



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF APRIL 20, 2015
APPROVED MEETING OF MAY 18, 2015

Call To Order: Steve Bogert called the meeting to order at 7 PM.

Roll Call By Clerk, Kristine Snow: Steve Bogert, **Chair – Present**; Suzanne Perley, **Vice-Chair – Present**; Orry Gibbs – **Present**; Dave Greski – **No Response**; Michael Foote – **Present**; Kate Geraci, **Alternate – Present**; Robert Smith, **Alternate – Present**; Gail Ober, **Alternate - Present**

Members Present: Steve Bogert, **Chair**; Suzanne Perley, **Vice-Chair**; **Full Board Members:** Orry Gibbs, Michael Foote; **Alternate Members:** Kate Geraci; Gail Ober; Robert Smith

Members Excused: Dave Greski, **Full Board Member**

Steve Bogert seated Gail Ober, Alternate Member, as a full voting board member for the evening in the absence of Dave Greski.

S. Saunders went over some of the changes to the meeting procedures. She let the members know that if a board member, a full board member or an alternate, takes part in a discussion they cannot later abstain from the vote. If they participate in the discussion, they have to vote.

She also said that all names will be listed on all votes whether for or against.

S. Bogert asked if alternates can still participate in the conversations but not vote and S. Saunders said they can discuss the application but cannot be part of the voting body once the motion is made.

Staff: Shanna Saunders, **Planning Director**

Recording This Meeting: Kristine Snow, **Zoning Technician**

I) MINUTES: The minutes from the ZBA meeting of January 20, 2015 were discussed. The **Motion** to approve the minutes was made by Orry Gibbs and seconded by Suzanne Perley with all voting in favor of approval, 5-0 (S. Bogert, S. Perley, O. Gibbs, M. Foote and G. Ober).

II) EXTENTIONS: None

III) PRESENTATIONS: The ZBA, acting as the Building Code of Appeals, will hear a presentation from the Heritage Commission regarding proposed changes to the demolition ordinance.

Presentation: Pam Clark appeared for the Heritage Commission. She let the board members know that the last time changes were made to the Demolition Ordinance was in 2009. Some significant buildings have been demolished in the past 6 years. She let the board know that this is to help preserve historical properties.

Pam Clark said that the Heritage Commission added something that was in the Master Plan, on the first page of the permit. She read from that portion. "A stated goal of the City Master Plan is to "Preserve the historic character of the City. Laconia's architecture and artifacts reflect its cultural history as one of the oldest

economic centers in the State. The character of these historic resources adds to the City's vitality and, as such, should be preserved."

P. Clark said that demolition is forever and every one takes away a piece of the City's character. If a structure still has most of its original design and features, demolition should be a last resort. She said we are talking about just historical properties.

On the next page she outlined what they consider a significant building to be. There are 4 criteria. They also changed the age of the structure to 50 years, down from 75, which aligns with state preservation guide lines.

Another change they have suggested is to give an option to the Heritage Commission and City to delay demolition. If things are not resolved in the 45 day time period, the Heritage Commission would be able to go to City Council and ask for an additional 180 day period to come up with alternatives. S. Perley asked if it would then be the City Council's decision to grant the additional time or not and was told yes.

S. Bogert asked if there is a list of historical structures so if one comes on the market they would know it was on that list. P. Clark said there are some already on the state/national register and we are trying to make the list more comprehensive. The Heritage Commission is in the process of interviewing an intern for the summer to begin doing a list of historic properties.

S. Bogert asked if they would be pro-active so when a property comes on the market they would begin looking at ways to handle that prior to the closing table. P. Clark said, using the Hathaway House as an example, the Commission came into that after the fact. She said they feel if they had been there in the beginning they would have had more time to come up with an alternative for the structure. She said she agrees that if the properties come up for sale, they could begin working on that immediately. As much time as they can get would be wonderful.

Gail Ober said that in reading the new proposal, this includes buildings built in 1965 or later, and asked if that is their intent. P. Clark said no, just the historical buildings. P. Clark said the oldest building in the city is 88 Oak Street but they are not interested in preserving that as it has been upgraded over the years with vinyl siding and other features, so that it is no longer of historical interest. She said that they listed their criteria on the second page.

