



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF DECEMBER 21, 2015
APPROVED AT MEETING OF JANUARY 19, 2016

CALL TO ORDER: Steve Bogert called the December 21, 2015 meeting of the Laconia Zoning Board of Adjustment to order at 7:05 pm.

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

MEMBERS ABSENT: Roland Maheu, Kate Geraci

Gail Ober was seated as a full board member for the evening.

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

MINUTES: The minutes from the ZBA Site Walk of November 16 and the ZBA meeting of November 16 were discussed.

MOTION for November 16 Site Walk: S. Perley moved to approve the minutes from the November 16th Site Walk, as written, with the second by G. Ober. All voted in favor, 5-0.

MOTION for November 16 ZBA Meeting: O. Gibbs moved to approve, as written, the minutes from the November 16th ZBA Meeting. S. Perley seconded. All voted in favor, 5-0.

CONTINUED: (Determination)

Application # 2015-0026	MSL # 225-248-8	CR Zone
J Green	527 Weirs Blvd	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.

S. Bogert reminded the public and applicant that the hearing is closed to the public at this point and open for board discussion only.



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G. Ober said she had taken a hard look at this. She went over the evidence presented by the condo association and is not convinced that the applicant meets the criteria for the Equitable Waiver. She said, at this point, she is inclined to not grant the approval.

O. Gibbs said she feels that they initially made the error in good faith, but that they should have stopped the construction immediately when notified. She said she feels the mistake was made in good faith, but did they do enough to stop the construction before it was substantially completed. She does not think this causes harm to the abutters, and no harm to the general public. She said this is a tiny incursion into the setback. She is not sure what the cost of correcting the error would be. She asked if we can accept that enough was done once the possibility of a violation was discovered. The board is sitting in the middle of a battle between these abutters. She said there is obviously a history between the abutters.

S. Bogert said if they had stopped construction at the time the error was found it would only have been the foundation and maybe some 2 x 4's. The fix should have been inexpensive at that point. The big question is if someone points out a possible error, should they have stopped and double checked. O. Gibbs said she agrees; she personally would have stopped.

S. Bogert said there was substantial room to move the structure. O. Gibbs said she didn't feel it was substantial but it could have been moved at that point.

O. Gibbs said if they had asked for a variance, she would have been inclined to grant it because it is such a small amount. S. Bogert said the amount of the infringement doesn't matter; it is still in violation. He does feel they started in good faith, and that the error was made in good faith, but that they could have stopped.

G. Ober said that is how she feels; more could have been done once they were notified. She feels that the evidence shows that and she agrees with O. Gibbs on this.

S. Perley said she can't get past item A; it is clear that the owner was told about the problem and the builder chose to move forward. It is a small incursion, and is on his own land, but she feels they should have stopped.

M. Foote said he also would have to agree with the rest of the board on this. He also feels this could have been avoided.



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S. Bogert said that Item B states this was not an outcome of ignorance of the law, or in bad faith. He feels that is correct.

M. Foote read the rest of item a, which states that the violation was not noticed until the structure in violation had been substantially completed.

O. Gibbs said there is no harm to public and no safety issues.

S. Bogert said if this had been stopped upon notification, the expense would not be there. The cost to fix this is irrelevant, as they chose to continue. O. Gibbs said if they can't meet all 4 points, the equitable waiver cannot be granted. G. Ober said that all 4 have to be met in the motion. O. Gibbs said all seem to agree that item A cannot be met.

Motion: G. Ober moved to deny the request for the Equitable Waiver because she feels they were aware of the problem before this was substantially completed. She does feel the error was made in good faith so they meet item B. She said she also agrees with item C as the infringement is negligible. On item D, she feels the cost of the correction should be borne by the owner and builder based upon the evidence presented.

M. Foote seconded. All voted in favor of denial, 5-0.

CONTINUED:

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.

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.



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It was determined by the board that the hearing for the Special Exception would be held first as that would be needed prior to the Variance being approved.

Applicant: F. Moeckel appeared for the two applications.

