



**City of Laconia**  
**Zoning Board of Adjustment**  
City Hall in the Armand A. Bolduc Council Chamber

6/30/2021 - Minutes

1. CALL TO ORDER

Chair S. Bogert called the meeting to order at 5:00 PM

Chair S. Bogert went over some ground rules for the meeting. He asked for all phones to be silenced, and all be kind to each other. Then first the applicant will be heard, then the city and then anyone from the public, including the developer's representatives. There will be no cross questions, all questions will be directed to the Board and the Board will redirect.

2. ROLL CALL

Members present: Roland Maheu, Jane Laroche, Marcia Hayward, Gail Ober, Mike DellaVecchia, Mike Foote, Steve Bogert

Chair S. Bogert noted there was a full board and a quorum established.

3. RECORDING SECRETARY

Kalena Graham

4. STAFF IN ATTENDANCE

Planning Director Dean Trefethen

5. OTHER BUSINESS

5.I. 41-63 Elm Street; Paugus Elm1 LLC, Abutter Appeal On An Administrative Decision

Applicant: Peter Brunette addressed the Board. He thanked them and gave a little background on the projects and the surrounding area. Demolition has been completed and excavation has started on what originally proposed to be a two building multi-use project is now a three building multi-use project. His family bought 15 Park Street in 1980. He has done title research just as curiosity and this is a book called Lakeports Ancient homes. He brought that book up because it's part of the area's history. He went over the history of the area. The neighborhood has been used commercially since it has been around. This house has been modified over the course of history. Along the property line there are trees that have been there. At the corner of the lot is a large Maple tree. On the other side in his yard is another Maple tree where the shade is dear and important. The cherry trees are located along the driveway, parallel to the property line. They are so old that the stumps have either been rotted away or cut and are growing up and out of the roots. They have a pretty heavy yield of cherries.

As far as the project goes, he has been a supporter from the start. He is the Chair of the Planning Board and has recused himself from all of the proceedings. He was the only abutter or member of the public to speak at either hearing. There was an approval in December and amendment in January. Originally, there was only going to be one large three story building with a full basement, so four levels, along Elm Street. the parking garage. The land slopes and drops toward the railroad tracks. There was

a beautiful plan with landscaping. That building was going to be freestanding. The plan was to have on street parking in the front, off street parking on a lower level parking area and parking garage, accessed off of Railroad Ave. The second floor of the garage would be above grade right next to his property. In the photos in the paper where the crane is would be the peak of the hill and he is slightly less than that. The land drops off on the other side because of the excavation. When it was first presented, it was presents as two buildings connected by a pedestrian bridge. That was intended to connect to allow people in the upper level of the garage to walk directly over to the other building in the front. There was no mention of a retaining wall installed at any of the Planning Board meetings. His house shakes from the sheet piling being driven in along Park and Elm Streets. He had to take things off the walls and shelves as to not break, just for the pilings along Elm and Park Streets. He understands that had that not been done the streets could have fallen in. BPS has been cooperated and explained everything to him. Tim Burke is on site every day and P. Brunette chats with them every day. The steel pilings were a surprise and at the time he didn't think too much about it. He was grateful when it was over, until he found the intent was to drive another piling two feet from his property line, within the setback. In order for the crane to reach, the trees would have to be trimmed. He explained where the lines painted on the property show where pilings and foundation will be going. His understanding was that there was going to be a landscaped area or something his property and the garage. He offered to maintain that area if something were to be put in. He brought his concerns at the June 1 Planning Board meeting hoping the Board would put some kind of condition that would deal with abutter's concerns, not only noise and vibration, but the dust and exhaust. Through it all it will be great for Lakeport. He believes that only three properties have not succumbed to the generous offers or inquiries from the developer. He understands the issue of off street parking in the area and if he sold his house it would be torn down. He said it is just like an earthquake where you can see things moving when the pilings are being driven in. His concern is the loss of vegetation and the effect of the vibration to the root system. He brought up the church and the structural integrity of the structure, specially with the bell tower.

He has had many discussions with the Planning Office and agreed to disagree on the sheet pilings. He asked what is the setback? He feels it would be a rear setback and not a side, as Planning says. If it were a rear setback the number would be 25 feet if a commercial property abuts a residential property, rather than the side of 5 feet. He argued the front and rear lines. His trees would need to be trimmed in half and understands the trimming. He is concerned with the root balls on the trees and loss of any vegetation, especially at this point in the season. The time to prune is in the fall. The developer wanted to take the Maple down as well. There is concern with the well that is on the property line it is 35 ft deep at least. He noted that the sheet pilings are over ft in length to be driven into the ground and cut off below grade. That makes them a permanent structure as they are left in the ground and has concern what that will do to the water table. The soil is compacted sandy loam with clay in it and part of a huge glacial dam at the end of the last ice age. He understands the soils requires some sort of a retaining wall, whether temporary or permanent. There must be other construction techniques to be used. He pointed out that if the proposed parking garage was moved ten feet to the south, they would need less of bridge to construct and still have access.

