



ZONING BOARD OF ADJUSTMENT
CITY HALL, 45 BEACON ST E
ROOM 200A, 7 PM
MINUTES OF SEPTEMBER 21, 2015

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

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

Members Absent: Michael Foote; **Alternate Members:** Kate Geraci

Steve Bogert let the audience know that we have a 5 member board and that Gail Ober (Alternate) will be seated for all of the hearings this evening. He mentioned that Orry Gibbs needs to recuse herself for the hearing for 90 Paugus Park Road so that one would have a short board, at only 4 members.

Rod Dyer introduced himself and said that his client, Larry Rubin for 90 Paugus Park Road, would like to have a full board so would like to be heard at the October 19 meeting of the ZBA.

Steve Bogert let the public know that PEM had withdrawn their application for Endicott Street and that the extension request for Hackberry Lane had also been withdrawn. He also let them know that the applicant for 33 Baldwin Street had requested they be heard at the October 19th meeting of the ZBA.

MINUTES: The minutes from the ZBA meeting of August 17, 2015 were discussed. Shanna Saunders let the members know the department heads and chairmen met with the City Clerk on the procedure regarding minutes last night. Minutes can be “accepted” without a motion being made. However, if changes or corrections are made, a vote is needed.

Roland Maheu said he would abstain from voting since he is brand new to the board. He did say he had a copy of the minutes from the last meeting. It was explained to him that he could vote on minutes, even if he missed a meeting, as long as he agreed with them.



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There were no changes to the minutes so the motion to accept the minutes was made by Gail Ober, with Orry Gibbs seconding. All voted in favor, 4-0, with R. Maheu abstaining.

HEARING WITHDRAWN:

Application # 2015-0013
PEM Real Estate

MSL # 165-72-11
326 Endicott E

SFR Zone
Variance

The applicant has submitted a letter requesting his proposal be withdrawn without prejudice.

EXTENSIONS:

Application # 2010
Karl Mueller

MSL # 230-477-1.24
15 Hackberry Lane

RS Zone
Extension

The applicant withdrew his request for an extension as he was able to get everything in order and he submitted a building permit today.

HEARINGS:

Application # 2015-0028
Andrea Berry

MSL # 20-455-7.2
24 Phoenician Way

RRII Zone
Variance

The applicant is requesting a variance from 235-35 (A), front setbacks, in order to construct a front porch. The front setback in the RRII zone is 75'. The house is currently situated within the front setback as the road was moved after the house was built.

Applicant: Andrea Berry appeared for the application. She said she wants to add a front porch to her home. All of the others on the street have them and it would give her a more finished look and would make the area more uniform.

S. Bogert clarified where the porch would be and asked if she planned to enclose the porch. Andrea Berry said she had no plans to enclose it. She said that the lot is over 2 acres. She cannot see her neighbor's house. The road was widened and improved and she believes that is when the non-conformity was created. Orry Gibbs said she checked the plans at the registry and that is correct.

S. Bogert said the house was built in 2005/06 so permits would have been pulled and it would have been in compliance. He is sure the house wasn't built in the setback at that time.



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Suzanne Perley clarified that this is a city street and was told yes. She said that there would still be a 60' setback.

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

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

Board: Gail Ober said she feels the applicant meets the hardship requirement as the road was moved after the house was built; O. Gibbs agreed with that.

Motion: Orry Gibbs moved to approve application # 2015-0028 for the variance from 235-51 (A) in order to construct an 8' x 40' porch on the front of the existing home. She said that a portion of the home already encroaches into the setback due to the fact that when the City enlarged Phoenician Way, they created the non-conformity.

This is not contrary to public interest as adding this porch will not create an excessive non-conformity.

The spirit of the ordinance is met as the applicant is adding to the home's value. She did not create this issue but must meet the requirements of the current ordinance.

Substantial justice is done as the the homeowner will be able to add the porch, add to the home's appearance and value, and enjoy the porch.

The values of the surrounding properties are not diminished. This would improve her structure, and enhance the neighborhood and her home's value while still leaving a front setback of about 60'.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. There is a special condition here as the setbacks were met when the residence was built but when the road was improved, it was widened and the City created the non-conformity. She now cannot add to the home without being in violation of the setback.

This use is reasonable as a farmer's porch in the RRII Zone is appropriate and reasonable.

Suzanne Perley seconded the motion.



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Roland Maheu asked if we can make it a condition of approval that this an open porch. If this is ever intended to be enclosed permits must be pulled.

