing Linda and Ed Schmid who are both in attendance. They are requesting a variance from the 50' shoreland setback. She brought in photos. They received approval from the DES on October 14; they got the impact permit.



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

She showed the existing shoreland along with the existing residence. The existing structure doesn't currently meet the shoreline setback. The house doesn't fit now as it was built before current regulations.

She showed the proposed structure. They want to remove the existing structure, which has moisture issues, mold and rot, along with pests, and carpenter ants. The builder told her to take it down and re-build. What they are proposing meet setbacks, and increases the shoreland area by about a foot. This is in a similar location to existing house, but is a larger structure. They are proposing additional plantings to help the lake and water quality and are installing storm water management under drip edges and along the drive.

The state of vegetation here is much better than other properties in area. Most have manicured lawns, but the owners like the natural look of the property and want to maintain that.

This is not contrary to public interest as other homes located in the neighborhood are non-conforming. They are trying to maintain or improve that setback and have brought it back about a foot. They are preserving lake water quality. This house was in place before the ordinance and there are limitations to the building envelope.

Substantial justice is done as the current building envelope won't allow for reasonable replacement. They want an updated energy efficient structure.

The structure will be modern, up to date, and have naturalized plantings around the lot.

The hardship is the configuration of the lot and building envelope. This new structure would be in keeping with the neighborhood.

S. Bogert clarified that this has been approved by the state and was told yes. He asked if they put any conditions on the approval and N. Roseberry said there are none specific to this. They meet the greenspace requirements but increased the coverage so were required to do storm water management. Doing the plantings was voluntary.

S. Bogert asked S. Saunders if the city has any issues with this and she said this is not an unusual request, and this is not a large variance request. M. Foote asked if this would go before the Conservation Commission at all and was told no. This is just a direct variance



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

which comes to the ZBA. If there were any wetland impacts, it would need a CUP, and Con Com would have input.

Public: No one spoke for or against the proposal.

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

Motion: M. Foote moved to approve application # 2015-0030, permitting a 39.5' setback from shoreland where 50' is required.

M. Foote asked if we can enter their comments as written. He mentioned that maintaining the vegetation and using best management practices helpful in building the site out.

S. Perley seconded. S. Bogert asked for a copy of the document from state, and that they follow all conditions.

Tax Map 374 Lot 291-13

1) The variance will not be contrary to the public interest ~

Multiple existing residences in this neighborhood are nonconforming to the 50' shoreline setback. The location of the proposed residence on the subject property will slightly improve the shoreline setback of the existing residence, and will not alter the essential character of the neighborhood, will not threaten public health, safety or welfare, and will not otherwise injure public rights.

2) The spirit of the ordinance is observed ~

This property was created prior to establishment of the 50' protective shoreline buffer, and the existing residence, as is the case with multiple residences in this neighborhood, is nonconforming to the 50' shoreline setback. The location of the proposed residence is reasonable given the limitations of the contemporary building envelope, and will slightly improve the shoreline setback, relative to the existing residence. Therefore, the proposed residence will not alter the essential character of the neighborhood, will not threaten public health, safety or welfare, and will not otherwise injure public rights. Additional protection of the Lake Opechee surface



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

water will be achieved through the incorporation of storm water management and vegetation restoration on the lot.

3) Substantial justice is done ~

The available building envelope on this lot will not allow for reasonable replacement of the existing residence with an updated, energy efficient structure. The proposed residence has been designed to slightly improve the shoreline setback while also meeting property line setbacks, and its location to the shoreline will remain in-keeping with multiple other residences in the neighborhood. Denial of the variance would disallow the placement of a reasonable replacement residence on the lot, without an outweighing benefit to the public.

4) The values of the surrounding properties are not diminished ~

The values of surrounding properties will not be diminished by the proposed residence that will be an updated and attractive structure.

5) Literal enforcement of the ordinance would result in an unnecessary hardship. A) Owing to special conditions of the property that distinguish it from other properties in the area, i) 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; and ii) the proposed use is a reasonable one ~

The existing lot was created prior to the existing Zoning Ordinance and the 50' shoreline buffer setback. Size and configuration of the lot result in a limited building envelope that does not allow for placement of a reasonable residence that also meets all building setbacks. The proposed residence has slightly improved the setback to the shoreline, relative to the existing residence, and its location will be in keeping with multiple properties in this neighborhood.

The proposed use as a single family residence is reasonable and in keeping with the neighborhood and zoning district.



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

S. Bogert said that the date on the approved plan is September 24, 2015. His addendum was accepted by M. Foote and seconded by S. Perley. All voted in favor of approval, 5-0.

S. Bogert let the ZBA members and the public know that the last two applications would be moved to November and placed in its current position as the applicant did not show up for the meeting.

S. Perley said she drove by today and noticed lots of equipment on the site. She asked what the applicant is doing and S. Saunders said he should only be working on the gazebo.

Motion: S. Bogert made the motion to move applications 2015-00331 and 2015-0034 to the November 16 meeting and put them into the same position on the agenda. M. Foote seconded and all voted in favor, 5-0.

Application # 2015-0031	MSL 425-158-57	DR Zone
R. Bartlett	35 Messer St	Variance

Application # 2015-0034	MSL 425-158-57	DR Zone
R. Bartlett	39 Messer Street	Variance

The applicant is requesting a variance from 235-48 E (2) in order to combine parking on these two lots which he now owns.

New Business: S. Saunders passed out an e-mail she had sent to the applicant for 33 Baldwin so the board is clear on what had transpired.

I) OLD BUSINESS:

II) OTHER BUSINESS:

III) ADJOURNMENT: The motion to adjourn the ZBA meeting was made by R. Maheu and seconded by S. Perley with all voting in favor, 5-0. The meeting adjourned 8 pm.

RESPECTFULLY SUBMITTED:



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF OCTOBER 19, 2015
APPROVED AT MEETING OF NOVEMBER 16, 2015

Kristine Y. Snow
Zoning Technician