



City of Laconia
Zoning Board of Adjustment
Tuesday, July 20, 2021 - 6:30 PM
City Hall in the Armand A. Bolduc Council Chamber

7/20/2021 - Minutes

1. CALL TO ORDER

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

2. ROLL CALL

Present: S. Bogert; R. Maheu; G. Ober; M. Dellavecchia; M. Foote (6:35PM)

Alternates: J. LaRoche

Absent: M. Hayward (with notification)

J. LaRoche was seated as a voting member.

3. RECORDING SECRETARY

K. Santoro, Zoning Technician

4. STAFF IN ATTENDANCE

D. Trefethen, Director of Planning & Community Development

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

5.I. June 15 2021 Zoning Board Of Adjustment Meeting Minutes (PDF)

R. Maheu made a motion to accept the minutes of June 15, 2021 as presented.

G. Ober seconded the motion.

All in favor.

5.II. June 30 2021 Zoning Board Of Adjustment Special Meeting Minutes (PDF)

R. Maheu made a motion to accept the minutes of June 30, 2021 as presented.

J. Laroche seconded the motion.

All in favor.

6. EXTENSIONS

7. CONTINUED PUBLIC HEARINGS, CONSIDERATION AND POSSIBLE VOTE Note: The Purpose Of This Agenda Section Is For The Board To Continue The Public Hearing For The Applicant And The Public To Provide Input. The Board May Also Deliberate The Application, Decide And Conduct A Final Vote At This Time.

7.I. ZO2021-0005VAR 57 Eastman Rd Variance Application (PDF)

M. Foote arrived (6:35PM). J Laroche returned to alternate status.

Attorney Corey Giroux presented the application for 57 Eastman Road. He explained that the house was built in 1957 and is closer to the road than other houses in the area. They are proposing to use the existing deck space to construct additional living space. He noted that the existing 12' x 20' deck is recessed and projects into the front setback approximately four feet. The proposed project would be on the exact same footprint as the deck. It was noted it would be removed and replaced as it cannot structurally support living space but would be same size. The use of the house would not change, it would remain a single family home.

The Board asked if the footprint of the project would include the existing stairs. It would not include area for stairs, just the main deck.

At 6:47 PM S. Bogert opened the public hearing.

At 6:48 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

G. Ober made a motion to approve the variance for application ZO2021-0005VAR. Applicant is requesting a Variance from Article VI Section 235-35(A) to allow the construction of an 12' x 20' living space over an existing 12' x 20' deck. Existing deck encroaches approximately 4' into the front setback area.

1. Granting the variance would not be contrary to the public interest because:

The proposed use is in keeping with the current use and composition of the residential structures in the area and will not conflict in any way – let alone to a marked degree – with either the Town's basic zoning objectives or the other uses in the area. As a result, the proposed use satisfies the public interest requirement.

2. If the variance were granted, the spirit of the ordinance would be observed because:

Granting the requested variance will not violate the Ordinance's basic zoning objectives and the proposed variance will not threaten the health, safety or welfare of the town's residents. Furthermore, the proposed use will not alter the essential character of the neighborhood, because the proposed use conforms with the residential character and use in the neighborhood. Accordingly, the proposed use is not contrary to the spirit or intent of the Ordinance.

3. Granting the variance would do substantial justice because:

Granting the variance will do substantial justice. Denying the variance provides no appreciable gain to the public, while visiting the Applicant with a significant loss as to the liberty to use their property. The proposed use is consistent with the existing use on the property and the use of other properties in the neighborhood. Furthermore, the proposed variance will not harm the abutters and is appropriate for the area, as the other residences in the neighborhood have undertaken similar projects without incident. In other words, the proposed variance will not result in any loss to the public because the proposed variance will be consistent with similar projects in the neighborhood and will not enlarge nonconformity with the front setback, but denying the variance would result in a loss to the Applicant as to their liberty

