

**ZBA MEETING
OF OCTOBER 19, 2009
MINUTES APPROVED 1/19/10**

PRESENT: S. Bogert, **Chairman**; P. Lambert, S. Perley, R. Tautkus, D. Greski, O. Gibbs (Alternate), J. Tivnan (Alternate)

ABSENT: S. Saunders, Planning Director

STAFF: K. Snow

S. Bogert called the meeting to order at 7 pm and welcomed everyone to the October 19, 2009 meeting of the Laconia Zoning Board of Adjustment.

RE-HEARING REQUEST:

**Application # 2009-00039
Laconia Union & Church LLC**

**MSL # 428-220-5
220 Union Ave**

**P Zone
Motion for Rehearing**

The applicant is requesting a re-hearing on the Administrative Appeal regarding signage at 220 Union Avenue, CVS. The decision was made at the July 20, 2009 ZBA meeting to uphold the decision made by the Planning Director at the June 15, 2009 meeting.

Board: S. Bogert explained that this is a request for a re-hearing and the three original members will be seated, R. Tautkus, P. Lambert, and S. Bogert. There will be no public input, this is for discussion purposes only, to determine if the applicant had presented any new information or if the board erred in their decision in review what the Planning Director had determined.

This was continued from the September hearing as the board required a signed affidavit from the property owner, which they now have.

P. Lambert asked for clarification on which document they would be discussing and that was determined. The board members took time to review the document, which was the actual request for the re-hearing which had been submitted for the September hearing.

After reviewing the documentation, P. Lambert said again this is to determine if the property has two frontages or not. S. Bogert said yes, and was any new information submitted to show that the board had erred in their determination. R. Tautkus mentioned the frontages again and said she did not see anything new. S. Bogert said he agreed.

P. Lambert said items 13 and 14 are the ones to hone in on. Looking at the zoning ordinance, he does find it a bit confusing but going by what has been done in the past, the interpretation was proper. S. Bogert said he feels they are still splitting their words between the sign, the verbiage, and the paragraph. He asked if anything new had been added, any new evidence had been provided by the applicant. He feels they went over the same things that had been done by the other attorney.

P. Lambert said everything had been reiterated before and that we have to go by past practice and that past practice is that there is only one lot frontage. He read the definition of frontage, which states there is one frontage. There is nothing indicating that we have allowed a site to have two frontages so he feels there is no new evidence and that nothing new was presented. R. Tautkus said she agrees and that she would go by S. Saunders' interpretation. She stated that she has not been on the board that long and feels that S. Saunders would have made her determination based on past practices so would agree with that.

There was no further discussion.

Motion: P. Lambert moved to deny as there was no new evidence presented by the applicant to show that this was handled differently than any other situation. R. Tautkus seconded and the board voted to deny the request for the re-hearing, 3-0 for the following reasons:

**ZBA MEETING
OF OCTOBER 19, 2009
MINUTES APPROVED 1/19/10**

This is to certify that at the meeting held on October 19, 2009, the City of Laconia Zoning Board of Adjustment voted to deny the motion for a rehearing on the Administrative Appeal regarding signage by 220 Union Avenue, for CVS. The decision was originally made at the June 15, 2009 ZBA meeting by the Planning Director.

The motion to deny the request was based on the determination that the applicant had not provided any new information that would indicate that the board had erred in their original decision.

HEARINGS:

**Application # 2009-00041
M. Merrill/Dairy Queen**

**MSL # 327-220-5
1126 Union Ave**

**C Zone
Area Variance**

The applicant is requesting an Area Variance from 235-35 (A) in order to erect a sign that would be placed in the front setback. They also request relief from 235-62 (C) which states that if a sign is removed it shall be replaced with a sign that is in conformance with the provisions of the chapter. While this sign is over the square footage allowed by ordinance it is less than what previously existed.