S. Perley said she thinks having an inventory is a smart idea and O. Gibbs and M. Foote agreed. P. Clark said they would love to hire a professional but that is not going to happen. They are using \$500.00 to pay the intern, which is pretty much their budget. From their budget of \$750.00.

G. Ober asked if the building has to meet all of the criteria or just one or a combination; how does that work. P. Clark said it has to meet at least one of the listed criteria. It was suggested that the wording be changed to reflect that.

M. Foote said he is thinking of the housing in Laconia if using the 50 year criteria. So a structure would have to be historically significant and at least 50 years old to be included here. He was told yes, that is the state criteria. If the building meets the criteria, then it goes to the Heritage Commission to determine if they want to follow up.

S. Bogert asked what would prompt this and was told a demo permit or the code official. S. Saunders said they need to do due diligence.

S. Bogert said we are requesting a building official, after the fact, to make a determination. He said this could possibly hold up real estate deals. He feels that question would have to be answered first. S. Saunders said she feels this is like setbacks - if people want to build, they find out after the fact normally what those setbacks are. S. Bogert said this would have to be part of their due diligence.

O. Gibbs said if buying with the intent to demolish, there are certain things they have to do first anyway. She said this happens a lot on the lake where people buy a property fully intending to take it down. She said she

doesn't think the City has the obligation to make sure the buyer does his due diligence. We should have the list handy at that point to make sure a property is or is not on the list.

O. Gibbs said they should have an attorney and that the attorney should be contacting the City if buying with the intention to take it down, to ensure that the building isn't on the historical list. S. Bogert asked if there should be a letter from the City saying this isn't on the historical list and S. Saunders said yes, we do things similar to that now.

P. Clark said there are not a lot of properties bought just to be demolished. M. Foote asked how many structures there are currently on the Heritage Commission's list and was told 13-15; this could be doubled after the inventory is done.

O. Gibbs said the 50 year thing is scary, but 95% of buildings don't meet the criteria so that should be fine.

Pam Clark said she is on the Historical Commission and the Heritage Commission and that there are lots of things of historical interest still out there, not just structures.

S. Saunders said that the next step is to go forward if all agrees. She will change the wording on the criteria for the Significant Building to state it only has to meet one of the criteria.

Motion: S. Bogert moved to approve the changes to the Demolition Ordinance, with the second by M. Foote. All voted in favor, 5-0 (S. Bogert, S. Perley, O. Gibbs, M. Foote, G. Ober). The public hearing will be scheduled for May 18.

IV) NEW HEARINGS:

Application # 2015-0002
C. Roy

MSL # 410-88-40
92 Gilford Ave

RS Zone
Variance

The applicant is requesting a variance from 235-28, Uses Not Permitted, in order to add a 5th unit to a structure that is already non-conforming in a zone where multi-family dwelling is not permitted. However the previous structure burned and was replaced with a 4-unit which was grandfathered. The 5th unit would be located in a previously un-used barn space and would not require changes to the footprint.

Applicant: Charles Roy (Ted) explained that the building burned in March of 2013. They rebuilt to the same standard, which was the 4 unit. There is an empty space above one of the units, in what was barn space, which is not finished now. They currently have 9+ parking spaces on the lot and are looking to do a 2 bedroom apartment. There would be no change in the footprint. This is an older section of the building, which was re-modeled years ago. The insurance company wants the space to be brought up to code.

G. Ober asked if this is something they had planned to do before the fire and C. Roy said they had given it some thought but never did anything. The insurance company now wants this done to make the building insurable.

S. Perley asked about the access and C. Roy explained access to the apartments. Page one shows one access to an apartment, which also has access from the parking side of the structure.

S. Perley asked about fire access and was told that Deputy Roffo checked everything when doing the construction. C. Roy said that the floor plan shows a second means of egress, which would be a deck and stairs leading down.

R. Smith asked about egress to this specific unit and C. Roy explained the new egress, which would be just a small deck and stairs down to the ground. G. Ober asked if they would be adding any dormers and was told no, they don't need them.

