



City of Laconia  
Zoning Board of Adjustment  
Monday, September 21, 2020 - 6:30 PM  
City Hall in the Armand A. Bolduc Council Chamber

9/21/2020 - Minutes

1. CALL TO ORDER

Chair S. Bogert called the meeting to order at 6:33 PM

2. ROLL CALL

Present: S. Bogert; M. Foote; G. Ober; R. Maheu; M. DellaVecchia

Chair S. Bogert informed the Board that Orry Gibbs has resigned her seat on the Zoning Board.

M. DellaVecchia was seated as a full member.

S. Bogert noted for the record that the Board was polled regarding holding the meeting via the ZOOM platform or "in-person". The decision was made to hold the meeting in person.

3. RECORDING SECRETARY

K. Santoro, Zoning Technician

4. STAFF IN ATTENDANCE

D. Trefethen, Director of Planning and Community Development

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

5.I. August 17 2020 Zoning Board Of Adjustment Regular Meeting Minutes (PDF)

G. Ober made a motion to accept the minutes of the August 17, 2020 meeting as presented.

R. Maheu seconded the motion.

All in favor (5-0)

6. EXTENSIONS

Chris Duprey, representative for the applicant, outlined the extension requests. He noted that the Planning Board approvals are still in place. He also noted that the company halted all projects with the COVID-19 pandemic.

G. Ober motioned to approve the variance extension requests for Akwa Waterfront LLC 63-99 Fletcher Lane; Akwa Waterfront LLC 63-99 Fletcher Lane Special Exception Request; and Akwa Vista LLC 664 Scenic Rd Special Exception Request until January 2021.

R. Maheu seconded.

All in favor (5-0).

6.I. Akwa Vista LLC Special Exception Extension Request - 664 Scenic Rd (PDF)

6.II. Akwa Waterfront LLC Special Exception Extension Request - 63-99 Fletcher Lane (PDF)

6.III. Akwa Waterfront LLC Variance Extension Request - 63-99 Fletcher Lane (PDF)

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.

7.I. ZO2020-0037SE 4 Duffers Drive Unit B Special Exception For Short Term Lodging Application (PDF)

Applicant Duane Laforcarde outlined his application. He provided an email from the rental agent stating he had been utilizing the home for Short Term Lodging since 2004. The Board requested copies of the contract(s) as evidence of the five years or more.

S. Bogert made a motion to continue Application ZO2020-0037SE 4 Duffers Drive Unit B to the October 19, 2020 meeting.

G. Ober seconded the motion.

All in favor. (5-0)

7.II. ZO2020-0050SE 176 Pleasant St Special Exception For Multifamily Dwelling Application (PDF)

The Zoning Board noted that the applicant for the two applications for 176 Pleasant St still had not arrived.

G. Ober noted that the applications had been on the agenda several months with no action.

G. Ober made a motion to deny without prejudice applications ZO2020-0050SE 176 Pleasant St Special Exception For Multifamily Dwelling Application AND Application ZO2020-0051VAR 176 Pleasant St Variance For Unit Density Application.

M. Foote seconded the motion.

All in favor (5-0)

7.III. ZO2020-0051VAR 176 Pleasant St Variance For Unit Density Application (PDF)

See application ZO2020-0050 SE

7.IV. ZO2020-0069SE 55 Bowman St Special Exception For Short Term Lodging Application (PDF)

Applicant Neil Pankhurst, outlined the application for Short Term Lodging to the Board. He informed the Board that he is applying under the 'Community Benefit' clause on the Special Exception application for Short Term Lodging. He explained that they rent out the property during the off-season for the Winnepesaukee Playhouse. This allows them to pay the bills and allow the players to use the property from June – September at no cost.

G. Ober noted that when Council approved the Short Term Lodging Ordinance, the community benefit clause was carved out specifically with the Winnepesaukee Playhouse in mind. D. Trefethen noted that the provision was drafted largely to accommodate the Playhouse, it was not exclusive but the intent was for the Playhouse. G. Ober commented that she understands why but is not in favor of carving out exceptions for individuals.

N. Pankhurst outlined that from June – September it is used by the Playhouse, from October – May it is rented out to offset the costs of maintaining the house (mortgage, utilities, etc). He noted that this year, due to the pandemic, the house was not rented out in the spring, leaving them in a deficit situation.

The Board members asked for clarification on how it is rented, number of nights, is it room rental or rental of whole house. N. Pankhurst informed them that it is rented on the AirBnb platform as the whole house, not individual rooms, and that the minimum stay is two nights.

At 7:09 PM S. Bogert opened the public hearing.

At 7:09 PM, with no one to speak for or against the application, S. Bogert closed the public hearing.