P. Brunette went over his hand out for the questions presented: question one – is the steel pilings a structure? His position is that yes, they are structures. If it were a construction technique, they would be removed and only be temporary. Question two – what is the proper setback 25 ft or 5 ft? Question three may or may not be in jurisdiction of this Board – if the developer does not indicate in the plans submitted to the Planning Dept at any point, that there will be steel structures inserted into the ground, then how to the dept and Board have adequately reviewed and approved it? There is an argument that could be made that the proposal should be sent back to the Planning Board because it wasn't properly approved because no full disclosure was made.

G. Ober clarified if the whole project was moved 10 ft away from where proposed, if that could be done, would it make him happy and was told yes. He added that there might be other ways to build. The applicant's representatives to the Planning Board didn't have all the information. The site manager told him that when the project was originally bid and conceived, the steel pilings were not mentioned. It wasn't until they got onsite that they realized they would need pilings. Which he doesn't understand why because many core sampling have been done all over the site.

Planning Director D. Trefethen gave a quick background: The property subject to the appeal has an

approved site plan, granted under the Performance Zoning process and the Planning Board. First approved 12/1/20 and an amendment to include the Avery property, approved 6/1/21. The area in the corner of the property at Park St and Mr. Brunette's property is essentially the same, with only the configure of the buildings changing. The parking garage proposed in the same spot at what was approved in Dec. The change was to a full level from a half level. The area is the same with both proposals. The amended plan extends the site plan along Mr. Brunette's rear property line. The issue of the sheet pilings was brought up by Mr. Brunette at the 6/1/21 meeting and was extensively discussed. A member of the church also had concerns with the vibrations. The amended site plan was unanimously approved by the board.

Mr. Brunette had several discussions with the Director and Assistant Planner Rob Mora, both by phone and through email, where what constitutes a structure and which setback definitions applied to the site were discussed. Sheet pilings are not a structure so it would not be subject to the setbacks, is his determination. On June 15, the discussion came to a point where Mr. Brunette essentially asked directly for an official opinion and determination of the situation from me. The next day, the 16th, I responded to him. I originally thought that the appeal would be to the Building Code Board of Appeals, but consultation with our legal counsel it was determined that it would go to ZBA, which is why the original appeal is addressed to the BCBA. Planning Director D. Trefethen fully understands the sentimental and emotional turmoil of the applicant, but that is not an issue for discussion. What is up for discussion is: A, what constitutes a structure? B, what setbacks will apply, rear or side? C, what should've been show on the site plans? 1, He finds sheet pilings to be a construction technique and not a structure. There is nothing in the IBC code. 2, He read the setbacks from the ordinance and explained using the room as an example with one and two possible road fronts.

235-13 STRUCTURE: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground.

235-35 Minimum setback requirements.

A. Front setback. The minimum front setback shall be determined by a line parallel to the street right-of-way line extending from one side lot line to the other, a distance specified in the Table of Dimensional Requirements.[1] Ornamental features, eaves and cornices may project two feet within the front setback. In the case of corner lots, the front setback shall be observed for all adjacent street frontages.

B. Side and rear setbacks. Side and rear setbacks shall be determined by a line parallel to the side or rear lot line and located a distance from the side or rear line as specified in the Table of Dimensional Requirements.[2] In the case of irregularly shaped lots the side setbacks shall apply to all lot lines except that line most parallel to and most distant from the front lot line. Ornamental features, eaves and cornices may project two feet within the side and rear setbacks.

The issues: There are three main issues to be discussed and decided: what constitutes a structure, what setbacks apply, and what should have been shown on the site plans.

Retaining walls vs sheet pilings: Planning Director D. Trefethen noted many times retaining walls are depicted on site plans because they are an engineered function to hold back land and will always be there. They will always be visible and will continue to hold back the land, even after construction. The difference is when a project is done using sheet pilings the space will be filled back in. These will be cut down under ground level and in some cases are removed. They serve no function and are not visible after construction so are no shown on site plans.

Planning Director D. Trefethen went over the article that was in the Laconia Daily Sun dated June 19, 2021. The idea of moving the garage is not possible due to the space between tapers off and questioned if enough room for vehicles to manure in and out of garage. He reiterated that the Dec and Jan plans of the garage has not moved. The developer offered to professional move the trees. He reiterated his opinion on the sheet pilings not being a structure and if they were that the 25 ft setback would still not apply. Chair S. Bogert asked what the Code says bout abutter property and protection

and was told the construction representative did surveys and is installing sensors in the surrounding areas for real time results.

G. Ober confused about the setback and what consists of a side and rear setback. Chair S. Bogert gave an example that has been before the Board many times regarding RV's and boats and she understood.