Applicant: Tim Sullivan, from Barlo Signs, appeared for the applicant, M. Merrill, who is also in attendance. They are asking for a variance to erect a freestanding sign in the 10' setback which is required by the ordinance. The present sign is at a zero ft setback. They are significantly reducing the size of the signage, bringing the total down to 107 sq. The new freestanding sign will be 76.5 SF. After laying out the traffic patterns they found that the current location for the sign poses safety hazards. There are exits on both sides of the sign and it would block visibility for vehicles. The main delivery trucks would be entering the property and they feel the sign would be damaged by the trucks.

They are looking to move this to the north corner of the property, keeping the zero ft setback and give motorists the proper visibility and allow them time to turn onto the property. There are some large trees that block the other side of the property so they feel the zero ft setback is needed for safety purposes. He said he feels that the sign is the final crown on the property.

S. Perley said the old sign was on a concrete pedestal and it appears the new one won't be, it will just be on a pole. T. Sullivan said that is correct, there is a pole cover that comes right down to the ground and it won't have a planter base around it. He said they are tight for space and don't have a lot of room to do things on the ground.

S. Perley asked about the property line and was shown on the plans. T. Sullivan said it goes between the sign and the tree and S. Perley asked what would be in that area, and was told nothing. The retaining wall was shown as well and T. Sullivan said the sign would be in front of the retaining wall. S. Perley clarified that no traffic can access the area and was told that was correct.

S. Perley clarified that the sign permit had been submitted and K. Snow said it had been but could not be approved without the variance being granted. S. Perley asked if everything indicated on the permit which was included with the application was correct and P. Lambert read the information for the board. K. Snow indicated that is what will be approved, it is just the location of this sign was in question. There was previously a 0 setback. P. Lambert said they are grandfathered for the square footage which they are actually decreasing. He said they are bringing this closer to conformity with this proposal.

D. Greski said he is confused; the total maximum allowable in this location would be 102. The freestanding sign is 76.53 SF, wall sign is 17.5 SF, and another wall sign at 27.62 SF, which is 121.65 SF. S. Perley said they would be grandfathered at 177 SF so are actually lowering their total of signage. K. Snow said that they are giving up 50 SF and will not get it back. S. Bogert said they get the 121.65 now but we are just here this evening for the location and setback.

R. Tautkus asked for clarification on the plan and was told the area she questioned is the underground drainage. She asked about the parking on the site and that was explained. S. Bogert showed the old sign and location from the

**ZBA MEETING
OF OCTOBER 19, 2009
MINUTES APPROVED 1/19/10**

original approved plan. He said the sign actually showed in the proposed location on that plan as well. T. Sullivan said it was, but something got mixed up when the sign permit was submitted.

Public: No one spoke for or against the proposal.

S. Bogert closed the hearing to the public.

Motion: S. Perley moved to approve application 2009-00041 for an area variance from 235-35 (A) in order to locate a freestanding sign at a zero ft setback and for relief from 235-62 (C).

She said the area variance is needed as this is a small lot. The sign was previously located with a zero ft setback situation so this will allow the applicant to move it to another location with the same zero ft setback.

The benefit sought cannot be achieved by another method as there is no other location to situate the sign on the lot and have reasonable traffic flow.

The granting of the variance will not be contrary to the public interest and no one spoke for or against the application.

This is consistent with the spirit of the ordinance as this will reduce overall signage on the site and keep the same setback as previously existed. This makes the site more conforming

Substantial justice is done as the benefit achieved to the applicant outweighs any negative impacts to the general public.

Property values in the surrounding areas won't be diminished as this fits with the area.

P. Lambert seconded the motion and all voted in favor, 5-0, with the following criteria:

a) Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; The lot is small and the sign previously had a zero-foot setback; **AND**

ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance; There is no other location on the lot where the sign could be situated and allow reasonable traffic flow; **AND**

(b) The variance will not be contrary to the public interest; No one from the public spoke for or against the proposal; **AND**

(c) The variance is consistent with the spirit of the ordinance; Granting the variance will reduce the overall signage on the site and keep the same setback as previously existed, making the site more conforming; **AND**

(d) Substantial justice is done; Substantial justice is done in granting the variance as the benefit achieved to the applicant outweighs any negative impacts to the general public; **AND**

(e) The value of surrounding properties will not be diminished; The property values in the surrounding area will not be diminished as this is in fitting with the area.

