



City of Laconia
Zoning Board of Adjustment
City Hall in the Armand A. Bolduc Council Chamber
Accepted April 16, 2019

3/18/2019 - Minutes

1. CALL TO ORDER

Meeting was called to order by Chair S. Bogert at 6:34 PM.

2. ROLL CALL

Present: Steve Bogert; Mike Foote; Orry Gibbs; Michael DellaVecchia (6:41PM); Roland Maheu

Absent with Notification: Suzanne Perley

Michael DellaVecchia was seated as a voting member.

3. RECORDING SECRETARY

Karen Clark, Zoning Technician

4. STAFF IN ATTENDANCE

Dean Trefethen, Planning Director; Rob Mora, Assistant Planning Director

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

5.I. February 19, 2019 ZBA Minutes (PDF)

M. Foote made a motion to accept the minutes of the February 19, 2019 meeting as presented.

R. Maheu seconded the motion.

All in favor (4-0)

6. EXTENSIONS

7. CONTINUED PUBLIC HEARINGS, CONSIDERATION AND POSSIBLE VOTE Note: The Purpose Of This Agenda Section Is For The Board To Continue The Public Hearing For The Applicant And The Public To Provide Input. The Board May Also Deliberate The Application, Decide And Conduct A Final Vote At This Time.

S. Bogert addressed the applicants, He informed that member O. Gibbs would be recusing herself from the applications for 111 Church St and both Sweetbrier Way applications. He explained that this would leave three members to hear and vote on the application and that a 3-0 vote would be needed to pass. The applicants were offered the opportunity to be heard or to continue until the next meeting when there may be a full board. The applicant's agent for 111 Church St, Jason Ganong, opted to have the applications heard. The applicant's agent, Attorney Phil Brouillard, opted for the applications to be continued to the April 15, 2019 meeting.

S. Bogert then informed the remainder of the applicants that there would be a four member board and offered them the option to move forward with their applications or have them continued to April and the potential of a full five member board.

430 Leighton Ave: applicant (Dave Greski) opted to be heard

Mallard Cove (674 Elm St): applicant (Jim McCabe) opted to be heard

791 North Main St: applicant (Mary Truell) opted to be heard

73 Gilford Ave: applicant (Peter Karagianis) opted to be heard

7.I. ZO2018-0035 SE 111 Church St Special Exception (PDF)

O. Gibbs recused herself from the meeting.

(Michael DellaVecchia arrived 6:41PM)

Jason Ganong, applicant outlined his applications for 111 Church St to the Board. He stated that, if he is able to purchase the property, he is proposing to convert the building to a 20 unit apartment building. He stated that the units would be one bedroom, market rate units. J. Ganong noted that it is a few blocks from the downtown strip and the building is conducive to housing as it has ample parking, is dual locking building. He did note that there are some updates that will be required for sewer and water.

R. Maheu commented that the project would be taking away office space in the professional district. J. Ganong responded that the number of businesses that size are limited and that the highest best use for the building would be as housing. S. Bogert noted that there is no guarantee that they would remain market rate; J. Ganong asked if this could be a condition if they were approved. In response to a question from the board regarding financial assistance from the town, J. Ganong noted that he has spoken to the Planning Department regarding impact fees and a possible reduction.

At 6:52 PM S. Bogert opened the hearing to the public for comment.

Harry Bean, Gilford NH, stated that he is a local landlord for 46 years, he does not think it is right to allow the conversion (of 111 Church St.). He stated that in the past he wanted to add a bedroom to one of his buildings, had to jump through hoops and was denied.

Paul Fitzgerald, attorney for the Flanders Trust, addressed the Board. He stated that there is no information for the hardship and that there is no hardship in this case. P. Fitzgerald also stated that there is more than adequate housing stock.

Joe Alexander, owner of 108 and 112 Church St, addressed the Board, He stated that this type of single bedroom apartments would attract a different demographic, there would be a larger turnover of tenants; that the traffic from 20 units would impact the quality of life of other residents in neighborhood. He noted that he agreed with Mr. Maheu's statement regarding the lack of office space; and he also noted that there would be a huge impact on town services including increase in water use; sewer use and city services such as police and fire.

