



City of Laconia
Zoning Board of Adjustment
Monday, April 18, 2022 - 6:30 PM
City Hall in the Armand A. Bolduc Council
Chamber

4/18/2022 - Minutes

1. CALL TO ORDER

The meeting was called to order by S. Bogert at 6:30 pm

2. ROLL CALL

M. Hayward, S. Bogert, J. LaRoche, R. Maheu, G. Ober, M. Foote, M. Dellavecchia (6:33 pm)

3. RECORDING SECRETARY

T. Daigle, Conservation/Planner Tech

4. STAFF IN ATTENDANCE

D. Trefethen, Planning Director

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

5.I. Acceptance Of January 18 & March 21 Minutes

M. Foote made a motion to accept the minutes from the January 18 meeting as presented. R. Maheu seconded the motion. All vote in favor (5-0)

M. Foote made a motion to accept the minutes from the March 21 meeting as presented. R. Maheu seconded the motion. All voted in favor (5-0)

6. EXTENSIONS

6.I. ZO2019-0001VAR; 29 Sweetbrier Way; Request To Extend The Approved For A Variance From Article V Section 235-36 And Attachment 3 Table II To Allow Additional Lot Coverage Over Previously Approved 20%. Former PUD (Planned Urban Development) Regulations Allowed 20% Lot Coverage; Current Regulations Allow 40% Lot Coverage

Phil Brouillard came before the board to clarify his involvement with the application. He was previously the one to apply for an extension but is not aware of who the new owners are and is not working with them.

G. Ober motions to continue the request for an extension to the May meeting, as the applicant was not present. R. Maheu seconds the motion. All vote in favor (5-0).

6.II. ZO2019-0002VAR; 10 Sweetbrier Way; Requests To Extend The Apporved Variance From Article V Section 235-36 And Attachment 3 Table II To Allow Additional Lot Coverage Over Previously Approved 20%. Former PUD (Planned Urban Development) Regulations Allowed 20% Lot Coverage; Current

Regulations Allow 40% Lot Coverage

The applicant's attorney, Phil Brouillard, addressed the board. The homeowners were delayed by their contractor's schedule. They have a contract in place to begin groundwork in May for their new house. This is the third extension request and if granted, it would expire on October 30th, 2022.

There are no further questions for the applicant from the board.

S. Bogert opened the public hearing at 6:43 pm. With no one to speak for or against the application, the public hearing was closed at 6:44 pm.

M. Foote motions to accept the extension for the variance and notes that it would be good until October 30th, 2022. G. Ober seconds. All vote in favor (5-0).

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.
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.
 - 8.1. Superior Court Remand For An Appeal For The Administrative Decision Concerning The Definition Of Structure At 41-63 Elm Street

S. Bogert explains the reason behind this rehearing from the Superior Court in regard to the Planning Director's decisions. S. Bogert read the court conclusions and the remand to the ZBA regarding the lack of a vote on the third question being appealed. He discusses that the question at hand is if the sheet pilings should be shown on the site plans.

P. Brunette asks the chair to formally open the public hearing will be opened.

S. Bogert opened the public hearing at 6:49 pm.

Peter Brunette, of 15 Park Street, addressed the board. He speaks to the board in regard to the court findings. Mr. Brunette states that the rule of law applies to all city government, even volunteers. He expresses that the discussion tonight should be about reconsidering the ZBA decision on whether or not the planning director's decision on sheet pilings not being considered a structure, was incorrect, as well as whether or not the conditional approvals need to return back to the planning board with corrected plans showing the structure.

S. Bogert thanks him for speaking. S. Bogert reiterates the discussion being about the pilons being shown on the plan. P. Brunette interrupts to distinguish that they are sheet pilings and not pilons. S. Bogert asks him to follow procedure and raise his hand if he wants to speak to the board. P. Brunette does so and states that the word 'pilons' are not in any of the legal documents. They are sheet pilings that make up a 90 foot steel wall.

S. Bogert closed the public hearing at 6:54 pm.

The board discusses the question at hand of, if the sheet pilings are legally considered a structure, then do they need to be shown on the plans? M. Dellavecchia mentions that he feels the classification as a structure is still a grey area. Joe Driscoll, legal counsel for the city, speaks in response to this. He states that the judge's finding that the sheet pilings are a structure is the law of the case and that there is no grey area left to that. M. Dellavecchia asks what the end goal of the decision tonight is? He

mentions that the board's hands are tied and if they are considered a structure then they must be on the plans. M. Foote also notes that the board likes to see as much detail as possible on the plans and would fully expect to see all structures on the plan.