Application # 2009-00042

MSL # 364-404-39

RS Zone

M. & D. Dragon

1261 Old No Main St

Area Variance

The applicant is requesting an Area Variance from 235-35 (A) in order to install a swimming pool that would infringe upon the front setback of 25'. The property has two frontages.

K. Snow passed out the updated answers to the variance questions.

**ZBA MEETING
OF OCTOBER 19, 2009
MINUTES APPROVED 1/19/10**

Applicant: D. Dragon stated that they want to place an in-ground swimming pool on the side of their home. She said that the town owns the first 15' of the property, between the street and their property line. They are asking that the setback be granted using the area from the road, rather than from the property line. She said the road is not a heavily traveled road and is a cul de sac with 8 homes so isn't traveled by the public. The 15 feet of property that is owned by the town looks like it belongs to them, so to the town it would appear that they do have the 25' setback from the road.

S. Perley asked about the white fence, and D. Dragon explained where they plan to place it on the 15' property line. S. Perley said she thinks there is one there now and D. Dragon said there is and showed where that is located. She showed how they plan to install the new fence, which will encircle the entire area. She said the actual pool (water) will begin at the 25' setback. P. Lambert asked if the fence would be on their property and was told yes.

D. Greski said the setback should be 25 feet, and S. Bogert said it appears that at the closest point, the fence would be 10 feet, then the additional town owned 15 feet to the road.

S. Perley asked if this is a standard sized pool and D. Dragon said it is 18 x 36. D. Greski asked about the other side of the property and said there are lots of pines. R. Tautkus said they would have to remove trees to do this and D. Dragon said no, the maple trees will be remaining; they would be removing one cherry tree only. D. Greski clarified that the trees lining the side street will remain and was told yes. D. Dragon said the trees are probably about 10 feet from their property line.

P. Lambert asked if the trees are owned by the city and D. Dragon said she isn't sure who owns them; they were installed by the development behind them. S. Bogert said he thinks the city owns them.

S. Bogert wondered why the city owns that strip of property and M. Dragon said there is a drainage system that goes down to the development. S. Bogert said usually the city has an easement for something like that. D. Greski asked if any swale or drainage shows on the applicant's property and was told no. M. Dragon said there is a storm drain on the corner and another further down their property.

O. Gibbs asked if there had been another instance where someone used part of the city's property as their personal setback and S. Bogert said he couldn't think of another case where he had seen street, city property, and then personal property.

K. Snow said if they didn't have the two frontages they would be ok and O. Gibbs said she didn't think so as there is 3 feet of concrete around the pool which decreases the setback to 7 ft. R. Tautkus mentioned that it states different setbacks in different places and D. Dragon said they had decreased the size of the decking.

D. Greski said he is confused on the different amounts being stated for the setback. He asked the applicant to read the answers to the questions. He said that originally the questions were not filled out properly and he feels the board would better understand if the applicant read the answers and explained them. He said it is their responsibility to present the answers from a – e and make the board understand. He doesn't want to put words into someone's mouth.

D. Dragon read the answers to the questions into the record.

S. Bogert asked who maintains the 15 ft property on the side of the house and D. Dragon said they do and have since they moved there. They did not know it wasn't theirs until they went to apply for the permit to build the pool. They found out when they got the plot plan.

P. Lambert asked if the other board members found another spot where they would be able to place this on the lot. D. Dragon said they had been trying to find a location for some time. At one point they got a permit to remove the barn. O. Gibbs asked why they decided not to do that and asked what the barn is used for now. M. Dragon said storage. D. Dragon said they had considered upgrading it to a garage but they have six years left with their kids and want to enjoy the pool with them now and do the garage later.

**ZBA MEETING
OF OCTOBER 19, 2009
MINUTES APPROVED 1/19/10**

R. Tautkus said it is a large pool and D. Dragon said it is the smallest diving pool you can have. S. Bogert explained how diving pools work. D. Dragon said you don't want to go smaller with teenagers as they won't necessarily follow the rules.

