



**ZONING BOARD OF ADJUSTMENT**  
**MINUTES MEETING OF**  
**FEBRUARY 16, 2016 – 7 PM**  
**APPROVED MEETING OF MARCH 21, 2016**

**CALL TO ORDER:** Steve Bogert called the February ZBA meeting to order at 7 pm. He explained to the public that we have a 4 member board this evening, which is enough for a quorum. An application would need at least 3 votes to pass and in this case, a 2-2 vote is considered a denial. If anyone wants to wait until the March 21<sup>st</sup> meeting, that option is available.

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

**PRESENT:** S. Bogert, Mike Foote, Roland Maheu, Gail Ober

**ABSENT:** Suzanne Perley, Orry Gibbs

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

**MINUTES:** The minutes from the ZBA meeting of January 19, 2016 were reviewed.

**MOTION:** M. Foote moved to accept the minutes as written with R. Maheu making the second. All voted in favor, 4-0.

**CONTINUED:**

**S. Bogert let the public know that the two applications for 9 & 17 North Street have asked to be continued until the March 21<sup>st</sup> meeting due to the short board.**

<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 the applicant would be permitted only 2 units. There are currently 4 units existing (on 2 lots). The grandfathering is unknown.



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**NEW HEARINGS:**

**Application # 2016-0001**  
**N & H Wright**

**MSL # 31-253-18**  
**78 Leighton Ave**

**RRI/SPOD**  
**Variance**

The applicant is requesting a variance from 235-19 (F) (2) (b) and 235-35 (A) & (B) in order to replace the existing structure with a new one which is more conforming. This will still infringe on the front setback and also the shoreland buffer

**Applicant:** Eric Buck, from Terrain Design, appeared for the application. He said they want to tear down the existing non-conforming cottage and build a new home which will be more conforming, although it will still infringe into the shoreland buffer and front setbacks.

The existing cottage is over the 50' shoreland buffer and the side and front setbacks. There is a small beach area, a shoreline wall, and existing landscaping. There is a non-conforming septic and currently no well. They use water from the lake for the cottage now.

They are proposing a complete tear down, a rebuild, with an attached garage. They are planning a new 2 bedroom septic system, and are reducing impervious coverage from 39% to 29%. The new structure will still fall outside of the side setbacks, and slightly in the front, as well as the shoreland. They are reworking drainage on the site. They will install a gutter system, and curtain drains. This will go into a bio-retention rain garden. The hard paved area will be pervious. He showed pictures of the proposal. The structure will be taller than what is currently there but meets the height requirements. There are stone walls on the site. There is no proposed reconstruction of the beach area and "seawall".

He said that they received approval from sub-surface at DES for the septic as well as approval for the shoreland for storm water.

S. Bogert asked about the septic and was told there is a new one designed, with a tank and leach field, which will be a chambered system under the drive.

S. Saunders asked how the pervious pavement works on top of the leach field and E. Buck said it is calculated to have the overload of the permeable. It has been accepted by the state.

R. Maheu asked if the new structure is bigger than the old and was told inside, yes, but the overall footprint will be smaller. They are going from 1.5 stories to 3. This is a tight neighborhood and this will be consistent with others in the area. Setbacks would constrict them to a 15' wide house.

G. Ober asked about the existing shed and was told it will be moved adjacent to the property line on the east nearer to Leighton Ave.



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S. Saunders said that the plans all show a 25' front setback but in this zone it is actually 40'. She also said the proposed structure is no closer to the road than they were originally.

R. Maheu asked what the hardship on the land is and was told this was developed prior to the current zoning being in place. R. Maheu said the city was here first, before the zoning laws went into effect. It is a non-conforming use of land, and it will still be non-conforming. E. Buck said the hardship is that there is not enough land to conform to the setbacks. S. Bogert said they are not going into any of the setbacks any more than what exists and E. Buck said they are decreasing those infringements as well as decreasing pervious, installing a well, and an up to date septic system. M. Foote said they are also improving the drainage from the roof into the rain garden.