He stated that he did speak with the city attorney, who e-mailed him, and that he still disagrees with the attorney, as does the client, but that they want to go forward. Ultimately it doesn't matter who is right but if the board grants the Special Exception it is a moot point, anyway. They want to convert the barn, and have a new rental unit available.

They are asking for variances and the special exception for the lot with the understanding that his client's rights are not waived. They are not waiving their position on the grandfathering issues.

S. Saunders said that the variance request also includes 235-67B for an accessory apartment. The accessory apartment is off of the table per F. Moeckel. He said on 235-67B, which is one component, forget about expanding into pre-existing/non-conforming structures. If you read the 4th sentence (3rd and 4th) it says to ask for a variance. It also mentions a CUP from the Planning Board to have the additional unit.

He read the 4th sentence which says that limits on expansion may be extended to lawful structures; he was referring to that item. He said they are removing 235-67 B.

S. Saunders said we will move forward with the special exception and variance.

Special Exception, 2015-0032: F. Moeckel showed the map of the property. He submitted photos from Google and Bing. He said the first picture showed the building pre-renovation, and the second during, the 3rd before renovation and the 4th while ongoing renovations.

G. Ober asked if the current tenants use the barn for storage and F. Moeckel said when you enter the structure, the ground floor and half of the hay level is open. Under the ground level is what is used for storage now but the tenants do not use this as a storage facility. F. Moeckel said he will call this the basement area. M. Foote asked if there was something below the first floor level - a basement area - and was told yes.



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S. Bogert said right now this has nothing to do with the additional unit. S. Perley said there are 4 units now, and each requires 1.5 parking spaces. F. Moeckel said they would need 7.5 spaces. S. Perley asked if we are approving the parking at this time, too.

M. Foote asked if he has enough parking for what is currently there and S. Saunders said 6 are required. She said she feels he does have the 6 required now.

S. Bogert said right now the board is only doing the special exception to make the use of multi-family legal.

F. Moeckel said he would go through the criteria.

- a) Is the use of multi-family authorized; F. Moeckel said it is per 235-26, which says that is done by the granting of the special exception.
- b) Even if there were some issues, this would still be permissible if it is not over done. No evidence has been shown regarding traffic issues. Adding a unit will have a negligible increase in traffic congestion. He acknowledges there will be some increase but it won't be undue or impair pedestrian safety.

M. Foote said he is having an issue with the 4 or 5 units and S. Bogert stated that it was irrelevant at this point, as both would be covered under the multifamily. He will address the 5th unit with the variance.

- c) The requested use will not overload city systems. The units are on the municipal system. There is no history of any overload issues and no reports on storm water runoff issues onto adjacent properties. The applicant does not propose to alter the terrain of the property. The installation of impervious surfaces usually lead to those types of issues and they are not changing the existing ground conditions on the property. He said that the board will see the minimum greenspace is 60% and the lot meets that. They are not increasing so water or drainage are not issues. That criteria is met.
- d) There will be no excessive demand on fire or police, schools or solid waste. The addition of a 5th unit may have an effect but again, it won't be excessive.
- e) There are no special provisions to be met.
- f) The requested use is that of multi-family. This will not cause issues. Look at the existing neighborhood which is mixed use. There are single family and multi-family residences here in the RG Zone. This is consistent with others so this is not out of



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character. It won't change the essential character of the neighborhood. This will cause no health, safety, or general welfare issues. The property is served by municipal services which will continue into the out structure.

- g) Look at the surrounding neighborhood, which has both single and multi-family structures so this is similar and an appropriate use.
- h) The use is consistent with the intent of the Master Plan. The use is permitted in the RG zone, and is already present in the district and in this neighborhood. The area is not heavily trafficked and there is no evidence of traffic congestion here being an issue.

He summed up by saying that he feels granting the special exception is proper.

S. Bogert said that in looking at the plan submitted, it looks like the parking is on a different lot. S. Saunders said the lots were merged. F. Moeckel said that the surveyor might have shown the old track lines.