to use and improve their residence as they deem most appropriate for their family in a residentially-zoned area. The proposed variance does not increase nonconformity, conforms with the current use zoning and does not enlarge the structures footprint. As a result, it is both appropriate for the area and won't harm abutters. Accordingly, granting the proposed variance will do substantial justice by permitting the Applicant to improve their residence with no loss to the community.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The Applicant's request for a variance contemplates a plan to enclose an existing deck to create more interior space for the residence. The Applicant's plan to enclose the deck space will be consistent with the existing residence and will appear seamless from the exterior and from the roadway. Creating more interior square footage will have a positive net effect on the value of the residence and should result in either a neutral or positive net effect on the value of the surrounding properties by increasing the taxable interior square footage along with refreshing the exterior of the residence through the work to enclose the deck area. Given the Applicant's proposed variance to enclose an older deck, which conforms with the existing use on the property and the residential uses in the area, and the Applicant's plan to improve the property should improve, rather than diminish surrounding property values.

5. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one because:

The Applicant satisfies both formulations of hardship pursuant to the statute. A number of special conditions on the Property establish that no fair and substantial relationship exists between the purposes of the Ordinance and its specific application to the Applicant's property as it pertains to the Applicant's variance request. The Property is unique among the residences in the neighborhood. While the residences all were constructed in similar fashion at a similar time in the neighborhood, the Applicant's property was the first constructed in the area and was constructed much closer to the road than the other neighborhood residences. The Applicant's residence was constructed in neighborhood in 1957, and the other three residences followed from east to west in 1957, 1961 and 1969, respectively. As the Ordinance increased setback requirements over time, the Applicant's property became nonconforming insofar as it encroaches, by only a few feet, with current setback requirements. The remaining properties in the area were all constructed slightly further back from Eastman Road, which allows those properties to expand by right.⁷ Because the Applicant's residence was constructed, some fifty plus years ago, only a few feet closer to the road, it is now nonconforming, but is otherwise in complete keeping with the rest of the neighborhood.

The stated public purposes of the Ordinance establish that no fair and substantial relationship exists between the purposes of the Ordinance and its application to the Applicant's property. City of Laconia General Legislation Section 235-2 directs that the purposes of the Ordinance are designed to: (1) Lessen congestion in the streets; (2) secure safety from fires, panic and other dangers; (3) promote health and the general welfare; (4) provide adequate light and air; (5) prevent the overcrowding of land; (6) avoid undue concentration of population; (7) facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks and other public requirements; and (8) assure proper use of natural resources and other public requirements.

Taking each requirement in order, the Applicant's proposed variance will not have any effect on congestion in the streets because it will not generate any additional vehicular or other traffic. It will affect safety, fires, panic or other dangers as the proposed variance will simply enclose existing exterior space into interior space. The proposed variance will, if anything, promote health and general welfare as it will provide more living space for the Applicant's family, while maintaining the same footprint the residence already has on the property. The proposed use will not affect light or air and will not overcrowd land, as it maintains the same footprint it currently occupies. It will not unduly or otherwise concentrate population. It will not affect transportation, solid waste, water, sewerage schools or parks. It will not affect natural resources or public requirements. Given the foregoing, it is clear that these purposes bear no fair and substantial relationship to the general purposes of Ordinance as specifically applied against the Applicant's property in connection with its request for variance.

The Applicant's proposed variance is a reasonable one. The Applicant seeks a variance to the setback requirements to permit the enclosure of an existing deck area into interior space for the residence, where the main portion of the residence encroaches on the front setback further than the proposed area sought to be enclosed. The proposed variance will not burden the roads, create traffic, noise or pollution, or burden public utilities, police or fire services. The use is appropriate in size for the structure, will occupy only the existing footprint of the residence, is appropriate for the lot on which the structure sits and conforms with the other residences and residential use in the area. The proposed use will improve the property and generate additional tax revenues. Plainly, the proposed use is a reasonable use for the property, as the use conforms with the existing use and will not increase encroachment on the setback requirements because it will utilize the same footprint it currently occupies. Accordingly, because the literal enforcement of the provisions of the Ordinance impose a hardship on the Applicant, the property has special conditions not found on other properties in the neighborhood and the Applicant's proposed use is reasonable, the Applicant has established hardship.

Condition: Addition is confined to existing main deck area; not including stairs.

R. Maheu seconded the motion.

All in favor (5-0)

7.II. ZO2021-0018SE 33 Clearwater Place Special Exception Application (PDF)

Attorney James Bianco addressed the Board. He explained that he was just recently able to procure the letters from the former owner and the rental companies, and that he provided a copy of the letters and the outline for the Special Exception.

