



City of Laconia
Zoning Board of Adjustment
Wednesday, January 18, 2023 - 6:30
PM
City Hall in the Armand A. Bolduc City
Council Chamber

1. CALL TO ORDER

2. ROLL CALL

3. RECORDING SECRETARY

3.I. Recording Secretary

Sheena Duncan, Zoning/ Conservation Technician

4. STAFF IN ATTENDANCE

4.I. Staff In Attendance

Dean Trefethen, Director of Planning and Development

Sheena Duncan, Zoning/ Conservation Technician

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

5.I. Draft Minutes

Acceptance of the minutes of the December 19, 2022 minutes

Documents:

[DECEMBER 19 2022 DRAFT MINS.PDF](#)

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.

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.

9. OTHER BUSINESS

10. ADJOURNMENT

This meeting facility is ADA accessible. Any person with a disability who wishes to attend this public meeting and needs additional accommodations, please contact the department at (603) 527-1264 at least

72 hours in advance so necessary arrangements can be made.



City of Laconia
Zoning Board of Adjustment
Monday, Month XX, 2018 - 6:30 PM
City Hall in the Armand A. Bolduc Council
Chamber

12/19/2022 - Minutes

1. CALL TO ORDER

Call to order 6:30 p.m.

2. ROLL CALL

Richard Bodie, Jane LaRoche, Roland Mahue, Steve Bogert (Chairman), Mike Foote, Marcia Hayward

-Jane LaRoche as a voting member standing in from Michael DellaVecchia

*Richard Bodie standing in as voting member for Michael Foote, who left after case ZO2022-0084VAR to attend a prior engagement.

3. RECORDING SECRETARY

3.1. Recording Secretary

Sheena Duncan, Zoning / Conservation Technician

4. STAFF IN ATTENDANCE

4.1. Staff In Attendance

Dean Trefethen, Director of Planning and Development

Sheena Duncan, Zoning / Conservation Technician

5. ACCEPTANCE OF MINUTES FROM PREVIOUS MEETINGS

5.1. Draft Minutes

Michael Foote made the correction that his last name should be amended contain an e in certain areas. Motion by M. Hayward to approve the minutes as accepted with the "E" Corrections- Ended by M. Foote. All approve- 5/0, motion passed.

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. ZO2022-0084VAR - 485 Endicott St E Unit 17

Suzzane Brunelle - representing the Sprague's. Ms. Brunelle explained that renting of condominiums had taken place at Gatehouse Community for at least 30 years, with the stipulation that rentals be for 7 days or more- per various Gatehouse bylaws. Rules require "seasonal use" (not to be claimed as primary residence). The Sprague's do not intend to rent or occupy the property year-round. They would like to rent the property outside the May 1 - October 31 seasonal use dictated by the City of Laconia's Short Term Lodging regulations as seasonal use. The family seeks to offset expenses (during a time of economic uncertainty) by renting the vacation property while it is not in use by the family. The Sprague's seek variance from the City's Ordinance in order to periodically rent their recreational/vacation home.

She then read from the addendum submitted December 13, 2022 outlining the new analysis of the five criteria, in summary stating in summary that:

- It would allow the owners to reasonably use their property during the May 1- October 31 seasonal period outlined in the Short-Term Lodging Ordinance while remaining in single family use, not commercial or multifamily.
- The character of the neighborhood would remain as "vacation/ recreational use". The issue of Short-Term Lodging is ongoing in the Gatehouse community- this case is no different from others pre-existing.
- Not granting the variance serves no public good, aside from leaving a vacant property. Granting the Variance would do a public good by providing tax revenue for the city in "off-season" months.
- Not granting the variance may decrease values by limiting the actual use of the property.
- Hardship is generated by the Condo Association's forbidding of year-round use
- The Ordinance assumes that the primary use of a property in this zone would be single family, year-round. This property is unique in that its primary use is periodic and recreational. Granting a Variance will not harm the character of a year-round, single-family neighborhood.

The applicant seeks to rent the unit during non-summer months, as well as summer months to defray the expense of ownership of a property that would otherwise sit idle.

Opened to the public ***

Ken Levey- President of the Gatehouse Community-addendum was submitted Dec. 13, much later than the November 18 filing deadline, and should not be accepted as a part of a complete application.

S. Bogert said that it was a clarification to streamline the complicated nature of the submitted application, not a new request, so it was admitted.