R. Smith said he noted other multi-family structures in this zone and C. Roy said from Union Avenue up to this house there are 17 multi-family homes.

Public: No one spoke for or against the proposal.

There were no further board questions and no closing comments from the applicant so Steve Bogert closed the hearing to the public and brought this back to the board for any further discussion.

There was no further discussion so S. Bogert called for a motion.

Motion: S. Perley moved to approve application # 2015-0002, to add a 5th unit in the RS zone where a multi-family structure is not a permitted use.

The granting of the variance is not contrary to public interest. The use is already that of a multi-family and there are others in the neighborhood.

The spirit of the ordinance is observed as there will be no sign of any increased activity in adding the 5th unit. Again, there are other multi-family structures that already exist in the area.

Substantial justice is done in granting of the variance. This is a residential use in a residential neighborhood so this is consistent with the use and the character of the neighborhood. There would be no harm to the abutters or to the general public in granting the variance.

The values of the surrounding properties should not be diminished as the structure fits into the use and character of the neighborhood.

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 is consistent with the current use and fits into the character of the neighborhood. The proposed use doesn't alter the neighborhood or create a hazard to the health, safety or general welfare of the public.

The proposed use is reasonable as it is currently a multi-family structure so the use is not changing. There will be no physical alternation to the footprint.

Orry Gibbs seconded and all voted in favor, 5-0 (S. Bogert, S. Perley, O. Gibbs, M. Foote, G. Ober).

**Application # 2015-0001
B. & J. Leroux**

**MSL # 345-168-1
58 North Street**

**RG Zone
Variance**

The applicant is requesting a variance from 235-28, Uses Not Permitted, in order to keep a rooster. This is considered agricultural use and that is not permitted in the RG zone. The rooster is a pet and kept mainly indoors.

Applicant: Bridgett and Jeffrey Leroux appeared and stated they have a rooster and want to keep him as a pet. They submitted other pictures to the board. They did not know this was in violation of the rules. He plays with their dogs. They bought him at the Sandwich Fair last fall. They keep the door closed so you cannot hear him crow.

J. Leroux said his cage is now in the kitchen. They used to keep him on the enclosed porch, but moved him inside. He sleeps on the couch or with one of them, or one of the dogs. He only weighs about 4 pounds. B. Leroux said he is smaller than the chickens she cooks at Hannafords.

J. Leroux said he plays with the dogs, he takes their toys. He said his father had purchased a rooster about 14 years ago at the Sandwich Fair and raised it on Strafford Street. His son liked him, it was only \$5.00, so he bought it. B. Leroux said initially she was unhappy but a week later he was her pet. They don't think it would survive in a farm situation.

J. Leroux said he is working on building him a sound proof cage. He is not real loud, and crows maybe 15 times a day. B. Leroux said he fell asleep at her birthday party, even with all the noise.

S. Bogert asked if they were aware that about a year ago the board went through some changes, and did some work on a chicken ordinance. However, the zoning has not changed. The Leroux's said no, they did not know.

S. Bogert said that the City tried to make changes and if they had wanted them, chickens would have been permitted.

S. Perley said we did a comprehensive review, we held public hearings, and put together an ordinance that would allow chickens, with certain conditions. In all of those discussions, and all the people who wanted chickens, roosters were not permitted. We went through the process, and it was killed when it got to the Planning Board level. Roosters were never part of the equation. They are loud and disruptive.

S. Bogert said there were articles in the paper on several occasions regarding the proposed ordinance and asked if they had seen them. Jerry Leroux said no, if he had he would never have bought him.

K. Geraci asked why they were here tonight and was told we received a complaint. Bridgette Leroux said if he crows when they are outside with him, they bring him inside. B. Leroux said he knows the word "treat" just like the dogs, do.

Public: Lorraine Carignan appeared and stated she is Bridgette Leroux's mother. She said that at first she was afraid of him, but then he got on top of the cage and danced for her. She held him; he talked to her. His crowing is not that loud, and she said she doesn't think he could be heard outside. He gets along with the other animals and is fine with humans. She said that she doesn't think he knows he is a rooster. He is a family member. This is a pet.