S. Bogert informed Attorney Bianco that they would not review the materials at the meeting and that any rentals occurring need to stop until a permit is issued.

G. Ober made a motion to continue application ZO2021-0018SE for a Special Exception per Article VII Section 235-70(2) to allow Short Term Lodging to the August 16, 2021 meeting.

R. Maheu seconded the motion.

All in favor (5-0)

8. PUBLIC HEARINGS, POSSIBLE CONSIDERATION AND VOTE Note: The Purpose Of This Agenda Section Is For The Board To Have A Presentation From The Applicant And Open A Public Hearing For The Public To Provide Input. The Board May Also Deliberate The Application, Decide And Conduct A Final Vote At This Time.

8.I. ZO2021-0030VAR 978 Weirs Blvd Unit 4 Variance Application (PDF)

Applicant Frank Pasquarello outlined his application. He noted that the surrounding condominium units have received variances and extended their decks from 6' to 10'. The condominiums are a long townhouse style building and this would bring his unit's deck out to match the others in the complex.

At 7:06 PM S. Bogert opened the public hearing.

At 7:07 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

1. The variance will not be contrary to the public interest;

The proposed modification to the existing structure is the same as what was done to the adjacent condo units at the same address and has no effect on the general public.

2. The spirit of the ordinance is observed; AND

If the variance were granted, the spirit of the ordinance would be observed as the proposed modification will be the same as other work done in other units in the same group of condos and will make unit #4 be in conformity with those units.

3. Substantial justice is done; AND

Granting the variance would do substantial justice because no change in use is proposed for the property by the modification, property values of the abutters will not be negatively affected and the unit will be consistent with the other units in the same group of condos thus making them more uniform.

4. The value of surrounding properties are not diminished; AND

If the variance were granted, it will not have a negative effect on surrounding property values, Unit 4 will conform to what has been done to the adjacent units, the entire building will be enhanced and modifications will increase the value of the neighbors by making the units look uniform and aesthetically more beautiful.

5. For the purpose of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

A. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The use of the property will not be changed at all by the proposed improvements, and it will increase the value to the general public.

B. The proposed use is a reasonable one because:

The proposed use is no different than that of the current use, the proposed improvements will not change the use and the proposed modification will cause Unit #4 to look aesthetically more pleasing and make it consistent with the adjacent units.

Condition: Deck is not to exceed 10'

M. Foote seconded the motion.

All in favor (5-0)

8.II. ZO2021-0031VAR 196 Paugus Park Rd Variance Application (PDF)

The agent for the applicant has submitted a letter requesting that the application be tabled to the August 16, 2021 meeting.

S. Bogert made a motion to table Application ZO2021-0031VAR for a variance from Article VI Section 235-35(A) Front setback to allow for the replacement of a nonconforming residential structure with a more conforming residential structure with attached garage and a deck a portion of which will be in the front setback, as requested by the agent for the applicant,

M. Foote seconded the motion.

All in favor. (5-0)

8.III. ZO2021-0034VAR 6 Maple St Variance Application (PDF)

Applicant Donna Kirouac presented her application to the Board. She noted that the house has been in the current configuration since the 1980s however it was only recognized by Assessing as a four-unit building. The issue came to light when an additional address was requested from the post office.

The Board asked about the layout of the house and units. It was noted by D. Trefethen that the variance request is for density. Any other issues regarding how the unit is laid out, safety issues, etc. are the purview of the Code Department and are not part of this application.

The Board asked about parking, it was noted that the driveway runs from Tower St to Doe Ave (the lot fronts on Maple; Tower and Doe) and can support eight regulation parking spaces due to its length and width. Eight spaces are required for a five-unit building.

At 7:36 PM S. Bogert opened the public hearing.

S. Bogert read aloud an email received from abutter Charles Carey who expressed concerns about cars parking on the street.

At 7:37 PM with no additional persons to speak for or against the application, S. Bogert closed the public hearing.

G. Ober made a motion to approve application ZO2021-0034VAR for a variance from Article VI Section 235-33 Maximum residential unit density to allow for conversion of residence to a five-unit multifamily residence.