K. Levey said that the Sprague's were aware of the community rules before they bought the property. The proposed is a commercial use- forbidden by the community. The rental provision was intended to allow relations to rent for a week or more at a time, not for a commercial use. The Sprague's have created a nuisance- also forbidden by the community rules, and violated multiple other rules, responding very late and insufficiently to offenses by their guests. While there is a history of long-term rental on the property (to the same tenant for 18 years) the Sprague's are renting under 7 days, (against community regs) to Airbnb clients. The Sprague's bought this property, spent \$50,000 to fix it up, and bought a \$900,000+ property south of Boston 6 months later- they knew what they were in for. Gatehouse stopped all other short-term lodging (also violations) since this case occurred. They can use the property for their own enjoyment any time of year- there is no hardship. The unit should additionally be made to meet fire egress standards if they are allowed to keep the use. We as a community are asking for a denial- "we want to keep our community character like it is. These rentals are choking out the actual owners." Senate bill 249 stating that Short Term Rental (STL) was a constitutional right was shot down 17-0 in November- not a valid argument.

Bob Morse, unit#16- Stated that he lived at Gatehouse during summer and fall for 16 years. The buildings are maybe 20' apart- the renters have been disrespectful and threatening- he reported one renter for doing drugs feet from his bedroom window and received threatening behavior from them until they left. He is not against Airbnb, but there is not a manager on site (or nearby). They (the Sprague's) are investors, who bought into a family environment. He said he didn't have a million-dollar house in the Boston suburbs to return to- now he's being forced to live next to a motel.

Chuck Daley #20- He said that he has lived at Gatehouse since 1987, and the neighborhood is characterized by close family connections- the last 4 purchases have been for Airbnb- they are here to make money. Eastern Shores (another local condo association) has banned all Short-Term Rental to protect their community.

Kevin Murphy #18- Said that all homes are in close proximity, and many renters have abused various rules such as watercraft related rules, and common space- taking other people's chairs to use at their fire pit. They make the community uncomfortable- it's a kid safe and family friendly environment- now we don't know who is coming and going. There is no regard for privacy.

Nancy Sousa #19- Stated that she was one of the owners who used Airbnb. She made interior and exterior changes for the improvement of the property she owns. Her property is at the entrance of the complex and is separated from the others. She wasn't forced to stop doing Short Term Rentals- she stopped on her own when she had recouped some of her expense, and it came to light that the city was against it. She rented for 27 nights- she understood the costs of owning the property. #17 is not representative of all owners of Short-Term Lodgings- some renters are respectful. She said that there might be advantages to allowing winter/ off season rentals of STL- the renters would be there when no one else was likely to be.

Kristen Murphy #18- 35th yr., 2 doors down from #17. She said that the cottages are very close together- it is not a resort. There are restrictions on things like operating a business, color of house, private watercraft- the new owners ignore the by-laws. The Sprague's built an 8-10' fire pit on common property. Renters interfere with other owners, make them feel unsafe. The Sprague's announced that

they were fine with taking the fines levied against them and would continue to rent illegally. She suggested that the city leave rentals to legal resorts.

Linda Fera #7- Said that renters sometimes blocked parking and caused a number of problems to the community. Allowing the Variance was contrary to the interest of the community, and if the applicants were "burdened by the expense", they should seek a property in an area that allows STL. She requested a denial for the good of Gatehouse Community.

Richard Ronnie Leroux #2- One of the Gatehouse units sent kids to school- some had dogs, many broke various rules. Renters short term don't abide by rules, make everyone else feel uncomfortable. The community has to insure the common areas- it's not fair to burden them with renters.

Chris Migala #6- He's a new resident who picked a family environment when he bought. The units are close together. He said that his eleven-year-old son loves to use the beach and fishing but the beach is now over crowded by renters who leave trash and fish hooks- they block the owners from use and don't have respect for the community.

Mark Eaton #4- Asking for denial of variance- to preserve the nature of the community he has enjoyed for 20 yrs.

Nancy Sousa #12- Said that she feels that she is comfortable with strangers in the environment because she doesn't believe it's her business who comes and goes.

S. Bogert read from the letters submitted by Mr. Costa #1- in objection, the Booths #13- in approval (Rachael Sprague's mother) Burley- opposed. Mr. Rousseau- Said that the owners were not to use the property for making a profit, and should not create a nuisance per create house bylaws. He wondered how to enforce the rules of short-term lodging if the owners did not live in the area. He said that the Sprague's had multiple offenses, and they operate as a business.

