



ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING AUGUST 16, 2010
APPROVED AT MEETING OF SEPTEMBER 20, 2010

Present: S. Bogert, **Chairman**; S. Perley, **Vice Chairman**; R. Tautkus; Jay Tivnan, **Alternate**; O. Gibbs, **Alternate**

Absent: D. Greski

Staff: S. Saunders, **Planning Director**; K. Snow, **Zoning Technician**

S. Bogert called the meeting to order at 7 pm. He announced that both O. Gibbs and J. Tivnan would be seated as full voting Board members for the evening's hearings.

Application # 2010-0015

MSL # 350-92-33

C Zone

Thomas Holly

65 Gold Street

Variance

The applicant is requesting a variance from 235-35 (A), front setback, in order to expand a 3-season porch. The structure is already in the front setback, however the second floor of the building is smaller than the first floor. The applicant wants to enlarge an existing 3-season porch without exceeding the current setback.

Applicant: Tom Holly appeared for the application. A letter of authorization for him to represent the applicant at the meeting was included with the submission. There is an existing structure already situated in the front setback. The first floor is a larger footprint than the second. The first floor is storage/garage, and the second floor is living space. They already have an existing 3 season porch and they want to increase it 5 ft in width, which brings the second story out to the same footprint as the first story.

T. Holly stated that he spoke with the wetland bureau on this, and they had no issue. As long as it does not extend over the existing first floor they have no problem with the proposal. The area in question is about 75 sf in size. The height of the structure is not being extended, nor the length, just the width to match the first floor. It will make the lines of the building cleaner and cosmetically make it more appealing, as well.

S. Perley asked if there will be an additional bathroom in this section and was told no, it will remain the 3 season porch with no heat, water or sewer. S. Perley asked if is this all porch area and was told that only 75 sq ft of this is in the setback. They are adding 150 sf to the total but only 75 sf is located in the setback area. He showed the board the area in question on the plan that was submitted.

R. Tautkus asked how far into the setback the structure is currently and was told that it sits right on the street; it is at the property line now. T. Holly showed R. Tautkus the existing building and what is being planned. S. Perley asked why it is just this section which needs the variance and was told that the rest is not in the setback area. They want to square the building off.

Public: No one spoke for or against this application.

Board: R. Tautkus asked if there are any side setback issues and was told no, just the front.

S. Bogert closed the hearing to the public at 7:10 pm.

There were no additional questions from the Board. S. Perley said that the applicant stated he is just squaring off the building.

S. Bogert re-opened the hearing to ask another question. He asked if this could quickly be made into an additional 4 season room and was told yes by T. Holly. They are using regular construction, but not looking at insulating the area. It will have energy efficient doors and windows. S. Perley asked if that makes a difference with living vs. porch space and was told no, the question was just for clarification purposes.

S. Bogert closed the hearing to the public and he brought the hearing back to the board. There was no further discussion on the application.

Motion: S. Perley moved to approve application 2010-0015 for a variance to allow the expansion of the 3 season porch. The proposal won't be contrary to public interest and no one from the public spoke for or against the proposal.

The spirit of the ordinance is observed as there is no increase in the original footprint of the building. No one is directly affected, so this has no effect on the ordinance.

Substantial justice is done as there is no increase in the original footprint or the roof height. This is a small setback adjustment of only 75 sq ft. There is no impact to the green space.

The values of the surrounding properties are not diminished. The proposal has no affect on the surrounding area.

Literal enforcement of the ordinance would result in unnecessary hardship. There is no fair and substantial relationship between the ordinance and the specific application. This is a continued use of the existing space, with no encroachment to the abutters, so has no negative effect.

The proposed use is a reasonable use and is an existing use. There is no change being proposed to the use. There is no change in the physical structure as it sits on the site. The structure is already non conforming, and already sits totally in the front setback.

J. Tivnan seconded the motion to approve. All voted in favor, 5-0.

O Gibbs recused herself for the following hearing:

**Application # 2010-0016
B & M Emond**

**MSL # 346-221-42
16 Valley Street**

**RG Zone
Variance**

The applicant is requesting a variance from Article VI, 235-17 (D) (c) to allow construction of a handicapped ramp, a portion of which would cross a seasonal drain.

Applicant: John Giere appeared for the application. They are here for a variance to allow construction of a handicap ramp. There is a 50 ft setback from a wetland. He will discuss the issues this evening.

