

**ZONING BOARD OF ADJUSTMENT**  
**MEETING OF JUNE 20, 2011**  
MINUTES APPROVED AT MEETING  
OF JULY 18, 2011



**PRESENT:** S. Bogert, **Chairman**; S. Perley, **Vice Chair**; O. Gibbs; D. Greski; M. Foote

**ABSENT:**

S. Bogert called the June meeting to order at 7 PM. There was a full 5 member board present for the meeting.

**HEARINGS:**

**S. Bogert let the board know that he is employed at Lowe's and that Barbara Foster, the first applicant, works at Lowe's as well. They do not work in the same department and he feels he can be objective; however the board can determine if they feel there is a conflict of interest. The members said they had no issues with this; they feel that he will be objective.**

<b>Application # 2011-0012</b>	<b>MSL 425-139-39</b>	<b>RG Zone</b>
<b>Bruce &amp; Barbara Foster</b>	<b>21 Lyford Street</b>	<b>Variance</b>

**The applicant is requesting a Variance from 235-35 (B), side setback, in order to build a deck which would be in line with the current house and not protrude any further into the side setback.**

**Applicant:** Barbara Foster said that they have a parcel of ground that is fairly unusable right now. She said this used to be the old Red Cross building. The land is covered with tree stumps, and a bamboo field which they are trying to kill off right now. There is a steep slope and no access from that side of the property. She said that the back yard is very small, as are most in this area. They want to erect a deck and access it from the dining room. The deck would be built from one exterior wall to the other exterior wall.

This is the only way that space could be used. If they made the deck 4 feet narrower they would not need the variance. However they have 3 people with disabilities that live with them so they need the extra space. If building the deck to meet the setbacks the people would not be comfortable and would have issues navigating in the space.

S. Perley said the dimensions of the proposed deck are 14 x 20 and she asked how many feet would remain between the deck and the property line. Bruce Foster showed the location and said there is a 6ft side setback right now.

Barbara Foster said if they built this in the rear of the property the deck would be very high and not as safe for the residents. M. Foote asked if any of their neighbors had expressed issues with this and was told no, they are not aware of any. Barbara Foster said they had discussed this with their direct neighbor who stated she has no issue.

D. Greski said he has concerns about making the property more non-conforming than it currently is. He asked why they couldn't build the deck narrower, to meet the setback requirement, or place it elsewhere. He said they are adding to the non-conformity of the property.

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S. Perley said they are keeping the new deck in line with the house; if placing the deck in the rear she feels it would be non-conforming also. That would be difficult to do as it is very steep in the rear of this lot. Bruce Foster said they will be adding a fence to the lot as well.

**Public:** No one spoke for or against the application.

**Board:** M. Foote clarified that the setback would be 6 ft instead of the required 10 and was told yes. They would be maintaining what exists there now.

**S. Bogert closed the hearing to the public.**

**Motion:** S. Perley moved to approve application 2011-0012 for the variance to install a 14 x 20 ft deck which would encroach 4 ft into the 10 ft setback.

The variance will not be contrary to the public interest and no one from the public spoke for or against the proposal.

The spirit of the ordinance is observed as the proposal won't alter the character of the neighborhood or propose threats to safety or health or welfare of the public.

Substantial justice is done in granting of the variance as this is consistent with use in the area, and would allow the applicant to maximize their property to the full and best use and give them outdoor space.

No evidence was presented to show that the values of surrounding properties would be diminished by the proposal.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to the applicant.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. The applicant does not have many alternatives due to the slope of the land.

The proposed use is a reasonable use and won't alter the character of the neighborhood.

M. Foote seconded the motion, with all voting in favor, 5-0.

**Application # 2011-0013**  
**Russell Beane**

**MSL # 394-336-15**  
**35 Blueberry Lane**

**RS Zone**  
**Special Exception**

The applicant is requesting a Special Exception from Section 235-70 (C) (2) (a – h) in order to change the use of the property from a place of worship to that of a conference center.

