



**MINUTES MEETING OF
NOVEMBER 16, 2015, 7 PM, ROOM 200A
APPROVED MEETING OF DECEMBER 21, 2015
ZONING BOARD OF ADJUSTMENT**

CALL TO ORDER: Steve Bogert called the November meeting of the Laconia Zoning Board of Adjustment to order at 7:06 pm.

ROLL CALL by Recording Secretary: Steve Bogert, **Chair**; Suzanne Perley, **Vice Chair/Secretary**; Orry Gibbs; Mike Foote; Roland Maheu; Kate Geraci, **Alternate**; Gail Ober, **Alternate**

STAFF: Shanna B. Saunders, **Planning Department Head**; Kristine Snow, **Zoning Technician/Recording Secretary**

MINUTES: The minutes from the ZBA meeting of October 19, 2015 were reviewed. The motion to accept the minutes was made by M. Foote and seconded by R. Maheu, with all voting in favor, 5-0.

CONTINUED: (Site Visit)

Gail Ober was seated for the original hearing so she was seated in place of Mike Foote for this hearing.

**Application # 2015-0026
J Green**

**MSL # 225-248-8
527 Weirs Blvd**

**CR Zone
Equitable Waiver**

The applicant is requesting an equitable waiver from 235-35 (B), in order to allow a garage to remain in its current position. The setback is 10' in this zone and the garage permits a 9.6' setback.

Board: S. Bogert let the public know that a site visit was held today at 1 pm. There was a quorum present at the visit. The hearing was left open at the last meeting so that the applicant can participate and the public can add any input.

Public: Regina Nadeau appeared and stated she is the attorney for the Lanterns on the Bay Condo Association. She passed out a time line to the members so they could follow along. She also gave a copy to Jeffrey Green.

She said the issue is the type of relief being sought by the applicant. The board is here to give relief to someone under the ordinance when there is a hardship if the appropriate criteria is met, and the same with special exceptions. Then we have this. If someone has substantially constructed something in violation, in good faith, and the end cost of removing the violation is too high, they can grant relief. They believe this was act first, ask for forgiveness later.

She submitted the time line and photos. She said she has never seen a building go up as quickly as this. On the 20th when the potential violation was noticed, the only inspection was for concrete and rebar. Both the contractor and the owner were let know verbally there was an issue, and were told to have a survey done by that Friday. She said that S. Saunders stated today, when the structure is this close to a property line/set back, an as built is required.

The surveyor went there amidst a flurry of construction. He said there were walls and also that there were walls and a roof. She said that it is understandable he would be confused as the site was very busy.

On the 20th, they were told there was an issue. On Wednesday the walls were put up. On Thursday the surveyor was there and at some point that day the entire roof was done. Friday was the day they were supposed to submit the survey to planning and didn't. They submitted it on Monday but the building was almost completely constructed.

R. Nadeau said that the board must find all the criteria has been met. On the 2nd page, it states the violation was not discovered until this was almost complete. They are saying it wasn't "official" they were in violation so they kept going.

This was not the result of bad faith or ignorance of the law. They have had issues with this neighbor in the past. This infringement doesn't seem like much to most people but they don't feel the pins were hidden. They could have rented a metal detector or gotten a surveyor since they knew there were issues in the past with the line. They didn't need a full survey, just to have this one line marked. They knew there was sensitivity to this as there were issues in the past with the property line.

She feels the construction activity from Tuesday to the following Monday was a showing of bad faith. They moved ahead with the project and asked for forgiveness later. They have to show that the violation won't adversely affect the abutter and they haven't shown that. The roof pitches towards the abutting property so there could be issues.

She said you have to ask if the degree of the past construction and the cost of repairing this would be an injustice if the board doesn't grant this relief. The applicant stood up at the last meeting and said they could have cut this corner off but it would have looked ugly. The cost has nothing to do with fixing this building.

No one else from the public spoke for or against the application and S. Bogert closed to the public at 7:20 pm.

Gail Ober asked Jeff Green if there has been anything else done to the building since he was last here - any nails, any dry wall, anything and J. Green said no.

S. Bogert asked if the exterior was completed at the time of that hearing and was told yes. R. Maheu asked if the builder was in attendance, and was told no as there were two meetings this evening, so he went to the other one.

Jeffrey Green said he does understand the concerns of the abutters. This did happen quickly, but a garage doesn't take long to build – it is just 4 walls and a roof and they have worked together on other projects. The builder said he staked the setback line, and at some point between the foundation being done and the excavation crew coming in, they feel something got moved. They believed they were in the right location.

J. Green said he got there in a reasonable time, found out the issue, and responded to the City. He located the foundation and the walls, which were there. The roof was going on. The part he was concerned with was there – the corner. That is what he located and was concerned with. The siding wasn't on it. He measured it in the field, but did not get the information back to them that day. He went back to his office, and then let the builder know. The only thing added in the “violated area” was the siding.

S. Bogert said if there was a question, and there was since he asked J. Green for his opinion, why would he continue to build? J. Green said the property line had been an issue in the past so this was sensitive. When this was brought up, they felt it was a witch hunt because of the past issues. The builder said he still thought he was in the right.

S. Bogert asked what got shifted, and J. Green said the building. First the area is staked, then dug out and the stakes moved, and then put back. When the forms are set, the stakes are moved again and then get replaced. This is only 6”. The builder did not feel it was wrong but he did finally call J. Green. The City had measured this so they knew it was close, and knew it had to be more precise so that is why/when he was called in to verify the line.