1. The variance will not be contrary to the public interest;

The unit has been there for many years; it has no effect on the general public.

2. The spirit of the ordinance is observed; AND

If the variance were granted, the spirit of the ordinance would be observed as it would allow the continued use of the building and additional unit as it has been for many years.

3. Substantial justice is done; AND

Granting the variance would do substantial justice because no change in use is proposed for the property by the modification, and property values of the abutters will not be negatively affected.

4. The value of surrounding properties are not diminished; AND

If the variance were granted, it will not have a negative effect on surrounding property values, it provides an additional unit of housing.

5. For the purpose of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

A. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: The use of the property will not be changed at all by the proposed extra unit, and it will increase the value to the general public.

B. The proposed use is a reasonable one because:

The proposed use is no different than that of the current use, the proposed increase in units will not change the use or appearance of the building and the area is already very dense.

R. Maheu seconded the motion.

Discussion: M. Dellavecchia proposed the condition that all required state and local permits are applied for and received.

Motion was amended to include the above condition that all required state and local permits are applied for and received.

Three in favor; two (S. Bogert; M. Foote) opposed. Motion passes.

8.IV. ZO2021-0035VAR 88 Leighton Ave N Variance Application (PDF)

Romy Maurer, landscape architect and agent for the applicant outlined the application to the Board.

The request includes the demolition and reconstruction of the house at 88 Leighton Ave. It was noted that the garage that encroaches on the neighbors property would be demolished and replaced with a small shed that will be entirely on the property as the proposed house includes an attached garage.

The same use, single family home, will be maintained and the new structure will meet all current codes and be more efficient.

At 7:58 PM S. Bogert opened the public hearing.

At 7:59 PM with no one to speak for or against the application, S. Bogert closed the public hearing.

G. Ober made a motion to approve Application ZO2021-0035VAR for a variance from Article VI Section 235-35(A) Front setback; Article VI Section 235 (B) Side and rear setbacks; and Article VI Section 235-36 Green Space to allow for the removal of an existing nonconforming single family residence and garage and the construction of a new more nearly conforming single family residence and shed.

1. Granting the variance will not be contrary to public interest because:

A variance request is contrary to the public interest when it violates the Ordinance's basic objectives. In order to determine whether a variance would violate the basic zoning objectives, it's beneficial to examine whether granting the variance would alter the essential character of the area and/or threaten the general public's health, safety, and/or welfare. The requested variance will not change the essential character of the area and will not be contrary to the public interest. The overall improvements to the site will make the structures more nearly conforming. The public interest is to prevent the crowding of abutting properties and to preserve the quality of the lake. The proposed house will be constructed further from the eastern property line and from Lake Winnisquam than the existing structures currently are, thus increasing open space to the abutter and lake. The existing garage currently lies over the westerly property line. That will be removed and the proposed shed will be located entirely on the Applicant's lot, which is a benefit to the abutter and in their best interest to not have a neighboring structure encumbering their property. Given the small, nonconforming size of abutting lots, many of the neighboring properties have structures that are located within the building setbacks, therefore the proposed encroachments would be consistent with the character of the surrounding area. The construction and the proposed site improvements have been carefully planned in such a way as to minimize any impacts on the environment that would adversely affect the public interest. There is no reason to expect that locating the house as shown on the enclosed plans will negatively impact the public and/or adversely alter the character of the neighborhood. Instead, the proposed project will actually support the public interest by replacing and removing existing non-conforming structures that are falling into disrepair with a new house and shed that are more nearly conforming could potentially be

a benefit to the essential character and aesthetic of the area.