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

**Board:** There were no further questions from the board.

**Applicant:** E. Buck said this is approved for a two bedroom septic. S. Bogert said there will be 2 bedrooms and asked about the layout. He was told that the basement space will be open – a game room with some storage. The bedrooms are on second floor, and the first floor is kitchen, dining, etc. There will be 2 full bathrooms. R. Maheu asked about the basement and was told it is built into the ground on Leighton, with a walk out on lake side. There is no bath in the basement.

M. Foote said that the shed is right on the property line, in the setback. S. Saunders said to make sure the variance covers the shed. E. Buck said that the shed is actually in better shape than the house so they do want to re-use that.

**S. Bogert closed the hearing to the public.**

**Board:** S. Bogert said R. Maheu brought up a valid point but we should look to see if there are more positives than negatives coming out of this. Yes, the structure is slightly out of the existing footprint but the setback infringements are shrunk. They are fixing a bad septic system. They are getting rid of run off and the fixed impervious surfaces are improved. He said he feels this is better use and the city will get more taxes from the improved property.

G. Ober said she is in agreement with him. She said she is a little troubled by the shed but feels the rest is better. She said she feels this is a real improvement to the area and that they have done a good job trying to stay within the original footprint. It appears to be a nice house.

R. Maheu said that the density of the area comes into play. The other houses conform as far as height but this will be taller. He said he feels there would be room for more people to come to the house, and where would they park. He said he feels this is a lot of house for this area.



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M. Foote said the impervious surface drops, and he likes the idea that they are updating the septic system. It will now be located away from the lake. The drainage update is good, and using the rain garden will clean up things. He said that while 3 stores is significant he feels this cleans up many existing issues. However he said that the shed should not be right up to the property line and asked if it can this be set back some, maybe 5' or so.

S. Saunders said that the house would meet the height restrictions but the building permit would address the height. M. Foote said the issues in the basement will stop any bedrooms being in the basement.

S. Bogert said he feels this is a two story house with a walk out basement. S. Saunders said we measure the average grade and we would verify issues at the building permit stage.

G. Ober said she agrees with M. Foote on the shed and asked if they can move it in some. S. Bogert said we can make that a Condition of Approval.

R. Maheu asked what the elevations are and was told 31' on the Leighton side, and 39' on the other and S. Bogert said that comes out to be the 35' so they should be ok. S. Saunders said we would verify that at the building permit stage.

**Motion:** M. Foote moved to approve Application # 2016-0001 in order to demolish an existing structure and construct a new residence that will be more conforming than the existing.

He said this won't be contrary to public interest as they are updating an older home on a challenging lot.

The spirit of the ordinance is observed as they are improving the neighborhood by adding a new structure and removing one that is in disrepair.

Substantial justice is done as they are updating an older building and creating something which is more in conformance with the ordinance.

The value of surrounding properties won't be diminished as the structure will be improved. This looks like a quality project, and it would aid the neighborhood.

The literal enforcement of the provision of the ordinance would result in an unnecessary hardship as the lot constraints would result in a house that could only be about 15' wide.

The use is reasonable and permitted in the zone.

He added a condition on shed, that it be placed at least 5 ft from the property line. He also said to add a condition that the height of the structure will be confirmed at the 35'.



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G. Ober seconded and the vote was 3-1, with R. Maheu voting against the proposal.

**Application # 2016-0002**  
**Belknap House**

**MSL 455-54-23**  
**200 Court St**

**C Zone**  
**Special Exception**

The applicant is requesting a special exception from 235-26, Table of Permitted Uses, in order to obtain the use of a boarding/rooming/lodging house.

S. Bogert said that additional documents were submitted this evening which did not allow time for the board members to review them. The board could either not accept them and continue on or continue the application until the next meeting.