J. Green asked if this is wrong, what can we do. He stated that the board members saw this today – it is a corner with a line going through it. The entire building doesn't have to move; they could cut the corner. The abutters will be the ones looking at it. Is that worse than looking at the building that is there now. No one could tell it is in violation. It can be an angular corner, but what is the end product going to be if that is done. He said he feels they fall under the equitable waiver. This did go up fast but not because of the property line issues.

G. Ober asked if there was electricity and was told there is none. The door is manual. They buttoned up the outside after the last meeting.

Glenn Hogue, the owner, appeared. He thanked the members for doing the site walk today. Outside In, the contractor, did make some sort of error, and he is not sure what or why. He is also unsure of why the abutters are spending so much time on this. The runoff was never mentioned before, and this area had already been paved. They didn't want to cut any more trees so used this area. He said he told the builder if there was a 10' setback to go to 15' but he was told they were fine. They did not even put on a storm door.

He said the landscaping had been asked about today, but they are not doing it if they have to rip this up. He has not done anything else since the last meeting. He passed out some information on what had been there and what is there now. There was storage, a basketball hoop, a bunkhouse for the kids, and a tree.

He passed out the information and pictures. He showed his property, then showed the Lanterns on the Bay and what they had there in the past. The tree is the one constant. He said the contractor is the one taking the hit on this. He finds this distressing.

He also had minutes from the Planning Board meeting of August 7, 2012, which he passed out. That stated that Lanterns on the Bay was changing from seasonal to year round and he said he feels the highlighted passage is pertinent to this. He read item 2. Pat Wood represented them.

He has been there since 1985, and they came here in 2003 and knocked the existing building down and built new. In their variance application, Pat Wood stated this is the type of thing you want to see in Laconia, with folks investing in their property. It doesn't meet the greenspace requirements as they have only 1/5 of an acre of land, but they built 10 units with a community room. The upgrades make this approval easier, and the board looks at each application case by case. It worked back then, with flexibility and understanding. He wants that to work now. He wants to see a common sense decision.

O. Gibbs said there was a comment about noise, and asked what is he going to do that makes more noise than the 10 units do. He said he doesn't feel there will be any noise as this is going to be used for storage. If there is a noise issue, call the police.

O. Gibbs said she is the one who had asked about landscaping, and asked after this what will they do. G. Hogue said he isn't sure, that will be his wife's decision. The pines do need to be fixed as they took a hit and something will be done to absorb noise.

G. Ober asked if they live there year round and was told no. She asked if they plow and was told yes. She questioned where the snow goes and G. Hogue said they plow straight up the hill and into the woods. It won't go onto the abutting property.

S. Bogert closed the hearing to the public.

Board discussion: S. Perley said any construction in the Weirs is tight. This is an encroachment into the setback, but she doesn't see any true hardship that outweighs the cost of removal.

G. Ober said if they had come in to ask for a variance would we have approved it? She can't say since they didn't do that. When the builder knew that he was this close, why did they continue? It is troubling that they continued on after knowing there was an issue with the line.

R. Maheu said that is the reason he was hoping to speak to the builder tonight. He would feel better if he heard this from the builder. S. Bogert said the property owner is ultimately the one who should have said stop if there was an issue.

G. Ober said she thought S. Saunders was going to check with the town attorney on this and S. Saunders said that was a different application but she said she could do that if the board wants her to.

S. Perley said what if this doesn't meet equitable waiver- what do we do, and S. Saunders said deny it. They can either fix it or ask for a variance. They don't need a CO, but they do need the final sign off on the building permit. S. Perley asked if it is realistic to ask them to chop off a portion of their building for 6". M. Foote said if we don't the abutters will always see it and it will always be in their minds.

R. Maheu asked if this would be a hardship if he wanted to sell the house, and did not remove the encroachment. S. Saunders said that wouldn't be a problem because they have to bring this into compliance. We normally send a violation letter and give them 2 weeks. We then send a second letter giving them another 2 weeks, and then file in court. The process usually takes about 2 months.

M. Foote stated that he doesn't see that moving the whole building is feasible, he can cut it if needed. S. Bogert said each is handled individually and there is definitely a 6" violation.

S. Saunders said if the board has questions on the wording here, we can table this and get help on the wording with the city attorney.

Motion: G. Ober moved to table the application in order to seek legal counsel on this hearing. R. Maheu seconded, and all voted in favor, 5-0.

Gail Ober left the meeting at 8 pm and Mike Foote returned to the board as a full board member.

CONTINUED (NOT OPENED)

S. Saunders explained that by submitting the Special Exception the accessory apartment is off the agenda for this evening. He can't have an accessory apartment with the multi-family use.

Fred Moeckel said he does agree so the accessory apartment is removed from the request. He said they can expand a non-conforming use into an already existing structure. S. Bogert said that if the Special Exception isn't accepted, then this is a moot point. He said this was supposed to be cleared up from the last meeting.

S. Saunders said we should listen to the argument and questions can be asked after.

**Application # 2015-0027
E. Tarbell**

**MSL # 442-11-36
33 Baldwin St**

**RG Zone
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.

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.

Applicant: F. Moeckel said this has been there since 1900, and the zone has permitted multi-family structures since 1950/60. He said there are limits on non-conforming use, and this can be expanded into an unused structure. 235-67 (B) says they can lawfully expand. He also applied for the variances but S. Saunders told him not to do the accessory use variance.

S. Perley read the code, and said the barn is detached so she doesn't feel this applies, and he said it doesn't say it has to be attached. O. Gibbs agreed that it doesn't say it has to be attached; it could be a hen house, a shed, or a garage.

