



**ZONING BOARD OF ADJUSTMENT**  
**MINUTES MEETING OF JANUARY 19, 2016**  
**APPROVED MEETING OF FEBRUARY 16, 2016**  
**SECOND FLOOR OF CITY HALL**

**CALL TO ORDER:** Steve Bogert called the January meeting of the Laconia Zoning Board of Adjustment to order at 7 pm and welcomed everyone to the meeting.

**ROLL CALL:** Steve Bogert, **Chairman**; Suzanne Perley, **Vice-Chair/Secretary**; Orry Gibbs, Mike Foote, Roland Maheu; Kate Geraci, **Alternate**; Gail Ober, **No Response**

**ABSENT:** Gail Ober

S. Bogert let the public know that Orry Gibbs would be recused from the hearing for 190 Paugus Park Road (Application # 2015-0044) and Kate Geraci would be seated in her place.

Chris Duprey appeared for the following extensions:

**EXTENSIONS:**

<b>Application # 2009-0027</b>	<b>MSL 130-234-001</b>	<b>SFR Zone</b>
<b>Akwa Waterfront, LLC</b>	<b>Scenic Road (Fletcher Lane)</b>	<b>Special Exception</b>

The applicant is requesting an extension for the use originally granted to permit Multi-Family structures in this zone. The requested date would be July 20, 2016.

<b>Application # 2009-0029</b>	<b>MSL 117-234-001</b>	<b>SFR Zone</b>
<b>Akwa Vista, LLC</b>	<b>664 Scenic Road</b>	<b>Special Exception</b>

The applicant is requesting an extension for the use originally granted to permit Multi-Family structures in this zone. The requested date would be July 20, 2016.

<b>Application # 2009-0030</b>	<b>MSL 130-234-001</b>	<b>SFR Zone</b>
<b>Akwa Waterfront, LLC</b>	<b>Scenic Road (Fletcher Lane)</b>	<b>Variance</b>

The applicant is requesting an extension for the use originally granted for height in this zone. The requested date would be July 20, 2016.

**Applicant:** Chris Duprey appeared for the applications. He let the board members know that the Planning Board has already extended their approval through October of 2016. Since they were last before the ZBA there is new progress on developing Spindle View. They have

completed one building and the second is almost done. They are looking to break ground on the last 2 buildings early in the spring.

This was the Ortolani and Gallagher properties, which they bought about a year ago. Those were the bridging properties between all of these parcels. They are very interested in moving forward with this project. This is contingent upon finishing Spindle View and some sales on Blue Gill, which was completed in June.

Nothing significant has changed in the area or with abutters and they meet the requirements in the submittal. The last extension request has not expired.

**Motion: 2009-0027:** S. Perley moved to approve the extension as they meet the criteria. Nothing has changed and the date has not yet expired. This will be extended to July 20, 2016. O. Gibbs seconded and all voted in favor, 5-0.

**Motion: 2009-0029:** O. Gibbs moved to approve the extension as they meet the criteria. Nothing has changed and the date has not yet expired. This will be extended to July 20, 2016. R. Maheu seconded and all voted in favor, 5-0.

**Motion: 2009-0030:** S. Perley moved to approve the extension as they meet the criteria. Nothing has changed and the date has not yet expired. This will be extended to July 20, 2016. O. Gibbs seconded and all voted in favor, 5-0.

**MINUTES:** The minutes from the ZBA meeting of December 21, 2015 were discussed. The motion to accept the minutes as written was made by M. Foote and seconded by R. Maheu with all voting in favor of approval, 5-0.

**CONTINUED HEARINGS:**

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

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.

**Applicant:** F. Moeckel appeared for the proposal. S. Bogert said when he was last here, the parking issues were to be discussed. F. Moeckel said he spoke with staff, and confirmed with staff and Attorney Mitchell this evening what the variance would be for and we can proceed with the recommendations.

F. Moeckel said he would like staff to read that into the minutes and S. Bogert said he feels that the applicant should read them in.

F. Moeckel said he submitted variances from the parking ordinances. There are 5 variances from the 5 articles addressing parking. He had requested a blanket variance for all initially

but staff indicated it was not appropriate to give the blanket approval. 235-45, 46, 47 48, 50-1.

He no longer is requesting the blanket approval from 235-45, as it is unnecessary from a code prospective. They are asking for a variance from 235-46 B, for the number of spaces; from 47 A, dimensional requirements; from 48 A (safety), B (drainage) and C (striping); from 48 E 1(setbacks); from 48 G 1 (landscaping); and from 235-50.1 F (drives accessing the street).

F. Moeckel said this is an historical lot; a pre-existing non-conforming lot. This lot has unique characteristics. The topography is street level on the east side but falls off on an angle to the west. There is not enough space without leveling the entire lot to comply with the ordinance. The building is on the northerly portion of the property, which doesn't allow proper circulation. He said he feels that the ordinance is feasible for a new project and a blank canvas. There is not enough space here to comply, and the topo makes it impractical to put into place.