2. If the variance were granted, the spirit of the ordinance would be observed because:

If the variance is granted, the spirit of the Ordinance would be observed. Ordinance Article IV states that the purpose of the Shoreland Protection District is to minimize the degradation of shorelands, protect water quality, and assure the retention of benefits provided by such shorelands. These objectives will be maintained and supported by the granting of the requested variance. The proposed house will be located over 6' further landward from the reference line of Lake Winnisquam and a concrete patio along the shore of the lake will be removed and vegetation will be installed to naturalize the area between the proposed house and lake. The existing aging septic system will also be replaced which is a benefit to the public interest as it will protect the lake from possible contamination from an older septic system. The project also proposes constructing the driveway and patio using permeable methods which will decrease the impervious area on site and increase stormwater infiltration. These improvements will increase stormwater infiltration and reduce runoff directly into the lake. The construction process will follow appropriate guidelines and best practices and there is no reason to believe that the proposed house will negatively impact the quality of the lake, nor do we believe that it will result in any changes to the property that will impact the water quality, wildlife, water flow, or the existing natural beauty. Article X Non-conforming Lots, Uses and Structures states that nonconforming structures may be partially replaced or replaced with a new structure which reduces the nonconformity of any dimensional requirements. Moving the proposed house further from the property lines and removing the existing garage that currently lies over the property line make the property more nearly conforming, thus maintaining the spirit of the Ordinance.

3. Granting the variance would do substantial justice because:

Injustice occurs when any loss to the individual is not outweighed by a gain to the general public. The public has little, if anything, to gain by a denial of this request, whereas the loss to the Applicant would be great. The proposed project will improve, instead of harm the property. The Applicant proposes to move the proposed house further from the lake and building setbacks than the current structure is and will use permeable material to construct the driveway and patio that will result in the removal of 879 square feet of existing impervious area that currently exists on site. Denial of the requested variance will prevent the Applicant from making the most effective use of the Property. Constructing a new, more efficient and comfortable single-family house along with the improved septic and stormwater measures will allow the Applicant to get the most use and enjoyment out of their property while benefiting the surrounding character of the neighborhood and quality of the lake. Further, the small, non-conforming lot limits the property such that encroachment into the building setbacks cannot be avoided. Once the required setbacks under the Rural Residential and the Shoreland Protection Overlay Districts are applied to the existing small lot, it prevents any reasonable building improvements on the property within the confines of the Ordinance. By granting the variance, substantial justice will be done and the Applicant will be able to improve the function of the property in a manner that is consistent with the Ordinance and that minimizes impact to the shorefront buffer, while ensuring that the new home will be more nearly conforming than the existing structures.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The value of surrounding properties will not be negatively impacted by the proposed improvements to the property. Granting this variance will allow the property to be utilized in a manner supported by the Rural Residential District without disturbing the neighborhood. Given the small, non-conforming size of abutting lots, many of the neighboring properties have structures that are located within the building setbacks, therefore the proposed encroachments would be consistent with the character of the surrounding area. The location of the proposed house being set even further back from the shoreline than the existing house and adding natural vegetation between the proposed house and shore improve the aesthetic of the property for abutting lots. Replacing an existing non-conforming house and garage that are dated and falling into disrepair with a new house that is more nearly conforming and a new septic system could potentially be a benefit to surrounding property values. There is no reason to believe that permitting the Applicant to build the house as proposed will have any negative impact upon

surrounding property values.

5. Unnecessary Hardship:

a. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of a variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The general purpose of the Ordinance is to protect the public health, safety, and general welfare of the residents of the City of Laconia. No fair and substantial relationship exists between the general purpose of the proposed project and a denial of the Applicant's plan. Denial of the requested variance will do nothing to contribute to the public's health or safety. The proposed project would remove existing non-conforming structures and improve the property with new more nearly conforming structures that are consistent with the general character and aesthetic of the surrounding area. The plan was design in such a way as to make the most efficient use of the property while protecting the environment, abiding by the Ordinance, and minimizing impact to Lake Winnisquam. The Applicant's plans will remove the impervious gravel driveway and build a new driveway with a permeable surface. The Applicant also intends to install new, native species along the shoreline. By taking these steps, the Applicant respectfully submits that the general purposes of the Ordinance will actually be served by the granting of the variance. By granting the requested variance, the Applicant will be able to use the lot efficiently and economically, while minimizing negative impacts to the surrounding area and making the structures more nearly conforming, improving the permeability of the land, and improving the quantity and quality of vegetation on the property.

ii. The proposed use is a reasonable one because:

The proposed use is a reasonable one. The lot is zoned Residential Rural (RRI), as are the surrounding lots. The use will remain single family residential. The overall improvements to the site will make the structures more nearly conforming. The town and public interests are to prevent the crowding of abutting properties and to preserve the quality of the lake. The proposed structure will be further from the majority of the property lines and Lake Winnisquam than the existing structures. The proposed design and location of the house is the best possible option to abide by the Ordinance and ensure maximum setbacks from the reference line while minimizing encroachments into the property line building setbacks. The proposed plan will allow for an appropriate use of the property without significant adverse impact upon the environment, and, in some areas, improvements to the environment by the improved stormwater management and the addition of native vegetation resulting in an efficient use of the property consistent with the surrounding area.