The owner has a heart condition, which is treatable but not fixable. The house is elevated about 8 ft off the street, with a sharp slope. The doctor told Mr. Emond to stop climbing the stairs. He has a scooter but needs to address how to enter the home.

They want to build a ramp over the area in question, add a walkway and another ramp to the house. They have to go to the far corner of the lot to do this and cross the culvert as the ADA wants a slope of minimum of 12-1. If they try to do this in the front of the house, they would have to start the ramp across the street. There is a gentler slope here coming up. The ramp would cross over the culvert, with a gravel path, and then another ramp. There is no way to access the home from the garage with the chair.

The wetlands are shown in blue on the plans. The plan traces it up to Stark Street and goes up to Bolduc Farm. If you look at the street drainage system, it meets an underground culvert at Stark Street. This is overflow. It is wet during the snow melt in the spring. It was bone dry today even after the rain last night. This is rock lined, and the city does perform maintenance.

The ramp will be on sono tubes, and will look nice. The neighbors have had no objections to the proposal.

J. Tivnan asked about the access with the drive on the opposite side of the house and was told he will go along the sidewalk in his chair to access the ramp.

S. Perley asked if this is going to be temporary or permanent and was told they would rather build it to permanent standards and make it a landscape feature with the bridge and ramp. They do not want to have to immediately take it down.

J. Tivnan asked if this will be used in winter and was yes. He said it would then have to be maintained by the applicant. J. Giere said they are both here along with their son, who is their contractor as well. They will maintain it.

S. Perley asked who governs the wetlands and S. Saunders said this type of application usually goes before the Planning Board as a Conditional Use Permit but it was determined that they can do a variance and that was suggested to expedite because of the serious health issue. J. Giere said they questioned if this is really a wetlands but decided this was the easier course to take.

Public: Herbert Martin, along with his wife, Sue Martin appeared. He said they live next door to the Emond's and have no objection to the bridge. It is a necessity for them and he cannot see any reason not to approve this. He said there is nothing detrimental in this idea and they are in support of it.

No one else spoke for or against the application.

Board: S. Perley said that originally the ramp and bridge was going to be removed, but now we are being told it will be permanent. S. Saunders said variances can be granted to go with the property owners only. When the property changes hands, the approval can revert, but this will be on sono tubes, so it sounds fairly permanent. S. Bogert said the sono tubes are needed for stability, especially in the springtime. R. Tautkus asked if all handicapped ramps are built in this manner and S. Bogert said he believes so.

J. Tivnan said this is an ADA ramp so they are usually fixed. S. Perley asked about the suggested hearing with Con Com on this. She wondered if they had any issues.

S. Saunders said they decided against the meeting but the Con Com tech did visit the site and weighed in on it. This is man-made, with rip rap sides. The 50ft buffer is impacted but he didn't think this was an issue although he also thought it was going to be temporary. R. Tautkus asked if this will affect the flow and was told no.

S. Perley asked about temporary vs. permanent, and the City's point of view. S. Saunders said the Con Com would be more concerned with the construction, as sono tubes deep holes would impact the buffer and there is the possibility of sediment transport. We can have the Con Com look at the erosion control plan. S. Saunders said once the structure is there it would not be a Con Com issue, as it will travel with the house then.

J. Giere said the interest here is time. If permanent vs. temporary is the issue, and delays the process, they will agree that the Condition of Approval can apply to just this property owner, and that the variance would not run with the land, and would be personal to them.

S. Perley said that the structure would then have to be removed. She asked if this was to have been temporary and J. Giere said yes, but after discussion it should have been changed to permanent on the application, but it got missed. They want to construct a good structure, not something sloppy looking. S. Bogert said this could be made just for the bridge and S. Saunders said there are 2 ramps, and both are located in the 50ft setback.

S. Bogert closed the hearing to the public at 7:35 pm.

Board: R. Tautkus asking about the permanence of the structure. There was another variance that was recently approved, for a side setback for a ramp. It was determined it could be temporary and S. Perley said this one has sono tubes, so is more substantial. S. Bogert said that they probably used sono tubes, too, but it didn't affect wetlands. R. Tautkus said she thinks when these are approved they will all be permanent structures.