D. Greski said he feels looking at what is being presented that the pool could be placed further in. D. Dragon said moving it puts it too close to the barn.

Public: Ann and Ray Kaligian appeared. A. Kaligian said they are abutters and did not get noticed. She only found out about this by reading the paper. She said they are the only people who will actually see the pool. She said the trees along the road were installed by the development in order for the city to accept this as a city street. She said they look directly down this street and there are a lot more than 8 cars a day using it; there are young people that just started driving and the traffic is heavy. She stated she doesn't feel the Dragons can actually see all of the traffic on the street. They like to sit on their front porch and she doesn't want to think that she will have to go all next summer looking at the swimming pool next door. She said that will be all they can see if this goes there. The abutters that did get noticed are not going to be affected by this.

Ann Kaligian said she would not object if they didn't have land in the back where they could place this as she understands that children need an area. She feels they have the back land to use. She saw today that there is a trampoline there now and feels the back would be a better area than having the children running out on the road.

Ray Kaligian submitted two photographs. The first was taken from their living room window and the second from the front porch. He said the trees on the right are the area where the pool is proposed to be located. He said the trees had to be put in by the developer. S. Bogert said the trees aren't going anywhere and A. Kaligian agreed that the applicant stated they would be staying.

D. Greski asked if they aren't considered an abutter and A. Kaligian said she didn't know why they didn't get noticed. S. Bogert said the city determines who is an abutter and K. Snow said they got the list from the Assessing Department and didn't know why, if they are an abutter, they didn't get noticed. A. Kaligian said whether or not she is an abutter she doesn't care to watch the pool.

J. Tivnan asked if there wasn't going to be a fence around the pool and A. Kaligian said it doesn't make a difference, she would be looking at a fence. S. Bogert said they could install a fence without a permit and then they would be looking at a fence anyway.

Ann Kaligian said this is a nice looking street and she hates to see it ruined by having a pool right on the corner. It will be very visible. The homes on the water are very nice homes. S. Perley asked if we know how high the fence will be and D. Dragon said the current one is 6 feet so they would keep it the same. She said that they plan to fence this area, no matter if the pool is approved or not as they plan a patio area.

M. Dragon said that even if the pool isn't put in they plan on fencing the area. O. Gibbs said the area looks shady and the applicant said they plan to remove the cherry tree. D. Dragon said the sun comes from the opposite side so the trees won't be shading the pool area. P. Lambert pointed out the compass on the plan, stating the sun would drop into the pool area.

D. Dragon said they would love to put this in the back area but the pine trees in this area do cast shade.

No one else spoke for or against the application.

Board: P. Lambert suggested taking a site walk to the area. R. Tautkus said it was a good idea. P. Lambert said especially now that the pictures had been submitted; he thinks the pool would be hard to see. J. Tivnan said the first thing you would see would be the fence. P. Lambert said the fence will be on the inside of the trees so first you see the trees, then the fencing. S. Bogert said the 6 feet privacy would hide the yard and P. Lambert said he thinks they can only go 5 ft. D. Dragon said they could do the 5 ft with no problem.

**ZBA MEETING
OF OCTOBER 19, 2009
MINUTES APPROVED 1/19/10**

D. Greski said you would see lawn, trees, lawn, and fence. P. Lambert asked how much frontage the town takes when putting in a development and O. Gibbs said the developer takes it, and usually it is a minimum of a 50 ft ROW. P. Lambert said this is a cul de sac and the 50 feet here is never going to be used. This will never become a through street and need 3 or 4 lanes so the property will never be used. P. Lambert said in this situation he feels the land is usable as setback.

He said he does feel the site walk should be done to make sure there isn't another place to put the pool but feels the board should do the site walk to do right by everyone.

D. Greski said he thought the measurement starts from the center of the road and was told yes. The actual setback begins at their property line. A copy of the plan for the subdivision was discussed.

D. Dragon said that they were told they would save \$2000.00 if they did the pool this fall instead of waiting until spring. S. Bogert said that would mean doing the site walk before the November meeting as the ground would be freezing. D. Greski asked if it were legal to do the site visit and make the decision at that point and S. Bogert said it is a public meeting, so yes, they could do that. Advertising the meeting was asked about and K. Snow said no, it is a continuation to date certain and that she does have to post it, for at least 48 hours prior to the meeting.