Cassandra Breault #21- Said she stood in solidarity with her community against STL.

Closed to public comment at 7:43.

Suzanne Brunelle- Clarifying the characterization of the applicant stated that her parents were owners at Gatehouse community. She said that she believed that people deserved a second chance, noting that the applicant would not make this mistake of renting short-term during Bike Week when many of the offenses took place. She noted that a permit would be issued which could be revoked upon several violations. If the HOA wants to ban short-term lodging, they may do so at their own meeting but this

was not the place. The Sprague's were ok with renting 15 times, or 120 days a year. It is a constitutional issue to remove the right to rent.

S. Bogert said that the ZBA cannot enforce condo bylaws. Seasonal use was listed as a hardship- the applicant could not meet the requirements of the Special Exception (regular path to the right) and sought variance from the regulations.

M. Hayward said that the applicant could not meet at least 3 of the 5 criteria for variance. 1-Their interest is against the public interest I 13 to 2.

2- Regarding the spirit of the ordinance- its forbidden in the RS District under the circumstances, its just not compliant.

3. Regarding character- its to remain single family, but this is a business proposal.

4. Regarding hardship- everyone in the District is burdened the same way, there is nothing outstanding about this property. The hardship listed is that they can't live there all year, and can't rent it- and they need to recover some of their expenses. That is a burden on the owner, not the land.

S. Bogert asked- if substantial justice was done to allow the use? The ordinance was designed to protect neighborhoods from negative impacts that can be caused by such a use.

R. Bodie- we have 13 people harmed by this.

S. Bogert said it was contrary to the public interest- per audience testimony. He read from a motion prepared for the meeting:

#1 The values of the surrounding properties are not diminished.

Finding of Fact

The applicant did not provide evidence that the values of the surrounding neighborhood would be positive or negatively impacted by the passing or denying of this variance request.

#2 Literal enforcement of the ordinance would result in unnecessary hardship.

Finding of Fact: The Zoning Board finds that there is no real or preceded hardship as, all properties in the following zones (RS, RG, RR1, RR2, & UC) must meet the conditions of 235-41 and the findings of 235-70.

#3 The variance is not contrary to the Public interest?

Finding of Facts:

The variance would be contrary to the Public interest.

1. The variance request is being used to subvert the following sections, which the city has set up for Short Term Rentals,
 - a. 235-M:1.a which provided zones that is zoned for short term lodging,(ie. Commercial Resort (CR) and Shorefront Residential (SFR)).
 - b. 235-M:1-e, which provides zones (Residential Single Family (RS), Residential General (RG), Residential Rural (RR1), Residential Rural Corridor (RR2) and Urban Commercial (UC)).
 - c. 235-70:2, The Zoning Board of Adjustments (ZBA) shall grant a request for a special exception only where it confirms in writing each of the following conditions stated in 235-70:2.i.

These Ordinances are recommended by the Planning Board and approved by the City Council to regulate and preserve the traditional character of the residential neighborhoods that can be negatively impacted by this type of use.

As for the requirement set by the Condo Rules, the ZBA does not have the authority to oversee or rule on disputes between the Condo Association and it's property owners. This is a civil matter. Also, the Condo Rules do not take precedence over the City's Zoning ordinances.

#4 The spirit of the ordinance is observed.

Finding of Facts:

I The spirit of the ordinance is not being observed based on the following:

- a. 235-41:M was adopted by the city to provide oversight of short term lodging in-order to preserve the traditional character of residential neighborhoods that can be negatively impacted. This type of use can a negative impact on the quality and quantity of housing stock for year round residential use.
- b. The city has set up two zones (CR and SFR) to accommodate this use with property owner applying and receiving a permit from the City Planning Department.
- c. The city also provided a method to acquire a permit in the following zones; RS, RG, RR1, RR2, and UC, if the property owner can meet the conditions of 235-70:c.2 by using a variance to bypass this process, removes the checks and balances used to provide safe guards for the neighborhoods in question.

#5 Substantial Justice is done.

Finding of Fact

Substantial justice is done by denying this variance

- a. The use of a variance to over-ride the provisions set-forth in 235-41:M & E and the findings of 235-70:2 which provides the review of "USE" ensuring that the neighbors are not negatively altered.
- b. This property also has "Condo Rules" that the applicant is trying to use the Zoning Boards to overrule. "Condo Rules" issues between the property owner and the Condo Association are a civil matter.