Motion: R. Tautkus moved to approve application 2010-0016 for the construction of a handicapped ramp which will cross a seasonal drain. This approval won't be contrary to the public and no one spoke against it. A neighbor spoke for it.

The spirit of the ordinance is observed as the applicant has to allow for access into the home due to a medical issue.

Substantial justice is done in granting the variance as this allows the applicant access to his home.

Property values won't be diminished. Adding a ramp to the structure should have no affect on this property or others in the neighborhood.

On the literal enforcement of the ordinance, there is no fair and substantial relationship that exists between the ordinance and application. This allows the applicant to access his home, which he currently has issues doing because of medical issues and the wheel chair. This is a reasonable use due to the medical issue.

She added the condition of approval that the erosion control plan is to be looked at by the Con Com.

J. Tivnan seconded the motion and all voted in favor of approval, 4-0.

Orry Gibbs was seated again as a full board member.

Application # 2010-0017

MSL # 430-246-12

RS Zone

S. & P. Kearney

124 Winter Street

Variance

The applicant is requesting a variance from 235-35 (B), side setback, in order to construct a second floor emergency egress. The proposed egress will not protrude any more than 6.5 from the property line on this side.

Applicant: Susan Kearney appeared. She stated that the home is a 2 family, and has been in her family since the 1940's. The second floor was always used for family and there was never a second story exit as an egress. She purchased the house from relatives and her niece and nephew live upstairs. There is only one exit in the front of the house.

They want to put on a second floor egress, which would be located on the opposite side of the house. She would like a 2 story deck instead of just a platform to just step out and go down. She wants a small deck to make the structure nicer looking. She stated that the side setback is incorrect in the city records. It says it is 6.5 ft but she stated it is 8.5 ft, but cannot afford a surveyor right now. If going by the 6.5 there would be windows located right there, so she needs the 8.5 so the landing doesn't fall right in front of the windows.

S. Perley said she couldn't see the area when driving by and asked if this is now open space. She asked S. Kearney to show the area on the drawing. S. Kearney showed the setback lines on the plan and where the deck would be located. She said it will be 2 stories. S. Bogert said it would be almost even to the side of the house.

S. Perley asked if this were to be 2 stories and was told yes. She asked if it was going to be a deck with a deck on top of it and was told yes; they will match it on the bottom. The windows on the first floor will become a door to access the deck.

S. Perley asked if these will be open decks with a railing on the first floor and S. Kearney said they will exit from the room, there will be no roof, and just a small deck. S. Perley asked how big and was told 16 x 10. S. Kearney said if she used a size which would not require a variance, the deck would fall right between windows on the first floor which she will replace with French doors.

S. Bogert said the doors would open into thin air if the deck were not this size. S. Kearney stated she wants to increase the value of the house, too. S. Bogert questioned the placement where the door would open into the deck. Doing it this way provides a safe exit out of the house. The first floor currently has exits but both on the same side. This gives egress from both sides for both apartments.

S. Perley asked what the building in the rear is and was told a 2 car garage. She asked how it is accessed and S. Kearney showed the driveway, which is on the other side of the house. All entrances are currently on that side, with none on the side where this proposal is.

J. Tivnan let S. Kearney know he had a two story set of stairs on a house he sold and they were required by Code fasten it to the house. It had to be bolted to the side of the house and wondered if Laconia does this as well. He was told it would be reviewed by Code Enforcement during their application.

Public: No one spoke for or against the application.

Board: There were no further questions or discussion.

S. Bogert closed the hearing to the public at 7:50 pm.

Motion: S. Perley moved to approve application 2010-0017. The approval will provide egress to the second floor on the opposite side from where the entries are located.

The approval is not contrary to public interest. No one from the public spoke for or against the application.

The spirit of the ordinance is observed as this is a safety issue and probably Code, as well. This is located on a small lot in a dense neighborhood. The structure was built in the 1940's.

Substantial justice is done as any benefit to the applicant outweighs any impact on the general public. There is no affect to the surrounding area.

The proposal won't diminish values of the surrounding properties.

There is no fair and substantial relationship between the ordinance and the application of the ordinance as this is a minor infraction into the side setback. The side setback of at least 10 ft setback will remain. The lots are small and close together.

This is a reasonable use. This is a residential use in a residential neighborhood with no adverse impact on the neighborhood. These will not be enclosed decks, with no roof on the second floor portion of the deck.