He stated that he wants all of the prior evidence from the previous meetings referenced by the board for this meeting, as well.

He said we discussed how this won't detract from other properties in the neighborhood. There are already single family and multi families located here. He said that the abutter from the previous meeting seemed happy with how the property has been improved. These variances are the next piece in the process.

He asked if granting this will be contrary to public interest and said that the neighborhood should remain the same; the structure and out-structure have been improved already. There will be no new impervious surface. They will maintain the existing parking scheme, with no additional paving. They will maintain the green space. They will maintain the neighborhood.

Historically there have been 4 units in the main structure. They will be adding one unit and 2 more cars. There are 5 spaces on the east side, which are stacked - one double stacked space for each unit.

He said he will rest on the prior submissions to the board and to take the previous information into consideration.

S. Perley said she is still a bit confused on the initial request. F. Moeckel said when he was here initially they had a dialog on grandfathering. In discussion with staff and the city attorney they agreed that the applicant would proceed on a certain course. The ZBA granted the special exception for the multi-family use at the last meeting. He is here now for the parking issues.

S. Perley said the granting of the special exception made the 4 units legal. S. Saunders said that they also need the variance for density.

F. Moeckel agreed that they also need the variance from Section 235-33, for the density requirements which he went over in December.

S. Perley asked if there is a need for the 5<sup>th</sup> unit.

S. Bogert asked if there are any further questions and to remember that this is all part of the same variance request.

**Public:** Paul Toutaint stated that he is an abutter to this property and that there is currently not enough parking here. There are 7-8 cars here now. There is no place for visitors to park unless they park on the sidewalk. There is not enough parking on Baldwin Street now and it has been that way for some time. He said it is too crowded here now. There are car doors slamming day and night. He said he is unsure of where they are but that it is very noisy here now.

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

S. Perley asked F. Moeckel to address the hardship issue as she is unsure of why they need this.

F. Moeckel said that the test is not a question of why you want it. The legal test is that there is no fair and substantial relationship between the ordinance provision and the specific application of the provision to the property.

O. Gibbs asked him to explain, owing to the special conditions of the property, and their application, what those conditions are.

F. Moeckel said this lot was created long before zoning was adopted. It existed in the late 1800's. The structures, both the main dwelling and the barn, existed before the ordinance existed. The property just cannot comply with a lot of the ordinances. That makes the property unique.

There are the physical characteristics as well. Remember the dimensions of the property. This slopes down to the west. There is a retaining wall on the northerly portion of the property. Some of the adjacent parcels don't have the same topo as this lot. The only way to put the new apartment in the existing building is to ask for relief from the ordinance. The first zoning ordinance required .05 acres for every multi family unit so it would have complied then.

Due to the location of the out-structure, the only way it can be converted to an apartment is to get the variance. He has asked the board to reflect upon the fact that since the 1940's that there has been 4 units there. This structure exists now. If they weren't asking for the 5<sup>th</sup> unit the parking would not come into play.

The use of multi-family is permitted in the district. They are only going from 4 to 5 units. This is just 1 additional unit. There is no intent to add more and the board can add a condition of approval that only 5 would exist. This is the logical move as the outbuilding is there. It is not in great shape, and the owner wants to improve the entire property which would help the entire neighborhood. The abutter said he is unsure of where the noise comes from.

He stated that Mr. Toutaint also had said at the last meeting that this property looks better, and that there are better tenants there now, too. This is the final piece. So the topography, the age of the structures and the dimensional situation are the conditions.

F. Moeckel reminded the board that the green space will be maintained. They can add a condition about organized parking. He said he hasn't seen the parking situation that the abutter has seen, but he isn't there all the time. They can put on a condition that the tenants must park in an orderly fashion. They have always backed out into the street.

**S. Bogert closed the hearing to the public at 7:37 pm.**

S. Bogert reminded the board that the variance is for density and parking, tied together. R. Maheu said he uses this street often and agrees that the parking in this area is terrible. He said that there are cars parked in the street, coming from Pine to Union, and you cannot pass because of the parking issues.

S. Perley said she doesn't see the need for the fifth unit; she is not understanding the hardship. She knows it has been there for some time, but the city has learned from its mistakes. She said she feels this might do more harm to the neighborhood than good.

S. Bogert talked about the diminished density of the square footage. This is a preexisting non-confirming lot. He gave the density of the lot, with 4 and 5 units. The structure does exist but this would further reduce the density, which is already non-confirming.

S. Bogert asked if people feel the density is at an acceptable level now. No reasonable alternative exists. They could not ever satisfy the requirements, even with the 4 units. He asked if adding the 5<sup>th</sup>, exacerbates the density issue.

S. Bogert said the codes are here not to hinder the development of a property. What is guaranteed is a safe, equitable use of the property, which isn't necessarily the maximum use. A lot of these buildings have been here since 1800's. The city has grown around these buildings. It has been pointed out how cramped the neighborhood already is.

M. Foote said he has been thinking about this for a few weeks. The density keeps coming back to him. Increased density isn't necessarily good in this area. He doesn't feel that the spirit of the ordinance is necessarily observed here.