Harry Bean addressed the Board again noting that thirty-three units about the property and that a few years ago there were fourteen vacancies. He also stated that rents are similar between regular and subsidized tenants.

At 7:06 PM, with no additional members of the public to speak for or against the application(s) the public hearing was closed.

J. Ganong made closing comments to the Board. He noted that in regard to the traffic concern, when the building was offices there were one hundred four employees plus patients in and out all day; the traffic would be reduced with apartments. M. DellaVecchia asked if he would be retaining the sixty-six parking spaces. J. Ganong noted that if he did the project he would utilize the front area for parking; he would consider in future what to do with remainder. He also noted that tenants are professionals, the impact to police and fire would be minimal.

The Board discussed the applications. S. Bogert stated that it would be taking the only modern office building, there would be no opportunity to attract tenants to the building. R. Maheu stated that one bedroom apartments would not encourage families to move in. M. Foote noted that he is uncomfortable with the increase in density to twenty units; also by seeking for maximum relief for the impact fees he feels places the burden on the city residents. M. DellaVecchia commented that one bedroom apartments have a good purpose but noted twenty units might be too heavy.

S. Bogert made a motion to deny ZO2018-0035 SE 111 Church St Special Exception

to allow for a 20 unit multifamily building in the Professional (P) district.

- a. The use is specifically authorized in this chapter.
 - b. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.
 - c. The requested use will not overload any public water, drainage or sewer system or any other municipal system, nor will there be any significant increase in stormwater runoff onto adjacent properties.
 - d. The requested use will not create excessive demand for municipal police, fire protection, schools or solid waste disposal services.
 - e. Any special provisions for the use as set forth in this chapter are fulfilled.
 - f. The requested use will not create hazards to the health, safety or general welfare of the public but will be out of character with the adjacent neighborhood consisting of twenty units in the professional district.
 - g. The proposed location is not appropriate for the requested use, the conversion of an office building to a residence in a professional zone.
 - h. The requested use is not consistent with the spirit and intent of this chapter and the Master Plan; it takes an office building out of the available inventory.
- R. Maheu seconded the motion
Three in favor (Maheu; Bogert; Foote); one opposed (DellaVecchia)

7.II. ZO2018-0036VAR 111 Church St. Variance (PDF)

S. Bogert made a motion to deny ZO2018-0036VAR 111 Church St. Variance from Attachment 3 Table II for density to allow for twenty (20) units on a lot where currently only 5 units would be allowed.

1. Granting the variance would be contrary to the public interest by converting a viable commercial space to residential units.
2. If the variance were granted the spirit of the ordinance would not be observed. The conversion of office space to residential units in the professional zone where office space is needed.
3. Denying the variance would do substantial justice because it retains office space in the residential zone.
4. If the variance were granted the values of surrounding properties would not be diminished. Value is not diminished as far as residential properties; however opportunities are decreased to grow professional zone.
5. No unnecessary hardship exists. There is use of the building as office space.

M. Foote seconded the motion
Three in favor (Maheu; Bogert; Foote); one opposed (DellaVecchia)

7.III. ZO2019-0001VAR 29 Sweetbrier Way Variance (PDF)
Continued to April 15, 2019 meeting at the applicant's request.

7.IV. ZO2019-0002VAR 10 Sweetbrier Way Variance (PDF)
Continued to April 15, 2019 meeting at the applicant's request.

8. PUBLIC HEARINGS, POSSIBLE CONSIDERATION AND VOTE Note: The Purpose Of This Agenda Section Is For The Board To Have A Presentation From The Applicant And Open A Public Hearing For The Public To Provide Input. The Board May Also Deliberate The Application, Decide And Conduct A Final Vote At This Time.