R. Tautkus seconded the motion and all voted in favor of approval, 5-0.

Application # 2010-0018

MSL # 407-227-50

C Zone

Laconia Refrigeration

11 Walker Street

Variance

The applicant is requesting a variance from 235-58 (B) and 235-58 (A), Table VI, Table of Sign Requirements, in order to erect a second free-standing sign on the site at 11 Walker Street and to allow an additional 8 Sq Ft of signage on the property. The site is currently grandfathered for signage and is over the allowed 90 SF in the Commercial Zone. This would give them a total of 113 Sq Ft of signage and the additional free-standing sign.

Applicant: S. Olson appeared. He is the co-owner of the business with his wife. S. Bogert asked if he had the right to represent this application as Kara Olson is the one who filled it out. The board members agreed that they are co-owners of the business and members of the same family so they felt it was proper to proceed. She is the one who signed the application, but both own the company. S. Olson said they lease the property.

S. Olson said they are looking to install a sign by the drive to direct people from the lot to the shop. The sign would be 2 x 4 ft only. If you are coming up Walker Street this would be placed where the sidewalk sign is now. They are renting out of Lakes City Auto Body, which occupies the front of the building. This is located in the rear of the building, so customers need direction to find the business.

There is another sign on the side of the building, which is grandfathered. It replaced another sign of the same square footage, but different dimensions. S. Saunders said this application has two issues. First is the the second free standing sign on the property, and the second is the additional 8 feet of signage.

S. Perley asked what the sign is made of and if it is illuminated. S. Olson said it is made out of aluminum backing with vinyl letters, and will not be lit. The posts are 4 x 4. S. Olson said their sign guy jumped the gun and did the posts.

S. Perley asked if the sign has to be 8 ft and S. Olson said it could be smaller, he guessed. S. Perley said this leads into a residential area so she would like to see the sign smaller if possible. She asked how big the sandwich board that is there now is and was told 18" x 2'.

Board members agreed that they would be comfortable if the sign were smaller. S. Olson said they can change the posts. S. Bogert said 18" x 36" seems proportional to him for this. It is about 4 feet off the ground now. S. Olson said he doesn't want something too large and that doesn't look good. The purpose is to get people into the facility. Wording on the sign was discussed and "Laconia Refrigeration Entrance" was suggested, removing the website.

S. Olson said he had taken phone calls from The Galley and Taylor Home asking questions, and both were fine with the sign after speaking with them. Rob from the Taylor Home asked if he should come to the meeting but S. Olson said he told him he didn't think it would be necessary.

S. Perley asked what was in this area before and was told an auto body shop, which is still there. They took over the shop in the back area. S. Saunders let the Board members know that the use is still pending approval. R. Tautkus said this is a small building. S. Saunders said that no permits were requested for this by the property owner prior to moving.

S. Bogert asked who should present the application for a variance for sign that goes with leased property. He wondered if it should be the property owner or the business. He said that the variance would carry with the property but the landowner didn't request the variance. S. Saunders said this is fine as the landowner signed the application but with any enforcement issues, the property owner is liable.

Public: Matt Leahy, resident of Cottonwood Ave, which is off of Walker St. This property was brought to his attention as a resident and as council member. He received complaints from abutters when the move was occurring.

He looked into this. Renovations were going on; garage doors were being cut. He checked on building permits and a site plan application, and none were done.

William Hawkins owns the property now and purchased it from the Taylor Home. This was their maintenance shop. W. Hawkins turned it into a garage then. Now there is an apartment on top. M. Leahy said he feels the property is being over used at this point. He is concerned with parking here.

He brought up a letter from the Planning Department indicating what the issues are. He passed out a copy of the letter. He said the issues date back to 2006 when the property was changed from a location where lawnmowers were stored, and changed to an auto body shop with no approvals being received.

M. Leahy stated he is concerned about the property as a neighbor and as Ward 2 Councilman. He said this is a nice residential neighborhood and care should be taken with this.

M. Leahy said he feels this application is premature. He said there is a lot of activity on this lot. 22 parking spaces are required, but he said he doesn't think this small lot would hold 22 spaces. The owner just goes ahead with no approvals. He asked the Board members to hold this in abeyance until site plan requirements are met.

