

LITCHFIELD ZONING BOARD
TOWN OF LITCHFIELD, NEW HAMPSHIRE
JUNE 3, 2010

DRAFT

ZBA Members Attending (Indent if Absent):

Eric Cushing, Clerk
 Laura Gandia, Vice Chairperson
Albert Guilbeault
 John Regan
Richard Riley, Chairperson
 Tom Cooney (alternate)
John Devereaux (alternate)
Gregory Lepine (alternate)

I. Call to Order

- Richard Riley calls the meeting to order at 7:12 pm. Meeting was properly posted and published in the Hudson/Litchfield News.
- Richard Riley takes attendance.
- Richard Riley appoints Greg Lepine and John Devereaux to the Board.

II. New Applications

There were no new applications.

III. Hearings

Case Number:	2010-01
Name of Applicant:	William and Diane Lamonthe
Owner of Property Concerned:	William and Diane Lamonthe
Location of Property:	21 Circle Drive, Map 2, Lot 19

Appeal Requested: The Applicant seeks a variance from Section 501.00 of the Litchfield Zoning Ordinance to permit a second dwelling on a single lot in a Residential District where only single-family dwellings are permitted. Applicant also seeks a variance from Section 502.01 of the Litchfield Zoning Ordinance as the lot in question lacks the required minimum 65,340 sq. feet for a two-family unit: Actual lot size is 43,560 sq. ft.

Reason for Appeal: Applicant was denied a building permit to repair damages caused by a recent fire to a detached building located at 21 Circle Drive, Map 2, Lot 19. The Code Enforcement Officer has made a determination that the proposed reconstruction plan constituted a second family dwelling and therefore the building permit, as submitted, is not permissible without relief from the ordinance described above.

Present are the applicants - Mr. William Lamonthé, and Diane Lamonthé, 21 Circle Drive.

Mr. Riley stated that the notice of the public hearing was properly posted and published in the Hudson/Litchfield News. Mr. Riley explained the procedure for tonight's hearing.

Mr. Riley: Generally what we do is we ask you to present your statements along with any supporting information such as photo's etc. explaining why your request for relief from a variance should be granted. When we are done there may be some questions from the Board. After any questions are resolved we will ask for public input starting with those who wish to speak in support of your application followed by any members of the public who wish to speak against it. If there are any more questions, we will get those out of the way and then we will close the input, and then the ZBA goes into deliberation. The deliberations are done here; it will all be done in public. We may ask you questions, but basically once we begin deliberations further input is closed unless we reopen it.

Mr. Lamonthé: Does it matter which one of the variance requests goes first?

Mr. Riley: It doesn't, but to me it makes the most sense to just start with the second dwelling on the single-family lot. Once we get past that, I'm not sure about the lot size, but it will probably be a lot easier to get into.

Mr. Lamonthé provided copies of the plot plan, which showed the location of the two existing buildings on the lot. They are identified as an existing single-family residence and a detached 3-car garage with living space above.

Mr. Lamonthé: As far as my presentation is concerned, the facts supporting my request are basically as follows: The variance will not be contrary to the public interest because other two-family homes and in-law additions exist in close proximity to my home, directly across the street and basically two homes to the left, specifically. The spirit of the ordinance, I believe, is observed because it permits a reasonable use of an existing structure. The building was put up in 1988. It maintains the character of the property; no footprint change has been incorporated, or would be incorporated. All modifications are to be internal. No adverse affect to the neighborhood, traffic, or adjacent properties. I believe substantial justice is done because it would allow a similar use provided to other neighbors, it would have no negative impact on any neighbors and would grant reasonable, minimal relief from the Zoning Ordinance. The values of surrounding properties are not diminished because the external configuration of the building would not change, as I mentioned earlier. Neighborhood eye appeal would be greater than that of a three bay garage, which was it's partially original intent. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because this property is unique dimensionally as it relates to adjacent properties and how the building, or buildings would sit well back from the road, and amply spaced. It has two driveways already and significant green space surrounding each building, all usual property lines; setback requirements in all directions were easily met. An in-law dwelling, although detached, is a reasonable use of this building. Just for the sake of a visual aid, as it were, some of you on the Board may be aware, may be not that there was a fire in this building back in January. This is what the property looked like when we bought it back in 1996 (shows pictures) and you can see what it looks like today as seen from the street.

Mr. Lepine: You said there were other properties that had two buildings on them?

Mr. Lamonthe: Directly across the street from me is a duplex, and if you were to walk to the base of that picture, if you were to walk the area to the left, two doors down, there is a garage and in-law conversion. You wouldn't necessarily know it if you were to look at it, but that's what it is.

There was further discussion regarding whether or not there was a hardship on the land itself. Mr. Lamonthe stated that the tax bill would be very difficult to cover without this arrangement and added that there was no impact on the neighbors, the established use will not change and the 3 -bay garage was present when he purchased the property. There are two driveways present, and there is significant green space surrounding both buildings. Mr. Lamonthe then presented photos taken after the fire in January, which the Board reviewed.