S. Saunders said that is not the way she looked at it, and that City Counsel agreed. He has two options - prove it was grandfathered as a multi-family before 1969 or proceed with the applications.

Moeckel said the code was amended in 1969. Prior to that multi-family use was permitted in Laconia. It had been based on the square footage. It had been 2000 SF of land per unit. These units were there prior to 1969. Building permits had been issued for the 4 units, so they had to be in compliance as they would not have given the building permits. They did a complete renovation so this had to have been grandfathered so he feels that is resolved.

S. Saunders said do the Special Exception to make this clear. Make it a multi family use, looking at all 5 units. She is including the 4 units as we need to clear that up before the 5th can be done.

F. Moeckel said no, he is stating that the 4 units are currently in compliance and they only need to add the one.

S. Saunders said that is the first time she has heard part of this issue and F. Moeckel said he sent her an e-mail. She stated that she did get a email from Walter Mitchell, but not from him.

F. Moeckel passed out information to the board. He shared a copy of the city's file on 33 Baldwin and read the zoning ordinance provision.

235-80 says no building permit can be issued until the Planning director determines that the land conforms to the ordinance. The materials that he gave the board are applications for building permits for this property. On March 13 2015 a building permit was issued on this for a total renovation so the property had to be in compliance.

S. Bogert said an error made in one department doesn't necessarily mean that we are all set.

S. Saunders said she did sign off on the building permit. She said we need to get this building

legal. If they accept this proof as grandfathering that is fine or they can do the Special Exception to erase any confusion.

S. Perley asked why he objects to obtaining the Special Exception as that will clean things up for the future. He said a grandfathered use can expand naturally. A use established by Special Exception is making an amendment to the zoning ordinance. That is static, and cannot be changed beyond what the board grants. The use cannot change if you obtain the Special Exception but a grandfathered use can grow naturally. He said that they would not be able to return if it were done by Special Exception but they can grow organically if the property is grandfathered. That makes the property more valuable. He gave an example of pre-existing use vs grandfathering.

S. Bogert clarified: if approved by Special Exception, then 235-67 can't be used but if this is grandfathered then they have the ability to expand under 235-67. S. Bogert said if they go forward with the Special Exception, and it is approved, then they cannot use 235-67B? F. Moeckel said he is not talking about room in the main structure for the new unit; it would apply only to the new unit in the barn.

S. Bogert asked if the Special Exception is for the 4 units and was told no, just for the single unit. S. Bogert said he is still not understanding this issue.

O. Gibbs said if the 4 unit is grandfathered, then 235-67 B applies and then he can extend the use. S. Saunders said she feels he could expand the existing units but not add another one. O. Gibbs said it doesn't state that; that is not specifically set forth, so she feels he can expand the use. S. Saunders said she doesn't feel he can add units. O. Gibbs said it is expanding the use. S. Bogert said 4 is a multi-family and so is 5. S. Saunders said she feels he could make the units larger, or have maybe 3 in the existing building, then put the 4th in the barn. K. Geraci said she also feels they can add this.

R. Maheu asked if he is asking them to vote that this building was grandfathered in 1969 and was told no; he wants them to determine if this is grandfathered. He said after they agree to that, then they can vote on the 5th unit and was told no. If this is grandfathered, then they can get the building permit. If the board doesn't agree, then they do the Special Exception.

M. Foote asked if, following the issuance of the building permit, is this listed as a multi-unit, with 4 units?

S. Perley said she wants to ask the City attorney for clarification. She wants to sit down with Moeckel and the City attorney for clarification. It was asked if we can do a conference call and it was determined we can.

S. Bogert said he would like to continue this. He asked if everyone understands why this application is before the board and most said no. S. Saunders said we can meet in a week or two to get this cleared up.

K. Geraci asked if the legal counsel agrees with his reading, then he is all set and S. Saunders said yes. She felt this was in lieu of the grandfathering to take care of this.

Motion: S. Bogert moved to continue the application to allow time to confer with the City attorney; O. Gibbs seconded and all voted in favor, 5-0. The hearing was over at 8:30 pm.

NEW HEARINGS:

| | | |
|--------------------------------|-------------------------|-----------------|
| Application # 2015-0033 | MSL # 377-199-13 | RS Zone |
| N & P Morrison | 569 Shore Drive | Variance |

The applicant is requesting a variance from 235-17 (D) (1) (c) in order to replace an existing deck and add an additional 4' which would further expand into the Shoreland Protection Overlay District.

Applicant: Nadia Morrison appeared, along with her husband. She said they need the variance for the new deck. They bought the house last August and were told at the time of the home inspection that the deck railings were below 36". Also the support posts were below grade and deteriorating. The deck is pitching towards the house. They want to put on the new deck, and add the 4 ft, which is already impacted by the stairs. The impact is really 4' minus 18".

The SPOD was questioned and K. Snow said she made an error in this. It should not have stated SPOD, it should be waterbody buffer. The citation was right but the language was typed incorrectly.

S. Saunders said she doesn't think they need to be here. We will withdraw the application and refund the money.

Motion: S. Bogert moved to withdraw application # 2015-0033 without prejudice. O. Gibbs seconded and all voted in favor, 5-0.

O. Gibbs recused herself and S. Bogert seated K. Geraci as a full board member for the next hearing.

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|--------------------------------|------------------------------|--------------------------|
| Application # 2015-0035 | MSL # 489-383-4 | RRI Zone |
| Percy One Family Trust | 212 Mason Court # 269 | Special Exception |

The applicant is requesting a Special Exception from 235-26, Table 1, in order to have a HAM radio communications tower.