8.I. ZO2019-0003VAR 430 Leighton Ave Variance (PDF)

O. Gibbs returned to the meeting.

Applicant Dave Greski outlined his application to the Board. He explained that they are proposing to enclose a portion of the existing deck as a screened in porch. A portion of the existing deck extends

into the 50' shoreland protection buffer. He noted that he has been in contact with the State of NH Shoreland Protection to determine if a permit was required; per the Shoreland Section supervisor, an "open porch" does not need a permit.

At 7:49 PM S. Bogert opened the hearing to public comment.

At 7:49 PM, with no one to speak for or against the application, the hearing was closed to public comment.

O. Gibbs made a motion to approve application ZO2019-0003VAR 430 Leighton Ave Variance to enclose a portion of an existing porch that is partially located within the 50' shoreland protection buffer.
R. Maheu seconded the motion.

1. Granting the variance would not be contrary to the public interest, there is no substantial change.
2. If the variance were granted, the spirit of the ordinance would be observed because there is no substantial change in use.
3. Granting the variance would do substantial justice because it would allow the owners full enjoyment of their property.
4. If the variance were granted, the values of the surrounding properties would not be diminished because it fits the character of the neighborhood, other homes have similar structures.
5. Unnecessary Hardship: the home was rebuilt on original footprint with was within the fifty foot shoreland protection buffer.

Condition of Approval: Porch is to remained screened only (no glass, etc)
All in favor (5-0)

8.II. ZO2019-0004VAR 674 Elm St, Mallard Cove Condo Association (PDF)

Jim McCabe, Vice President of Mallard Cove Property Owners Association, outlined the application to the Board. He stated that the demographic of the residents has changed, many are younger and the residences are more seasonal. He noted that the development was built when 20% lot coverage was allowed; new regulations allow for 40% lot coverage. The association is requesting that they be allowed 24% lot coverage to allow for minor future expansions on the existing structures such as decks, porches, etc and potentially a small parking area for four to eight vehicles. J. McCabe also provided a spreadsheet outlining what has already been built (utilizing a survey from 1995) and estimated expansions to explain how he came up with the request for 24%.

At 8:06 PM S. Bogert opened the hearing to public comment.

At 8:06 PM, with no one to speak for or against the application, the hearing was closed to public comment.

The Board briefly discussed the request.

O. Gibbs made a motion to approve application ZO2019-0004VAR 674 Elm St, Mallard Cove Condo Association to increase buildable area (lot coverage) from 20% to 24% to allow for future decks/porches; possible future parking spaces for 4-8 vehicles.

M. Foote seconded the motion.

1. Granting the variance would not be contrary to the public interest, there is no substantial change.
2. If the variance were granted, the spirit of the ordinance would be observed because there is no substantial change in use, it would not affect the public in any way and the association has its own internal controls.
3. Granting the variance would do substantial justice because it would allow the owners full enjoyment of their property and improve their quality of life.
4. If the variance were granted, the values of the surrounding properties would not be diminished because it fits the character of the neighborhood, other homes have similar structures.
5. Unnecessary Hardship: the development was built under old criteria, the new criteria allow for further expansion.

All in favor (5-0)

8.II.i. ZO2019-0004VAR Mallard Cove Plan Attachment (PDF)

8.III. ZO2019-0005VAR 791 North Main St Variance (PDF)

Mary Truell and Paul McIntosh, owners of 791 North Main St, addressed the Board and outlined their application to allow the creation of a small private elementary school. They noted that there are three schools within walking distance of the location; they would operate from 8:00 am to 3:15pm with no sports etc so it would be quiet on the weekends. M. Truell informed the Board that the state approval is pending. They expect to have 1-2 staff with consultants for the arts/music; the core skills (reading, writing, arithmetic) are done through online curriculums. They informed the board that the school follows the Acton Academy model, a learner driven school. M. Truell stated that the driveway is great for pickup/dropoff as it comes in and can make a loop to pickup/dropoff.

At 8:26 PM S. Bogert opened the hearing to public comment.