S. Bogert said 9 portions of the code would not be observed here in order to achieve one item.

M. Foote asked when does the benefit of one outweigh the benefit of all? This is 50% beyond what the density permits. He said this is already non-confirming, why make it more.

He asked if the property values would be diminished and said possibly. There is no room for extra cars. This could be too much. S. Bogert said there is no evidence for or against this so we have to use our own judgments and life experiences in making a determination.

M. Foote said he doesn't find a hardship here. The property has been brought into conformance as much as possible by acknowledging the 4 units. S. Perley added there is an alternative for the outbuilding; it could be used for storage. O. Gibbs said she agrees that there are other uses for the structure. The applicant implies that they won't be fixing the structure if they don't get this variance. There are alternative uses. It could be used for storage for each of the 4 units or as a garage for one of the units.

S. Perley said M. Foote outlaid a good motion for denial if we are calling for a motion.

**Motion:** M. Foote moved to deny application # 2015-0027. He said that the density and parking was outlined by the applicant at the beginning of the meeting.

The use is contrary to public interest due to density issues that already exist.

He does not feel that the spirit is being observed here. The property has been brought into conformance as much as possible with the acknowledgment of the four units and adding the fifth could cause harm to abutters and injure the public rights of others.

Substantial justice is not being done as the property is already non-conforming. There are alternative uses for the out-building. This approval would make it more non-conforming and a lot of ordinances would be required.

Would this be detrimental to property values? We aren't sure but there would be increased parking, and additional traffic, which could be detrimental. There is no unnecessary hardship, as this is already non-conforming.

He is unable to find a hardship as there are alternative uses for the existing out-building.

R. Maheu seconded, with all in favor of denial, 5-0.

**The hearing was over at 7:50 pm.**

**NEW HEARINGS:**

<b>Application # 2015-0041</b>	<b>MSL # 22-311-15</b>	<b>RRI Zone</b>
<b>J. Prowse</b>	<b>32 Dennis Avenue</b>	<b>Variance</b>
The applicant is requesting a variance from 235-19 (F) (2) (b) in order to add a small enclosed screened porch, which will infringe into the 50' shoreland buffer area.		

**Applicant:** Joyce Prowse appeared and said she is the owner of 32 Dennis Avenue. She has been here at the lake for 65 years. She wants to add a roof and screens to the area that her father constructed in the late 1950's. She obtained her DES permit based on their qualifications. They said she can go an additional 12' from the existing wall. She has been on the Concord NH Conservation Commission for 12 years.

When she went to the state, on October 19, 2015, she didn't know if the 12' would include the drip line or not. She got an amendment stating she could go out an additional 12 feet from the existing wall.

The house has been in the family for a long time. She wants to improve it, and said she takes pride in the property.

O. Gibbs said the pictures submitted were very good. S. Perley asked how far she was going into the shoreland buffer area and J. Prowse said that the original drawing showed 11', and she thought that included the drip line. The state said no, she could go an additional 12' not including the drip line. The 12' includes an existing cement pad.

J. Prowse said the existing cement patio is 8' and a few inches. She said from the dwelling wall, she is going out 12'. Some of the impact is already there. S. Perley referred to the language in the state permit.

M. Foote showed a picture and asked if that is where this will be built. J. Prowse showed where this would come out over the existing pad. They will put in pilings. S. Bogert asked about the roof line. J. Prowse explained that the screens will have vinyl separations that go up and down; it is called an Easy Breeze system. They will use the existing steps.

She wants to be able to use this area in the evening after the bugs come out.

**Public:** No one else from the public spoke for or against the application. The e-mail from the abutter was mentioned.

**S. Bogert closed the hearing to the public at 8:05 pm.**

**Board:** O. Gibbs said the abutter mentioned in their e-mail the run off and possible guttering. M. Foote said the comment on the down spout is good, and we can do a rain garden or something similar to mitigate the outflow.

R. Maheu said the application does mention the drainage, and that they will address that. O. Gibbs said the applicant also mentioned the existing hedge that will absorb some of the run off. S. Saunders said this is a small area but if the ZBA asks for a rain garden they could look at that.

**Motion:** S. Perley moved to approve Application # 2015-0041 so the applicant can construct a screened porch.

This won't be contrary to public interest as this is a reasonable enhancement of an existing use.

The spirit of the ordinance is observed as there is no substantial change in use to the property. DES approval has been obtained and the applicant has agreed to protect the shoreline during the construction process.

Substantial justice is done in granting the variance as this is a small addition. This will not become additional dwelling space.

Values of surrounding properties should not be diminished as this addition should have no effect on the surrounding properties.

Literal enforcement of the ordinance would result in an unnecessary hardship as the house was built in 1950 and the location of the dwelling on the lot makes compliance with the ordinance impossible.

The use is a reasonable one and permitted and is proper in its setting.

M. Foote seconded the motion.

S. Bogert suggested amending the motion to add that all aspects of the shoreline permit be followed and that a rain garden be looked at for the discharge of rain water.

