

**ZONING BOARD OF ADJUSTMENT**  
**MEETING OF DECEMBER 20, 2010**  
APPROVED AT MEETING OF FEBRUARY 22, 2011



**PRESENT:** S. Bogert, **Chairman;** S. Perley, **Vice Chair;** R. Tautkus, **Secretary;** D. Greski, O. Gibbs; J. Tivnan, **Alternate**

**ABSENT:** None

S. Bogert called the December meeting to order at 7 pm. He let the members know that only the 4 members who were originally seated would vote on the first application; S. Bogert, S. Perley, O. Gibbs and J. Tivnan were the 4 original members. The other members can ask questions of the applicants, but can not vote on this hearing.

**HEARINGS: (Continued)**

**Application # 2010-0018**  
**Laconia Refrigeration**

**MSL # 407-227-50**  
**11 Walker Street**

**C Zone**  
**Variance**

The applicant is requesting a Variance from 235-58 (A), Table VI, Table of Sign Requirements, in order to erect a wall sign on the site at 11 Walker Street and to allow an additional 23 square feet of signage on the property.

**Applicant:** S. Olsen and T. Olsen appeared for the application. S. Olsen said this application is for the modification of the wall sign on the Union Avenue side of the property as previously discussed by the Board. The size of the sign would be 32 SF, the same as what is currently there. That gives them an additional 23 SF of signage on the property, for a total of 113 SF.

S. Bogert said this approval would bring the property into compliance, as the previous sign was not permitted.

S. Saunders explained that the auto body, located on the site, had also submitted a permit to re-face their existing sign and that was being held until this sign was permitted. That permit should go through fine after this. Discussion was held on the signage on the property. The ZBA approval would mean that this property would forever be allowed 113 sf of signage, unless the ZBA tied the approval directly to this business. The new amount of signage on the property would be 113 SF, not 90 SF, which is what is permitted in this zone.

**Public:** No one appeared to speak for or against the application.

**Board:** S. Perley asked about the new sign on the side of the building. S. Olsen said this sign will be 32 SF, as determined previously. There was no further discussion.

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

**Motion:** S. Perley moved to approve application # 2010-0018, for a variance allowing an additional 23 SF of signage on the property. The variance would not be contrary to public interest. The board addressed the public input at previous meetings and their concerns were taken care of by removal of the request for the freestanding sign.

The spirit of the ordinance is observed as this is a commercial site, and historically has been. The signage is required due to the location of this new business. Substantial justice is done as the benefits to the applicant outweigh any negatives.

Values of surrounding properties are not diminished as there has historically been a business located here so the use remains the same.

**ZONING BOARD OF ADJUSTMENT**

**MEETING OF DECEMBER 20, 2010**

APPROVED AT MEETING OF FEBRUARY 22, 2011

There is no fair and substantial relationship that exists between the general public purposes of the ordinance and specific application of the provision to the property as this is an existing high intensity commercial use which had several businesses in the building. This is a continued use, so should have no other impact.

The use is a reasonable one and is not altering the essential character of the neighborhood, nor should threaten safety in any way.

R. Tautkus seconded the motion and the vote was 4-0 in favor of approval.

**Orry Gibbs recused herself for the following hearing as she works for Rod Dyer's office. J. Tivnan was seated as a board member.**

**Application # 2010-0022**

**MSL # 152-200-40**

**SFR Zone**

**John & Jacqueline Remington**

**61 Pendleton Road**

**Variance**

The applicant is requesting a Variance from 235-19 (F) (2) (b) in order to construct a two-story single-family home on an existing foundation. The overall footprint for the house will be diminished.

**Applicant:** Rod Dyer appeared, along with Steve Smith and Catherine Broderick. They are representing the Remington's, who are out of state. The Remington's decided to make plans for the future for this property. The property was engineered and it was determined that the density would support 32 lots. J. Remington thought that was too much, so they reduced the project from 32 lots to 15, and worked out an arrangement in 2003 with Planning, on a development agreement. That was recorded at the registry at that time. The land can never be subdivided into more than 15 lots per that agreement.