Public: Paul Toutaint, 32 Baldwin, said he has lived here for 37.5 years. This is not a quiet neighborhood. Between 3 and 5 p.m. this is a race track as cars use this street to escape traffic lights. Cars park on the sidewalks. He said he heard you need to have 10-15 ft between the properties. The people who used to own this had separate apartments, so did not use services much. He said he has to admit that the current tenants seem ok. They are gone all day at work. Apartment people don't care about the neighborhood.

S. Bogert asked Mr. Toutaint if this unit creates more noise than the other properties and was told that this one is currently fairly quiet. He said that when we have snow there will be less parking, and said that they need snow storage. There are too many people currently on this corner now. All are currently multi families here now. He owns a single family, and said he feels his value is gone. S. Bogert asked if he feels this is currently an apartment-based neighborhood and Mr. Toutaint said yes.

O. Gibbs asked him if this has this always been an apartment building and he said yes. There were two sisters who lived here, one on each floor, with their niece downstairs.

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

Board: There were no further board questions.



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Applicant: F. Moeckel said the resident of 32 Baldwin said this is now a multi-family. This building has been updated dramatically, and the owner wants to continue with that. He doesn't feel that one additional apartment will unduly increase vehicular traffic or harm pedestrians.

He said we did not hear anything about pedestrian safety. He stated that he is unsure of what will happen with snow removal, but thinks it will be put on the grass area. He said he does feel the applicant is going to make the parking better.

S. Bogert closed the hearing to the public.

Board: Gail Ober said that she lives in the neighborhood, and feels this meets the criteria for multi-family. It has been the same character of the neighborhood since the 70's.

M. Foote asked S. Saunders about the parking, who said it shows 5, but she does she feel this is ok with the current 6 that was mentioned. 9 x 19 is the size the ordinance speaks to and she feels he could fit 6 here now.

G. Ober said she lives near here and drives by this frequently, and has never seen any parking issues.

Motion: S. Perley moved to approve the special exception, 2015-0032, in order to permit this structure to be an official multi-family building.

The use is authorized by the chapter.

The use will not create undue traffic congestion. The use has existed here for many years as is. There is no evidence this has been an issue in the past.

This use won't overload municipal systems, nor cause any increase in run off.

This will not create an increase demand for additional police, fire, schools or solid waste disposal services as this already exists here.

There are no special provisions set forth in the chapter.



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This will not create hazards to health, safety, or the general welfare nor be detrimental to the use of or be out of character with the neighborhood.

The location is appropriate for the requested use.

The use is consistent with the spirit and intent of the chapter and of the Master Plan.

G. Ober seconded the motion and all voted in favor of approval, 5-0.

Variance, 2015-0027: S. Saunders said they are requesting a variance from the entire parking chapter. F. Moeckel said there had 6 requests. 235.33, 235.45, for off street parking and driveway access; 235:46, number of spaces required; 235-47 for dimensional requirements for the parking spaces; 235-48 for design requirements, and 235-50.1 for driveway access.

Discussion was held on the actual application. S. Bogert explained that by doing all of the requests as one variance, if one portion fails, the entire application fails.

F. Moeckel said he would begin with density.

S. Bogert re-read the application from the agenda. It was determined that the applicant had eliminated 235-67 (B) and 235-41 (J).

F. Moeckel asked the board to also use testimony from the previous application for this one.

F. Moeckel asked the board to look at the site plan submitted. He spoke about the physical characteristics of the site. The property slopes from east to west. On the north property line, there are retaining walls. The northerly side of the structure is close to the north property line, there is a grade issue; that side is lower and it drops off.

On density, he said that all of these structures pre-date the zoning ordinance. They have existed since the 1900's per city records. The property lends itself to the use of existing buildings. They are not asking to expand the footprint, as all changes will be on the inside. They only intend to create one unit in the out structure.