The Zoning Board of Adjustments moves to deny application #2022-0084VAR

Using the afore mentioned reasoning/ finding of fact, S. Bogert motioned do **deny** the variance request, seconded by M. Foote. 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. ZO2022-0093VAR - 40 Beacon St E

*M. Foote left for a prior engagement, replaced by R. Bodie.

Beth Vachon, representing Lakes Region Mental Health requested the use of a television monitor as an electronic messaging center (EMC) sign, stating that the monitor would meet all requirements of an EMC in other districts where they were permissible- being lower than the allowable brightness, static for as much as several days, equipped with the capacity for dimming, not creating glare, and non-pulsing. It would be used to inform the public about mental health issues, and services- not to advertise goods for sale.

She said that the request followed the spirit of the ordinance because it met the EMC criteria, and in this case would be used to produce a public good- by spreading a public/ mental health awareness.

Regarding substantial justice, she said that mental health problems rose 20% during the covid pandemic, and that their mission was to provide awareness.

Regarding property values- she said that the monitor would be located inside the building, set on a window ledge- it would have no negative impact, being fully movable.

Regarding hardship, she said that she had never heard of anyone using a tv set for such a use, and it would provide a greater good than any perceived detriment. The proposed was reasonable, and would do a public good.

S. Bogert asked if the monitor would be left on 24/7- it could be, again, left on one image for potentially days at a time. S. Bogert asked if it would be considered a window sign- D. Trefethen said that it would, and that it would count against the total allowable signage calculation.

Opened to public comment at 8:30pm.

There being no one to speak for or against the proposal, public comment closed at 8:30pm.

M. Hayward asked what would happen to the existing signage- it would be replaced by a smaller logo, higher on the window.

R. Bodie said that it was not out of character with the downtown, as it was not overly bright and obnoxious.

S. Bogert mentioned that the only other electronic sign allowed in the downtown had been a large free standing digital clock, but even that seemed to be gone now. There had been many restrictions placed on electronic signage- but this one seemed to be different- not much different for a computer monitor

being left on at an office desk facing the windows.

S. Bogert said that regarding public interest, it was not contrary, M. Hayward said that it provided a public good, and met the spirit of the ordinance by complying with the requirements for EMC's in other districts.

S. Bogert said that justice would be done to allow the use because it provided public awareness about mental health; it caused no positive or negative property value impacts. Regarding hardship, he said that the restriction was causing an undue hardship because the sign was not like others in that it was not designed as a money making devise, and would not be a nuisance.

Using the afore mentioned reasoning, S. Bogert motioned to **approve** the request, seconded by R. Mahue. All in favor, 5/0.

8.II. ZO2022-0094SE - 23 Messer St - Assisted Living Facility

Celyn Godbout (Residential Services) Representing Lakes Region Mental Health, and Matthew Dupee, owner of 23 Messer St. M. Dupee said that the property had previously been used as a sober living boarding house designed to teach people in recovery useful skills that would help them transition back into society. Lakes Region Mental Health was looking to start a facility with a similar use. Normally a house manager would be selected from the residents, but in this case professionally licensed staff members would maintain the household. C. Godbout Said that the staff were licensed through the Bureau of Mental Health, and that property would be staffed 24/7 in a structured support environment for day-to-day living.

S. Bogert clarified that Lakes Region Mental Health would be subletting the property from the owner and that it was not funded specifically by grant money but through Medicaid and 30% of the income of each of the renters.

D. Trefethen asked if it would be acceptable to the applicant to place a condition on the approval that the use would stand as long as the applicants license to perform the use. Should the applicant lose their license, the use would cease, and should another provider seek the same use, they would have to seek their own Special Exception. They agreed to the condition.

Opened to public comment at 8:50pm.

Amelia Brock of Samyn D'Elia Architects Spoke in support of the application stating that they were a responsible care provider, and it was a community need.

Closed to public comment at 8:51pm.

D. Trefethen explained that the Special Exception was required because the original use was essentially a roommate like arrangement, and that this use was a service provided by licensed professionals. M. Hayward asked if the new use would require a property card change- yes it would- and when the use changes, it would revert to the "boarding house" use.

S. Bogert said that the use was authorized by special exception, would create less traffic than the current use (as they planned to decrease numbers by 6 tenants), it would create no new changes in water, and other municipal systems, or drainage, no additional trash, or admittance to the school district, no concerns for public health or safety, and would still be very much like the boarding house that already existed. He said that it was in an appropriate location, near services helpful to the clientele, and met masterplan objectives by providing a needed service.