Amy Good of Oak Street, an abutting neighbor, addressed the Board. She asked about the backyards being separated by a fence. She also asked about outside noise (when kids are outside). S. Bogert informed her that the zone allows for a preschool, Jim Young of Oak Street, expressed concern about containing the children to the yard. He was also concerned as a firearms owner if restrictions would be placed on him because he lives next to a school.

At 8:35 PM, with no additional members of the public to speak for or against the application, the hearing was closed to public comment.

After a brief discussion, O. Gibbs made a motion to approve Application ZO2019-0005VAR 791 North Main St Variance to allow the creation of an elementary school in the Professional zone.

1. Granting the variance would not be contrary to the public interest because education is a high priority for many families and communities that have many different educational options are valued by society. In addition, the variance does not unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. The property in question is near the end of the professional zone and is only two parcels from Oak Street and four parcels away from the former LASC building with is the start of the Residential General (RG) District. Schools are permitted use in the RG zone and the property is less than ¼ mile from the Boys and Girls Club and Laconia Middle School in an area that is regularly travelled by children. As a result, the variance would not alter the essential character of the locality or threaten the public health, safety or welfare.

2. If the variance were granted, the spirit of the ordinance would be observed because educational pursuits for preschool and kindergarten are already permitted. An Elementary school is very similar to these options. Further, as noted previously, the variance would not alter the essential character of the locality or threaten the public health, safety or welfare.

3. Granting the variance would do substantial justice because there are already 3 schools within walking distance of this location. The building and property are well suited for a school and the owners purchased it for this purpose. There is no gain to the general public by literal enforcement of the ordinance and the applicants will suffer substantial harm if the variance isn't granted.

4. If the variance were granted, the values of the surrounding properties would not be diminished because school is only from 8am to 3:15pm with no after school sports, so the property will be quiet from 3:30 every night and on the weekends. Also the building will be kept in a neat, orderly, and well maintained way. The surrounding properties are already within a very short distance to other schools, and this is part of their positive property value – to be walking distance to area schools. Further, there are already a substantial number of vacant professional offices in the area, including the former Genesis building two parcels away, and the grant of a variance will put the property to use and should increase the value of the surrounding properties.

5. Unnecessary Hardship a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the Professional District "is designed to provide attractive professional areas outside the retail commercial core. This district contemplates allowing professional office facilities to be located adjacent to important access routes in reasonably close proximity to the higher-density residential zones, with minimal change to the outward physical appearance of the areas involved." The requested variance will not result in any change to the outward appearance of the property and area and the use of the property in this manner will support both the professionals working in the nearby offices and the residential areas abutting it by providing them with the ability to have their children's school close by where they work and live. Thus, no fair and substantial relationship exists between the general public purpose of the ordinance and its application to the property.

ii. The proposed use is a reasonable one because there are already three schools very close by, and many commercial businesses in the neighborhood, and the property is on a main town sidewalk and road. Further, there is ample parking on the property, an area behind the building for children to play, and it is in easy walking distance to Opechee Park. Based on the foregoing, the use of the property as a school is a reasonable use.

R. Maheu seconded the motion.
All in favor (5-0)

8.IV. ZO2019-0006SE 73 Gilford Ave Special Exception (PDF)

Applicant Peter Karagianis addressed the board and outlined his application. P. Karagianis stated that he is developing options for the house. He is requesting to use it as a short term rental home stating that it is not conducive for use as a single family home. P. Karagianis explained to the Board that he is looking at rentals from 3 days to 30-60 days for vacationers, housing for visiting nurses/doctors. In response to a question from the Board, P. Karagianis stated that there could be 8-12 people at one time.

Planning Director Dean Trefethen noted that professionals coming in would be more "rooming house" vs the AirBnb model. He also noted that if the rental is more than six months it is not a short term rental.

P. Karagianis continued his presentation of the application by noting that other homes in the area are not owner occupied/rented houses. He stated that he would be a respectful host and that he lives a mile away.