Applicant: Don Percy appeared along with William Philpot. He passed out some information to the board. He stated that he got involved with ham radio about a year ago. He subscribes to geopolitical periodicals which recommended that people look at ham radios. He wasn't aware of how active this was in the community. They do parades, handle the race on 106, and they work with the hospital and the Mount Washington. He decided to pursue this and wanted to back up the community. There are 240 homes at Briarcrest. Sometimes the lights go out, and this is a 14,000 Watt generator. This can also be used with solar flare threats.

D. Percy said that one of his neighbors has an issue with the tower but that he went to the board at Briarcrest, and they approved this in June to provide back up for the Co-op.

He met with the LPD who said he can provide a valuable asset during an emergency situation. He can back up the hospital, fire, and police. It costs a lot of money to bring this all together. He is taking another test to get a higher rating. There are 101 operators in Laconia alone, about 30-40 in Belmont, with another 30-40 in Gilford. They meet on a monthly basis.

William Philpot appeared for the applicant. He said this is a sophisticated hobby that benefits the community. Mr. Percy has the capability to communicate with other operators all over the world. The tower/antenna has a small base – called a lattice tower – which only extends 15’ over the ridge pole of the house. This is an accessory use to the residence in the RR1 zone and is protected by federal statute and state statutes. He can provide alternative communication in case of an incident. People are mindful of the possibility, Paris is an indication of that.

This use is incidental to the main use. It is a hobby. Under normal circumstances, Mr. Percy was within his rights to erect the tower.

W. Philpot stated that 60% of the criteria isn’t even applicable here.

He asked if this is a reasonable use and read a case from the town of Hudson. There is limited pre-emption by federal government. You can give the land use board the right to look at this and see if this is reasonable. In Hudson there were 3 towers, over 100’ high. The town agreed it was reasonable, so an abutter went to superior court, then to the Supreme Court who determined it was an accessory use. Here the tower is 30’, only 15’ over the ridge pole.

He said that the board read the narrative so he is not going to rehash that but will answer any questions on that.

K. Geraci asked how they came about being here. S. Saunders said we sent a violation notice, and we passed this by legal counsel. Our ordinance says he does need to be here, and the courts respect this, but by case law we do need to look at this as a reasonable use. In order to deny the use there has to be overwhelming evidence that it isn’t a violation.

R. Maheu asked if he is sure he is in Laconia, and was told yes.

Public: Ed Lasatta, stated that he lives behind Mr Percy (203 Sandhurst). He found out from a neighbor he was going to put up an antenna. He stated that this is a rural district, and he cannot do that. He showed a picture of what he has to look at out his window every morning. He showed picture of Percy’s shed, which also has an antenna.

He said he went to their building committee and asked if he could have this and was told no but Mr. Percy put this up. He said this is out of place where it is. Homes are on top of each other in Briarcrest. People already experience interference. There is a lack of concern with the neighbors. Some residents like Mr. Percy but others want to know what else is he doing

that he shouldn't have done. Neighbors here complain about things like putting in a sandbox for kids.

He said we heard other people tonight, but what else is he going to do without a permit. He has motion detectors that go on when leaves fall so they come on all the time; he has cameras installed. Mr. Lasatta said he has to look at the antenna every day. He said it makes noise, and the generator sets outside, and he tests it twice a week. There is no enclosure. He had been told by Briarcrest that you could not have a garage if you have a shed. This shed has electricity.

Angelo Castiglione, of 215 Mason Drive, said he moved there in 1993. They have bylaws they have to abide by. The previous speaker has caused problems. He said that Don Percy keeps a first class place, and that he likes the feeling that if anything happens, they will be able to communicate. This helps the people in the park. He does a good job for them. He lives across the street. He said that Don Percy tells them what he is doing. He said that he doesn't even notice the antenna anymore and has no complaints with it. He said he feels safer knowing this is there and that using Paris is a good example.

Orry Gibbs, 167 Tiffany Drive: She stated that she was the president of Lakemont Co-op when Don Percy applied to do this and the vote was 4-0 in favor. The boards' opinion was that it was a protected use by the FCC, and that Mr. Percy provided a use to the community in case of problems. This system will work and keep them in touch with the outside world.

She said that the other issues being mentioned are community living, and you have pros and cons everywhere. The issue is if this an appropriate use. They felt it was a good hobby and a benefit to Briarcrest and to Laconia as a whole.

No one else from the public spoke for or against the proposal.

Board: S. Bogert asked how high the tower is and was told 35'. R. Maheu asked if that is from the ground. Don Percy said it is the same height as his flag pole. K. Geraci asked about noise, and was told it makes none.

William Philpot stated that this is a sophisticated system, and that Mr. Percy said it doesn't make noise, and it doesn't. It is a sophisticated system, in a hut, it is insulated, and doesn't emit any noise. He feels that the abutter is not correct on the noise issue.

S. Bogert closed the hearing to the public at 9:10 pm.

Board: There was no further discussion.

Motion: S. Perley moved to approve Application # 2015-0035 for the Special Exception permitting the use of the communications tower in the RR1 Zone. She said she felt the responses submitted by Attorney Philpot were well written and to the point and asked to use them as the board criteria and insert them into the minutes.