Using the afore mentioned reasoning and finding of facts, S. Bogert motioned to **approve** the request for Special Exception, seconded by R. Mahue. All in favor, 5/0

8.III. ZO2022-0095VAR - 35 Marcia Ann Way

Steven Villani and Collin Brewer stated that they had recently purchased the undeveloped property with the intention of building a vacation home, where they planned to use Short Term Rental to offset costs. They said that the use would bring tourists and increased economic benefits to the city with no increase to city services provided, as the property would be on a well with a septic. They had a history of good short term rental relations at their previous property, using penalties for violations. They said that the hardship was that the property was located very close to the Commercial Resort District (.2 mi) where the use was be allowed by right, and that property was located on a quiet street where only one other house currently existed, which would prevent there being any nuisance. They said it was close to a public beach and would be consistent with the CR Zone short-term lodging.

Opened to public comment at 9:08pm.

Ken Drysten of 237 Hilliard Rd explained that he sold the land to the previous owner who then re-sold the property to a subdivider who then sold this a lot to the applicants. He said that he was having some remorse and wondered what recourse there would be when renters violated regulations and the owners lived out of state.

S. Bogert explained the short-term lodging permit requirements designed to protect the public from nuisance renters and the method by which complaints could be filed, and the potential for the permit to be revoked. Mrs. Drysten expressed concern that the other lots on Marcia Ann Way would be sold and used the same way.

Closed to public comment at 9:18pm.

The applicants said that they used an option through Airbnb that allowed them to hand select their renters and had always maintained respectful clientele. The home would be a vacation home, causing no harm to local housing stock.

J. Laroche asked when they intended to start building- spring of 2023, possibly ready by fall.

M. Hayward said that this was very similar to the previous case at 485 Endicott St E unit 17. R. Mahue said that he would motion/vote the same as he did for that case. M. Hayward said that granting the variance would allow for encroachment into the protected zoning for the RS District with a contrary use.

R. Bodie said that when you buy a property, you accept the requirements of the law.

S. Bogert, reading from a potential prepared motion-

#1 The values of the surrounding properties are not diminished.

Finding of Fact

The applicant did not provide evidence that the values of the surrounding neighborhood would be positively or negatively impacted by the passing or denying of this variance request.

#2 Literal enforcement of the ordinance would result in unnecessary hardship.

Finding of Fact

The Zoning Board finds that there is no real or preceded hardship as, all properties in the following zones (RS, RG, RR1, RR2, & UC) must meet the conditions of 235-41 and the findings of 235-70.

#3 The variance is not contrary to the Public interest?

Finding of Facts:

The variance would be contrary to the Public interest.

1. The variance request is being used to subvert the following sections, which the city has set up for Short Term Rentals,

a. 235-M:1.a which provided zones that is zoned for short term lodging,(ie. Commercial Resort (CR) and Shorefront Residential (SFR)).

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c. 235-70:2, The Zoning Board of Adjustments (ZBA) shall grant a request for a special exception only where it confirms in writing each of the following conditions stated in 235-70:2.i.

These Ordinances are recommended by the Planning Board and approved by the City Council to regulate and preserve the traditional character of the residential neighborhoods that can be negatively impacted by this type of use.

Application 2022-0095

#4 The spirit of the ordinance is observed.

Finding of Facts:

The spirit of the ordinance is not being observed based on the following:

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- b. The city has set up two zones (CR and SFR) to accommodate this use with property owner applying and receiving a permit from the City Planning Department.
- c. The city also provided a method to acquire a permit in the following zones; RS, RG, RR1, RR2, and UC, if the property owner can meet the conditions of 235-70:c.2

By using a variance to bypass this process, removes the checks and balances used to provide safe guards for the neighborhoods in question.

#5 Substantial Justice is done.

Finding of Fact

Substantial justice is done by denying this variance

- a. The use of a variance to over-ride the provisions set-forth in 235-41:M & E and the findings of 235-70:2 which provides the review of "USE" ensuring that the neighbors are not negatively altered.

The Zoning Board of Adjustments moves to deny application #2022-0095VAR

Using the aforementioned reasoning in finding of fact, S. Boggart moved to deny the request for variance seconded by R. Bodie. All in favor, 5/0.

9. OTHER BUSINESS

10. ADJOURNMENT

S. Bogert motioned to adjourn, seconded by R. Mahue. All in favor, meeting adjourned at 9:42pm.