Developer: Steve Smith of Steve Smith and Associates address the Board. His office presented and designed the plans for the project. He has been representing clients for over 40 years and the setbacks have been interpreted the same since. He noted that retaining walls are not a structure and can be on the property lines. He gave Dairy Queen, Domino's and the site next door to Domino's as examples. Sheet pilings will hold back land and not be taken out. Not just because of the hammering but because it causes more damage to remove them than keep them in. There is a lot of thought put in to techniques and S. W Soule designed these. There will be continual monitoring of the bell tower and church and will be in communication as well as with other structures in the neighborhood throughout the process. He understands the concern with the cherry trees and is in agreement with the Planning staff's interpretation. If the garage is moved back the common area will not have an alley or garage. He noted that the application has been through month of reviews and sheet pilings are a construction technique to protect all the surrounding properties.

Barry Salta from BPS discussed the seismograph. The owner hired SW Cole who is a geo tech company. They installed sensors to record the whole time as well as real time. He offered to submit the guidelines they are working under if the city wanted. G. Ober asked what happens if the wall is not done and the critical max has been hit? B. Salta said that would change the plan. There is always multiple plans. Work would need to be done within certain parameters. G. Ober asked if there is another less intrusive technique and B. Salta said not that they are area ware of. The problem is the footings need to be so far below grade. Sheet pilings are temporary until the wall is put in, then the space between the two are filled in. The space is tight and will be cut about 2-3 feet below grade. There is an insurance bond in place. M. DellaVecchia asked if a slower vibration would be possible and was told yes but it would take longer as well.

Ron Decola, representing the property owner noted his presence and said they take P. Brunette's concerns seriously and want to work with him.

P. Brunette responded to the comments. He noted he was never offered to move the trees. The offer was to put fertilizer in the ground after the construction to encourage root growth. He argued that the entrance to the garage could be moved for access. The trees are wholly on his property with the crowns extending out. He added that the foundation is not a retaining wall.

Board discussion:

Item one: Description of the setbacks; whether the setback is 5 ft or 25 ft. As the Board has reviewed many different properties throughout the city, based on recreation, he believes the Planning Director has been consistent and in his opinion that is the side setback. Did the Planning Director D. Trefethen err in the interpretation of the setback either 5 or 25 ft, rear or side?

Motion that the Planning Director D. Trefethen, as far as declaring the property line in question as a side setback did not err in the description of the setback and has followed the true meaning of what has been done consistently that it is a side setback of 5 ft made by S. Bogert, R. Maheu seconded. All voted in favor of the motion.

Item two: Did the Planning Director D. Trefethen err in the description of retaining wall – is the sheet piling a structure or a construction technique? Chair S. Bogert has thought a lot about the issue. R. Maheu agreed with what the Chair will say. M. Foote noted the difference being once it is set in place and the foundation is put in and backfilled, then it's not holding back the pressure of the hill anymore. Because it becomes more neutral. Chair S. Bogert said that is irrelevant and becomes a cost factor. It would cause more damage to take the piling out which is also irrelevant. M. DellaVecchia noted that

even if it were called a retaining wall, it would still be allowed in the same spot. He feels for P. Brunette. Chair S. Bogert noted the developer made good faith effort and have a good nursery come in and root ball trees, there is a high survival rate if done correctly. He doesn't believe Planning Director D. Trefethen erred in his description and is a technique and not a structure.

Motion that the Planning Director D. Trefethen did not err in the description of structure and that the sheet pilings are a construction technique made by S. Bogert, M. DellaVecchia seconded. All voted in favor of the motion.

Item three: Should the retaining walls have been depicted on the site plan? Chair S. Bogert noted that since the issue of the pilings were brought up at the Planning Board meeting in June and was not specially referred to in the Planning Board motion. R. Maheu feels the determination should be made as to not hold up the project. Chair S. Bogert feels it was discussed and brought up and the Planing Board voted to approve the amendment. M. Foote noted the acknowledgment that the issue was discussed. M. DellaVecchia doesn't recall a steel wall being put all around the property but the pilings were discussed and the vibrations. Concerns should've been discussed and raised at that point and it was not, by any other Board members.

The Board acknowledged by all the testimony given that it was discussed at the June 1 Planning Board meeting and will not need a vote here. The Board in affirmation that was discussed and the amended site plan was approved.

Last comments from P. Brunette. He made the observation that the procedure and practice is much different than the Planning Board. As the chair he never makes motions nor suggest to other members how they should vote. He didn't hear in the motion that the decision was made based upon the definition of structure in the zoning ordinance.

## 6. ADJOURNMENT

With no other business, G. Ober motioned to adjourn with M. DellaVecchia seconding. All voted in favor.

The meeting adjourned at 6:44 PM

Respectfully,

K. Graham