O. Gibbs said she felt that stating "farmer's porch" covered that but agreed to add the language stating open porch. S. Perley seconded that and all voted in favor, 5-0 (S. Bogert, S. Perley, O. Gibbs, R. Maheu, G. Ober).

Application # 2015-0023
D Rock

MSL # 345-177-29
43 Paugus Street

RG Zone
Variance

The applicant is requesting a variance from 235-35 (A) in order to extend an existing entry/porch. The addition will not protrude any further into the front setback than what currently exists. It will run the length of the house, plus an addition 4'.

Applicant: Diane Rock and Jim Brown appeared for the application. D. Rock said that they want to improve the house. It is a 40's house with a dilapidated entryway. This won't extend out any further than the existing structure and will also will fix an existing drainage issue.

Board: Roland Maheu asked if this will be constructed in the same footprint and J. Brown said yes, except for the small area on the side. The front is currently enclosed, and is a mud room. It is not very large, and they want remove that and put on the porch.

Gail Ober asked if the window is being blocked off and D. Rock said that their submission # B shows the representation of the porch. O. Gibbs said the windows will remain. J. Brown said that only a portion of the porch will be covered by a roof, and the rest will be trellised. S. Bogert asked if they are planning to enclose this and was told no. He asked if the trellis will continue on and was told yes so they will be able to access the house from the back. There will be a slightly different pitch to the roof. They will remove the existing enclosed entry way.

Public: No one spoke for or against the application.

There were no further comments so S. Bogert closed the hearing to the public.

Board Discussion: Orry Gibbs said this will be a huge improvement to the home. G. Ober asked asked if there is a list of abutters as she didn't receive it. S. Saunders said that the public notices did go out so one had been provided.



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Motion: Suzanne Perley moved to approve application # 2015-0023 for the variance to permit the property owner to extend an additional 4' into the front setback.

This won't be contrary to public interest as adding the porch is a permitted use. This won't extend any further to the setback than the current entry and will add just 4' additional feet in the setback area.

Substantial justice is done as this makes the home consistent with other properties in the area. The benefit to the applicant outweighs any negative impacts to the public.

The spirit of the ordinance is observed as permitting this will improve the property and bring it more into line with others in the neighborhood.

Property values won't be diminished. The home is a 1940's construction and the non-conformity exists. The home owner needs to improve this portion of the house and fix an existing water issue.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. This won't alter the essential character of the neighborhood or threaten the welfare, or safety of the general public.

The use of a porch is reasonable and is permitted in the zone.

The board added that this is to be an open porch and not be enclosed.

Roland Maheu seconded and all voted in favor of approval, 5-0 (S. Bogert, S. Perley, O. Gibbs, R. Maheu, G. Ober).

The following hearing asked to be moved to the October 19th, 2015 meeting in order to be heard by a full board.

Application # 2015-0024
L Rubin

MSL # 274-178-17
90 Paugus Park Rd

RS Zone
Variance



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

Application # 2015-0025
MT McCarthy Realty

MSL # 450-54-63
161 Court Street

BCI Zone
Variance

The applicant is requesting a variance from 235-58, Table of Sign Regulations, in order to add a third sign, and an additional 13.3 SF. The third sign will be on a freestanding sign which is to be erected on the property. The tenant currently has 2 signs and 140.22 SF.

Applicant: Mike McCarthy appeared. He said that he will be erecting a new pylon sign. They got a variance for Dollar Tree's signage last month. This is for additional signage for Advanced Auto. They have 140.22 SF now, and they want to add another 13 SF so they can be added to the new pylon sign.

This won't be contrary to the public interest as there is a sign that identifies other businesses, and they just want to add their name.

The spirit of the ordinance is observed as the signage identifies all of the businesses located in the plaza. The public will be able to identify a business as they will see the sign before they turn.

Substantial justice is done as the signage will make it easier to identify the businesses located there. Substantial justice is done for the property owner as it allows the plaza to have full tenancy which helps the public, the property owner, and the City.

Values of the surrounding properties will not be diminished as the sign will exist and will be more attractive with the panels filled and be made more useful by identifying the current businesses in the plaza.

Literal enforcement of the ordinance would result in a hardship to the tenant as they need signage to grow their retail business. The public faces a hardship if this isn't permitted as this identifies the businesses and enables the public to locate them.

The use is reasonable as this is only a small increase of 13.3 SF over that they currently have.

R. Maheu asked if this will be lit and was told yes, inside and with LED bulbs. M. McCarthy said this is softer lighting.