Stormy Leroux, the daughter of Bridgette and Jeff, said she just had a quick comment on his being outside. She took him outside the other day with their 3 dogs. She said he turned around and went back inside and looked out the window at them. He actually prefers to be indoors.

Dan Oulette, 46 North Street. He made the complaint about the crowing initially around the middle of December. His windows and doors were all closed, and he is about 150' away. He could hear it crowing. He said it definitely does crow, you can hear it. He is noisy, and crows sometimes in the morning and afternoon for a few hours. He thinks it is disturbing. Failure to know about the law doesn't make it right. He said that he understands this is a pet, and he is trying to be a good neighbor but if he had not heard it he would not have made the complaint.

Armand Leroux, Jeff's father, said he has been around roosters a lot, and had one for 15 years in Laconia. He never had a complaint about the noise. He said he doesn't feel this makes any more problems than a barking dog. They have gone out of their way to keep him inside and are working on making a sound proof cage. He is definitely a pet. He plays games with their dogs. Roosters can become quite the pet. While they are farm animals, they can become pets, and this one definitely is.

Dave Oulette, brother of Dan. He said it is unfortunate we are here. If this was a chicken and didn't crow, there would have been no complaint. Barking dogs can be addressed. Regulations speak for themselves. This could snowball into something that could be problematic if this is approved.

Mary Ann Leroux, Jeff's mother, stated in response to the 46 North Street resident who said he could hear the rooster crowing in December, sometimes with the wood stove going they did have to open a window. She said that they had a rooster for 15 years here in Laconia. This rooster is very cute and sweet. He is a pet and gets along with the other animals. The other pets would miss him and Bridgette and Jeff would miss him.

Stormy Leroux stated on the dog barking issue: when the rooster crows, if picked up he immediately stops. He crows when it is dark and he doesn't see them around. You give him attention just like you do with a dog or any other pet. If left alone for a while, he will crow. You comfort him and he stops. This is not uncontrollable. People leave dogs outside to bark for hours at a time.

There were no final board questions nor any closing comments from the applicant so Steve Bogert closed the hearing to the public at 7:55 pm.

Board Discussion: Robert Smith said this is a pet, not an agricultural animal. We had a case a while back on Old North Main Street, where we granted a variance which was time limited and only for one animal.

Kate Geraci said she feels there is a distinction between this and chickens that were to be kept outside. Steve Bogert said what about a horse if it is a pet; would you keep it inside? K. Geraci said if the rooster is staying inside, she thinks this is a different issue. She said she feels like there is a distinction here. They are trying to deal with the noise.

S. Bogert said spring and summer are coming. If the noise was heard with one window open, wouldn't everyone hear it? If we allow the rooster, then why not any animal? Why do we have zoning? The ordinances protect neighborhoods. If a person wants a non-traditional pet, then why wouldn't they live where they could have them?

K. Geraci said the distinction is that they are not asking for a coop out back but for one indoor animal. People have snakes and tarantulas for pets, and those are non-traditional. This is definitely a pet and not being used for an agricultural use.

S. Bogert said that R. Smith had mentioned the 4 H project that they agreed to grant in the past. This proposal did go to the Planning Board and they did not want the change made. He is not sure how to circumvent this as other boards help construct the ordinances, and they said no.

R. Smith said that the City adopted the state requirement, which said no farms, including gardens per our ordinance.

K. Geraci asked if there is something that says what a pet is and S. Saunders read the definition of pet: An animal from which profit may not be generated from the sale, traditionally, of its fur, eggs, flesh, feathers, edible portion or services, with the exception of mating.

She also read the definition of Agriculture: The production, keeping or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats of any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program.

K. Geraci said the part about animals seems to mean eating them, selling them, etc, and that is not true in this case. S. Saunders said we took the more strict path, which means that chickens are a useful entity, so were categorized here and not with dog or cat.