They are here this evening for a variance for a portion of the wetlands setback ordinance. They have all approvals in hand, except for this variance to permit them to alter the roofline. A portion of the proposed structure is in the 50 ft setback outlined in the ordinance. R. Dyer said this is similar to what happened on Eastman Shore Road a year or so ago. They have limited ability to move the house due to wetlands.

Remington already had building permits in hand and just needs this board's approval. D. Greski asked what the encroachment is here and was told none, they are not expanding the footprint, and it is not closer to shoreline, just going up in height.

D. Greski said he had mentioned previously that you couldn't see this from the street and had asked for pictures. S. Smith said he had offered to meet with board members to show them the site and had not got a response.

S. Smith passed out pictures for the board. There was a pre-existing house, which was entirely in the 50 ft setback; that was a single story residence, and was there for over 40 years.

S. Smith showed the lots and explained the frontage and entrances. They got approval to extend the road in from Summit to service 5 lots and there is another entrance as well. This is lot 7, with 59,000 SF of land area. S. Smith showed the existing house and cottage, the 50 ft setback, the wetland, the wetland setback, and the Winnepesaukee River interceptor sewer that travels through the lots. He stated that the small cross hatched area shown on the plan is the only buildable area, 3,775 SF out of 59,000 SF. They have shore frontage of 216 ft. This proposal is to take the roofline over the existing structure to make livable space on the second floor.

They filed an application with the State, who told them they did not need to go before them as the structure is going up, not out. The State prefers going up, not out. Remington filed a building permit to re-build but then the bedrooms became an issue.

S. Smith showed what had been approved and the new proposal, which changes the roofline. J. Tivnan asked what would be on second floor, bedroom and a bath, and S. Smith said bedrooms, and he assumed a bath, but a total of 700 SF of living space.

**ZONING BOARD OF ADJUSTMENT**  
**MEETING OF DECEMBER 20, 2010**

APPROVED AT MEETING OF FEBRUARY 22, 2011

D. Greski asked what the total height would be and was told 28.5 ft; it is currently approved at 24 ft, and the allowed height in this zone is 35.

D. Greski asked about the 10 ft of foundation being removed and S. Smith explained. The State didn't want that done as they said it would interfere with existing conditions on the site. D. Greski said that statement regarding the removal of the 10 ft should be removed and S. Smith said yes, that was changed after the application was filed.

D. Greski asked for clarification; this is taking a non-conforming structure and going up? He was told yes by S. Smith. D. Greski asked why they are here and S. Smith said that under the City's ordinance, going up requires a variance as they are making a non-conforming structure more non-conforming. The State prefers the pre-existing structures to go up.

J. Tivnan asked if the site has city water and sewer and S. Smith said there is sewer and on site water.

S. Smith said they are not expanding the footprint, there is no more lot coverage - they are just going up in height. S. Smith read the ordinance to the Board members. He said that the State doesn't consider going up in height an addition or expansion but the City does.

S. Perley asked about visual impact on neighbors and was told there is none. S. Smith said the nearest neighbor is at least 150 ft away, and the area is all wooded. This is not obstructing the view of the lake.

S. Bogert asked about the gray area shown on the plan and S. Smith said it is a garage, which is outside of setbacks, and all permits were obtained.

R. Dyer said that because the original language included the 10 ft of the foundation being removed, the owner has offered to remove the 300 SF cottage if the board feels that is necessary. The cottage is in existence currently. Removal would add to the green space on the lot.

Catherine Broderick appeared. She said this meets the State standards - they are here just for the City's ordinance. This expansion is not visible from other properties in the area, it is a low impact use, is consistent with the neighborhood, and will be in harmony with the natural site. She asked the Board to consider the hardship tests here and to take into consideration the size of the lot here.

The wetlands on this site present issues for building elsewhere. There is no expansion in the footprint, they are just going up. This is a permitted use here, as this is a single family home.

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

R. Dyer stated that this is a reasonable use. S. Smith indicated this was a simple application, just a roofline adjustment, with no lateral expansion, and no impact on greenspace. It is within the space that already exists.

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

D. Greski said they offered to remove the cottage, which would make the lot more conforming and give more greenspace to the lot. S. Bogert said it is a good thought and whenever anyone makes that type of offer, take it. The Board can make that a condition.