M. Dellavecchia seconded the motion.

All in favor. (5-0)

8.V. ZO2021-0037VAR Endicott St East Variance Application (PDF)

Both applications will be presented together. Please see below.

8.VI. ZO2021-0038VAR Endicott St East Variance Application (PDF)

Timothy Britain, attorney for the applicant Jennings Excavation and Jason Hill of TF Moran, presented the both applications at the same time as it is one project and both applications tie together.

Attorney Britain gave a brief history of the property including all prior approvals. He noted that in 2008,

the project formerly known as Shaker Hill Estates, had started some of the infrastructure work including clearing for the roads and some piping for water and sewer. (The applicant recognizes that the piping may not be viable after so many years.) The applications presented are exactly the same as the prior expired applications.

Attorney Britain stated that application 2021-0037VAR a variance is requested from Section 235-40, B. (6) (g) to permit the construction of roads that are partially within the 40-foot perimeter buffer for a residential development proposed for this property. The applicant felt it appropriate to use the existing road design as the groundwork for the roads and drainage had already been laid and it will permit a better clustering of the residential structures. It was noted that only a portion of the roadways will be in the buffer.

He also stated that Application ZO2021-0038VAR a variance is requested from Article VII Section 235-40 (B)(6)(h)[1] Cluster Development to allow for the construction of a residential cluster development with some units within the ten foot setback from the perimeter buffer.

The Applicant is requesting the same variance on the same Property, as the Zoning Board previously granted to Phoenix Capital in 2017. It was noted that there has been no material change to the property, and no material change to the surrounding area. The Applicant intends to establish a cluster residential development in the same manner as previously proposed by Phoenix Capital, and approved by the Laconia Planning Board in 2017, and to use the same existing infrastructure and same road design from the prior projects. None of the proposed residential structures will be within the perimeter buffer. Parts of some of the residential structures will be within the 10-foot setback from the perimeter and are indicated in yellow. Parts of some of the residential structures will be within the 10-foot setback from the Wetlands Conservation District buffer also indicated in yellow.

Jason Hill of TF Moran outlined the existing work including the roads that were roughed in and rough graded. He noted that since the Shaker Heights approval the Winnepesaukee Gardens plan pulled the units to the center of the development to reduce encroachment, and preserve open space in larger tracts within the development. He noted that the units marked in yellow have a portion of the unit within the buffer area.

The Board asked about restrictions to protect the buffer. It was noted issues have arisen in the past with unknowing homeowners installing sheds, permanent fire pits, etc in buffer areas. The idea of a deed restriction was mentioned and discussed for the units that encroach in the buffer area.

The Board asked if the reason for keeping plans the same was financial. Attorney Britain stated that it is not for financial reasons to keep it the same, it is a pre-existing condition, to tear it out and start over would do more ecological damage.

At 8:50 PM S. Bogert opened the public hearing.

Tom Rosco, an owner in the Northern Heights Condominiums, an abutting neighbor to the east, addressed the Board. He noted that the proposed road known as Wren Lane is in front of the Northern Heights buildings. The residents are concerned about lights and privacy. He asked if the road could be designated a fire lane and gated at the Endicott St E entrance; this would reduce traffic as there are a small number of houses accessed on that road. He also asked about a buffer, such as arborvitae to shield the residents of both developments.

Jason Hill responded to his concern, noting that there is a fence on the plans that runs down the eastern side of the property for this reason.

S. Bogert noted the receipt of the letter from abutter Mike Hilsinger and asked if Board members had read it.

At 8:59 PM with no additional persons to speak for or against the application, S. Bogert closed the public hearing.

It was noted that designating Wren Lane as a fire lane was discussed in 2017. The road can be gated with Knox box access for the fire department.