R. Smith said he doesn't lay eggs, and is not going to be food, so should he be considered agriculture use.

M. Foote said he went to Plymouth State, and had an ethics class, and this resonated with him. He asked when does the good of one overrule the good and comfort of all? In creating the regulations, we spent a lot of time talking about chickens, and with the amount of discussion and open meetings we had, Planning gave a pretty firm expectation of what they hold the rules to be.

S. Perley said that the committee that looked at this did a lot of research, and we looked at all of the related ordinances in the state of NH. None of them allowed roosters. They are meant to be on a farm, not in a neighborhood like this.

S. Bogert said if a rooster is allowed in a residential house as a pet, what stops a person from having a pet in an apartment. He was told a landlord would stop that. K. Geraci said she thinks there is a distinction between backyard chickens and this pet and S. Perley said he still goes outside, and he still crows.

M. Foote said they stated the last one lived 15 years, so this could go on for an extended period of time.

S. Bogert said there is no difference here that makes this property unique from any others in the area. There is nothing that falls within the spirit of the ordinance that we can base approving this on. M. Foote said this is emotionally driven, not criteria driven.

S. Bogert said there is no hardship as no one here can have a rooster. The spirit of the ordinance treats everyone the same. The property has no bearing on this.

K. Geraci said what about if he is kept indoors and in the soundproof cage and S. Bogert said do we want everyone to do this. K. Geraci said she has lived next door to parrots and didn't want them there, either.

M. Foote said a big parrot used to live near him; it was a significant sized bird which made a lot of noise. If it were in an apartment, and made a lot of noise, it would generate a police call.

G. Ober said that unfortunately the zoning ordinance does define poultry. She said this is an unfortunate situation but she feels she has to vote no.

Motion: Steve Bogert moved to deny application # 2015-0001 in order for the applicants to keep a rooster at 58 North Street, in Laconia, NH.

He said granting the variance would be contrary to public interest. This would be in opposition to the ordinance. Public interest hearings were held within the past year dealing with chickens, and ultimately the Planning Board denied the ordinance.

The spirit of the ordinance would not be observed by granting of the variance as that would not follow what was directed by the Planning Board and the City and would not follow the current Zoning ordinances.

Substantial justice would not be done in granting of the variance as a rooster is, by definition, a farm animal and that use is not permitted in a Residential zone.

There is nothing saying that granting the variance would lower or increase the property values so this is a moot point.

There is nothing different in this property, or in this zone, that makes it different from any other properties in the zone, that would permit them to have the rooster.

The use is not a reasonable one as this is an agricultural use, which is not permitted in the RG zone.

M. Foote seconded the motion and the vote was 4-1. O. Gibbs voted against denial with S. Bogert, S. Perley, M. Foote and G. Ober voting for denial.

The hearing was over at 8:20 pm.

G. Ober said she hopes the Planning Board will re-visit this issue in the future. S. Perley said we are holding the public hearing differently now as how it was done before, the Planning Board really did not see what went on prior to them getting the proposal. (S. Saunders left the meeting.)

**Application # 2015-0003
Prescott Conservancy**

**MSL # 191-241-2
928 White Oaks Rd**

**RR1/RR2
SE**

The applicant is requesting a Special Exception 235-26, Uses Permitted by Special Exception, in order to add a preschool program to their already existing programs. The program would serve no more than 16 children, be state-licensed, and be 5 days a week

Applicant: Sarah Dunham-Milliotis, the Director, appeared and said that they want to open a nature-based preschool. They would have no more than 16 children, 5 days a week.

S. Perley said this is an impressive proposal. G. Ober mentioned traffic but said she doesn't think it is a big deal here. M. Foote asked if this would be accredited and was told not right now. They will only have state licensing for now.

M. Foote asked what the difference is between the current programs and this. S. Dunham-Miliotis said they currently have summer camps, a 1.5 hr program in the morning, and some workshops. Because this is a pre-school and 5 days a week, S. Saunders said she has to go through the process.

G. Ober asked if this use is permitted in the zone by Special Exception and was told yes, that is why they are here.

Public: Cathy Duffy said she will be the lead teacher and pre-school teacher. The summer camp program has a lot of attendance so the traffic would be significantly less with this use.

Jane Hasty said she helped create the curriculum for this. They did a feasibility study and found there is a need for this. Nature is a great way to do this.