M. Foote seconded the motion.

The applicant has placed a lattice amateur communications tower to the site of their home in the RRI zone. The tower extends approximately 15 feet above the ridge pole of the residence. The use is for conducting amateur radio communications. The use is protected by limited federal pre-emption under the Amateur Radio Pre-emption provisions 101 FCC 2nd 952 (1985). In turn, the activity is pre-empted under the provisions of RSA 674:16 IV. The activity is an accessory use to the primary residential use as such use is customarily incidentally related and clearly subordinate to the principal use on the lot, a residence. The ham radio tower is situated to allow the applicants to carry on a hobby. The criteria for granting the special exception as satisfied as follows:

(a) The use requested is specifically authorized in this chapter. The use is protected under the pre-emptive powers of the federal and state legislature as cited above. The use is an accessory use to the residence. The use is reasonable.

(b) The requested use will not create undue traffic congestion or unduly impair pedestrian safety. The criteria are not applicable. The structure is an amateur radio tower and therefore does not cause traffic congestion or unduly impair pedestrian safety. In particular, the lattice tower is set in a base of concrete and secured to the side of the residence to prevent it from toppling over.

(c) The requested use will not overload any public water, drainage or sewer system or any other municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets. The maintenance of a thirty foot small lattice tower does not add to the demands of the systems cited.

(d) The requested use will not create excessive demand for municipal police, fire protection, schools or solid waste disposal services. The ham radio use aids the service providers with back up communications in the event of emergencies. In fact, the applicant works with the named service providers to add to and supplement the ability to communicate as needed.

(e) Any special provisions for the use as set forth in this chapter are fulfilled. The applicant is not aware of any such special provisions – the use is an accessory use. The use is reasonable in its application (only a small lattice tower of 35 feet +/-).

(f) The requested use will not create hazards to the health, safety or general welfare of the public nor be detrimental to the use of or out of character with the adjacent neighborhood. The use does not subtract from health, safety, or general welfare of the public nor is it a detrimental use of the RR1 zone. To the contrary it benefits in that it provides an alternate communication source in times of emergency and otherwise. The use is accessory to the residence and the height of the tower and its location is reasonable to the use.

(g) The proposed location is appropriate for the proposed use. The use is accessory under the zoning ordinance. The tower is located on the side of the residence and is no higher than a TV antenna required for receiving signals.

(h) The requested use is consistent with the spirit and intent of this chapter and the Master Plan. The use is for a hobby, and is accessory to the primary use of a residence. The use is protected by the pre-emptive provision of federal and state regulations and statutes above cited.

S. Bogert said he would like to add conditions of approval that the tower does not exceed the 35' height stated here this evening. If for some reason they want to add to the height, they would have to return to the board. Any permits that need to be pulled should be obtained and the tower inspected if needed.

S. Perley agreed to the conditions of approval and M. Foote seconded. All voted in favor of approval, 5-0.

Orry Gibbs returned to the board as a full board member and Kate Geraci returned to alternate status.

**Application # 2015-0036
T. Varney**

**MSL # 457-188-16
66 Province St**

**RG Zone
Variance**

The applicant is requesting a variance from 235-33, Table II, Dimensional Requirements, in order to change a single family residence to a two family. The lot size is 8735 SF and 14,520 SF would be required for the two- units.

Applicant: Tom Varney appeared along with the owner, Carl Burr. He said that pictures were submitted along with plot plan. Mr. Burr bought this in October. The outside will remain the same. There are 4 parking spaces available at the rear of the property. Greenspace will remain almost the same. This is more feasible economically to have a two family structure instead of one.

Carl Burr said his mother in law co-owns this. She sold her home, they found this big Victorian, and purchased it. This would be up/down apartments. She was going to live in one unit, and use the rest as an apartment. He said he checked the permitted uses and found that a two family was permitted but didn't realize about the density issue at that time. He wants to fix this structure up and bring it back to what it once was. He said it is a beautiful old house, with lots of charm. Greenspace had been mentioned but he feels this meets it.

S. Perley asked if it was empty now and C. Burr said he bought it in August, and didn't realize until he went to get a building permit that there was an issue. There will only be one small wall inside. He went to get the change of use and then found out. He said he hasn't done anything yet because if he doesn't get the approval for the two units he will probably turn around and sell it.

S. Saunders said that greenspace had been mentioned a few times but this is a density issue.

R. Maheu asked if there are 3 parking spaces and was told there are 4. He was shown on the plan.

C. Burr said this is a skinny and long structure. The apartment on the first floor will have two bedrooms located on the second floor. The remainder of the structure, up to the barn, and along with two rooms in the top of the barn, sheet rocked and insulated, would be the second apartment. He thinks there are about 1200 sq ft each.

S. Bogert asked if the ground level of the barn will be used for housing and was told no, this was a barn, and will become a workshop. C. Burr said there is a lot of room here.

S. Perley asked if the house across the street, on Province Street, is a multi-unit and was told yes. She asked if there are a lot in the neighborhood and was told yes. C. Burr said he checked out the neighborhood before he bought, and there are a number of multi-units, with some having up to 8 units.

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

Board: M. Foote clarified that this is just for density and was told yes.

S. Bogert closed the hearing to the public at 9:20.

Board: S. Perley said this is a huge house. R. Maheu said he feels this is commendable for people to want to refurbish old houses like this. He would encourage this use. S. Perley said the use is not out of character with the neighborhood.

Motion: O. Gibbs moved to approve application # 2015-0036. She said this would not be contrary to public interest and the spirit of the ordinance is observed in converting this to a two-family home.

The variance will not be contrary to public interest as there are already a number of multi-family residences located in the neighborhood and the owner will be upgrading the property and maintaining it.