At 9:04 PM S. Bogert opened the hearing to public comment.

Wayne Eshelman, 69 Gilford Ave, addressed the Board. He informed them he has lived next door since 1974. W. Eshelman noted that the building is upkept well and that P. Karagianis is a responsible owner. He stated that he felt the application should be approved and that it was brought to the ZBA up front, rather than after the fact.

Laura Dunn, 78 Gilford Ave, across the street from the applicant, addressed the Board and presented a list of concerns. She noted that it is a wonderful family but is concerned if the property sells the variance goes with the property. L. Dunn also stated that there are three owner occupied buildings in the neighborhood (applicant stated other homes were not owner occupied) Concerns she raised included: vacationers visiting area are looking for fun, they don't have ownership interest in area; that there will be impact on police; parking is a concern as lot of kids walking, someone backing out could hit them; wording is vague and would give a new owner a lot of flexibility; its opening a can of worms with vague language, it changes character of neighborhood, and impacts safety. Additionally, L. Dunn read aloud the Laconia Daily Sun article regarding short term rentals which quoted Mayor Engler. She closed by noting she objects to application not the owner, and there is not a hardship; she also noted previous applications have been denied.

M. Foote commented that Gilford Avenue is a fairly intensely traveled route. O. Gibbs also noted it is a major route in and out of Laconia. L. Dunn commented that this would increase traffic.

R. Maheu noted that this is a special exception, not a variance. D. Trefethen confirmed that it transfers with the property. R. Maheu stated it could give him an unfair advantage when trying to sell property.

Nicole Karagianis, daughter of applicant, address the Board. She stated that he is a resident of Laconia, he wants to maintain the community, he can be called personally if there is a problem. She noted he is going the legal route and requesting permission first (not after complaint). The road is a main thoroughfare and other properties are receiving rental income.

At 9:28 PM, with no additional members of the public to speak for or against the application, the hearing was closed to public comment.

P. Karagianis addressed the Board with closing comments. He stated he understands Mrs. Dunn's concern, he is trying to improve neighborhood; the complexion of neighborhood has changed. He noted the house has been vacant for a year; if there is a problem neighbors can call; regarding it being for sale he has to be careful not to oversell the property, it is a 1900 Victorian home. He would like some flexibility and thanked the Board for hearing him.

At 9:34 PM S. Bogert requested a brief recess to ask D. Trefethen a question.

At 9:38 PM. S. Bogert called the meeting back to order.

S. Bogert explained that he got clarification on the difference between Air BnB type rentals and rooming/boarding houses.

S. Bogert addressed the AirBnb-type rentals and that, by current zoning definitions, there is no difference, it is categorized under boarding/rooming/lodging house. There is no minimum time, no maximum time; parking is a player and one space per room is required.

At 9:45 PM S. Bogert re-opened the public hearing.

Laura Dunn, 78 Gilford Ave, readdressed the Board. She stated her concerns are the same after the explanation; she noted she has been there for sixteen years.

At 9:50 PM, with no additional members of the public to speak for or against the application, the hearing was again closed to public comment.

M. Foote noted that the use is a permitted use in the RG Zone by special exception, it is not a non-permitted use that would require a variance. O. Gibbs commented that it is very close to a commercial zone, it's on a main thoroughfare, it would depend on the character of the neighborhood, due to the proximity to the commercial zone this location is appropriate for the use.

S. Bogert asked for confirmation that most houses in that area are two-family or multifamily homes. D. Trefethen noted it is predominantly two/multifamily homes.

D. Trefethen suggested three conditions: a maximum of four vehicles on the property; a maximum of thirteen people (based on 200sf/person); and that the property be subjected to a fire/code inspection.

M. DellaVecchia commented that he thinks he cannot vote to approve as not enough guidelines to go by. He commented about a row of hotels in a residential area.