**Applicant:** Suzanne McKenna appeared along with the applicant, Russell Beane. He has a purchase and sales agreement on the property at 35 Blueberry Lane. Mr. Bigelow from the Jehovah's Witness congregation is present as well. They are proposing to change the use from that of a church to a conference center. They feel this is closely related to the current use, and would be a supporting function to the neighborhood. The use is similar and is consistent with Laconia's Master Plan.

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S. McKenna went over the criteria for the Special Exception.

The use is authorized in the chapter with the granting of the Special Exception.

The requested use will not create undue traffic congestion or unduly impair pedestrian safety. There is ample parking on the site. The intensity of the use would be similar to that of a chapel. In the parking table provided in the ordinance the requirement is 4 seats for each 1 space of parking and that is the same as in that of the conference center. The building holds 270 people, so 67.5 spaces are required and there are 75 spaces there now. People would not have to go off site for parking so there is no issue with pedestrian safety.

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 storm water runoff onto adjacent property or streets. The intensity of use would be roughly similar to what it is now as the chapel. They would handle all manner of functions, such as wedding receptions, memorial services, and baby showers, which are not at maximum capacity on a day to day basis. The property could have intense use 1 or 2 days a week, with some smaller usage during the week.

The requested use will not create excessive demand for municipal police, fire protection, schools or solid waste disposal services. Since the requested use is similar in nature there would be no increase in the demand for these services.

Any special provisions for the use as set forth in this chapter are fulfilled. There are no special provisions set forth in the chapter.

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. The property would be used to hold meetings, or other social functions which is consistent with the Master Plan, so would be beneficial to the neighborhood. S. McKenna said the use would be similar to that of the Opechee Park or Leavitt Park clubhouses.

The proposed location is an appropriate one for this use. This is within walking distance to Wingate and other residences in the area so the use is not weather related.

The use is consistent with the chapter and with the Master Plan. The residents of the neighborhood would be able to walk to the structure and it would support the existing neighborhood.

S. McKenna said that Mr. Beane is a long standing member of the community and familiar with the Laconia area so he knows what is needed in the area.

**Board:** S. Perley said that one of the abutters to this property is Perley Pond. She said you can barely see the parking lot from the road unless it is winter, and she wants to ensure they preserve the vegetation that is there now to protect the integrity of the pond.

R. Beane said that he agrees. He said he lives near a pond himself and enjoys seeing it. He stated that there is some growth there now, with some evergreens, and they could possibly add more of a buffer in the future. S. Perley said she is interested in preserving the buffer.

S. Bogert asked if funeral services would be held here and was asked to define funeral services. He asked if a casket would be in the building. R. Beane said he is trying to separate the two businesses. He said,

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according to NH law, a funeral home has to have a mortuary and embalming facilities. In a memorial service a life is celebrated, and they do not need the casket or body; they can use an urn which represents the person but he stated that he cannot say 100% that a casket won't be in the building. If someone rents the facility and wants the casket or body there, then yes. He said that is the same as a church. He said the intent is not to make this a funeral home.

S. Bogert said this use is mentioned specifically. Conference centers do not mention this. R. Beane said his goal is to have 2 enterprises. This is a place to gather, hold functions, or a celebration of a person's life. S. Bogert said if left as a church, then they could have that use, and a church can rent their space out.

S. McKenna said that the marketing of this would not be in competition with their business. Celebrations of life are a trend right now, so this facility would be a resource if that comes up. They are looking for this property to be a branching out of their business plan. They hope to keep services at the other facility. The focus here would be a conference center but some usage would come from their existing business.

R. Beane said that now people want to hold a celebration of life, and have light refreshments, without leaving one facility, to have them all under one roof. He said they could have the funeral at Pleasant Street, and then meet here for a light lunch.

M. Foote asked if they would continue to have church services and R. Beane said they plan a total separation but that someone could rent it on Sunday morning to hold a church service. He said that the Memorial Middle School does that now and other public facilities are also rented out to hold church services locally, too.