The spirit of the ordinance is observed in converting this to multi-family as the structure will be maintained and exterior and green space maintained. There will be no impact to the aesthetic of the neighborhood. Upgrades will be made to the property which will be better for the neighborhood.

Substantial justice is done as this allows the owner to make full use of the property. This is a large house located on a small lot and there will be no visible change to the exterior of the building.

Values of the surrounding properties are not diminished. The owner will be maintaining the structure and the look of the existing exterior will be maintained, along with the current green space.

The size of the house makes literal enforcement of the ordinance unreasonable. The house is located on a small lot so there is not much else that the owner could do with this.

This is a reasonable use, and there are already many multi-family homes in this neighborhood.

S. Perley seconded with all voting in favor, 5-0.

The next two applications will be heard together with separate decisions being made.

Application # 2015-0038 **MSL # 350-168-19 & 20** **RG Zone**
KTM Properties **9 & 17 North St** **Special Exception**

The applicant is requesting a Special Exception per 235-26 for a multi-family structure, in order to replace two 2-units buildings (4 units total) with 8 units in two buildings. The lots would be merged and the non-conforming structures and parking would be brought into compliance with setbacks.

Application # 2015-0037 **MSL # 350-168-19 & 20** **RG Zone**
KTM Properties **9 & 17 North St** **Variance**

The applicant is requesting a variance from 235-33 in order to replace 4 units with a total of 8 units. The lots will be merged and the new lot will have .47 acres, which is 20,473 SF. Density in the RG zone is 6 per acre. With the merged lots he would only be permitted 2 units. There are currently 4 units existing (on 2 lots). The grandfathering is unknown.

Applicant: William Philpot appeared with Chris Albert of Jones and Beach Engineering. The current owner of the property is in attendance as well.

W. Philpot said they are asking for a higher density but will bring the land coverage down and maintain 74% greenspace.

Chris Albert said both structures are currently located in the front setbacks. There are 7 parking spaces, all in the front 15'. They plan to remove both homes, two sheds, but keep the existing boat house and slips. There is another boathouse which belongs to a neighbor; there is an easement in place.

They will remove gravel parking and move the units back, which will now meet setbacks, and supply 12 parking spaces. He showed them on the plan; the spaces will be 9 x 19. They will start behind the 15' setback. This now has 66% greenspace. They will be using porous pavement. All of the parking and the walks will be porous, as well as the footpath. They will plant low shrubs to keep people confined to a certain area.

W. Philpot said the current use is 4 rental units, and 12 boat slips. They are proposing to bring this all into one lot, bring all of the parking on site, and change the use to condominiums. The boat slips will be part of the condominium, not an outside enterprise like it is now. It is now commercial. The slips are under state jurisdiction. The uniqueness is the coverage. While the density will go up they will be increasing green space on the lots. They are not asking for multiple forms of relief. They need the Special Exception for multi-family, which is grandfathered.

S. Bogert asked if these are 4 bedroom units. He was told they are 3 stories but comply with height requirements. He asked how the 12 parking spaces will work. He said that parking can

be problematic if these are 4 units. S. Saunders said we can restrict parking. K. Geraci asked about parking, and was told it would be stacking parking.

S. Perley asked about the DES permit and C. Albert said they would be reducing run off and enhancing water quality. They will have underdrain systems, and would be decreasing the volume into the lake. After tonight they will do a full site plan approval, and will submit to DES along with the Shoreland application.

S. Bogert said this is not currently a multi-family as each lot has two units. W. Philpot said he was just pointing out the use and S. Saunders said he did submit the Special Exception.

They will have walkouts from the lower level, with retaining walls, and are building to street level. S. Perley asked if there was a slope down to the water and was told yes.

W. Philpot said they will be making this more conforming. They will be getting cars off the street, improving parking, and moving structures back to meet current setbacks. The structures will be sprinkled.

W. Philpot said they are trying to propose a reasonable use. He feels this is reasonable.

R. Maheu asked if they own the 12 boat slips and was told yes. There is a neighbor who has an easement across this property to his slips. R. Maheu asked how high the retaining wall will be and was told 10'. There are walkouts in the basements.

W. Philpot said that the use of multi-family structures is permitted with the granting of the Special Exception.

This will not create undue traffic or unduly impair pedestrian safety. The use is rentals now along with the commercial marina. There is off-site parking now. With this proposal, everything is on site, with no congestion off site with vehicles or pedestrians.

The use will not overload any public water, draining or sewer systems or other municipal systems, nor will there be any significant increase in stormwater runoff onto adjacent properties or the street. They have the calculations ready to go to DES to show the containment and bring a situation that isn't controlled now into compliance with current regulations.

They are estimating a use of 2000 gallons over what is currently used. The request entails no appreciable tax to the systems.

This use will not create excessive demands for police, or fire, schools or solid waste disposal services. This will be a condo, which will be self-governing. They will take care of its own needs with trash disposals. There should be no call for police but rules and regulations that they have to abide by. This would add only 4 more units, as there are 4 there now.

They don't feel there are any special provisions for the use. They are increasing greenspace, even with the higher density. The owners would have boat slips, no there is no off street parking like there is now for people using the marina.

The requested use will not create hazards to the health, safety or welfare of the public, not be out of use with the character of the neighborhood. There are currently multi-family structures in the neighborhood now. The area is gradually going through a change, and they feel this will add to that upward change.

The location is appropriate for the use. There are other multi-family homes in the area so they are asking for something that already exists in the neighborhood.

The use is consistent with the spirit and intent of the master plan. That allows for multi-family use. This would be under individual ownership, not rentals; this would increase the green space, and bring the structures into compliance with setbacks.