**Motion:** D. Greski moved to approve application 2010-0022. They are seeking to vertically expand the non-conforming structure.

This won't be contrary to public interest and the essential character of the neighborhood won't be altered. This won't threaten the welfare of the public as they are going from 24 ft to 28.5 ft in height in a zone where 35 ft is allowed.

The spirit of the ordinance is observed as this is an established neighborhood. This won't negatively impact the area and is permitted use under Table I. This meets requirements.

**ZONING BOARD OF ADJUSTMENT**  
**MEETING OF DECEMBER 20, 2010**  
APPROVED AT MEETING OF FEBRUARY 22, 2011

Substantial justice is done as there is no impact to surrounding properties, and no one spoke for or against the application.

Values here won't be diminished. The structure will improve values and there are no neighbors that this proposal will directly impact.

Literal enforcement of the provision of the ordinance would result in an unnecessary hardship. The applicant can only go up because of the lot restrictions. The State prefers and allows a structure to go up, however the City's ordinance doesn't.

There is no fair and substantial relationship that exists between the general purposes of the ordinance and the specific application of the provision. This meets the State requirements by going up. By removing the 300 SF cottage, it makes the lot less non-conforming. This won't alter neighborhood, and should improve it.

The proposed use is a reasonable one as this allows the applicant full use of the property.

The Board will request a condition be added that the 300 sf cottage be removed to make the green space larger, and make the lot more conforming.

J. Tivnan seconded the motion. S. Bogert requested that the condition also states that the 300 sq ft cottage cannot be reconstructed in the future.

D. Greski added that condition to the motion. J. Tivnan seconded the addition, and the application was approved, 5-0.

**O. Gibbs was re-seated as a member and J. Tivnan went back to alternate status.**

**Application # 2010-0024**

**MSL # 448-184-136**

**RG Zone**

**Kathleen McDonald**

**33 Pine Street**

**Special Exception**

The applicant is requesting a Special Exception from 235-26, Table I, Table of Permitted Uses, in order to change a 3 family unit to a 4 family unit.

**Applicant:** Domenic Canzano and Richard O'Connell appeared for the applicant. They want to change this residence from a 3 to a 4 family unit. When the owner purchased it, it was a 3 family with an in-law apartment. They have been renting it as a 4 unit. They brought in an electrician and plumber in to do work, and brought this all up to code.

The building was represented to the applicant as a 4 family which is why she bought it, for the income and taxes. Without the income from the 4<sup>th</sup> unit, she will have problems.

D. Greski asked about off street parking and was told there is enough for 8 cars. R. O'Connell said there are 2 driveways, which fit 3 vehicles each and then spots beside the house, which are an additional 4 spaces. They are all on the property. D. Greski asked for clarification on the parking layout and was told that one apartment has one side, and the other apartment has the other side for parking. The rest of the parking is for the other tenants. D. Greski said only 6 spaces are required by the ordinance.

R. Tautkus asked about the units and was told that 3 apartments and the in-law unit were there when the building was purchased. The electrical was not in good condition and that is now done. They added the additional service. K. Snow explained about the addressing situation, and that is when we found out about the 4<sup>th</sup> unit.

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

**Board:** S. Bogert asked the Board if there were any additional questions. S. Perley said she feels this proposal fits in with other residences in the neighborhood. D. Greski agreed.

**ZONING BOARD OF ADJUSTMENT**

**MEETING OF DECEMBER 20, 2010**

APPROVED AT MEETING OF FEBRUARY 22, 2011

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

D. Greski asked if there are any other requirements we need to look at and was told no, the applicant must meet the requirements in the ordinance. S. Bogert said this meets the parking requirement, and the spots are laid out in a usable manner and located off the street. He added that having the electrical updated is a definite plus.

**Motion:** R. Tautkus moved to approve application # 2010-0024 for the Special Exception to allow the change of this property from a 3 to a 4 unit building.

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

The use will not create undue traffic congestion or impair pedestrian safety; the parking was discussed and is adequate and meets the ordinance. The use is there now so won't impair pedestrians.

Granting the Special Exception will not overload public services nor will it increase run off to abutting properties. This won't create any overload as the 4 units exist today and it won't increase run off as there is no change being made.