M. Foote asked if he had any idea of what the percentages are going to be for celebrations of life and other functions and R. Beane said he doesn't think a high percentage will be used here for services but that he cannot say right now.

D. Greski asked if they currently hold funeral services at the church now and B. Bigelow said yes. They have had caskets there. D. Greski said that is an accepted use with a church but that he doesn't see a convention center having caskets going in and out. R. Beane said he doesn't think will happen frequently but that he owns Wilkinson-Beane so the option would be there. S. McKenna said the Elks is being used frequently for celebrations of life now. D. Greski said he agrees, that is now more common, but that he thinks the casket makes it different.

R. Beane said that a funeral home is a place to hold funerals, and they must have an embalming facility. They will not have that here so this cannot be a funeral home. They are thinking more of weddings, and showers or it could be rented out by a church.

S. McKenna said there are different licensing requirements for embalming. Any aspect of funeral directing would require supervision.

D. Greski asked S. Saunders if the Elks or Knights of Columbus could hold a celebration of life with a casket and she said it sounds like that is going on already; we have no zoning on that.

R. Beane said that you do not have to be a licensed funeral director to hold services. You can use a family designee. There is no law covering that. The cremation rate in NH is 65%. They must have another facility to hold these types of celebrations in.

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S. Bogert asked for clarification on renting or leasing to the church. S. Saunders said by granting this as conference center, it can be rented to entities. The main use would be that of conference center. They could rent to church groups of any denomination, hold showers, weddings or receptions, etc.

S. Saunders let the board know that the definition of conference center also includes accommodations for sleeping so the applicant could add that in the future. S. Perley said there is not enough parking for that use.

M. Foote asked if there is currently food preparation here and was told there is no kitchen facility. R. Beane said that if food is brought in, the family would have to bring in or have it catered. M. Foote asked if there is parking in the rear and is it paved and was told yes.

S. Perley clarified that there would be no changes to the exterior and was told none at all by R. Beane. He said the building is in walk in condition.

**Public: Evelyn Millar, 1090 Main Street:** She said they live on the corner of Blueberry and North Main, and the church is in their back yard. She stated she didn't even know the church was there. She said she thinks the proposed use is more like a park house. She asked if music would be included and was told probably. She said she is concerned with the noise factor. She has an apartment with a tenant so has to be concerned about noise for the tenant as well.

**Bill Bigelow:** He is the owner and is confused on what was said about the church continuing to use the structure. He said they have been offered the use of this facility while looking for a new building or finding land in order to build. Now he thinks the religious use would not be allowed. He asked S. Saunders to explain that. S. Saunders said that is one view point, but this has not been laid to rest yet. B. Bigelow said it is kind of them to be allowed to continue to meet there but they do want to sell and build a new building. If they cannot continue to meet there they must re-think on where to go.

S. Saunders said if the ZBA approves this, the applicant would have one year to act upon it so the church would have the grandfathered use for one year. That use would be contingent on the change-over. If this Special Exception is approved, it has one year for it to come to fruition; if the church wanted to remain, they would be grandfathered. Then R. Beane could take over.

**Richard Carrier, 50 Blueberry Lane:** He asked what the zoning here is now and was told it is RS, Residential Single, and it will remain that. They must meet the criteria for the Special Exception because of the zone. He verified that the capacity of the building is 270 and S. Saunders said yes, but she is going by what the application presented to us says. R. Carrier asked if R. Beane purchases the property he would be charged taxes and was told yes. R. Carrier said that is what he wanted to know.

**Brian Smith:** He asked if he has a large home and wants to rent part of it to hold church services, would a Special Exception be required to do that and was told yes. S. Saunders told him that there are strict criteria, however, for home based businesses which he couldn't meet.

**Craig Beane:** He stated he wanted to let the board and public know that these will be two separate entities, Russell Beane is purchasing this himself, Wilkinson Beane is not.

S. Bogert asked why the packet states R. Beane, President of Wilkinson Beane, and S. Perley said she feels they are just stating his title. The application itself is in just his name.