G. Ober commented she was ready to make a motion, S. Bogert asked the Board about conditioning an approval (if granted) if the Playhouse no longer utilized the property then the Special Exception no longer applies. S. Bogert commented that people did not buy houses in these neighborhoods to live

next to a hotel and that the Zoning Board is the only protection.

G. Ober stated that City Council has left it up to the ZBA to determine what is and what is not a community benefit.

G. Ober made a motion to approve with conditions Application ZO2020-0069SE 55 Bowman St Special Exception For Short Term Lodging.

a. The use requested is specifically authorized in the chapter:

The use is authorized by Special Exception.

b. The requested use will not increase demand for municipal services:

The property will not be used in any way that exceeds demand as a permanent residence.

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

The provisions for trash removal, occupancy limits and off street parking will be met.

d. The requested use will not create hazards to the health, safety, or general welfare of the public;  
There will be no hazard created for the public.

e. The applicant can offer convincing evidence that granting the Special Exception for this property includes a general community benefit that rises above the financial gains of the applicant:

The house was purchased to house performing and technical staff for the Winnepesaukee Playhouse and therefore has a community and cultural benefit to the Lakes Region.

CONDITION: If the Winnepesaukee Playhouse no longer utilizes the property, the Special Exception Approval will cease.

Discussion: R. Maheu noted that the area is densely populated; M. Foote commented that he is not completely convinced; M. Dellavecchia also commented he was not convinced.

S. Bogert seconded the motion.

Three in favor (G. Ober; S. Bogert; M. Foote)

Two opposed (R. Maheu; M. Dellavecchia)

#### 7.V. ZO2020-0072VAR 233 Mechanic St Variance Application (PDF)

Applicant Wayne Gregoire addressed the Board and outlined his application. He is proposing to reconfigure and slightly widen his existing driveway to make it safer as it is very tight, especially in the winter. The increase in lot coverage would be an additional 1%

At 8:53 PM S. Bogert opened the public hearing.

At 8:53 PM, with no one to speak for or against the application, S. Bogert closed the public hearing.

G. Ober noted that she had driven by the property and that the driveway is very narrow, this makes sense and is a minimal increase.

M. Foote made a motion to approve Application ZO2020-0072VAR for a variance from Article VI Section 235-36 Green Space (allowed lot coverage is 40%; increase to 41%) to allow the expansion of an existing driveway.

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

Granting the variance would not be contrary to the public interest as it is improving an existing driveway, making it safer.

2. The spirit of the ordinance is observed; AND

If the variance were granted, the spirit of the ordinance would be observed as the owners would be improving the safety of their driveway and would not devalue the neighboring property.

3. Substantial justice is done; AND

Granting the variance would do substantial justice because it would upgrade the property, making it safer.

4. The value of surrounding properties are not diminished; AND

If the variance were granted, it will not diminish the value of the neighboring properties;

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;

The existing chain fence that separates the two properties driveways cannot be moved (set in blacktop); the expansion is minimal but provides a safer driveway.

G. Ober seconded the motion.

All in favor. (5-0)

#### 7.VI. ZO2020-0074VAR 1144 Weirs Blvd Unit 3 Variance Application (PDF)

Applicant Tim Blanc outlined his request to the Board. He needs a variance for an increase in the bulk of a nonconforming structure, to add a dormer to the rear of the structure. He explained that the cottage is right on the beach, it is approximately 15' from the shoreline. T. Blanc explained that he would be demolishing the existing structure as it is not repairable and rebuilding on the same footprint, changing the roofline and adding a second floor living area.

At 8:04 PM S. Bogert opened the public hearing

John Sinnamon, President of Pier III Condominiums, stated that they have no issues with him (Mr. Blanc) rebuilding because, currently it is below his deck line. He did state that he understands that his view is not protected but that by allowing the dormer it will decrease the value of his condominium unit. S. Bogert noted that they can go up to 35' in that Zone.

D. Trefethen clarified the application. He explained that, without a variance, the applicant can change the pitch of the roofline and put a dormer on the opposite side of the roof without a variance as it is not in the setback. The only portion the applicant needs a variance for is the second dormer that faces Pier III Condominiums because it would be in the setback area.

John Sinnamon stated that he has been a member of a Zoning Board, and that the fact that the applicant recently purchased the property and he does not have a hardship.

AT 8:25 PM with no one else to speak for or against the application, S. Bogert closed the public hearing.

T. Blanc addressed the Board again. He noted that the loss of view would be approximately 5 square feet. The structure is in poor condition, they purchased it to rehab it which would improve its value and the value of the surrounding properties. He also noted that he has been working with DES regarding the Shoreland Impact.