The Board briefly discussed the letter from Attorney Pat Wood. D. Trefethen noted that the information from the former applications is part of the public record. It was noted that since the prior approvals there have been lessons learned and that modifications have been made at the Planning Board level to address the issues.

1. The variance will not be contrary to the public interest;

The development of the property will be using existing site work and reducing the amount of additional disruption on the site. The variance would encourage the sound development of the land and help preserve open spaces and protect the natural resources while also enhancing the living environment of this development.

2. The spirit of the ordinance is observed; AND

The use is consistent with area's current use and character as housing. The proposed variances do not conflict with the purpose and intents of the District and do not violate the basic objectives of the Laconia Zoning Ordinance since these setbacks would not apply but for the fact this is a cluster development. There would be no alteration of the basic and essential character of the neighborhood by the granting of these variances.

3. Substantial justice is done; AND

Utilizing the existing infrastructure system is a reasonable development proposal. With that existing infrastructure, the locations of the residential units must be established in manners that fit that infrastructure. In keeping with the concept or flexibility in design for cluster developments, the residential structures are located to provide an attractive living environment and accommodate the need for off street parking for the residences.

4. The value of surrounding properties are not diminished; AND

This cluster residential development will not diminish the values of surrounding properties because it is basically the same type of development that surrounds the property. These minor variances within the confines of the whole project and will not be noticeable by any of the abutting properties. The encroachments into the setback from the 40-foot perimeter buffer means the buildings will still be at least 40 feet from the perimeter instead of the normal 10 foot side setback or the 15 foot rear setback.

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship:

The property is distinguishable from many neighborhood properties: The special conditions of this property are that it was already substantially developed for a more intensive residential purpose and major work was done on the site for that prior development. The goal of the Applicant is to retain that previous work to reduce the impact on the property and the neighborhood that would be created if the prior site work were to be removed and a whole new infrastructure were to be developed. Utilizing the existing infrastructure also requires the residential structures to be situated to use that infrastructure effectively, which is in accord with the requirement to provide economical and efficient public services.

- i. There is no fair and substantial relationship between the goals: The unusual condition of the Applicant's property is such that utilizing the existing road system and infrastructure is more in keeping with the general purposes of the Ordinance than requiring a total reworking of that road system. Siting the residential structures in manners that accommodate the existing infrastructure yet meet the new 50-foot buffer from wetlands and the 40-foot perimeter are examples of creativity and flexibility in design in order to develop the land in an environmentally sound manner.

The Applicant's proposal is designed to do exactly what the Zoning Ordinance promotes - good design to use the Applicants' property in a safe and appropriate manner and to do so in a way that improves overall safety and does not disturb the neighborhood or the neighbors. If the setbacks are enforced, the Applicant will have to choose between reducing open space and amenities, which makes the development less attractive, or abandon the project entirely. Neither of those options are within the reasonable purposes of the Ordinance.

ii. The proposed use is reasonable: Utilizing the existing road system and infrastructure on this property is not only reasonable but is part of a good civic design that meets many of the purposes and objectives of the cluster development provisions of the Ordinance, It is environmentally sound; it preserves open space; it protects existing resources; it enhances the privacy of the development; it permits the use of existing infrastructure; and it helps to create a residential environment that provides adequate open space and common area amenities adjacent to the residential units.

The property was substantially developed within the parameters of prior municipal approvals. Requiring all that prior site work to be removed and recreated in different locations would be more detrimental to the property and the neighborhood than would the granting of this variance. Strict conformance with the ordinance would make this project not feasible as currently designed. Granting the variances would be reasonable and would be in keeping with the goals and objectives of the Laconia Zoning Ordinance.

CONDITIONS:

1. A minimum of a fence shall be built along the eastern corridor of the property to shield lights from vehicles from the adjoining property; the Planning Board to decide if further shielding is necessary for that area.

2. The fence should be noted in the homeowner's documents and that the homeowners association will be responsible for upkeep of the fence and be responsible for the fence.