S. Saunders said that gutters are not part of this so S. Bogert said to add that condition as well.

S. Perley agreed to the amended motion; M. Foote seconded that and all voted in favor of approval, 5-0.

J. Prowse asked about the guttering. She was not aware of the e-mail from the abutter and was given a copy of that. She said that rain currently runs off of the droop and drops off of the pad into the bushes.

S. Saunders said to call her at the office to discuss this.

**K. Geraci was seated as O. Gibbs recused herself from the following hearing.**

**Application # 2015-0044**

**MSL 300-178-002**

**RS Zone**

**J & M Sterner**

**190 Paugus Park Road**

**Variance**

The applicant is requesting a variance from 235-19 (F) (2) (b) in order to replace the existing structure. While the house will meet setback requirements it will encroach 10' into the shoreland setback, leaving a 40' setback. Approval has been received from the state.

**Applicant:** Pat Woods appeared for the applicants, who were also in attendance. He said that they want to replace the two structures, with a new house. The house will be within the setbacks, but the deck will go out 10' which would put it within the 50' front setback.

This is a unique property. He asked the board members to look at the existing condition plan. The shed is in the side setbacks, and the house is in the setbacks. The lot is a horseshoe shape. This is an unusual configuration. He passed out information on the property and a map.

The house that is being proposed meets the 50' setback but the deck infringes. P. Wood gave the board a copy of the deed with dimensions shown on the plan. They got the shoreland impact permit. This was reviewed by DES, and it was approved. A copy of the permit was included with the application. This was subdivided many years ago, that plan was also enclosed with application.

The house was built around 1930 and is quite small. It doesn't meet current code requirements. They want to upgrade the structure, which would meet current code requirements. He showed a copy of the building plans and said that many of these houses on Paugus Parka Road have been re-built. Many of them needed variances, often for the shorefront setback.

Originally there wasn't a 50' setback, so many of the homes are within that. This house won't be; just the deck would encroach. The state does distinguish between structures. The city ordinance does not. The state says any primary structure, so they permit an accessory structure in that 50'. The city doesn't. This is a seasonal camp and shed and the house would be a year round residence. There is 15.73 percent lot coverage now, and 25.19 is proposed. 30% is required by ordinance. Photos were attached.

The property owners talked with the neighbors, and there was no objections from them. The request is for the deck to be within 40' of the waterfront. The slope of the land is gradual, and the water is shallow here.

The proposal is not contrary to public interest. This shouldn't violate the basic zoning objectives. There is no threat to the public health, safety or welfare or other public rights. The location is appropriate.

We are talking about taking a 1930's seasonal camp and bringing it into current codes. This will be more energy efficient, and more functional. The drive will be porous pavement. The structure won't be out of keeping with the area, and won't interfere with any views. This would promote the general welfare of the public.

Upgrading the structure is in the public interest.

The spirit of the ordinance is observed as this proposal will not violate basic zoning objectives, nor violate health, safety or welfare of the general public. There will be no harm to the general public as the structure will be brought up to current codes and the applicant will be addressing drainage and control water pollution.

Substantial justice is done as any loss to the individual that is not outweighed by a gain to the general public is an injustice. This is consistent with the area's present use, which is residential. Many homes have already been replaced. There are unique qualities of the lot. This is currently a seasonal camp which will become a new house. Many others here have done the same thing, and many of those are quite large. Denying the variance due to the unusual configuration of the lot is not reasonable.

Property values will not be diminished. P. Wood said he took a quick look at the tax records, average one way is \$121,500, and the other way is \$100,000. This is valued at 46K, this will go up and bring it into line with the others.

Literal enforcement of the ordinance would result in an unnecessary hardship. If you look at the lot, the current structure is 10' closer than the ordinance allows. P. Wood said he feels a denial is an unnecessary hardship.

There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application. The ordinance wants a property owner to take care of their property and upgrade when they can.

This is a permitted use and should be beneficial to the community and to the neighborhood. This is in keeping with the ordinance, as it would be hard to upgrade and fit into the neighborhood without this variance.

This is a reasonable use and fits into what has been happening in the neighborhood. They are bringing this structure up to current codes. It will be a modest structure which will fit into neighborhood.

S. Bogert said the deed mentions a 30' ROW and P. Wood said that is actually for Paugus Park Road itself. He said to look at the map of the original subdivision which shows the original ROW which is now Paugus Park Road. There is no encumbrance on the property.

S. Bogert mentioned the statement about the uniqueness of the property and the mentioned horseshoe shape of the shorefront. He said that all of the properties here seem to have that characteristic. P. Wood said that some do have some indentation, but not to this extent. S. Bogert asked if the depth of the horseshoe is what makes this unique and P. Wood replied yes.

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

**S. Bogert closed the hearing to the public at 8:35 pm.**

**Board:** S. Perley said she has no issues with this. R. Maheu said Paugus Park Road is a changing road. Most of the older structures are disappearing and new ones are being built. He feels this is consistent with the neighborhood.