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R. Beane asked if they would need two Special Exceptions if the church needs a place to go. He said that the Purchase and Sales agreement doesn't hinge on that. S. Saunders clarified; she said that they cannot both be the primary user. If the church remains using it, then the building would not be permitted for the conference center. S. Saunders said the church could not be the primary use; if other things are booked, then it is a conference center.

S. Bogert said he feels this is the same as allowing Brian Smith to rent his house and S. Saunders said it is different. Meetings, conferences, and seminars, under the home use, is not the specific use. The definition of house doesn't include seminars, conferences, etc. S. Perley said that this use is allowed under the Special Exception and S. McKenna said the RS is a different zone, where this is specifically allowed with the Special Exception.

R. Beane said his intent is not for this to be the same as a park house. Their staff would be there whenever there is a function, they would not give someone a key and tell them to bring it back when they were finished. There would be supervision by their staff.

No one else from the public spoke so S. Bogert went back to the board for any further questions of the applicant. There were none and he closed the hearing to the public.

**Board:** D. Greski stated that paragraph 2, the definition of conference center bothers him. He said that everything listed works for the conference center. A person can say they have no plans to do something but that just means not tomorrow. S. Bogert said to remember that the Special Exception goes with the property. If sold, a new owner could change things and add beds, etc. S. Saunders said that requires site plan approval, but if it meets the criteria they could do it.

S. Bogert said he is uncomfortable. You buy a house knowing a church is there, but all of a sudden this changes, and you don't know what the use now is; it could be something different every day of the week. S. Perley said this use is allowed by the city in the zone.

S. Bogert asked if this is the proper place for this use and O. Gibbs said a church could rent this facility out, too. S. Bogert said a church would probably not allow drinking. He said that the neighbors deserve someone to speak for them.

D. Greski said how to apply to criteria a-h and S. Bogert said it has to be clear in his mind. If they meet a-h, meet the criteria and definition, then they are ok.

The definition was read again. S. Perley said the neighbors were notified. 2 people spoke, and one person was concerned with noise. No factual negative evidence has been presented.

S. Saunders said while Special Exceptions go with the property, they could limit this approval to this owner, and have a new owner return to the board.

S. Perley said she doesn't feel this will be a high impact use; S. Bogert said he doesn't disagree. O. Gibbs said she is fine with limiting the approval to this owner, as he is an established owner with a reputation to protect. This gives the city more control over the approval.

**Motion:** D. Greski moved to approve application 2011-0013 for the change of use from religious to conference center.

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The use is specifically authorized in the chapter and permitted by Special Exception.

This use won't cause any traffic congestion as the as the requirements are the same for this use as for the previous use, 1 space per every 4 seats. The site has 75 spaces and needs 67.5 per the ordinance. The fire permit shows current capacity at 270. The spaces are all off street parking so there will be no issue with pedestrian safety. The demand should be comparable to the existing use as the chapel.

The requested use will not overload any public water, or any other municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets. There will be no excessive demand. This is comparable to the demand that exists now, with the same amount of people and parking.

The proposed use is comparable to what currently exists there today so there should be no further demand on the services for police, fire, schools, or solid waste.

There are no special provisions set forth in the chapter.

The requested use is similar to what is currently there so would not create any hazards to the health, safety or general welfare of the public and should benefit the area as it will provide resources for social functions.

This location is an appropriate one and meets the permitted use requirements.

The requested use is consistent with the spirit and intent of this chapter and fits in with the master plan goal to utilize existing facilities and preserve the character of the neighborhood and of Laconia.

**The board added 2 conditions to the approval:**

- 1) This approval is for Russell Beane only; if the owner changes they must return to the ZBA for approval.
- 2) The applicant agrees to preserve the Perley Pond area. They will add a vegetated buffer so the parking lot isn't visible from the road, especially during the winter months.

