



City of Laconia
Zoning Board of Adjustment
Monday, May 17, 2022 - 6:30 PM
City Hall in the Armand A. Bolduc Council
Chamber

5/17/2022 - Minutes

1. CALL TO ORDER

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

2. ROLL CALL

M. Hayward, J. LaRoche, R. Maheu, M. Dellavecchia, S. Bogert, M. Foote, R. Boddie

3. RECORDING SECRETARY

Taylor Daigle, Conservation/Planner Technician

4. STAFF IN ATTENDANCE

Dean Trefethen, Planning Director

Sheena Duncan, Zoning Technician

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

5.I. Acceptance Of April 18 Minutes

Chair S. Bogert made M. Hayward a voting member for tonight's meeting,

R. Maheu motioned to accept the minutes of the 4/18 meeting as presented. M. Foote seconded. All vote in favor (5-0)

6. EXTENSIONS

6.I. ZO2019-0021SE; Endicott Street East MBL 187-72-7; Request To Extend The Approval To Install Solar Garden On City Property

The applicant addressed the board over the phone. The project is requesting an extension because of supply chain issues resulting from the covid shutdowns. Their goal is to build in 2023.

M. Foote motions to accept the six-month extension request. M. Dellavecchia 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.

7.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

Property owner, Peter Gerardi, addressed the board regarding his project at 29 Sweetbrier Way. They are looking for a six-month extension and have just broken ground on construction.

M. Foote motions to accept the six-month extension request. R. Maheu seconds. All vote in favor (5-0)

7.II. 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

Property owner, Reuven Kitov, addressed the board. He is requesting to build a shed on his property within the side setback. He is requesting a 6-foot setback instead of the 10-foot requirement. Applicant brought photos of his property to share with the board. He addressed that if required to keep the 10-foot setback, the shed would be in the middle of their access point to the water. Allowing the shed to be built in the setback ensures that they can still get a watercraft into the water. The shed design will match the house and there is a vegetative screening already between the two properties. M. Foote asks how close to the property line it would be? Applicant answers that they will maintain a 6-foot setback. M. Hayward asks about placing it on the other side of the house. Applicant addresses that the shed would be holding all of their water-related items and it would make sense to be on the side of the house with easier access to the water. J. LaRoche asks if neighbors are aware of it. Applicant says yes, they do not have any issues.

S. Bogert opens the public hearing at 6:52pm. With no one to speak for or against the application, the public hearing is closed at 6:52pm.

M. Dellavecchia notes that the plan makes more sense after speaking to the applicant. M. Hayward agrees and thinks the 4-foot encroachment is not a lot, and there is already a vegetative buffer present. M. Foote notes that there would be enough space to maintain the area around the shed as well.

M. Dellavecchia motions to approve the variance requested because it is only a request for a 4-foot encroachment, and it is a narrow lot to begin with. M. Foote seconds. All vote in favor (5-0)

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. State Of NH Housing Appeals Board Remand Concerning Application ZO2021-0018SE-STL, 33 Clearwater Pl; A Special Exception To Allow Short Term Lodging

S. Bogert addresses the board and explains the Housing Board of Appeals remand to the ZBA. The initial application was denied, and the Appeals Board determined the ZBA's decision was in error. Therefore, the application is back at the ZBA for a rehearing. The applicant's legal team addressed the board and would like to readdress a few comments from the previous denial. They have suggested the following conditions of approval to be considered by the ZBA:

1. The applicants will comply with all parking and occupancy limits set by the Planning Department. There will be no parking allowed I the street and occupancy will be limited at 12 people.

2. They will ensure that they are adhering to the city's noise ordinance.
 3. They will supplement municipal trash services by hiring a private company to remove excess trash when guests turnover.
 4. They will install a fence/screening to prevent accidental trespass and help reduce noise.
- S. Bogert read these out loud for the audience and board.

M. Dellavecchia asked about the covenants in the Clearwater development. S. Bogert states that the board nor city have any control over the covenants. Anything that arises from those covenants are a civil matter between the development/homeowner's association and the individual homeowner.

M. Foote asks the applicants how long this property has been renting? Applicants respond that it has been used for this since at least 2014.