The use won't create excessive demand for police, fire, solid waste or schools as the use currently exists.

There are no special provisions for the use.

The use won't create excessive demands to health, safety, or welfare of the public, nor be detrimental to the adjacent neighborhood. Again this is already being used as a 4 family so there won't be any changes. There are other 4 family homes on the street, so the use is consistent with the neighborhood.

The location is appropriate as there are other 4 family homes in the neighborhood.

The use is consistent with the spirit and intent of the chapter and the Master Plan. This is allowed in the zone with the Special Exception.

O. Gibbs seconded and all voted in favor of approval, 5-0.

**D. Greski said that he has used the builders, Barnett Builders, on his renovation but he feels he can be impartial. He said he would leave it up to the Board to decide if he should recuse himself. S. Bogert asked if he has any financial gain with this application and D. Greski said no. S. Bogert said he has no issues with D. Greski sitting on the next hearing and asked the remainder of the Board their opinion. The rest of the Board agreed and D. Greski remained seated for the hearing.**

**HEARINGS: (New)**

**Application # 2010-0025**

**MSL # 180-346-2**

**RRI Zone**

**H. & S. Sacco**

**150 Birch Haven Road**

**Variance**

The applicant is requesting a variance from 235-35 (B) in order to raise the existing structure 4' and build a permanent foundation. The structure is currently situated in both side setbacks and the house footprint will remain as-is.

**Applicant:** Chuck Barnett, of Barnett Builders, appeared for the applicant. He said they want to raise the structure, due to a crumbling foundation, install a new foundation, which will give them a walk out basement, and eventually make that usable space. He said this situation is similar to the Remington's as they are just raising the house, and repairing the crumbling foundation. S. Bogert asked if he would be jacking up the house and then doing the foundation and was told yes. They will jack it up and raise it to the point where they can put a poured foundation under it. There is currently about a 4' crawl space there now.

**ZONING BOARD OF ADJUSTMENT**  
**MEETING OF DECEMBER 20, 2010**

APPROVED AT MEETING OF FEBRUARY 22, 2011

S. Perley asked if they have septic here and was told there is town septic and water. C. Barnett said they have lived there about 10 years, but the house has been there about 50. S. Perley said this won't affect the neighbors and C. Barnett said both neighbors have already raised theirs. This is a narrow lot, and is non conforming, and has been that way since they purchased the home.

S. Perley said she doesn't see an issue as they are not expanding the footprint, and there will be no excavating on the site; they are just raising the home and fixing the foundation.

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

**Board:** The Board had no further questions.

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

R. Tautkus said this proposal is very similar to Remington's, which was approved earlier. S. Bogert said this will make a major improvement to the structure if the foundation is crumbling and to the neighborhood as well. O. Gibbs said many other homeowners in this area have already made improvements.

**Motion:** S. Perley moved to approve application 2010-0025 to raise the house 4' and pour a foundation.

The proposal won't be contrary to public interest and no one spoke for or against the application.

The spirit of the ordinance is observed as this is a residential use in a residential neighborhood and there will be no change to that existing use

Substantial justice is done as the benefit to the applicant outweighs any negatives to the general public.

There will be no diminishing of the values of surrounding properties. This will have no impact on the neighbors, and will increase values in the area.

There is no fair and substantial relationship that exists between general public purposes or the ordinance and the specific application of the provision to the property. This is a minor request and there will be no change in the footprint, no affect on the shore or vegetation. This will cause no erosion.

The proposed use is a reasonable one. This is a residential use in a residential area and won't alter the general character of the neighborhood.

The motion was seconded by D. Greski and all voted in favor of approval, 5-0.

**OTHER BUSINESS:** K. Snow will put the election of the officers for 2011 on the agenda for the January meeting, which will be a Tuesday evening.

**MINUTES:** The minutes from the ZBA meeting of November 15, 2010 were reviewed. S. Perley moved to approve as written; the second was made by O. Gibbs. All voted in favor of approval, 5-0.

**ADJOURNMENT:** S. Bogert made the motion to adjourn with the second made by O. Gibbs. All voted in favor, 5-0, and the meeting was adjourned at 8:30 pm.

Respectfully Submitted:

Kristine Y. Snow  
Zoning Technician