**Motion:** M. Foote moved to approve Application # 2015-0041. This proposal still leaves a 40' setback and State approvals were received.

He suggested we use the applicant's write up for the 5 criteria. S. Perley agreed and seconded the motion.

**1. The variance will not be contrary to the public interest.**

[I]o be contrary to the public interest, the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the

ordinance's basic zoning objectives. *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 105 (2007). In determining whether granting a variance violates an ordinance's basic zoning objectives, we look to, among other things, whether it would alter the essential character of the locality or threaten public health, safety or welfare. *Id.* at 105-06. Such examples are not exclusive. The requirement that the variance not be "contrary to the public interest" is "related to the requirement that the variance be consistent with the spirit of the ordinance." *Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 580 (2005). "The public interests are protected by standards which prohibit the granting of a variance inconsistent with the purpose and intent of the ordinance, which require that variances be consistent with the spirit of the ordinance, or which permit only variances that are in the public interest." *Id.* at 581 (quotation omitted).

*Nine A, LLC v. Town Of Chesterfield*, 157 NH 361, 366 (2008).

The authorization of the proposed variance would permit the design and location of a safe and reasonably configured residence. The location and size of the proposed house will not interfere with views by neighboring property and will replace an aging existing house with a new structure that meets current codes, is more energy efficient, and is considerably more functional for the 21<sup>st</sup> century. The variance would allow the applicant to obtain a reasonable use of a lot that is substantially smaller than currently allowed in a manner that adheres to the setback requirements for the primary structure but, because of the unusual configuration of the lot, encroaches somewhat into the shorefront setback.

Such an encroachment would not out of keeping with the neighborhood and would not interfere with any views from neighboring structures. A new residential structure that is built in accordance with current life safety, electrical, plumbing, and energy efficiency standards and requirements will better secure and promote health and the general welfare. In light of the unusual configuration of this lot, the "reference line" is about 7 feet closer to the proposed structure than it would be if the reference line were consistent with the deed description. The requested variance would not have a negative impact on the public interest in preserving and protecting the shorelands adjacent to Paugus Bay.

## **2. The Spirit of the Ordinance is observed because:**

The requirement that the variance not be contrary to the public interest is "related to the requirement that the variance be consistent with the spirit of the ordinance." *Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 580 (2005).

[I]o be contrary to the public interest . . .the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives.

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.

Another approach to [determine] whether granting the variance would violate basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare.

*Id.* at 581 (quotations and citation omitted).

The proposed variance does not conflict with the purposes and intents of the District and does not violate the basic objectives of the Laconia Zoning Ordinance. There would be no alteration of the basic and essential character of the neighborhood by the granting of the variance. Many of the properties on Paugus Park Road have been rebuilt and in many cases have done so with variances of one sort or another. The proposed construction will be similar in size to the rebuilt structures on many of those properties. The size of the proposed structure is well within the average sizes of both existing and new structures on Paugus Park Road.

The proposed structure will also provide for enclosed off-street parking rather than the less controlled parking situation that currently exists. The proposed new house will be within the small existing buildable area and only the proposed deck will be within the shoreline setback, although, as noted above, in light of the configuration of that shoreline, the reference line is substantially closer to the deck than it would be if it followed the deed description.

Among the purposes of the Shoreland Protection Overlay District are the "maintenance of safe and healthy conditions" and the "prevention and/or control of water pollution." The proposed residential structure will provide greater safety and health through the upgrading of the electrical, plumbing, safety, and energy efficiency of the structure. By establishing a dripline trench around the entire structure and by using porous pavers, roof and surface drainage from the proposed new structure will be even better controlled and maintained than is the case with the current structures on the property.

The proposed variance would be consistent with the spirit of the ordinance.

### **3. Substantial Justice is done because:**

Within the framework of this application, what is meant by "substantial justice?" According to Webster's, "substantial" means "not imaginary or illusory." A synonym would be "real." "Justice" is defined as "the quality of being just, impartial, or fair."

"Perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In Labrecque v. Town of Salem, 128 N.H. 455, 459 (1986), we also looked at whether the proposed development was consistent with the area's present use.

*Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 105 (2007)

Considering the unique qualities of this lot – its width, its topography, and the configuration of the shore frontage - the purposes and intents of the Laconia Zoning Ordinance to maintain safe and health conditions and to prevent and control water pollution and to reduce or eliminate flooding and accelerated erosion, will be more effectively met by replacing the current 1930 seasonal camp with a modern residential structure that meets current codes for life safety, energy efficiency, and plumbing as well as capturing and controlling roof and surface drainage. As noted above, the unusual configuration of the waterfront of this Lot puts the reference line substantially closer to the proposed deck than the deed description. In addition, the distance from Paugus Bay is effectively quite a bit farther from the proposed deck than the 50 foot setback from the existing reference line.

The proposed replacement of the seasonal camp with a modern residential structure is in keeping with the status of most of the properties on Paugus Park Road and is beneficial to the protection of the economic benefits that the scenic qualities of the shoreland present.