He asked if granting the variance to increase the number of units would alter the essential character of the neighborhood. He asked if the extra unit would threaten public safety, health or the general welfare of the public and said no, they don't feel it will as this is a



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modest density request. Going from 1 unit per 4000, to 1 unit per 3500 ft. all the existing facilities are there, will use city water, sewer and gas. No sanitation public health issues. Will be updated to the current building code. Will look attractive for the neighborhood. Wants to attract good tenants. The addition of 1 unit won't change the area. Renovation of the building, interior and exterior, will improve the look of the neighborhood.

Substantial justice is done as the public will gain the status quo and the applicant will gain the use of the new unit. This will add to the city's tax revenue. They feel substantial justice is done. The property will be improved, it will increase the tax base, and they will repair the building currently in disrepair. Leaving the existing outbuilding as is would not be good for surrounding property values.

On the unnecessary hardship, F. Moeckel said to look at the physical characteristics of the area. Look at how the out structure is situated on the property.

On the fair and substantial relationship criteria, this was created before Laconia had zoning ordinances. The buildings have been there for over 100 years, so they are not shoe horning more units onto the lot. There is no reasonable alternative. The structure is approaching the height limit for the zone.

There is substantial green space here. The applicant wants to keep the existing green space, and for a lot this close to down town the amount of green space is unique. This is consistent with the master plan.

The use is a reasonable one. The neighborhood is a mix of single and multi-family dwellings. They are going to maintain the look and feel of the neighborhood. He asked if one additional unit will make a huge difference.

The parking use is historical here. The topography is as exists now, and the green space. They can't meet the ordinance requirements to meet the drive and landscaping requirements. He said that he feels the ordinance leans more towards new development than these existing older lots. To apply the requirements to this property, after being used for over 100 years, is not reasonable. You cannot require this to meet the current standards. 10 cars can fit, if stacked, so each of the 5 units would get one row. Each unit would have its own stacked space.



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Parking is permitted in the RG zone and in the master plan. Consider the size of the lot, the topography, the layout of lot, and existing buildings on the lot. He said he feels the requirements for parking do not have a relationship to this lot.

M. Foote asked how far the northwest corner is to the property line, and was told on the left side it is about 5 feet. 15 is required per the ordinance but this is a pre-existing structure.

S. Bogert went over the density requirements for the lot. He feels what is currently required, what the lot has now, and what would be needed for 5 units, is a significant difference. F. Moeckel said they are here asking for the relief from the provision.

M. Foote said in looking at the submitted plan, there are two different dimensions listed - one on the agenda, and one on the submittal. He was told there is a slight difference; they used what given by the surveyor.

S. Bogert said they are asking for an increase in parking, and a decrease in density.

S. Saunders said she is hesitant for them to give a blanket approval on all of the parking requirements.

F. Moeckel said they will stipulate the condition that the variance is subject to the property being used as a 5 unit multi-family only. That would cover the parking issue.

G. Ober asked S. Saunders if the board grants this, does the building have to go through the building inspection process. She was told it would require a building permit and it would have to be brought up to current codes.

S. Saunders asked Walter Mitchell if they put that condition regarding the 5 unit use only, does she need to go through each criteria but S. Bogert said he feels it is the applicant's duty to tell us what he is looking for.

F. Moeckel said on the the commercial provisions, 235-45 A, read second clause/sentence. He said he feels 235-45 C and D are applicable here.

S. Bogert said feels we should table this for the evening, as this is not the place to work out the issues.



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S. Bogert moved to continue this application. They will be first on the January agenda. M. Foote seconded, and all voted in favor, 5-0.

The next two applications were withdrawn.

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.

The board took a 5 minute recess, resuming at 9 pm.

NEW HEARINGS:

Application # 2015-0041	MSL # 407-31-43	RG Zone
C. Dwinal	41 Butler Street	Variance

The applicant is requesting a Variance from 235-35 (B), side/rear setbacks, in order to add 72 SF (approximately 7 x 10) to the residence. The addition will square off the house and will protrude no further into the rear setback than the current structure, leaving a rear setback of approximately 6'.