S. Perley said that in his narrative, he talks about the lessening of city services and W. Philpot said he is looking at the self-governing aspect of this. Look at the existing conditions. There are now 4 rentals, with an absentee owner. If there are issues they fall onto fire or police. They feel being privately owned is better. W. Philpot said that he feels the overall impact is less because of the condominium form of ownership. There will be an additional impact on the services but he doesn't feel they will be significant.

S. Bogert said this will be a condominium, and asked if it will state in the documents that units cannot be rented. W. Philpot said he can't say that, as this is a resort area. S. Bogert said that the possibility is there that there could be 8 rented units and W. Philpot said, given the area, will people purchase these and immediately turn them into rentals - no, that doesn't make sense, but he can't promise that they won't be rented. They will be individually owned and apartments are not individually owned. He said that 8 people will own 8 units. They still have to go to site plan review and go through those hoops, but he feels this would be better protected than it currently is.

W. Philpot said he didn't intend to say they would never be rented.

This is not contrary to public interest as this is in the RG zone where multi-family is permitted with the Special exception. The development of water frontage will meet any state and local requirements, and the individual form of ownership is better. There will be a decrease in coverage, and an increase in the green space.

The spirit of the ordinance is observed as allowing the applicant to seek the higher density will not increase the overall impervious coverage of the site. Right now there are two uses going on - the commercial marina and 4 rentals. This will bring all of the parking on site, and the coverage is not increasing.

S. Bogert questioned the coverage again. S. Saunders said gravel is not considered pervious. They were told impervious conditions will be met.

M. Foote asked about the commercial aspect here - the boat slips. He asked if the boat house will continue to exist and was told yes, the owners get a slip. There are 8 units and 12 slips so some of the slips are smaller, maybe a small boat would be there, something a kid could use. S. Bogert asked if the boat slips could be rented and was told they will be part of

the sale of the condo. Right now the people are parking on North St, and people currently call the police.

R. Maheu asked if the boat slips could be rented out and cause off-site parking problems and was told no. S. Saunders said that would be addressed at the planning level.

W. Philpot said there are advantages to bringing properties up. This is currently a mixed use, rentals with the structures not compliant with setbacks, and the commercial boat slip rental, which they would be bringing all on site and controlling so substantial justice would be done.

Chris Albert said that at the two year storm is .96 cfs, goes to .74 for 100 year, 3.5 reduced to 3. Roof run off will go to an underground system.

W. Philpot said this should increase the values of surrounding properties as these will be new buildings, built up to new codes, and will bring things onto the site. This will be a plus to the neighborhood, a catalyst to the neighborhood.

Literal enforcement of the ordinance would result in an unnecessary hardship. If you look at the existing conditions here, the lots are small, and this would merge the two lots. This will take away the coverage issue, enhance green space, and control the parking situation, eliminating existing issues in several areas. They are only adding 4 additional units, so the net effect is positive.

The use is reasonable and permitted in the zone.

S. Bogert said they are doubling the amount of units on 1/2 an acre lot from 4 to 8 and even at a full acre only 6 units are permitted.

M. Foote read the numbers regarding green space on the plan. He said the current is 66%, and they said they are proposing 71.3%. He was told the plans were wrong and they will correct that.

S. Perley asked why 8 units, why not 6? She feels 8 is too much.

Public: No one spoke for or against the application.

Board: S. Bogert said we had one letter submitted, from 12 North St, stating that they are not in favor of this proposal.

K. Snow will scan and send that to W. Philpot.

S. Bogert asked why 6 units wouldn't relieve the hardship here and W. Philpot said with the existing marina operation it makes more of a mix. They are not here asking for green space coverage relief, which is the norm. 12 is definitely too much. There are 12 boat slips. They are decreasing the coverage, so they feel 8 is reasonable.

S. Bogert said if looking at this from another angle, they are increasing from 4 units, with 2 bedrooms each, so from 8 bedrooms to a possible 32 bedrooms. He said that seems awful dense to him.

S. Perley said they are increasing the intensity of the use. Chris Albert said the water quality of the lake is the key thing. They are removing structures right on the water, taking away lawns, and placing a vegetative buffer. They are trying to enhance water quality. The density is there but he feels the water quality is the main issue here.

R. Maheu said 4 bedrooms were not mentioned on the plans as a bedroom, it says 2. He was told there are additional rooms on the third floor for future expansion so the potential is there.

S. Bogert closed to the hearing to the public at 10:20 pm.

M. Foote said he feels the numbers are a little misleading. Each unit, at its full potential utilizing all 3 levels, has 1920 sf of living space. That is a lot. That is density intensive. He likes the ideas of removing the sheds, using pavers, etc but he feels 8 units is too high.

S. Perley asked if we can get additional input from others; maybe from the Conservation Commission. S. Saunders said we could require a third party review. We do have someone from Belknap County Conservation Commission that could take a look at impact. An engineer can take a look at the parking.

S. Bogert said what about the number of people being placed in here? You have a potential for 32 bedrooms, they have friends visiting, so the density is very tight people wise. S. Saunders said we have no expert on that. We can look at traffic, water/sewer, retaining walls, and other issues.

O. Gibbs said an abutter suggested we do a site visit. She said she would be happier if it were 6 units. It would supply more green space, and better parking. She doesn't liked the stacked parking. We know what is going to happen with that and there is no parking for company.

S. Saunders said if a third party review is required, the motion should indicate that and the possible site visit as well. S. Bogert said he doesn't think a site walk will help him anyway as he is stuck on the amount of people. He was told there is no one to study that aspect of it.