Denying the variance for the proposed deck in light of the unusual shorefront configuration would not be a reasonable trade-off for the substantial benefit the community and the neighborhood will receive by the new residential structure.

**4. The values of surrounding properties will not be diminished because:**

The upgrading of the residential structure on the Applicants' property will be in keeping with the overall appearance of the neighborhood and, as a new and much more valuable structure than the existing residential structure, will most likely enhance the values of the surrounding properties. Indeed, the assessed value of the building on this Lot is \$46,200. The average value of the six residential structures to the north of this Lot is \$121,500; the average value of the six residential structures to the south of this Lot is \$110,300. Leaving the seasonal camp on the Lot would more likely diminish the value of the surrounding properties.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because"**

**A. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:**

The proposal is to remove the existing seasonal structure and construct a new single-family residential structure. The Applicants' property is about 60 feet wide and 130 feet deep, according to the deed. However, because of the unusual configuration of the waterfront, the property is approximately 156 feet deep on the northerly side and approximately 154 feet deep on the southerly side with about a 30 foot deep cove or inlet that makes the depth of the lot approximately 123 feet in some places.

It is that horseshoe configuration of the waterfront that creates the hardship because the "reference line" for determining the required shorefront setback is actually considerably closer to the proposed structure than it would be even if the dimensions in the deed were held. The Applicants have proposed to construct a new residential structure on this small lot in such a manner that all of the primary structure will be within the setback requirements. Unfortunately, because of the configuration of the shorefront, the deck for the new house would be less than 50 feet from the reference line.

Even with a newer and larger structure, the total lot coverage being proposed – which includes the area of the proposed deck – will be only slightly more than the current lot coverage. If the reference line matched the deed, the proposed deck would almost meet the shorefront setback requirement. If the reference line were half of the distance of the two prongs of the horseshoe, there would be no need for a variance.

This is an interesting lot. The size of the proposed deck is not extreme and is in keeping with similar structures in the neighborhood. The proposed location of the deck will not be materially closer to Paugus Bay than structures on neighboring properties.

**(i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property:**

The Zoning Ordinance was adopted, in part, to promote good civic design and the appropriate use of land and buildings. Removing the existing seasonal camp and replacing it with the residential structure where proposed will be a better use of Applicant's property and is more in keeping with the neighborhood. Most, if not all of the residential structures on Paugus Park Road, have some sort of deck. The unusual configuration of the shorefront of the Applicants' property has created a reference line that is substantially closer to the proposed structure than the deed and the original subdivision plan show.

The Applicants' proposal is designed to do exactly what the Zoning Ordinance promotes –good design to use the Applicants' property in a safe and appropriate manner and to do so in a way that improves overall safety and does not disturb the neighborhood or the neighbors. Applying the shorefront setback requirement to prohibit the construction of this accessory structure does not serve the general purposes of the zoning ordinance.

**(ii) The proposed use is a reasonable use:**

The removal of the existing seasonal camp and replacing it with a modern residential structure is reasonable. Having a deck on the new residential structure is in conformity with the structures in the neighborhood and is a reasonable and appropriate accessory structure. The Applicants have designed and located the new residential structure in a manner to conform to the setback requirements. It is the unusual configuration of the shorefront that has created the difficulties and the need for the variance.

The proposed location of the deck will not have negative impact on the lot or the neighborhood. The proposed location is reasonable and safe.

S. Bogert clarified the portion submitted by the applicant meets the criteria for questions 1 - 5. All voted in favor, 5-0 and the hearing was over at 8:40 pm.

**O. Gibbs was re-seated as a full board member. (K. Geraci left the meeting.)**

The following two applications will be heard together and decisions made separately. Bill Philpot and Chris Albert appeared for the applications.

<b>Application # 2015-0042</b>	<b>MSL # 350-168-19 &amp; 20</b>	<b>RG Zone</b>
<b>KTM Properties</b>	<b>9 &amp; 17 North St</b>	<b>Special Exception</b>

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 6 units in two buildings. The lots would be merged and the non-conforming structures and parking would be brought into compliance with setbacks.

<b>Application # 2015-0043</b>	<b>MSL # 350-168-19 &amp; 20</b>	<b>RG Zone</b>
<b>KTM Properties</b>	<b>9 &amp; 17 North St</b>	<b>Variance</b>

The applicant is requesting a variance from 235-33 in order to replace 4 units with a total of 6 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.

S. Perley said that she didn't have the answers to the questions for the criteria for either the Variance or the Special Exception.

B. Philpot said they withdrew the previous application and re-submitted for 6 units. Chris Albert said the application was hand delivered and B. Philpot said the previous application was withdrawn, not amended, so the board needs the criteria to be submitted again.