Applicant: Charles and Connie Dwinal appeared for the application. Charles Dwinal said that they have both been diagnosed with cancer. They currently have a very tiny bathroom, and want to take the 6 x 12 ft jog to enlarge the bathroom in case anything happens. EMTs would be able to enter a large room. He said that the outside of the house would really look the same. He described how it would be remodeled. He showed in the picture where what is currently a window will become an interior door. No change would be evident. There are



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some rocks and weeds in this space, but nothing usable. If they come out 6 ft, they will be going away from the property line by a few degrees.

S. Bogert asked S. Saunders for clarification on the application number and it was determined it should be 2015-0039.

S. Bogert asked if the roofline would be the same and was told it would be continued out. Connie Dwinal said it is a metal roof. It will still have a small pitch. M. Foote asked if the picture shown indicates the jog and was told yes. S. Bogert asked if any foundation work is required, and was told some will need to be done.

Public: No one spoke for or against the application.

Board: There were no further questions. G. Ober said she feels this is very straight forward, and she has no issues.

S. Bogert closed to the hearing to the public at 9:07 pm.

Motion: G. Ober moved to approve Application # 2015-0039 to expand the footprint of the current structure, which will square the house off and won't infringe any further into the setback area than the current structure.

This won't be contrary to public interest as the house is infringing no further into the current setback and will be squared off.

The spirit of the ordinance is observed as the addition does not injure public or private rights of others and is consistent with others in the neighborhood.

Substantial justice is done as the benefit to the applicant outweighs any negative impact to the general public. There is no substantial change in the use being proposed.

The values of surrounding properties should not be diminished by this small addition.

The hardship here is clear – illness necessitates this addition. It would be an unnecessary risk to the applicant and could pose a risk to the public if an emergency arose.

S. Perley seconded, and all voted in favor, 5-0.



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Application # 2015-0040	MSL # 21-253-15	RRI Zone
D. Mulkern/Briggeman Construction	536 Leighton Ave N	Variance

The applicant is requesting a Variance from 235-19 E (2) (b), in order to add a deck to the existing structure. The deck will protrude no further into the SPOD setback than the current residence and will be located approximately 35' from the shorefront. Shoreland approval has been obtained.

G. Ober asked the board if they felt she should recuse herself as the applicant is her plow person but it was determined that there is no conflict.

Applicant: Gerry Briggeman appeared for the application. The property owners want to add a deck to rear of the house. It is a mossy open area there now. They want the deck to enjoy the area. The neighbors can't see the area in question and you can't see this from the road. They already got shoreland approval from the state.

S. Perley clarified that this is a new addition – there is no deck there now and was told that is correct. S. Saunders asked if this will be enclosed and was told no, it will be totally open. M. Foote asked what this would rest on and was told piers. S. Bogert asked if they will be sunk 2 feet into the ground and was told 4 ft.

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

Board: There were no further questions.

S. Bogert closed the hearing to the public.

S. Bogert said this addition will stay within the current confines of the house. They got approval from the state.

Motion: S. Perley moved to approve application # 2015-0040 to add the 14' x 24' deck to the house.

This won't be contrary to public interest as it will stay within the current confines of the house and will protrude no further into the setback than the current structure. State permits have been obtained.



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The spirit of the ordinance is observed as the applicant is just adding a deck to a single family house, which is permitted in the zone.

Substantial justice is done as the benefit to the applicant outweighs any negative impacts to the general public. The use is consistent with other homes in the area.

The values of the surrounding properties should not be diminished by the deck addition.

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property as the addition of this deck doesn't alter the essential character of the neighborhood or affect the welfare or safety of the general public.

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

G. Ober seconded. All voted in favor, 5-0.

I) NEW BUSINESS: None

II) OLD BUSINESS: None

III) OTHER BUSINESS: None

IV) ADJOURNMENT: The motion to adjourn the ZBA meeting was made by M. Foote and seconded by G. Ober. All voted in favor of adjournment, 5-0, and the meeting adjourned at 9:20 pm.

Respectfully Submitted:

Kristine Y Snow
Zoning Technician