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G. Ober clarified that a person is coming down Court Street towards Laconia has no sign on Fair Street to let them know where to turn into the property. She feels that would be a safety issue that this sign would take care of.

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

There were no further comments so S. Bogert closed the hearing to the public.

Board: O. Gibbs said this sign gives people coming down the street a heads up to where the entrance is.

G. Ober said she feels not permitting this sign would be a hardship.

Motion: S. Perley moved to approve Application # 2015-0025 in order to allow Advanced Automotive a third sign and an additional 13.3 SF of signage.

The sign is not contrary to public interest as the location of the business is off the street and the signage is needed to direct people.

The spirit of the ordinance is observed as this will safely direct people into the business.

Substantial justice is done as the sign doesn't threaten public safety health, safety or welfare. Signage is necessary to conduct business so this is an appropriate use.

Property values won't be diminished as this is in keeping with other businesses and signs in the area.

A hardship exists as the business is located back from the street and it needs visibility. This small sign addition permits the public to safely enter and exit the property.

The sign is reasonable and permitted in the zone.

G. Ober seconded and all voted in favor of approval, 5-0 (S. Bogert, S. Perley, O. Gibbs, R. Maheu, G. Ober).

Application # 2015-0026
J Green

MSL # 225-248-8
527 Weirs Blvd

CR Zone
Equitable Waiver



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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.

Applicant: Jeff Green is the surveyor who found the problem. The garage was new construction. He was called to determine how close to the boundary line this was located. There is 9.6' to side setback.

He found the garage was erected. The walls and roof were on when the question arose. He measured and found it was located 9.6' away. This is a condo unit. This was marked with string and stakes, and the actual corner marker was found under bark mulch. This area doesn't affect the use of the property or of the neighbor's property. The cost would be prohibitive. The entire garage isn't the issue, just a small area.

Steve Bogert asked S. Saunders why this isn't a variance and S. Saunders read the equitable waiver criteria. She said this comes into play when it isn't necessarily an illegal issue. The owner felt it was being done properly and found out later there was an error made. Gail Ober asked if this were truly an accident and S. Saunders said the building inspector went out more than once to check it, and it is very hard to tell, which is why we required the survey. It is only 4 inches off.

Roland Maheu asked why this wasn't discovered before this was constructed? He was told that the land had been previously surveyed. The applicant laid string, and felt this met it. Jeff Green said he found the grade stakes, when he was called in after the fact. The original pin was about half a foot away. They had assumed that the grade stake they found was the boundary line. As soon as they found the issue, he surveyed the area and found the error. The walls and roof were already done when he verified this.

R. Maheu asked if the building inspector was involved from the start and was told yes. S. Saunders said this was very close, and on the plan we received it met the 10' setback. The first inspection we did was for the footings.

Gail Ober asked about the complaints and was told that Lanterns on the Bay made the complaint initially, as they thought it was too close.

S. Perley asked how long it has been there. J. Green said he went out in August. S. Bogert asked if construction had stopped, and S. Saunders said their lawyer called her today and said that the construction went on. She does not recall giving them permission to proceed. If we



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did give them permission they would have been told at their own risk. The foundation and framing were done. We did not issue a cease and desist since they applied to come to the ZBA.

S. Bogert asked if they knew they were in violation and S. Saunders said yes. Our only inspection was for rebar. The building inspector said the framing was up, too.

R. Maheu asked if the building inspector signed off on this and S. Saunders said yes, the plan said they met the setback. S. Perley clarified that this is only .5 in the setback and was told yes.

G. Ober asked how far they were in the process and J. Green said he went out in August. He saw a roof, plywood, and walls. R. Maheu asked if this affects anyone's view of the lake and S. Bogert said the view doesn't come into play. R. Maheu said that could affect property taxes. O. Gibbs said you need to have an easement in order to have control over what is built on someone else's property.

G. Ober asked O. Gibbs for clarification on a legal term. O. Gibbs said that any official notification given in writing is considered legal.

G. Ober said she has a problem thinking that the applicant knew about the problem and went ahead with construction. J. Green said this was done in good faith. It was not intentionally done. The foundation and walls were up, so the only thing left would have been the siding. This is only one small corner and would still have been just the siding.

If the board doesn't agree with this equitable waiver, they could ask for a variance or could cut the corner off and make an odd shaped building. It is only 5" on the corner. Any work that would have continued would just have been the siding.