S. Bogert said without those answers we must continue these two applications until the next meeting on February 16.

**The following three applications will be heard together and motions made separately.**

<b>Application # 2015-0047</b>	<b>MSL # 306-178-2</b>	<b>SFR/SPOD</b>
<b>Paugus Park Rd Realty Trust</b>	<b>274 Paugus Park Rd</b>	<b>Variance</b>

The applicant is requesting a variance from 235-19 (F) (1) (a) for the establishment of the vegetative buffer within 50' of the shoreline after the reconstruction project.

<b>Application # 2015-0048</b>	<b>MSL # 306-178-2</b>	<b>SFR/SPOD</b>
<b>Paugus Park Rd Realty Trust</b>	<b>274 Paugus Park Rd</b>	<b>Variance</b>

The applicant is requesting a variance from 235-35 (A), front setback, and 235-35 (B), side setback, to install a 10' x 15' shed in the setback area. They will reclaim 150 SF of pavement to avoid decreasing existing green space.

<b>Application # 2015-0049</b>	<b>MSL # 306-178-2</b>	<b>SFR/SPOD</b>
<b>Paugus Park Rd Realty Trust</b>	<b>274 Paugus Park Rd</b>	<b>Variance</b>

The applicant is requesting a variance from 235-35 (A), front setback, and 235-19 (F) (2) (b), waterfront setback, in order to add a second story to the existing footprint and add 96 SF over existing impervious lot coverage.

**Applicant:** Regina Nadeau appeared for the applicant. She said there are 3 separate applications as there are 3 components to the proposal; the relocation of the shed, the construction of the house, and vegetation of the waterfront buffer. The applicant spoke to the neighbor about the shed, and he has some concerns so they want to continue the shed variance, possibly for two months. That is application # 2015-0048.

They will just do applications 2015-0047 and 2015-0049 tonight. S. Bogert asked if they want the meeting of March 21<sup>st</sup> and R. Nadeau said she will contact the department about putting this back onto the agenda.

R. Nadeau said that the previous application was also on Paugus Park Road and there are similar issues here. This is also on Paugus Park Road. The house is a split level, 1.5 stories. On the westerly side Paugus Park Road is an easement that crosses this lot. Part of the lot is bifurcated by the road and is unusual. She showed the area on the map. This is a 2 bedroom, 2 bath house. There is a lack of space on the lot, and people are currently parking their boats, trailers, and sheds in the railroad ROW. This shed is located there and the railroad DOT is asking for everyone to move their things out of there. This will be handled at the next hearing.

They want to add another story to the existing footprint and an outside stairwell. The stairwell would be in the waterfront buffer but not in the side setback. This has almost no building envelope. There is a 25' setback from the edge of Paugus Park road and 50' from the lake. That leaves about 5' for the building envelope. There are 10' setbacks on both sides, and a 45' wide building, so the buildable area is about 5' by 45'. It is impossible to build anything with that configuration.

They are proposing to go up, which will not change the footprint of the existing structure. There will be no change to the impervious area. There is existing concrete on the south side, and the proposed exterior staircase would be situated over that. There is no great encroachment onto the road or other setbacks. There will be 96 SF over the existing impervious area.

They are required to re-vegetate. R. Nadeau handed out a picture which shows the property line with the fence, which was taken today. They are proposing vegetating an area along the house side of the fence with a 2' wide vegetated area. The plantings would be about 3' high. There is a very small yard here and the ordinance would require vegetation right up to the house. They are trying to make a good faith effort. She noted that they submitted one existing and proposed plan for all 3 applications.

They had planned to offset the 96 SF with the relocation of the shed. The reclamation of the pavement is tied to that application, 2015-0048. The "reclaimed pavement area" on the north side of the house was removed as part of the plan (and variance approvals) because that was a trade-off for the shed, the application for which is being continued.

S. Bogert asked who controls the vegetation within the 50', the state or town and S. Saunders said both. This request is for the city's language. The state's is different. R. Nadeau said she has not applied to the state yet but she will do that. This entire property is disturbed from sideline to sideline, and they are not increasing that. S. Saunders said she feels the state would want more tree types, while we want plants with deeper roots than grass to hold the earth in place.

**Public:** No one else spoke for or against the application.

**Board:** S. Perley clarified that we are doing applications 2015-0047 and 2015-0049 tonight and that 2015-0048 is moving. She was told yes and we need two motions.

S. Bogert asked about the vegetation buffer. Since they are putting a buffer in, do we need the application for 2015-0047 since they agreed to put it in and was told yes, as the ordinance says the entire 50' so they do need the variance. We have to ask for some sort of vegetative coverage. S. Perley said they are asking for a variance so wouldn't that eliminate this need and was told no, they are just giving us the 2' of vegetation. S. Bogert said we can add a COA.

They are adding another story, and the only lateral expansion is the stairwell. They are unsure if the state needs to approve the stairwell. The height will be under 30'. This is for the variance of both front and waterfront setback (2015-0049).

**S. Bogert closed the hearing to the public at 9:06 pm.**

S. Bogert said this approval is dependent upon DES approvals. The request for the vegetation is on 2015-0047 and 2015-0049 is the shoreland protection permit.