M. Foote seconded; the vote was 4-1, with S. Bogert voting against the proposal.

<b>Application 2011-0014</b>	<b>MSL # 465-17-16</b>	<b>RS Zone</b>
<b>K. McCarthy</b>	<b>14 Beech Street</b>	<b>Special Exception</b>

**The application is requesting a Special Exception from Section 235-26, Table I, Table of Permitted Uses, in order to change a two-family residence to a three-family, which is permitted in the zone by granting of the Special Exception.**

**Applicant:** Kimberly McCarthy appeared for the application. The house is listed with the city as a two family, but when she purchased it the residence was set up as a three family. At some point, the building was made a three unit building. She tried to find out when this was done but was unable to locate any records. The two apartments are one bedroom units while her unit is a 2 bedroom. They had a hard time getting financing when they purchased the property and had to remove a sink/stove. She is now trying to re-finance to remove her ex's name and is having problems because of the discrepancy.

K. McCarthy stated that whether this is a 2 or a 3 unit house, there would probably be the same number of people residing there. The parking area holds 4-5 cars.

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S. Perley asked if the building was being used as a 3 family when she purchased it and was told yes. The city has it listed as a 2 family.

D. Greski said that they need at least 4 parking spaces, and clarified that this area holds 4-5 cars. K. McCarthy stated they could park 5 cars.

K. McCarthy stated that the zone allows the multi family use with the Special Exception. She attached pictures of buildings in her neighborhood, with the application, showing ones that are multi units.

S. Perley asked her to show how she could park vehicles. K McCarthy showed the parking area on the plan. She currently has one tenant in the building.

S. Perley asked if anyone would go in to make sure this meets code if this is approved and S. Saunders said she isn't sure. K. McCarthy said no changes were being made inside. She said she talked to neighbors and they had no issues in the past with the 3 family. O. Gibbs said she feels it makes a difference if the building will be owner occupied. K. McCarthy said her tenant has lived there for 3 years and doesn't have a car.

**Public:** No one spoke for or against the application.

There were no further questions of the applicant from the board so S. Bogert closed the hearing to the public.

**Motion:** O. Gibbs moved to approve application 2011-0014 for the special exception in order to allow this 2 family to become a 3 family unit.

Use is authorized in the chapter with the granting of the Special Exception and the building was used as a 3 unit in the past.

The proposal will not create traffic congestion or impair pedestrian safety. There are sidewalks in the neighborhood, and adding an extra vehicle with a one bedroom apartment shouldn't change traffic here.

The requested use won't overload public or municipal systems. There should no increase with a one bedroom unit. There are no changes being made to the exterior of the property so this won't affect storm water runoff. The building set up to be used as a 3 unit, so this will not be adding any undue strain.

The addition of the one bedroom unit will not create excessive demand on police, fire, schools or solid waste.

There are no special provisions to be met in this chapter.

This will not be creating any hazards of any kind to the general public as the neighborhood is a mix of older large single units and multi-family units.

The proposed location is appropriate as this is a mixed use neighborhood and other multi -family units exist now.

The use as a 3 unit apartment is consistent with others in the neighborhood and is not contrary to the intent of the chapter and is in keeping with the Master Plan.

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S. Perley seconded the motion and all voted in favor of approval, 5-0.

**MINUTES:** The minutes from the ZBA meeting of May 16, 2011 were reviewed. Two typos were corrected. The motion the minutes as amended was made by S. Perley. M. Foote seconded and all voted in favor of approval, 5-0.

**OTHER BUSINESS:** Discussion followed on general wording of motions. S. Perley talked about the planning and zoning conference she recently attended and gave the other board members information she received at the conference.

M. Foote let the board members know that the Google Earth newest fly over was done in April 2011 and it is a great tool to use. He said the detail is wonderful.

**ADJOURNMENT:** The motion to adjourn was made by S. Perley with the second by M. Foote. All voted in favor, 5-0, and the meeting adjourned at 8:45 pm.

Respectfully Submitted:

Kristine Y. Snow  
Zoning Technician