R. Maheu asked what changes there were and S. Bogert said that we don't know since the board did not have time to review them. He said the board can accept this information or not, or muddle through.

M. Foote said he feels this is a fairly significant amount of reading material that was submitted. S. Bogert said this is a change of use, and he feels this is significant and he would like time to review the material. He said he feels he wouldn't be doing the city the best that he can if he doesn't review this information first.

P. Wood said this is basically an outline of his presentation. S. Bogert said this doesn't allow the proper time to review the documents. P. Wood said you don't need to read this ahead of time and it is his practice to submit the outline, which they are going to go over tonight.

S. Bogert said using that statement, you would not have to submit a completed application. P. Wood said this just goes through the questions in a little more detail, which he is going to do tonight anyway. S. Bogert asked if this is exactly the same and was told not exactly - this elaborates. P. Wood said the first one gives the citations, for example. This is like the prior applicant, who gave them photos of the structure. P. Wood said what he is going to talk about is what was submitted, with some additional information, so they can consider the bigger picture.

S. Bogert asked the board what they want to do and G. Ober said she feels the request for the Special Exception is complete. She said we can look at this two ways. She doesn't think this adds any legal information; she said she feels this is more like a power point submittal. She doesn't feel this changes the nature of the request.

M. Foote said there is a lot more information in the handout than what was in the application. R. Maheu said he feels we can proceed.



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S. Saunders said that their write up on the application says boarding/rooming/lodging house and does not mention the shelter so they could not consider that use this evening as the shelter was not noticed. She read the definitions.

P. Wood said that the shelter is permitted as an accessory use. If this is boarding/rooming/lodging house, with the accessory use of the emergency shelter, would that address the concern? S. Saunders said she thinks so as long as the primary use is the boarding/rooming/lodging house.

M. Foote asked where does the hostel fit into this discussion and P. Wood said that the closest definition they could find is boarding/rooming, lodging house. S. Saunders said we have no definition of hostel. G. Ober asked if there is a definition for emergency shelter and S. Saunders said yes, and read that.

She said that their write up did not say shelter. P. Wood said that has been the plan from the beginning. As a means of raising money to keep the shelter going, they wanted the use of a hostel in the summer.

**The board took a 5 minute recess at 7:50 pm so P. Wood could confer with his clients.**

P. Wood asked to look at the application. He said it says boarding/rooming/hostel and to house homeless families. He was told that under the zoning ordinance, there are different definitions for boarding house and emergency shelter.

S. Bogert said that an emergency shelter insinuates they aren't paying. Hostel is a paying use. Belknap house gets paid but not from the individuals per P. Wood.

P. Wood said that they can do the hostel portion and come back for the emergency housing, although he doesn't feel that serves a purpose, as they are going to hear the same thing, and receive the same information.

S. Bogert said he feels there would be more information to go through. P. Wood said that what he passed out doesn't change the discussion; it is basically the same information that he would be going over. It would be presented into the record. P. Wood said if he hadn't presented it at all, he would have handed out the photos in his presentation. S. Bogert said he didn't have the opportunity to go through and match things up with his ordinance.

S. Saunders said she feels the process point of view is only doing this as a boarding/rooming/lodging house because that is how this was presented. This was not advertised as an emergency shelter. This was not part of the application and was not noticed and she feels this could be overturned by the courts. We can deal with the boarding house tonight and move forward with the Special Exception that that tonight.



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P. Wood asked if he could amend the application and re-notice for the March meeting and was told yes. He said he will re-submit and be here for the March 21<sup>st</sup> meeting.

**Motion:** S. Bogert moved to continue the Application # 2016-0002 until the March 21 meeting so an amended application can be submitted. R. Maheu seconded and all voted in favor of the continuance, 4-0.