S. Bogert asked why they placed this so close to the line and was told if you look at the property there is a bank that goes up behind the garage. It was being squeezed into the area and the pavement was already there for the garage. There are bushes, grade stakes, and mulch which was placed over the line from the condo, and lots of issues that hid the true property line. This is a tight area.

Public: Regina Nadeau appeared for Lanterns on the Bay. She said they want the board to deny this request. The applicant didn't do their due diligence. The construction was not done



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when the error was discovered, and they are still having issues with the boundary line. It would have been cheap to fix at the time of discovery.

She passed out information to the board. J. Green asked if he could have a copy as well.

S. Bogert asked if there is more to this than meets the eye. It appears that there is more to this than the 5". It seems a lot that the applicant has gone to the expense of retaining a lawyer over 5".

He was told that their driveway is adjacent to the condo. In past discussions with the landowner about driveway, there was a satellite dish that had to be moved. They had to pay a surveyor for the line to be marked so as to prove they were not doing any encroaching. The property owners knew a survey had been done for the prior owner. That shows the line. Their survey shows the granite bound, the iron pin, and lines.

She went over the time line and said that the applicant was aware of this. They didn't do basic due diligence here.

She said that substantial construction was done. She read from the letter written by S. Saunders on this. They went to Code the week before the permit was done as they saw the stakes in the ground and thought they were too close. The building permit was issued on a Thursday. R. Nadeau said they spoke to Code on Friday, and they went out on Monday to inspect this. On the 17th the foundation was poured. Lumber arrived on the 20th, and they were notified on the 20th by phone there was an encroachment issue. The wood was gone on the 21st. There were no roof, walls or enclosures at that time.

They were supposed to submit a survey by the 24th, but didn't do that until the 27th. She said to look at the packet she submitted and look at the pictures from the 21st and 23rd and see what it looks like. On the 28th the roof and walls were done, then the survey was submitted and they found the encroachment. She doesn't feel this meets the spirit and intent of the equitable waiver. This is pushing it to the max.

The statute says reasonable inquiry. There was not substantial completion at that time. Was there a potential remedy back then? Yes. They could do it now – just shave off the corner of the house.

This is an extension of a nuisance that began several years ago. Two surveyors located it. She feels Mr. Green told them what he saw when he got there. But it was already built.



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She said that municipal estoppel is the term Gail Ober was looking for. The building inspector did nothing wrong based on the plan he was presented. It showed the proper setback. They just didn't build what they said they would.

S. Bogert asked about the date on first picture, and was told it was 8/16. He said he is looking at the sequence, when was this done. R. Nadeau said they got a formal notice when the foundation was in.

R. Nadeau reminded the board that if this is approved this becomes a conforming structure. They could apply for other uses such as in law apartments, etc. and those would be legal. They were told multiple times they were doing this at their own risk.

R. Nadeau said she feels that estoppel is not appropriate here as Code didn't make an error.

Glen Hogue stated he is the property owner and that this is the last place he wants to be. He said he had originally asked the builder if they could do a 15' setback but was told they would have had to cut more which is why they put it right on the property line.

He said they are finally investing back into the property, and they want to move here within the next 5 years. They are trying to bring this in line with the area. He said he put his trust in the builder. They did dig out some of the hill.

S. Bogert asked why things continued after they were noticed. G. Hogue said he called the builder, and was told it was close but that they should be all right. He also left a message for S. Saunders. He said that he left it in the hands of the builder, as he is the professional. He trusted him and he has the license.

R. Maheu asked G. Hogue why he didn't cut the corner and again he said that the builder spoke with everyone, and said it wasn't an issue. He said he wasn't in a rush, there was no time line for this as this is for the future. They want to use this for storage now and renovate the cabin and make it year round. He is not happy with the builder at this point. This is Phase 1 in their renovation process.

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

Jim Green said he didn't have the pictures when he spoke. After looking at the pictures, he said he applied on the 18th, and did the survey on the 23rd. He was there when the sides were



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on. This is a minor infringement and is not over the boundary line. This is only 9.6' instead of 10' and was not intentionally done.

S. Bogert closed the hearing to the public at 8:30 pm.

G. Ober asked if we should discuss estoppel with our attorney.

S. Perley said she didn't see the site, and wanted to know if the other members wanted to visit the site as this is such a small intrusion. O. Gibbs agrees. She said that sometimes helps to put things into perspective.