M. Foote clarified that all the work is confined to the existing footprint.

T. Blanc clarified for the Board that the house height, including a short foundation to get out of flood zone is 18'7", the roof will be approximately a 10/12 pitch. The house in its current state is approximately 11' in height. He noted that he is utilizing different framing techniques etc to keep the height down.

James Grace, an abutter from Pier III, addressed the Board. He stated that ultimately two windows would be blocked and it would decrease his property value.

M. Dellavecchia noted that the applicant is doing his due diligence to save space and he is using the existing footprint.

M. Dellavecchia made a motion to approve Application ZO2020-0074VAR for a variance from Article VI Section 235-35B to allow the installation of a dormer on the rear of the existing house.

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

Granting the variance would not be contrary to the public interest as it would be taking an existing cottage and upgrading it without expanding the footprint.

2. The spirit of the ordinance is observed; AND

If the variance were granted, the spirit of the ordinance would be observed as the owners would be upgrading the structure and increasing its value and would not devalue the neighboring property.

3. Substantial justice is done; AND

Granting the variance would do substantial justice because it would upgrade the property, increasing its value and make it functional for the owners

4. The value of surrounding properties are not diminished; AND

If the variance were granted, it will not diminish the value of the neighboring properties;

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;

The property cannot be made larger, the cottage was originally constructed prior to zoning and due to its proximity to the water and being in a flood zone he has to use the existing footprint.

M. Foote seconded the motion.

Four in favor (S. Bogert; M. Foote; R. Maheu; M. Dellavecchia) One abstained (G. Ober)

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.

\*\* Due to the COVID-19 pandemic applicants were asked to stagger their arrival at the meeting. Due to the fact that some of the applicants had not yet arrived

S. Bogert made a motion to move the Request for Rehearing up on the agenda as there is no public hearing or input.

M. Foote seconded the motion.

All in favor.

The Board briefly discussed the request for rehearing.

M. Foote made a motion to deny the request for rehearing Application ZO2020-0065VAR 144 Lake St Unit 10.

G. Ober seconded the motion.

Four in favor (M. DellaVecchia; R. Maheu; G. Ober; M. Foote); one abstained (S. Bogert)

At 7:42 PM S. Bogert made a motion for a brief recess to allow applicants who were asked to come later to the meeting to arrive.

G. Ober seconded the motion.

All in favor (5-0)

At 7:55 PM the meeting was called back to order by S. Bogert.

The applicant for 1144 Weirs Blvd arrived, to keep the meeting going, the application was moved up on the agenda.

- 8.I. ZO2020-0062EW 40 Carriage Lane Equitable Waiver Of Dimensional Requirement Application (PDF)

Applicant Ken Brunelle outlined the request for an Equitable Waiver. He explained that when the contractor built the deck he built it slightly further over than intended. Mr. Brunelle has a CUP from the Planning Board for the 50' buffer and the project did go to the Conservation Commission. He informed the Board that the encroachment is approximately 18" on the corner of the deck.

At 9:02 PM S. Bogert opened the public hearing.

Neighbor Mike Migneault commented that the deck is beautiful and he does not have an issue with the encroachment into the setback.

At 9:03 PM, with no one to speak for or against the application, S. Bogert closed the public hearing.

The Board briefly discussed the application, that it was not deliberately done, and it is a minimal encroachment which will not affect the neighboring property.

M. Foote made a motion to approve Application ZO2020-0062EW for an Equitable Waiver of Dimensional Requirements from Article VI Section 235-35(B) Side Setback to grant an equitable waiver

of dimensional requirements for an encroachment into the side setback and rear 50' buffer by the existing rear deck. Encroachment was discovered after completion of construction and an as-built survey was done.

a. The violation was not noticed or discovered by the owner, former owner, owner's agent or representative or municipal official until after a structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

The encroachment was not discovered until the project was complete and an "as-built" survey of the property was done.

b. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of any owner, owner's agent or representative but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent or by an error in ordinance interpretation or applicability by a municipal official in the process of issuing a permit over which that official had authority;

The violation was not an outcome of ignorance of the law, it was a miscalculation on the part of the contractor when installing the deck.

c. That the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area nor interfere with or adversely affect any present or permissible future uses of any such property;

The encroachment of approximately 18" on the corner of the deck does not constitute a public or private nuisance and would have no effect on future uses of the property.

d. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.

The cost of correcting the error would outweigh any public benefit and it would be inequitable to require the violation to be corrected.

G. Ober seconded the motion.

All in favor (5-0)

#### 8.II. ZO2020-0063VAR 40 Carriage Lane Variance Application (PDF)

Applicant Ken Brunelle outlined his request for a Variance to allow the construction of a fire pit within the 30' buffer. The applicant noted that CBH Landscaping installed the fire pit and patio and that it is made of permeable pavers and its on an area of already mowed lawn.