S. Bogert opens the public hearing at 8:07pm.

Jon Hildreth, of 39 Clearwater Place, addressed the board. He acknowledged that the Housing Board of Appeals determined that past concerns cannot influence the decision about the future use of the property. He notes that the fence being recommended goes against the covenants of the development. The covenants do not allow for any artificial fencing, only natural barriers like vegetation. He also notes the covenants address "the preservation of the character of Clearwater as a residential community and each lot will be used for residential purposes only". He also notes the issues and safety concerns at the docks. There is a covenant that addressed that "no slip or dock shall be used or rented by anyone but the owner of the lot or other Clearwater residents". Mr. Hildreth notes that they would have brought these covenants up early but only recently became aware of them. He notes that the covenants preclude the short-term rental use and remain in perpetuity. Mr. Hildreth also notes that as of 5/16/22, 12 of the 17 lot owners (comprising of about 85% of the land in the development) filed an amendment with the Registry of Deeds that limits the allowable time of rentals to a maximum of 180 days. He also notes that he was listed as the emergency contact for the short-term rental permit and does not know why that would be the case. He asks the board to deny to application based on the existing covenants.

S. Bogert addresses the room to clarify a few things. The first, is that the material of the fence is not specified and that would be addressed between the property owners and the planning department. The second, is that the docks are not a part of the discussion because it is an internal issue among the development/home-owners association and the property owner. The third, is that all covenants related to a deed is a legal matter between the home-owner's association and the homeowner. S. Bogert notes that the concerns are understandable, but the city cannot get involved with covenants and it will have to be dealt with between the development and the individual homeowner.

Jon Hildreth addresses the board again. He notes that the applicant was renting last year after the city denied their application. S. Bogert addresses that many of the concerns from previous years are addressed in the permitting process, such as parking, trash, and noise. There is the possibility of a permit being revoked if these conditions are not met. D. Trefethen also adds that once the appeal was filed with the Housing Board of Appeals, the city could not enforce anything, including the past fall/winter renting. The appeal was filed shortly after the initial denial and met the requirements for filing the appeal in time.

Insha Haque, of 40 Clearwater Place, addresses the board. She notes that she has written a letter that summarizes the concerns of the property to the board. She feels the safety concerns are not being addressed. Past renters have blocked her and her husband's ability to enter and exit their own driveway. She notes that their jobs at the hospital require them to be able to respond quickly and get to the hospital. They bought their house because the proximity to the hospital. She notes that even with the occupancy limits, there have been issues.

S. Bogert responds to Mrs. Haque. He says that a major condition of approval will require that there is no parking in the street and therefore, no blocking of any driveways. If there was an issue with parking, the permit approval process provides instructions on how to file a complaint with the city and that the local agent must respond and resolve the issue. As long as the applicant complies with the permit, the issue should not happen again.

Mrs. Haque readdresses the board and states that the main issue has been cars with trailers attached to them. They have called the police about the issue before and were told they could not enforce anything because it was a city matter.

S. Bogert closed the public hearing at 7:27pm.

S. Bogert asks the applicant if the parking in the street condition will apply to all trailers and vehicles. The applicant responds yes. J. LaRoche asks what would happen if there were trailers on every vehicle there. S. Bogert states that if they cannot fit in the driveway they cannot be there.

M. Foote asks is the road is city-accepted or private. D. Trefethen says it is a city street. S. Bogert says no matter what there is to be no parking in that street.

M. Hayward asks D. Trefethen about the process of creating the ordinance for short-term lodging and if it considered how covenants would play a role in the permitting. D. Trefethen states that covenants are a civil matter with the association/development and the homeowner. The city does not referee covenants for anything, including boundary line disputes. The city does not enforce them. Homeowner's associations have the ability to change their rules regarding covenants. M. Hayward asks about the legality of a ZBA decision that does not consider the covenants? D. Trefethen states that if an issue arises related to such it would go to the court system and the judge would have to decide. D. Trefethen notes that a major issue with covenants is the interpretation of the language used. He gives the example that the term "resident" could mean the homeowner, or it could mean someone residing there for a certain time. The city cannot make that interpretation.

D. Trefethen also notes some details about the permitting process for short-term lodging. The permitting process addresses conditions surrounding parking, noise, and trash. An approval letter is sent to the applicant and all abutters, in which there are instructions for reporting real-time issues. There is a second component to the permitting process that is educational for the applicant. The planning department suggests that the applicants post/advertise the conditions of the permit within the building they are renting, for any renters to be aware. He notes that we have over 90 approved short-term lodging permits in the city and there have been zero complaints about permitted properties. The only complaints the department has received are in regard to unpermitted properties, so the educational component of the application process appears to be working.

M. Dellavecchia notes he is in favor of short-term lodging but is concerned that granting this approval puts a legal burden on the abutters/development. S. Bogert reiterates that it is not appropriate for the board to consider covenants in their decision. M. Dellavecchia asks about how long a permit is good for. D. Trefethen states it is for 2-years, and then they must be renewed.