**Application # 2016-0003**  
**Zeng Realty Trust**

**MSL # 431-204-40**  
**62-64 Spring St**

**P Zone**  
**Special Exception**

The applicant is requesting a special exception from 235-26, Table of Permitted Uses, in order to bring this existing 3-unit property into compliance. The property has been used as a 3-unit residence for at least the past 14 years but City Hall has no record that it was ever made compliant with the ordinance.

**Applicant:** Phil Brouillard appeared for the application. He said that they reviewed the old tax cards, and found that even though the tax cards say this is a three-unit, it showed as a two unit.

He said this has been 3 units for some time – since before 1998. The tax card says 3 units and the owner purchased it as 3 unit.

He said that the use of multi-families are permitted with the granting of the Special Exception.

The requested use creates no traffic congestion or unduly impairs pedestrian safety. There is adequate off street parking. There are at least 8 parking spots.

The requested use does not overload any public water, drainage or sewer system, nor will there be any increase in stormwater runoff. The use is already there and nothing will be changing. There are 3 units now and they will continue to have 3 units.

The use creates no excessive demand on Fire or Police. It remains the same.

There are no special provisions set forth.

The requested use creates no hazards to health, safety or general welfare of the public and will not be out of character with the neighborhood.

The proposed location is appropriate for the requested use.

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



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He added that in regards to items B, C, F, and G, the proposed use has been there for over 30 years with no issues or problems. This is a fairly large lot for this area, .33 acres, with a lot of room for drainage, and an insignificant amount of lot coverage.

S. Bogert asked about the density and S. Saunders said he doesn't have enough but he isn't adding the unit; it already exists. She said this is basically housekeeping. This has been there for a very long time, and they are just trying to make this a legally permitted use for the records.

R. Maheu asked if the building is under renovation and is someone living there right now. P. Brouillard said he measured the parking spots, and didn't see any cars, but he wasn't there at night so he is unsure if anyone is living there now.

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

**Board:** M. Foote asked how this was discovered and was told Code did an inspection.

**S. Bogert closed the hearing to the public at 8:12 pm.**

**Motion:** G. Ober moved to approve application # 2016-0003. The use is permitted with the granting of the Special Exception.

The use creates no undue traffic congestion or unduly impairs pedestrian safety.

The use does not overload any water, drainage or sewer systems. There is no increase in stormwater runoff. There are no changes to these systems.

The use does not create any excessive demand on Fire, Police schools or solid waste as the 3 units already exist. There is no change to that.

There are no special provisions set forth in the chapter.

The requested use creates no hazards to health, safety, or general welfare of the public and will not be harmful to the use or out of character with the neighborhood.

The proposed location is appropriate.

The use is consistent with the spirit of the Zoning ordinance and with the Master Plan.

M. Foote seconded the motion.



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S. Bogert said he would like to add a Condition of Approval that no further additions to the property that will increase the living space, based upon the density issue, be permitted. S. Saunders clarified that to no more than the 3 units be permitted here and S. Bogert agreed.

G. Ober amended her motion to include the COA. M. Foote seconded that and all voted in favor of approval, 4-0.

**Application # 2016-0004**  
**Melhem Hachem**

**MSL # 329-168-49**  
**134 North Street**

**RG Zone**  
**Variance**

The applicant is requesting a variance from 235-35 (B), side setbacks, in order to erect a garage which would infringe approximately 2' into the side setback, in a zone where the setback is 10'.

**Applicant:** No one appeared for the application.

**Board:** The board agreed to move this to the March 21 meeting.

**Motion:** S. Bogert moved to continue the hearing until the meeting of March 21. R. Maheu seconded and all voted in favor of the continuance, 4-0. RM seconded, all in favor, 4-0.

**NEW BUSINESS:** There was no new business.

**OTHER BUSINESS:** There was no other business.

**ADJOURNMENT:** M. Foote moved to adjourn, with the second by R. Maheu. All voted in favor, 4-0, and the meeting adjourned at 8:20 pm.

**RESPECTFULLY SUBMITTED:**

Kristine Y Snow  
Zoning Technician



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