At 9:21 PM S. Bogert opened the public hearing.

Neighbor Mike Migneault commented that he does not have a problem with the fire pit. It does not affect greenspace.

At 9:22 PM, with no one to speak for or against the application, S. Bogert closed the public hearing.

The Board discussed the application, some of the issues discussed were the permeability, after a fire, where does water go, and was the ground excavated to install the pavers.

D. Trefethen explained to the Board that the pond was created at a detention pond, man-made.

G. Ober made a motion to deny Application ZO2020-0063VAR for a variance from Article IV Section 235-19 (F)(1)a and Article VI Section 235-35(B) Rear Setback to allow the construction of a fire pit with patio.

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

Granting the variance would not be contrary to the public interest ;

2. The spirit of the ordinance is observed; AND

If the variance were granted, the spirit of the ordinance would not be observed as the spirit of the ordinance with the buffer is to protect the wetland

3. Substantial justice is done; AND

Granting the variance would not do substantial justice because it would not have an effect on the value and use of the property

4. The value of surrounding properties are not diminished; AND

If the variance were granted, it will not diminish the value of the neighboring properties;

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship; There is no hardship, the patio and firepit were built in the buffer without appropriate permits.

M. Foote seconded the motion.

Three in favor (S. Bogert; M. Foote; G. Ober); Two opposed (R. Maheu; M. Dellavecchia). Motion passes.

8.III. ZO2020-0076VAR 34 Massachusetts Ave Variance Application (PDF)

**Due to the time, the Board informed the remaining applicants that no more applications will be heard this evening after the application for 34 Massachusetts Ave. All remaining applications will be continued to the October 19, 2020 meeting.**

Applicants Dave Henrick and the owner of the property, David Thompson, outlined the application. The proposed new lot would be conforming in size and frontage, the remaining existing lot would meet size requirements but due to the unusual shape of the property would have 70' of frontage on Massachusetts Ave, not the required 80'.

At 9:49 PM S. Bogert opened the public hearing.

At 9:49 PM, with no one to speak for or against the application, S. Bogert closed the public hearing.

The Board briefly discussed the application. They noted it would be another needed house in Laconia.

G. Ober made a motion to approve Application ZO2020-0076VAR for a variance from Article VI Section 235-34 Minimum Lot Frontage to allow the lot to be subdivided into two lots. Reduction requested is 10' of lot frontage.

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

Granting the variance would not be contrary to the public interest as it would be in harmony with the lot size of other homes in the neighborhood

2. The spirit of the ordinance is observed; AND

If the variance were granted, the spirit of the ordinance would be observed as the proposed subdivision of the lot will allow for the construction of needed housing.

3. Substantial justice is done; AND

Granting the variance would do substantial justice because it would be in harmony with the surrounding neighborhood and not have any negative effect.

4. The value of surrounding properties are not diminished; AND

If the variance were granted, it will not diminish the value of the neighboring properties;

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;

The proposed use is a reasonable one as it is consistent with the neighborhood and does not have any negative effect.

M. Dellavecchia seconded the motion.

All in favor (5-0)

8.IV. ZO2020-0079VAR 34 Pine St Variance Application (PDF)

Continued to the October 19, 2020 meeting.

8.V. ZO2020-0081VAR 111 Island Drive Variance Application (PDF)

Continued to the October 19, 2020 meeting.

8.VI. ZO2020-0083VAR 119 Pendleton Beach Rd Variance Application (PDF)

Continued to the October 19, 2020 meeting.

- 8.VII. ZO2020-0084VAR 43 Opal Lane Variance Application (PDF)  
Continued to the October 19, 2020 meeting.
- 8.VIII. ZO2020-0085VAR 17 Van Dyke Dr Variance Application (PDF)  
At the request of the applicant the application was continued to the October 19, 2020 meeting.
- 8.IX. ZO2020-0086VAR 289 Pleasant St Variance Application (PDF)  
Continued to the October 19, 2020 meeting.
- 8.X. ZO2020-0087VAR 522 Endicott St N Variance Application (PDF)  
Continued to the October 19, 2020 meeting.
- 8.XI. ZO2020-0088VAR 23 Summit Ave Variance Application (PDF)  
Continued to the October 19, 2020 meeting.

9. OTHER BUSINESS

- 9.I. Re-Hearing Request ZO2020-0065VAR 144 Lake St Unit 10 (PDF)  
See above.

10. ADJOURNMENT

At 10:05 PM M. Foote made a motion to adjourn the meeting.  
G. Ober seconded the motion.  
All in favor.

DRAFT