J. Driscoll addresses the board again. He clarifies the situation and what the rehearing is for. There were three questions asked of the board and the judge for consideration. The board did not provide a decision on question 3 (was the director's determination and the planning board's approval of the application were proper since the steel retaining walls were not on any of the plans submitted or referenced in any notes?) and therefore, the judge could not make a ruling and remanded it back to the board. He reiterates that the board needs to make their decision on this question tonight. S. Bogert discusses making a motion. J. Driscoll returns to the stand to suggest language for the motion. He suggests: "to overturn the director's interpretation and the planning board's approval as to the steel pilings in this application. Per the court's order, these pilings are structures and therefore they should have been included on the site plan. As the court viewed this issue as an appeal per RSA 676: 5 (III) and the pilings were required to be on the plan, therefore this matter is remanded to the planning board on this issue".

P. Brunette raises his hand to readdress the board. S. Bogert states that the public hearing has been closed. P. Brunette would like to rebuttal J. Driscoll's comments. S. Bogert repeats that the public hearing is closed. P. Brunette speaks to the board anyway. S. Bogert states they will adjourn the meeting for a moment to have a non-meeting with the legal counsel. P. Brunette leaves the meeting at this time.

S. Bogert motions to adjourn the meeting for 10 minutes to discuss the situation with the legal counsel in a non-meeting, in accordance with RSA:91-A. R. Maheu seconds. The motion passes 4-1 (G. Ober against).

The board has a 10-minute, non-meeting. The regular ZBA meeting is reopened at 7:30 pm.

S. Bogert makes a motion, with J. Driscoll's suggested language, "to overturn the director's interpretation and the planning board's approval as to the steel pilings in this application. Per the court's order, these pilings are structures and therefore they should have been included on the site plan. As the court viewed this issue as an appeal per RSA 676: 5 (III) and the pilings were required to be on the plan, therefore this matter is remanded to the planning board on this issue".

S. Bogert reiterates the motion at hand with the suggested language from J. Driscoll. M. Foote seconds the motion. There is no discussion of the motion. Motion passes 5-0

8.II. ZO2022-0016VAR; 5 Parsonage Dr; Variance Request From Article VI Section 235- 35B Front Setback To Allow For The Construction Of A Farmers Porch That Would Encroach Into The Front Setback

The applicants, Elizabeth and Daniel Brothers, addressed the board. They are looking for a variance to add a farmer's porch to their house, along Parsonage Drive. They have a corner lot with two front setbacks and this variance would give them more privacy and comfort on their property. Applicants remind the board that they have made a number of improvements to the lot already.

R. Maheu asks if it will be screened in? No, it will not be. J. LaRoche asks if it will have a roof? Yes. G. Ober asks what the setbacks are here and what would remain after building? The home has two front setbacks of 75' due to being a corner lot. Approximately 40' setback will remain if the variance is granted, ultimately adding to the nonconformity.

S. Bogert opens the public hearing at 7:37pm. With no one to speak for or against the application, the public hearing is closed at 7:37 pm.

M. Foote asks what level the porch roof will be at? Applicant responds that it will be below the second story windows of the house.

The board continues to discuss the application. M. Foote and S. Bogert note that the hardships that exist are that the property is a corner lot with two 75' setbacks and that the majority of the house is already in setbacks, requiring a variance for most work on the house.

M. Foote motions to accept the variance application stating that:

1. Granting the variance is not contrary to the public interest
2. The spirit of the ordinance is observed because the farmer's porch makes sense in the RR2 zone and it will add value to their house.
3. Granting the variance would do substantial justice by relieving the property owners of their setback hardships.
4. Granting the variance will not diminish the values of the surrounding properties.
5. Denial of the variance would result in unnecessary hardship based on the corner lot setbacks in the RR2 zone, which came after the house was built in the 1980s. It is also a reasonable use for access to the area in the front of their house.

M. Dellavecchia seconds. The motion passes 5-0

- 8.III. ZO2022-0018VAR; 164 Paugus Park Rd; Variance Request From Article VI Section 235- 35B Side Setback To Allow For The Construction Of A Shed That Would Encroach Into The 10 Ft Setback

The applicant was not present to address the board. G. Ober motions to defer this application to the May meeting (5/17). R. Maheu seconds. The motion passes 4-1 (M. Foote against)

9. OTHER BUSINESS

10. ADJOURNMENT

R. Maheu motions to adjourn the meeting. M. Foote seconds. Motion passes 5-0