O. Gibbs said Code relied on the plan which was submitted, which was ok. When it was staked the error was made. It was very slight so was not noticed by the inspector initially. But when informed there was a problem, she feels the builder should have stopped until the issue was settled. They were told to proceed at their own risk.

S. Saunders said they were told in the letter, if they continued between the date of the letter and the survey, then he was at his own risk. Until the survey was done and the violation showed there was an issue, he then proceeded at his own risk, until the violation was proven, and then he had to cease and desist. The ZBA information was received on 8/21.

S. Perley said she would really like to see the area and take a look at what is around this. If we continue this we can talk to the attorney regarding estoppel.

R. Maheu said he doesn't feel a site visit is needed to know where the line is; we know this is in violation. O. Gibbs said she agrees with that but wants to see what impact this has on the neighbor, and the area. There might be shrubs, or other issues that will help us to make a more informed decision.

R. Maheu said the building was put up in a week. Information was put out in that time, and they knew there was an issue. The owner just said he talked to the builder and discussed this with him. He feels we should vote this evening.

S. Bogert asked the other members how they want to handle this. We can continue the hearing and do a site visit or vote tonight. S. Perley and O. Gibbs said they would feel comfortable doing the site visit, and R. Maheu and G. Ober said they would prefer to vote this evening. S. Bogert said he is in favor of a site visit.



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S. Saunders clarified that she is to ask legal counsel if estoppel is to be taken into consideration here and was told yes.

G. Ober and O. Gibbs will not be here at the October meeting. S. Perley asked if the other members are here in October can they participate and was told yes. S. Bogert said he isn't comfortable with using a short board on this. O. Gibbs said she agrees with him.

R. Maheu said he wants to vote on this tonight. S. Perley said she has additional questions on the City's role and feels the impact is so minor she doesn't understand the real problem here. She wants to see the impact to understand the issue.

R. Maheu said a variance sets a precedent, but would this Equitable Waiver? S. Saunders said each application is looked at on its own merits. R. Maheu said if someone comes in for something similar, it would be logical to think the same decision would be made. O. Gibbs said not necessarily, as each application is unique. It could be in the same zone but the neighborhood could be so different, that one is appropriate and the other is not.

R. Maheu said the setback line is there and the building is over that line. G. Ober said the property owner said this is not urgent, so could we continue this until the November meeting.

S. Bogert re-opened the hearing to the public at 8:50 pm to ask the property owner if they could do a site visit before the November meeting on November 16.

It was determined that it would be dark then and a 1 pm site visit was suggested. The board and property owner agreed on that time so site visit will be held on November 16, 2015 at 1 pm for the board, property owner, and abutters if they want to attend. It will be noticed as a public meeting.

S. Bogert re-closed the hearing to the public.

Motion: S. Bogert moved to continue application # 2015-0026 to the meeting of November 16. A site walk will be held at 1 pm which will be posted. They will meet at the site. The meeting will be open to abutters. We will reopen the public portion of the meeting as well. S. Saunders will ask question regarding estoppel of legal counsel.

G. Ober seconded, and all voted in favor of the continuance and site walk, 5-0 (S. Bogert, S. Perley, O. Gibbs, R. Maheu, G. Ober)



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The following hearing was continued until the October 19, 2015 meeting.

Application # 2015-0027
E. Tarbell
Variance

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.

- I) NEW BUSINESS:** G. Ober and O. Gibbs will both be out in October. O. Gibbs said she will try her best to get back in time for the meeting.

G. Ober said she wanted the members to know that she was contacted by the attorney for Bridgette Leroux, of North Street, regarding the suit filed against her and she filed a statement, and will be testifying on her behalf. If this does go to trial, there is a possibility we could all be subpoenaed. She saw the complaint. She said that Kate Geraci also made a statement as she was in the courthouse the same day.

S. Saunders said she had some information regarding signs and we will probably discuss this in December. There was a new case regarding signs. She went to a briefing on this last week and this renders significant portions of our sign ordinance illegal. It has to do with contents of signs.

It had been determined that a political sign could be bigger than a special event sign, and the Court said they could not be regulated by the content. We have development property identification, property directional sign, and subdivision requirements in place. We will have to look at this again, placement size, lighting, not content.

The case was Reed vs The Town of Gilbert Arizona and it was heard by the Superior Court.



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II) OLD BUSINESS:

III) OTHER BUSINESS:

IV) ADJOURNMENT: The motion to adjourn the ZBA meeting was made by S. Perley and seconded by R. Maheu with all voting in favor, 5-0. The meeting adjourned at 9:15 P.M.