Monday, the 26th was discussed but some board members could not make it during day time. It was decided to hold the site walk on Tuesday, the 27th, at 4 pm. S. Bogert explained the process to the applicants. P. Lambert requested that DPW stake this and K. Snow said she would contact them. The board also requested a copy of the site plan for Clearwater. D. Dragon said the pool area is already staked out. P. Lambert asked if Dig Safe had been to their site. D. Dragon said yes, they got the plans. They are relocating a sewer line at their home.

Motion: The motion to continue the hearing and have a site walk at the 1261 Old North Main address was made by P. Lambert and seconded by S. Perley. All voted in favor and the hearing will be continued until Tuesday, October 27, 2009 at 4 pm in order to hold a site walk at the applicant's residence in order to determine whether the proposed location for the pool is the appropriate one. The motion passed 5-0.

NEW BUSINESS: P. Lambert questioned the frontage issue. He said that this lot has two frontages and that we just turned someone down because of the same issue; he said he feels it is going to cause issues in the future and that the ordinance should be looked at and possibly re-written for clarification. He read the definition of frontage. It should be lot, not frontage. Further discussion ensued on frontage. They wondered why, if the address is the frontage, people have 2 frontages. They agreed that this should say lot, not frontage, in the sign situation.

OLD BUSINESS: P. Lambert said that the Brickfront Restaurant now has more exposure than he ever had and feels that the variance for the rooftop sign should not have been granted. S. Perley said he voted against it so is on record as not being in favor. P. Lambert said if the applicant had just added the word "restaurant" to his existing sign he would have been fine.

P. Lambert said he considered appealing the decision as he felt the rooftop sign was the last resort. S. Bogert said he should have been more vocal during the hearing and P. Lambert said there should have been more people here to speak about it. The CVS sign lights up Church Street now. The temporary CVS signage was mentioned. P. Lambert said that people know what CVS looks like and feels that a lot of signage isn't needed. S. Bogert mentioned the requirement of downcast lighting.

D. Greski said he has struggled with the applicant's responses in the time he has been on the board. He said if the forms are not filled out adequately it is hard to make a motion. He doesn't want to put words into the applicant's mouths. He doesn't feel the applications are sometimes clear enough for the board members to understand. S. Perley said that some of the applicants have attorneys and some don't and that makes a difference. She feels that it is the responsibility of the board to ask questions to better determine the responses. D. Greski said he does agree but it is the applicant's responsibility to give all the reasons why they need the variance and they are listed on the application.

**ZBA MEETING
OF OCTOBER 19, 2009
MINUTES APPROVED 1/19/10**

S. Bogert said he wants to have a friendly board. The board now has a good reputation with the public. K. Snow said that people do not understand the questions. S. Bogert said that is correct, as board members we get to attend classes to help us understand. D. Greski said he agrees but they have to answer, even in the most simplistic way. S. Bogert said that is why we get to ask the applicant questions. D. Greski said the application should be handed back and told it isn't correct. S. Perley said she feels that in 99% of the cases it is done okay.

D. Greski said the applicant should show up being prepared to sell their case. S. Bogert said the board used to be deemed an angry board and O. Gibbs said the reputation of the board has improved significantly. D. Greski said when he did his variances he was told his application wasn't filled out completely and to make changes. He said he did so and then felt comfortable at the meeting.

MINUTES: The minutes from the meeting of July 20, 2009 were reviewed. The motion to approve was made by S. Perley with the second by R. Tautkus. All voted in favor and the minutes were approved, 5-0.

The minutes from the meeting of September 21, 2009 were reviewed. R. Tautkus made the motion to approve, with the second by D. Greski. All voted in favor of approval, 5-0.

ADJOURNMENT: The motion to adjourn was made by P. Lambert with S. Bogert seconding. All voted in favor and the meeting adjourned at 8:30 pm.

Submitted by:

Kristine Y. Snow, Zoning Technician