S. Perley asked if they are still applying for permits or are all in place and was told they are still applying, and hope to open in September.

No one else from the public spoke for or against the proposal so S. Bogert closed the hearing to the public.

Board Discussion: The board members agreed that this is a good project, will be great for kids, and was presented well. This will be a plus for the community.

Motion: S. Perley moved to approve application # 2015-0003 for a Special Exception to allow a pre-school program to be added to the already existing programs. She said that the applicant put together a very comprehensive sheet, and requested that their submittal be put into the record as the answers to the criteria:

(a) The use requested is specifically authorized in this chapter. A preschool/kindergarten is allowed in RRI/RRII by Special Exception as shown in the Table of Permitted Uses – City of Laconia.

(b) The requested use will not create undue traffic congestion or unduly impair pedestrian safety. There will be a very slight increase in the numbers of cars on White Oaks Road (a maximum of 16 families dropping off and picking up children each day), though we will encourage carpooling to minimize fuel use and traffic. Our current parking (along our driveway) is sufficient for the number of cars expected during drop-off and pick-up. There will be no change in traffic patterns that might impact pedestrian safety.

(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. Prescott Farm is not on municipal water or sewage systems (well and septic rather). There will not be any modifications to roadways or our driveway in activities within the building that would serve to increase site drainage or runoff onto adjacent properties or streets.

(d) The requested use will not create excessive demand for municipal police, fire protection, schools or solid waste disposal services. The nature-based preschool program will run out of Prescott Farm's existing education center building and we anticipate no additional demand for municipal police or fire protection. The program will be licensed by the State and meet all requirements regarding staff first-aid/CPR training. A Life Safety inspection will be conducted by the local Fire Department as part of the licensing process. There will be no demand on the local schools. As an environmental education center we strive to minimize waste anyway, so there should be no undue burden on solid waste disposal services.

(e) Any special provisions for the use as set forth in this chapter are fulfilled. There do not appear to be any other special provisions set forth in the chapter for this use.

(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 addition of a nature-based preschool will, if anything, improve the health, safety and general welfare of the public. There will be no change to the character of the adjacent neighborhood as there will be no modifications to the buildings or property.

(g) The proposed location is appropriate for the proposed use. Prescott Farm has been operating as an environmental education center at this location since 2000. The additional proposed use as a nature-based preschool is consistent with educational programs already being operated on the property.

(h) The requested use is consistent with the spirit and intent of this chapter and the Master Plan. The City of Laconia Zoning Ordinance was established to regulate land use, lot size, etc, in order to secure safety, facilitate provision of services, assure proper use of natural resources, and promote health and general welfare. The use of Prescott Conservancy's property for a nature-based preschool is consistent with the spirit and intent of the Zoning Ordinance because there will be nothing in the operation of the program that would be contrary to those goals.

Gail Ober seconded, and all voted in favor, 5-0 (S. Bogert, S. Perley, O. Gibbs, M. Foote, G. Ober).

The hearing was over at 8:30 pm. Sarah Dunham-Miliotis gave Kristine Snow a form from the state that S. Saunders has to sign.

G. Ober asked when we deny someone, do the people understand they can appeal and ask for a re-hearing? She was told yes, it is actually printed right on the Notice of Action.

S. Bogert said that even if the chicken ordinance had been approved, this would still have come before us as this is a rooster.

S. Bogert said the board is here to look at the zoning laws and protect all of the neighbors. We take into consideration the rights of the one and rights of the many. O. Gibbs said she agrees and if 6 people had shown up against it, then she feels that would be better.

M. Foote said the rooster living in a sound-proof box isn't a good quality of life. He said if using the 5 criteria, not the emotional side of the issue, the applicant has no leg to stand on.

V) NEW BUSINESS: None

VI) OLD BUSINESS: None

VII) OTHER BUSINESS:

VIII) ADJOURNMENT: The motion to adjourn the ZBA meeting was made by Gail Ober and seconded by Michael Foote with all in favor, 5-0 (S. Bogert, S. Perley, O. Gibbs, M. Foote, G. Ober).