



**ZONING BOARD OF ADJUSTMENT  
TOWN HALL, 85 MAIN STREET  
PITTSFIELD, NH 03263  
MINUTES OF PUBLIC HEARING**

**DATE: THURSDAY, APRIL 14, 2016**

**ITEM 1.** Call to Order at 7:00 P.M. by John (Pat) Heffernan, Vice-Chairman

**ITEM 2.** Roll Call

Members Present:

Jeffrey Swain (JS), Chairman, John (Pat) Heffernan (PH), Vice-Chairman, Paul Metcalf, Sr. (PM), Scott Aubertin (SA), James Hetu (JH), and Delores Fritz, Recording Secretary.

Members Absent:

Paul Metcalf (PM), Alternate, Deidre Benjamin (DB), Alternate and Albert Douglas (AD), Alternate- Resigned Effective 4-12-16.

**ITEM 3.** Approval of Minutes of March 24, 2016

(SA) Motion to approve Minutes of March 24, 2016.

(JS) Second. Carried 3-0. (JH) Abstains.

**ITEM 4.** New Business

(PH) I guess there was a mistake made last meeting in appointing Carole Dodge to the Board as she was considered to still be a member of the Board until James Hetu was sworn in, which had not occurred at that time.

a, Appointment application Carole Dodge – Member

(JH) You need to have Board elections first. (PH) I was planning on doing them when we have a full board. (JH) You do not have the authority. The term for Chairman or Vice-Chairman is for one year and is now deferred to you as past Vice-Chairman. (PH) I disagree with you but we will hold elections.

(PH) I nominate Jeffrey Swain for Chairman.

(SA) Second. Carried 3-1 (JH).

(JS) I nominate Pat Heffernan as Vice-Chairman.

(SA) Second. Carried 3-1 (JH).

(JH) Motion to advertise for the position of Zoning Board member.

(SA) Second. Carried 4-0.

(PH) Also a letter will be sent to Al Douglas thanking him for serving as Alternate.

Jeffrey Swain, Chairman conducted meeting.

**ITEM 5.** Continued Public Hearing with respect to an application for a Variance filed by Richard Labore & Marguerite Girard, 31 Old Candia Road, Deerfield, NH 03037 to permit three separate rental apartments – two apartments located in an existing structure at 39 Clough Road, Pittsfield, NH 03263 (Tax Map R07, Lot 13) and an additional apartment located in a separate existing cottage which is also located on the said property. Property is owned by Richard Labore & Marguerite Girard and located in the RURAL Zone.

Mr. Labore submitted some information which he had obtained through Hank Fitzgerald, Housing Standards. (JH) This is from the HSA Inspector? Mr. Labore: Yes, it dates back to 1990. House was built in 1986 and the tax cards show C1 and C2 apartments in house. (PH) Looking at this and the records, I cannot find when this was converted to a two-family house. Mr. Labore: I do not know how to prove something like this. They allowed it and let it happen. In 1990 it was considered as a three family right along which is for the past 25 years or better, it has been taxed as a three family. I do not know how things were back then.

(PH) As far as I know, this has been a single family house; so what you are telling me is that it has been an illegal apartment since then. Originally, the Building Permit says it has been a single family residence.

Mr. Labore: I agree it started out as a single family, but at some point and with paying taxes, it was listed as a three family. If it started out as a single family house, no one knows that. It might have been then but not allowed now.

(JS) Pat is saying that when it was built, it was a single family. They would have to apply for additional apartments. Mr. Labore: Let's say it was put up illegally, but it was taxed as a three family and HSA certified it. (PH) They did not know about it.

(JH) It would be different if you could be considered as grandfathered but there is nothing noting that you can be grandfathered. (PH) I think we had this conversation at the last meeting – there is nothing that says it is legally a two family house. (JH) Is the application valid? (PH) There is not enough here to have Variance granted.

(JH) Procedurally, Board has to go through the Criteria. (JS) If we all agree then, it is not grandfathered, we can go through the Criteria. (JH) We need to vote on it and go through it again.

The Board and Mr. Labore read through the questions on the application.

(SA) Did you get permits for the rehabbing? Mr. Labore: I checked with Jesse who put them on hold and explained I needed to check with you guys if it was okay as a three family and suggested a Variance.

(PH) What is up with the septic system? Mr. Labore: There are two septic systems and two wells. (PH) That is a lot for this size lot. Mr. Labore: I think the septic is old and if you like me to address the septic, I could do that. (SA) The State approved it.

Public Input:

Scot Palmer: I would like to know if he was charged (taxed) for a three family home. If the Town charged for a three family, he should have a three family. (JS) That is kind of where we are hung up. There is no evidence of

it becoming a three family. He is correct, it does say it is a three family.

Jesse Pacheco: I do not believe the Town charges by apartments but by square footage. (SA) I do not think that is true. They charge for more kitchens and bathrooms – right?

Larry Konopka: Where is the house located? I have had a family member who lived there ten years ago.

Bob Hetu: The usage of the septic, did not hear that in '88 it was for the cottage. The cottage was there and the septic was for the new unit. (JH) No, in 1988 it was for the cottage that is there now. Bob Hetu: It is required that you apply to the State for the septic. (SA) I did say that the State approved it. (JH) If the State approved it back then, we cannot override what the State has approved.