**Motion:** O. Gibbs moved to approve Application # 2015-0047 for relief from the requirement of the vegetative buffer.

Granting the variance is not contrary to public interest. It was agreed to use the responses to the criteria from the application as prepared by the applicant.

1. **THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST:** The interest of the public in establishing a vegetative buffer for purposes of improving water quality will not be affected by the project at hand, as the improvements have no impact area within 50' of the shore other than a positive increase in green space within the 50' buffer .
2. **THE SPIRIT OF THE ORDINANCE WILL BE OBSERVED:** The intent of the Ordinance is to allow reasonable expansion of non-conforming structures and uses while providing for adequate protection of water quality. The footprint of the shed will not be in the waterfront buffer. The single family dwelling will only increase by 96 square feet, will not be closer to the water, will not redirect or affect surface water patterns or treatment, and will result in a positive increase of green space by 150 square feet.
3. **SUBSTANTIAL JUSTICE WILL BE DONE IN GRANTING THE VARIANCE:** The City's interest in maintaining and promoting water quality will be preserved by the minimal changes to the site, while the applicants can make use of what little lakeside area they have between the house and the shore.
4. **THE VALUE OF THE SURROUNDING PROPERTIES WILL NOT BE DIMINISHED:** There will only be an increase in green space within the 50' waterfront buffer, improving the permeability of that area, thereby improving, if possible, water treatment on the lake side of the house.
5. **LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ORDINANCE WOULD RESULT IN AN "UNNECESSARY HARDSHIP"**

(A) The property is distinguishable from many neighborhood properties because the road bed is part of the lot, but subject to rights of others and it has only a 150 square foot +/- building envelope.

- i. There is no fair and substantial relationship between the goals of establishing a buffer to protect water quality and the minimal impact the project will have, as there will be less impervious

area within the buffer than previously existed; and

ii. The proposed use is reasonable as single family uses with reasonable square footage size are allowed within this zoning district.

(B) Owing to the unique characteristics of the lot, the lake side of the house can not be reasonably used if the applicant is required to establish a vegetative buffer in this area.

The applicant will also add the plan for the 2' vegetation along the fence and obtain the appropriate shoreland protection permit from the state.

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

**Motion:** S. Perley moved to approve application # 2015-0049 to add the second story and the 96 SF enclosed stairwell over the existing impervious lot coverage.

We will add the condition that this is subject to all of the appropriate shoreland permits being obtained. We will use the responses to the criteria from the application as prepared by the applicant.

1. **THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST:** The interest of the public in enforcing the front and waterfront setbacks under the Ordinance is to prevent overcrowding and safety issues with respect to the road, and to prevent unnecessary impacts on water quality adjacent to the shoreline. The proposal at issue will not bring the structure any closer to the road or the lake.
2. **THE SPIRIT OF THE ORDINANCE WILL BE OBSERVED:** The intent of the Ordinance is to allow reasonable expansion of non-conforming structures and uses. The footprint of the single family dwelling will only increase by 96 square feet, will not be closer to the water, will not encroach into the sideline setback, will not affect green space, and will not redirect or affect surface water patterns or treatment.
3. **SUBSTANTIAL JUSTICE WILL BE DONE IN GRANTING THE VARIANCES:** The City's interest in maintaining safe distances from roadways and reducing impacts on shoreline will not be impacted with the proposal, as none of the improvements will be closer to the road or shore than the existing single family dwelling. Limiting the owner's use of the property under those circumstances, where impacts are negligible, would be injustice.
4. **THE VALUE OF THE SURROUNDING PROPERTIES WILL NOT BE DIMINISHED:** The height of the structure will meet all codes, and the sideline abutters will not be impacted as the structure will not impact either sideline setback. The building will be brought up to code, making it safer for the neighborhood.
5. **LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ORDINANCE WOULD RESULT IN AN "UNNECESSARY HARDSHIP"**

(A) The property is distinguishable from many neighborhood properties because the road bed is part of the lot, but subject to rights of others and it has only a 150 square foot +/- building envelope.

There is no fair and substantial relationship between the goals of setting back from the road and the lake, to the applicant's desire to make improvements which come no closer to the road or the lake; and

ii. The proposed use is reasonable as single family uses with reasonable square footage size are allowed within this zoning district.

(B) Owing to the unique characteristics of the lot, it can not be reasonably used without encroaching into any of the three setbacks on the parcel.

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

**The hearing was over at 9:12 p.m.**

**NEW BUSINESS: Election of Officers:**

S. Perley moved to reappoint S. Bogert as Chair for 2016. O. Gibbs seconded and all voted in favor, 4-0.

O. Gibbs moved to reappoint S. Perley as Vice-chair and Secretary for 2016. R. Maheu seconded and all voted in favor, 4-0.

**OTHER BUSINESS:** There was no additional business that came before the board.

**ADJOURNMENT:** The motion to adjourn was made by M. Foote and seconded by O. Gibbs. The vote was 5-0 and the meeting adjourned at 9:15 pm.

**Respectfully Submitted:**

Kristine Y Snow  
Zoning Technician