M. Leahy again spoke to the grandfathering issue. He said when the building was bus service there might have been a single sign. Marcoux Plumbing and Heating had one sign. He said he doesn't think the Taylor Home had any. He stated there was no sign on the side of the building so the one there now doesn't replace any. He said he doesn't feel this is grandfathered as grandfathering should not be obtained by disregarding the issues.

He said he feels this is pre-mature and that the property owner must go through the site plan process. He doesn't feel that the signs are grandfathered at all and doesn't feel they should be scattered all over the site.

No one else from the public spoke for or against the application.

Board: S. Bogert asked S. Saunders how many business signs are allowed on a property and she responded 3, but there are 4 here now. S. Bogert asked what is grandfathered and S. Saunders said the decision was made several years ago to grandfather the signs. She stated she thinks the ones existing were the ones grandfathered. No additional signs were requested at that time. She stated that we can bring additional information to the board. Only one freestanding sign is allowed, with multi business signs on it. S. Bogert asked if each business is allowed 90 sf or is it the property and was told that each business is allowed 3 signs but the entire property cannot go over. S. Saunders explained the grandfathering and the number of signs here.

J. Tivnan asked if we shouldn't know what has been given already in order to make a proper decision and S. Bogert responded yes. We don't want to give a variance without the proper information. S. Saunders said that the applicant did submit everything they needed to. S. Bogert said the parking is an issue and S. Saunders said that approval can be made contingent upon the findings.

M Leahy said any signage was put there by Hawkins without the proper approvals so asked how can this be grandfathered.

S. Perley said there are a lot of uses going on here, and the parking issues scares her. Matt Leahy said tractor trailers are being unloaded in Walker Street right now.

S. Bogert asked if the other Board members had additional thoughts for clarification. O. Gibbs said she wants to see exactly on the plan where the parking is. She wondered if the sign will interfere with sight distance and wants to see that on the plan as well.

Motion: S. Perley voted to continue application 2010-0018 to the meeting of September 20, 2010 to clear up sign issues on the site. J. Tivnan seconded and all voted in favor of continuing the application, 5-0, in order to supply information to the Board on the grandfathering, the existing sq footage of signage, the administrative approval, and the plan with the location of the parking and the proposed sign called out.

MINUTES: The minutes from the ZBA meeting of July 19, 2010 were discussed and it was determined to continue them until the September meeting. The motion to continue was made by S. Perley and the second by O. Gibbs with all voting in favor.

OTHER BUSINESS: Daisy Gardner Road was discussed. S. Saunders explained the issues. S. Bogert said if this was built with no internal flooring, and meets the height requirements, he thinks this is appropriate. It was built to hide the vehicles being stored in it. The size of the building, if holding a boat or RV or vehicle of this sort, would need a door of this type to access it. He thinks they didn't do anything wrong. He does feel that they didn't volunteer all of the information they should have but that they met what they said they would do. This is a single story structure so it meets the intent.

S. Perley said she agrees that this meets the use. J. Tivnan asked if this meets the requirements for a home based business and was told that they are currently working on it.

S. Perley asked if the height can be limited on future approvals on a one story building and was told yes.

Dunkin Donuts signage was brought up. S. Saunders said they are now one square foot over. She asked if we can do an approval internally for this and S. Bogert asked if the mechanism is in place to allow this.

S. Saunders said it goes to the intent. She feels they submitted it correctly, but their measurements were wrong. S. Saunders said comfortable with doing this, as this is a small amount, or they can be asked to return for the variance for the additional 1 sq ft. S. Bogert said he is concerned with just approving this as others could do the same. S. Bogert said that we could ask them to come back to the board for approval. R. Tautkus asked if that would involve them applying again and paying additional fees.

S. Saunders said there is one other thing she wanted to bring up but that the Board has no paperwork on this. CVS will be returning. Ashe has asked legal counsel for a memo explaining legally where the city sits. We haven't seen that yet. S. Bogert asked if the issue was explained to them, and S. Saunders said we had the explaining done to us. Legal counsel made a determination on this and a memo on their findings will be supplied to the Board. CVS will be asking for only 2 more signs, one pedestal and one wall.

ADJOURNMENT: The motion to adjourn was made by S. Perley and seconded by J. Tivnan. All voted to adjourn, 5-0, and the meeting adjourned at 9 pm.

Submitted by:

Kristine Y Snow
Zoning Technician