Jesse Pacheco: When he applied for the permit, he has to show the septic map which is correct and both can be on the property prior to them building on property. (SA) This is all approved. Jesse Pacheco: DES makes sure it is adequate. (SA) As far as the State, it has legally been put in and are still legal.

#### Close Pubic Input

(PH) Was the septic ever approved for a two family or a single family?

(SA) The septic plans might be here at the Town or in the State archives.

(PH) I do not feel comfortable with this. The grandfather aspect has gone by the wayside. (JH) He never had the grandfather aspect. (PH) There are no apartments in the Rural Zone now. The house was probably for a single family. (JH) As far as I can see, it is for two units - cottage and the house. (PH) Two units are okay but three are not. (JH) I think you are running on the wrong trail. I do not think you can overturn what already has been approved. Two units were approved for that lot. It is grandfathered for two lots and he has two units there now.

Mr. Labore: Let's say it was not approved years ago, but it was built and taxed. The Town acknowledged it as a three unit. We can show that it was a three unit building for 25 years. If you approve it, is it subject to a septic review? It helps me to know not to be wary about it failing in the winter. I can do it myself. (SA) Contingent upon it being legal, it has been approved and that is hard to take away.

(JH) It is contrary to the spirit of the Ordinances, and granting the Variance would do substantial justice due to the increased density to the Rural Zone.

(SA) He still has the two “apartments” if we vote it down.

(PH) That would be the direction that I am going.

(JH) Motion to deny Variance filed by Richard Labore & Marguerite Girard to permit three separate rental apartments - two in the existing structure at 39 Clough Road, Pittsfield, NH (Tax Map R07, Lot 13) and one in the existing cottage because it is contrary to the spirit of the Ordinance and would do substantial justice due to the increased density to the Rural Zone. (PH) Second. Carried 3-1 (SA).

(JH) I would like to give the reasoning for the denial.

- It would meet standard 3
- The surrounding properties values would not be diminished
- It would be a hardship because of the 3 units.

(JH) For the record the 2 we had issue with is contrary to public interest and spirit of the Ordinances.

(JH) It doesn't matter since he does not meet all five of the Criteria.

(JS) advised Mr. Labore of the thirty (30) appeal process and explained how the appeal process would work.

(PH) A search of the old records was conducted to ascertain the approval of the two-family house rental by records contained in the Town hall. Jesse and I could find no documentation on this.

Mr. Labore left meeting at 7:50 P.M.

#### **ITEM 4:** New Business - Continued

Appointments: (JS) We have received a signed Petition concerning Scott Palmer's appointment to the Zoning Board.

(JH) Motion to table appointments to Zoning Board until next meeting.

(PH) Second. Carried 4-0.

The position will be advertised in The Sun and on the Website and applications will be reviewed and appointments will be done at the

May 12<sup>th</sup> meeting.

**ITEM 6:** Information Items

- a. OEP Conference June 4, 2016

(JS) If anyone would like to attend, you can contact the Town Hall secretary.

- b. New In-Law Apartment Law

(JS) This becomes effective on June 1, 2017. We have a letter from Thomas & Elizabeth Hitchcock requesting approval to allow property to become rental. A letter will be sent to them advising that the law is effective next year.

Paul Nickerson: The Statute was signed a couple of weeks ago but you have until 2017 – a year and a half from now – to enact. This might be repealed. There are 86 towns that are against this. If it is not repealed, it is something we will have to do – change our ordinances and work on them before it goes into effect. Hopefully, it is repealed and the law will not change that much.

**ITEM 7:** Members Concerns\_

Jesse Pacheco: The big problem lies with our assessing people. When the assessing company goes out and finds something such as an apartment, documentation as to the validity of the apartment should be researched before HSA goes out and licenses it. There has to be documentation somewhere. (SA) When you did the demo permit, did you not see that?

Jesse Pacheco: I did not know it was a two family, this should be on the tax card but the problem lies with the assessing company as to the validity of the apartment. (SA) I do not know if assessing has to do that. Jesse Pacheco: Someone should be doing that. (SA) Who? Jesse Pacheco: Assessing should be flagging it just like we flag other additions, renovations, etc. It is a pretty easy fix though I do not know if assessing goes out to every property every five years.

(JH) I agree with you but this is way out of the Zoning's level to do this.  
You are setting a dangerous precedent with Zoning getting involved in that.  
(PH) It is a problem.

**ITEM 8:** Public Input

Jim Pritchard: This Board does not do policing. Jesse is the Code Enforcement Officer and if he has a concern, then he should address it.

Larry Konopka: I welcome you to the Zoning Board. The Board of Selectmen is considering hiring a part-time assessor to be on staff.

**ITEM 9:** Adjournment

(PH) Motion to adjourn. (JH) Second. Carried 4-0.

Meeting adjourned at 8:07 P.M.

Approved:

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Jeffrey Swain, Chairman

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Date

Attachments: (0)  
Olympus: 1.06.39

I hereby certify that these Minutes were recorded by me on April 14, 2016, transcribed and publicly posted on April 21, 2016.

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Delores A. Fritz, Recording Secretary

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