Mr. Lepine asked about the other buildings on this property and on adjacent properties. Mr. Lamonthe replied that there are just the two units on this lot – their one-family unit and the three-car garage with the apartment above it. He added that there is an existing duplex across the street, and that two lots down there is a garage with an in-law conversion. Mr. Lepine then asked if the lot sizes were larger on those lots. Mr. Lamonthe replied that the lot is pie-shaped, and that the other lots are about the same size. He went on to state that the previous owner had built the garage with the intention of having a three-bay garage, with a mother-in-law apartment above the garage. He then added that there is a pumping chamber down below for wastes from the apartment above. Discussion continued.

Mr. Guilbeault: I really don't want to get into this too much, but that street is half in Litchfield and half in Hudson. Are those other lots with multiple buildings in Hudson or Litchfield?

Mr. Lamonthe: Litchfield. If you look at the color photographs of my house, my neighbor on my right is Hudson.

Mr. Riley: I have a couple of letters from neighbors that I wish to read into the record. One is from Gary Robert Fulmer at 25 Circle Drive. He states in the letter: "As the next door neighbor to the Lamonthe's, the owners of the property concerned, I wish to support their request for a variance. I cannot think of one reason not to issue the variance". Signed Gary Robert Fulmer. I have another one dated Monday April 2, 2010. "To Whom it May Concern. We live at 20 Circle Drive, Litchfield, NH and I am not opposed to our neighbors at 21 Circle Drive receiving a variance. Regards, Bob and Jackie Hillbride.

Mr. Lamonthe stated that the Hillbride house is actually half in Litchfield and half in Hudson. That's the other side of the street.

Mr. Lamonthe: When we bought the property, there were two open bays and the center bay had been converted to a shop. The previous owner was a plumber and he was using the garage for pipe cutting and things like that.

Mr. Riley read the letter from Kevin Lynch, Building Inspector/Code Enforcement Agent.

dated February 19, 2010, addressed to William Lamonthe and Diane Lamonthe. “Dear Mr. and Mrs. Lamonthe: As you are aware after our meeting regarding the detached structure recently consumed by fire, the town had issued a building permit for a garage to the previous owner in 1998. It was found, after the fire, that the detached building (a garage) had been converted into a two-family structure with no building permit ever issued by the Town of Litchfield. I researched all records as I stated at the meeting. The conversion was done in violation of the Town’s Zoning, and I cannot review or allow the repairs of the building to go forth into any residential use, nor can the repairs to a two-family or even a single unit. The Town’s Zoning Board of Adjustment would need to approve the use. Therefore, you need to request two variances of the Zoning’s regulations, Section 501.00 – Permitted Uses to allow two detached units on a single lot in the Residential District and Section 502.01 – being the lot lacks the required square footage of 65,340 sq. ft. My decision can be appealed to the Zoning Board and allow a further request for a variance from the Zoning Regulations as to the above, by the Litchfield Zoning Board of Adjustment. If you choose to appeal my decision, and are approved, the Building Code of said renovations must be built to the 2006 IRC Building Code. If you choose to not pursue the change of use from the garage to a dwelling unit, only a building permit will be needed to repair the existing building as the garage. If you have any questions, please contact me.” Signed Kevin Lynch.

Mr. Lamonthe pointed out that if you were to drive by his property, the second building still looks like the photo presented earlier.

Mr. Riley asked Mr. Lamonthe if he had done any research with the Town records to see if the duplex or other two-family homes he refers to on his street are in fact legally set up that way. Mr. Riley: It seems the main argument for allowing this variance is because others on the street have similar uses. Mr. Riley explained that he was finding it difficult to accept that argument without proof that those properties have legal in-law apartments and since it has been pointed out that a conversion was made to your own property without proper approvals in my mind that raises the question about these other properties as well.

Mr. Lamonthe: This is my perspective Mr. Riley. When I bought the house in 1996, there were two open bay garages down below, and in the center what was supposed to be a third bay, which was shown on the permit or whatever is on record, I’ve never seen the building permits for that thing, ever. There were two open bays and there was a machine shop in the center bay. The center bay had been closed off. There was a picture window, a regular entry door, a concrete floor had been poured, it was completely wired, all the studs for the bathroom, sink and what not were in place. The four-inch sewer drain was in place all the way out to a 500-gallon pumping chamber that he had installed. The upstairs was completely done except for bath fixtures. There was carpet on the floor, sheetrock on the walls, paint, all of the steps for his mother or mother-in-law’s kitchen and her bathroom, and then he lost the house. I contacted, after 2 or 3 years of living there the way it was, I contacted Mr. Bergeron, who was the Building Inspector at the time. He told me face-to-face, just like I’m talking to you, Jerry Deschenes was the original owner. He was a fairly large plumbing contractor in this area. He said Jerry’s intention was to put his mother or mother-in-law upstairs. He was running 6 vans out of that property, 6 step-vans for his business. He was cutting pipe and what not down in that machine shop, and then he lost the house. I finished what he started and what Roland Bergeron knew that building was going to be used for. Then when the assessors came out, or the company that did the re-evaluation of the town, they came out in 2005. You can even see it in the picture,