O. Gibbs made a motion to approve Application ZO2019-0006SE 73 Gilford Ave Special Exception from Article V Section 235-26 and Attachment 2.3 Table 1 to create a Boarding/Rooming/Lodging House with three conditions:

1. Maximum of four vehicles
2. Maximum of thirteen people (200 sf per person)
3. Property be subject to a fire/code inspection

a. The use requested is specifically authorized in this chapter.

b. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

Gilford Ave is a main artery, this will not create increase in traffic/

c. The requested use will not overload any public water, drainage or sewer system or any other municipal system, nor will there be any significant increase in stormwater runoff onto adjacent property or streets.

The physical aspect of the building is not changing, impact would be negligible.

d. The requested use will not create excessive demand for municipal police, fire protection, schools or solid waste disposal services.

There is no increase in demand on school or other services; no increase in demand on solid waste.

e. Any special provisions for the use as set forth in this chapter are fulfilled.

There are no additional special provisions.

f. The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.

Application is not out of character for this neighborhood, its adjacent to multifamily homes; close to commercial zone and hospital.

g. The proposed location is appropriate for the requested use.

This property in this neighborhood on main road is appropriate for the requested use.

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

Yes, it is consistent, it is an adaptive re-use of property without increase in density.

M. Foote seconded the motion

Three in favor (Gibbs; Foote; Maheu); two opposed (Bogert; DellaVecchia)

9. OTHER BUSINESS

9.I. Re-Hearing Request ZO2018-0034SE 77 Opechee St Special Exception (PDF)

O. Gibbs noted she was absent from meeting and asked if she should proceed. D. Trefethen clarified that the request is looked at to see if the Board made an error or if there is new information. If O. Gibbs has read the minutes of the meeting and the request for rehearing and feels she can make a decision she can proceed.

S, Bogert stated he was going to review the points on the argument starting from the bottom (#9) and going up (to #1)

9. The City and the Board have no authority to restrict short-term rentals where the use of properties for dwelling purposes is allowed of right.

The use is not allowed by right, it falls under boarding/rooming/lodging house as a use by special exception and as such is regulated by the Zoning Ordinance

8. The City and the Board have improperly engaged in selective enforcement of the Ordinance by not

actively seeking to identify properties being used as short-term rentals without express approval, but predicating enforcement on whether a complaint is made to the City.

All violations are looked at equally and zoning has always been complaint driven.

7. The City and The Board have improperly and arbitrarily precluded the use of properties as short-term rentals while allowing the use of long-term rentals.

The complaint refers to two different sections of the Zoning Ordinance.

6. To the extent the Board does not agree that the conditions of the Special Exception have been met and therefore does not grant the approval, petitioner should be allowed to use the property for short-term rentals because such use is a permissible accessory use to the principal use of the property as a single family dwelling.

It is not automatically an accessory use.

5. The Board improperly concluded that a Special Exception, once granted, must run with the land forever.

The use continues in perpetuity unless the use is abandoned.

4. The Board improperly found that the requested use is not consistent with the spirit and intent of Laconia's Zoning Ordinance and the Master Plan.

The use is not consistent with the Spirit at this location.

3. The Board improperly found that the location of the property is not appropriate for the requested use.

The Board determined this particular location is not appropriate; out of character was the reasoning.

2. The Board improperly found that the requested use will be out of character with the adjacent neighborhood.

The use is out of character at this location.

1. The Board improperly found that the requested use will create undue traffic congestion or unduly impair pedestrian safety.

Board does not believe Board erred, that there is an increase in pedestrian traffic; and an increase in on street parking at the location.

S. Bogert made a motion a motion to deny the request for re-hearing based on the findings.

M. Foote seconded the motion.

All in favor. (5-0)

9.II. Presentation By Staff

Presentation by Staff on Downtown Zoning and Performance Zoning

D. Trefethen made a brief presentation due to the late hour. He handed out a draft outline of the re-evaluation of the Downtown (DT) zone and the concept of performance zoning.

10. ADJOURNMENT

At 10:52 PM M. DellaVecchia made a motion to adjourn the meeting

O. Gibbs seconded the motion.

All in favor. (5-0)