M. Foote said if the third party reviewer says ok, then we still have that inclination that 8 is too much so does it make a difference?

S. Perley asked about the third party review process, and S. Saunders said we do that through Belknap County Conservation Commission. We haven't done one in about a year. They put out the request, and we would get someone from their list.

O. Gibbs said even with a third party review, she thinks this is a lot for this lot.

R. Maheu said this is an improvement over what is there but he isn't sure. He said the boat slips get crowded on the weekends and this would solve that problem. O. Gibbs said 6 units

would be better, giving 2 parking slips each. K. Geraci said with 12 boat slips, how would that work? Not everyone has 2 boats, so what would happens with that.

M. Foote said there is some value here, but that he feels the intensity of the density is a bit much for him. If we voted on this tonight, he would vote to deny. He would like to move ahead with reviews. He likes the idea of 6 units much better as well.

Motion: S. Bogert moved to continue application # 2015-0037 and 2015-0038 in order to request third party reviews. S. Saunders asked if those are for the natural resources and the engineer? S. Perley asked if Con Com gets this and was told that Planning does. She said we need the input now. S. Saunders said the engineer is probably better to speak to their issues. We can request storm water, parking, intensity of the use on the lot, utilities, sewer flows, trash impact, 10 ft retaining walls, soil types, and engineering of the buildings. Green space calculations would be looked at. The board will request a site visit as well.

S. Perley seconded the motion to table, requesting the third party review to look at the above mentioned issues and all voted in favor, 5-0.

The hearing was over at 10:30.

The board took a 5 minute recess.

CONTINUED (NOT OPENED):

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| Application # 2015-0031 R. Bartlett | MSL 425-158-57 35 Messer St | DR Zone Variance |
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| Application # 2015-0034 R. Bartlett | MSL 425-158-57 39 Messer Street | DR Zone Variance |
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The applicant is requesting a variance from 235-48 E (2), parking area setback, in order to combine parking on these two lots which he now owns.

Applicant: Randy Bartlett appeared. He purchased both of these properties which already shared a driveway. He wants to increase the size of the drive. There are 2-3 parking spaces. 39 Messer St doesn't need parking but 35 Messer St does. They need to park in the drive. With the new configuration they can now turn around in the drive without having to back out. He said it is a disaster to back out onto Messer St.

He increased the number of parking spaces - doubled it - which created the opportunity to safely turn around and pull out onto Messer Street.

S. Bogert asked if he owns both buildings, why he needs to do this and S. Saunders read the ordinance which states you can be no closer than 10 ft from boundary of abutting lot. There must be a fence, berm, or visual barrier. M. Foote asked about the shared drive which is there now and was told that the parking would require 10' setbacks on both of the properties.

R. Maheu said he commends anyone who can get cars off of Messer St. He said he feels that part is good. S. Bogert asked if one unit doesn't have enough parking and R. Bartlett said 35 Messer St won't permit vehicles. The house on the left won't have any cars. There is now has a total of 6 spaces, which they want to pave.

R. Bartlett said if he owns these properties the parking won't change. M. Foote asked if 39 Messer St is transitional and are there people who work there? He was told yes. He asked if they have cars and was told yes. He asked how many staff will be monitoring the site and was told that they come over from 96 Church Street, one staff person at a time with an auto. At 96 church St, they have never had 6 cars there. Most residents don't have cars and some don't have licenses.

S. Saunders asked if there are any women in the program and was told no, this is just for males.

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

Board: S. Perley asked if there is anything specific we should be thinking about S. Saunders said to think about long term. She has the change of use in hand. If ownership changes down the road, we can allow the caveat to change back. But even if they change back, having this shared space isn't a bad thing.

S. Saunders read definitions of transitional housing and of rooming house.

S. Bogert closed the hearing to the public at 10:55 pm.

Board: There were no further questions.

Motion: S. Perley moved to approve both of the applications stated above, using the same criteria for both.

Application # 2015-0031, for 35 Messer Street:

Granting the variance will not be contrary to public interest as the applicant is creating additional parking and removing it from the street.

The spirit of the ordinance is observed as this won't threaten public health, safety or welfare or injure public rights.

Substantial justice is done in granting the variance as parking is necessary for residences. There is no harm to the general public or to other individuals.

Property values won't be diminished as the applicant is providing additional parking and removing on-street parking.

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. This variance doesn't alter the essential character of the neighborhood, nor does it cause harm to the general public.

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

R. Maheu seconded, and all voted in favor, 5-0.

Application # 2015-0034, 39 Messer Street:

Granting the variance will not be contrary to public interest as the applicant is creating additional parking and removing it from the street.

The spirit of the ordinance is observed as this won't threaten public health, safety or welfare or injure public rights.

Substantial justice is done in granting the variance as parking is necessary for residences. There is no harm to the general public or to other individuals.

Property values won't be diminished as the applicant is providing additional parking and removing on-street parking.

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. This variance doesn't alter the essential character of the neighborhood, nor does it cause harm to the general public.

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

R. Maheu seconded, and all voted in favor, 5-0.

The hearing was over at 11 pm.

OLD BUSINESS:

OTHER BUSINESS: S. Bogert let the board know we have a request to have a special meeting for an applicant who needs a variance. The board were unanimous in saying no, they will not hold a special meeting for the applicant.

ADJOURNMENT: S. Perley moved to adjourn the meeting with the second by R. Maheu. All voted in favor and the meeting adjourned at 11:10 pm.