there was staging on the front of the house, and I was painting the front of my house when he showed up. He asked me if he could come through the house; if he could go through the other building and I said yes, go right ahead. His paperwork was reported to the Town and the following tax bill went from a \$4600 tax bill to a \$7200 tax bill. It was noted at that time, 2005 that that building, with the garage conversion to an in-law apartment. I've been taxed that way for five years. I've never tried to hide anything. I've never tried to manipulate anybody or any information. I spoke with Roland, but Roland unfortunately is no longer with us to confirm what I'm telling you, but the reality is on that tax bill. And if the town didn't want me to do that in 2005, I should have gotten either a registered letter or a phone call, or something saying we've got a problem here. If I was jammed for land, that would be another issue.

Mr. Riley: I'm not sure of the exact process, but I don't think the assessors will research records to determine if a two-family dwelling was "legal" or not. It was not necessarily their charter to do that. No other board members were familiar enough with the process to answer this definitively. Mr. Lepine: It would seem the applicant was being taxed based on how the second structure was being used at the time. Mr. Riley: Then would the tax rate be lowered if the applicant is not able to restore the structure back to that condition? Mr. Lepine: I think they would need to file for an abatement and the selectmen would decide that.

Mr. Riley: What about the fact that the prior code enforcement officer was aware of the conversions that were taking place. Mr. Lamonthé is telling us that Roland knew and I don't see any reason to question that. Mr. Devereaux: Yes but that's still hearsay. The current code officer has found nothing in the files to show the proper permits or variance that would make the conversion legal. Mr. Riley: True, and if he had then we probably would not even be hearing this case.

Mr. Riley: What is it that makes the conversion a second dwelling? For example, I think I can convert my basement to add another bedroom, maybe a bath and even a small kitchenette but I don't think that makes it a second dwelling or two family house. I might have to upgrade septic and things like that and I'm sure my taxes would go up but I don't think I'd need a variance. Is it the requirement for a full kitchen with a stove that pushes this over the top, make's it a second family dwelling? Mr. Lepine: I think so, I think I recall a similar situation where the owners had made renovations for an in-law apartment and somehow it came out and the owners had to make changes. Mr. Riley: It seems to me that even if we deny the request the applicant can still make some renovations, like the example I gave of my own house, that would allow them to restore the structure almost to it's prior condition as long as it wasn't classified as a second dwelling. I have heard of homeowners that have done this and then added a stove after the inspections were done that's why I was wondering if it's just the stove that pushes this over the limit.

Mr. Lamonthé pointed out that his son and daughter-in-law lost everything in the fire, and his focus was on getting that resolved. He added that Mr. Lynch had told him that it didn't matter what Mr. Bergeron had said or done. Mr. Lynch had inherited this issue and he went on to say that Mr. Lamonthé needed to come before the Zoning Board for a variance. Mr. Lamonthé: I've been above board on all of this from the start. We never tried to hide anything and that's why we're here.

Mr. Lamonthé stated that he had copies of his past tax bills, which he presented to the Board for their review.

Mr. Riley asked if the Board members had any questions and there were none. He then opened up the discussion to the public.

IV. Public Input:

Mr. Brad Hood, 424 Donald Street, Bedford, NH 03110: I am not an actual abutter, but I have no problem with this application.

Virginia Hokenstrom: I live at 10 Hillcrest Road, Litchfield. As far as the illegality of the neighboring properties, I don't think that it has anything to do to this application. As far as this application, there is no hardship. If there is no hardship, there can be no approval of the application. I don't know if you understand hardship and what is legal in town. He has used an illegality to approve his argument. In fairness, this is not represented as legal comparison.

Mr. Riley asked if there was any further public input and there was none. Mr. Lamonthé was asked if he had any further comments to make.

Mr. Lamonthé: As I have said already, I think that I have been completely above-board with the Town, with everyone involved since I bought that property. I inquired as to what I was supposed to do and what I could do, and if it had not been for the fire, I would be still be paying a \$7200 tax bill on a property that the town has recognized as an in-law use, as they have others in the neighborhood.

Mr. Lepine MADE A MOTION to close the public discussion. Mr. Guilbeault Seconds the Motion. VOTE: 5-0-0.

Public input is closed.

The Board then began discussion regarding the application for variance.

Refer to Notice Of Decision.

John Devereaux MADE A MOTION TO DENY the applicant's request for variance from Section 501.00 of the Zoning Ordinance Code due to number 2 and number 5 above. The applicant did not meet the spirit of the ordinance, Number 2 and hardship, Number 5. Gregory Lepine seconds the Motion. VOTE IS 4-1. MOTION CARRIES.

Mr. Riley informs Mr. Lamonthé that he has 30 days in which to file an appeal of the ZBA's decision.

V. Adjournment.

Gregory Lepine MADE A MOTION TO ADJOURN. Eric Cushing Seconds the Motion. VOTE IS 5-0. MOTION CARRIES.

The meeting is adjourned at 9:10 PM.

Respectfully submitted,
Margaret J. Dabrowski

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