3. Wren Lane is to be designated as a Fire Lane.

G. Ober seconded the motion.

All in favor. (5-0)

S. Bogert made a motion to approve application ZO2021-0038VAR for a variance from Article VII Section 235-40 (B)(6)(h)[1] Cluster Development to allow for the construction of a residential cluster development with some units within the ten-foot setback from the perimeter buffer.

I. The variance will not be contrary to the public interest;

The development of the property will be using existing site work and reducing the amount of additional disruption on the site. The variance would encourage the sound development of the land and help preserve open spaces and protect the natural resources while also enhancing the living environment of this development.

2. The spirit of the ordinance is observed; AND:

The use is consistent with current use and character as housing. The proposed variances do not conflict with the purposes and intents of the district and do not violate the basic objectives of the Laconia Zoning Ordinance since these setbacks would not apply but for the fact this is a cluster development. There would be no alteration of the basic and essential character of the neighborhood by the granting of these variances.

3. Substantial justice is done; AND:

Utilizing the existing infrastructure system is a reasonable development proposal. With that existing infrastructure, the locations of residential units must be established in manners that fit that infrastructure. In keeping with the concept of flexibility in design for cluster developments, the residential structures are located to provide an attractive living environment and accommodate the need for off street parking for the residences.

4. The value of surrounding properties are not diminished; AND:

This cluster residential development will not diminish the values of surrounding properties because it is basically the same type of development that surrounds the property. These minor variances within the confines of the whole project and will not be noticeable by any of the abutting properties. The encroachments into the 10-foot setback from the 40-foot perimeter buffer means the buildings will still be at least forty feet from the perimeter instead of the normal 10-foot side setback or the 15-foot rear setback.

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship:

(A) The property is distinguishable from many neighborhood properties: The special conditions of this property are that it was already substantially developed for a more intensive residential purpose and major work was done on the site for that prior development. The goal of the Applicant is to retain that previous work to reduce the impact on the property and the neighborhood that would be created if the prior site work were to be removed and a whole new infrastructure were to be developed. Utilizing the existing infrastructure also requires the residential structures to be situated to use that infrastructure effectively, which is in accord with the requirement to provide economical and efficient public services.

i. There is no fair and substantial relationship between the goals: The unusual condition of the Applicant's property is such that utilizing the existing road system and infrastructure is more in keeping with the general purposes of the Ordinance than requiring a total reworking of that road system. Siting the residential structures in manners that accommodate the existing infrastructure yet meet the new 50-foot buffer from wetlands and the 40-foot perimeter buffer are examples of creativity and flexibility in design in order to develop the land in an environmentally sound manner.

The Applicant's proposal is designed to do exactly what the Zoning Ordinance promotes - good design to use the Applicants' property in a safe and appropriate manner and to do so in a way that improves overall safety and does not disturb the neighborhood or the neighbors. If the setbacks are enforced, the Applicant will have to choose between reducing open space and amenities, which makes [the development less attractive, or abandon the project entirely. Neither of those options are within the reasonable purposes of the Ordinance.

ii. The proposed use is reasonable: Utilizing the existing road system and infrastructure on this property is not only reasonable but is part of a good civic design that meets many of the purposes and objectives of the cluster development provisions of the Ordinance. It is environmentally sound; it preserves open space; it protects existing resources; it enhances the privacy of the development; it permits the use of existing infrastructure; and it helps to create a residential environment that provides adequate open space and common area amenities adjacent to the residential units.

The property was substantially developed within the parameters of prior municipal approvals. Requiring all that prior site work to be removed and recreated in different locations would be more detrimental to the property and the neighborhood than would the granting of this variance. Strict conformance with the ordinance would make this project not feasible as currently designed. Granting the variances would be reasonable and would be in keeping with the goals and objectives of the Laconia Zoning Ordinance.

G. Ober seconded the motion.

Conditions:

1. Houses located within the buffer are noted with a deed restriction or HOA/Condominium Association restriction indicating the restrictions for the use of the back yard.
2. The general comments date June 5, 2017 from the Conservation Commission be adhered to.
3. That the houses highlighted in yellow are specifically indicated by lot number.

All in favor (5-0)

9. OTHER BUSINESS

No other business.

10. ADJOURNMENT

At 9:25 PM G. Ober made a motion to adjourn the meeting.

M. Foote seconded the motion.

All in favor.

DRAFT