R. Boddie notes that the board understands both sides of the issue.

S. Bogert discusses that the city's permitting process for short-term lodging covers all of the previous issues in the past, and therefore, the past issues cannot be used against the property as there are policies in place to control the issues, once permitted.

S. Bogert also states that there will always be someone unhappy with a decision made but the board needs to consider the facts in front of them. M. Hayward notes that the application packet in front of them does meet all standards of the ordinance. S. Bogert notes again that all issues are covered by the permit and the applicant's word. There are checks and balance. D. Trefethen suggests using the term "screening" instead of "fence" for this application.

S. Bogert motions to approve the application for the special exception based on the property historically being used for rentals since 2014. They have also provided the documentation that there will be no added stress to municipal services. He notes five conditions of approval:

1. There will be no parking of any vehicle, trailer, or general obstruction in the street.
2. The occupancy is capped at 12 people.
3. There will be additional trash pick up on Saturdays, with guest turnover.
4. Screening will be added as agreed upon with the applicant and planning department.
5. The city noise ordinance will be complied with

M. Foote seconds the motion. The motion passes 3-2 (M. Hayward and M. Dellavecchia vote against).

8.II. ZO2022-0021VAR; 66 McGrath Street; Variance Request From Article VI 235:35B To Allow For The Construction Of A One Car Garage To Be Built Within The Side Setback

The applicant, James Poire, addresses the board. He is requesting to build a one car garage within the side and rear setbacks of his property. He is requesting to have a 10-foot side setback instead of 15-feet and the rear would be 12-feet instead of 15-feet. This will allow him to continue using his existing driveway without encroaching on the existing grass area and still park two cars in the driveway. He notes that this encroachment is not unusual for his surrounding properties. The new garage would match the shed at the end of the driveway.

M. Foote asks about the size of the garage. It will be 14x24. M. Dellavecchia asks about the angle the garage is to be placed at. Applicant notes he does not want to enlarge his driveway so the angle shown would allow him to maintain the existing driveway. S. Bogert notes that a different angle would require the owner to remove the shed, and it would be in the setback anyways. R. Boddie asks about vegetation in the area. The applicant states there is already a tree buffer with the neighboring properties.

S. Bogert opens the public hearing at 8:02pm. With no one to speak for or against the application, the public hearing is closed at 8:02pm.

M. Hayward notes that she did a drive-by at the property and agrees with the applicant about the alignment of the garage. M. Foote asks about there being two driveways. D. Trefethen clarifies that it is a duplex property.

M. Dellavecchia motions to approve the variance request or a rear setback of 12 feet and a side setback of 10 feet. He notes it is a small lot, it will not impact the neighboring property values, it is an improvement to the owner's property, and there are no abutter issues. R. Maheu seconds. All vote in favor (5-0).

8.III. ZO2022-0023VAR; 556 Weirs Blvd, Capri Coondos; Variance Request From Article VI 235:35B To Allow For The Construction Of A Second Story Over An Existing Footprint That Encroaches Into The Side Setback

The owner, Ron Shepherd, addresses the board. He is requesting to add a second story to his one-story home to expand the living space. It will be on the exact same footprint, which currently encroaches on the setbacks. M. Dellavecchia asks which unit this is, applicant responds that it is unit 5. The applicant also states that it is an existing cinderblock foundation with a crawl space. D. Trefethen asks that any engineering reports for the building permit process address that the existing foundation can support the new story. S. Bogert asks about the height. Applicant states it will be 27 or 28 feet.

S. Bogert opens the public hearing at 8:09pm. With no one to speak for or against the application, the public hearing is closed at 8:09pm.

S. Bogert asks if a shoreland permit is needed. D. Trefethen states we will have to look into it, but it can be made into a condition of approval. M. Foote notes this is a reasonable request. There will be no change to green space, and it will fit in with the existing community.

M. Foote motions to accept the variance stating that the second floor will remain under the height limitations of the city, it is not contrary to public interests because it is consistent with the neighborhood keeps with the spirit of the ordinance, it does substantial justice, and neighboring property values will not be impacted. M. Dellavecchia seconds. S. Bogert notes the condition that is a state DES permit is needed, the applicant must get their approval prior to building. All vote in favor (5-0).

- 8.IV. ZO2022-0022VAR; 377 Union Ave; Variance Request From Density To Allow One Unit To Change From Commercial To Residential, For A Total Of 11 Residential Units

The applicant was not present to address the board. S. Bogert motions to continue the application to the next ZBA meeting. M. Foote seconds. All vote in favor (5-0).

9. OTHER BUSINESS

10. ADJOURNMENT

R. Maheu motions to adjourn at 8:18pm. M. Foote seconds. All vote in favor (5-0).

DRAFT