

**TOWN OF SEABROOK  
BOARD OF ADJUSTMENT  
MINUTES OF OCTOBER 26, 2011 MEETING**

Members Present: Teresa Rowe, Robin Fales, Henry Therriault, Dr. Robert Lebold and Mike Lowry

Others Present: Paul Garand, Building Inspector and Jo-Anne Page, Secretary

Henry Therriault opened the meeting at 7PM and explained the procedure of the meeting to all in attendance.

Minutes of September 28, 2011 Meeting

**Motion:** Dr. Lebold Accept the minutes of the October 26, 2011 meeting with the following changes:

**Page 2 currently reads:**

"T. Rowe stated that C. McLaughlin hand no right for the extra units"

**SHOULD READ:** "T. Rowe stated that C. McLaughlin had no right for the extra units"

**Page 5 currently reads:**

"Motion: Dr. Lebold Grant variance for frontage relief at 10 Moore's Lane to 79.97' and 20.03' with the  
Second: M. Lowry condition of one single family home per lot due to a problem with existing well on  
Yes: Unanimous adjacent property close to property line too close to take 20 feet from adjacent  
property.

Case #2011-10 request for Variance to frontage at 10 Moore's Lane is granted."

**SHOULD READ:**

"Motion: Dr. Lebold Grant variance for frontage relief at 10 Moore's Lane to 79.97' and 20.03' with the  
Second: M. Lowry condition of one single family home per lot. Due to a problem with existing well on  
Yes: Unanimous adjacent property close to property line is too close to take 20 feet from adjacent  
property.

Case #2011-10 request for Variance to frontage at 10 Moore's Lane is granted."

**Second:** M. Lowry  
**Yes:** Unanimous

Minutes of October 26, 2011 meeting accepted with the changes recommended.

Motion: Dr. Lebold Change the order of the cases to be heard and call Case #2011-11 first and then  
Second: M. Lowry Case #2011-09 second.  
Yes: Unanimous

Case #2011=11 will be heard first and then Case #2011-09.

**Case #2011-11 Deborah A Fredette, 9 Whittier Drive, Map 8, Lot 38, Sequence 9 for Special Exception to Section 7, Sub-section 7.2 to Allow Family Apartment in Zone 2R**

Deborah Fredette appeared on behalf of this application. She stated that the proposal is to remove the existing home and replace it with a new split entry home with a basement apartment for her parents.

P. Garand stated this was a modular stick built home.

H. Therriault asked if the applicant was familiar with the regulations of a family apartment.  
D. Fredette stated that she was.

H. Therriault said that if there were no more questions or comments on this application it was time to vote.

	T. Rowe	R. Fales	H. Therriault	Dr. Lebold	M. Lowry
A	Yes	Yes	Yes	Yes	Yes
B	Yes	Yes	Yes	Yes	Yes
C	Yes	Yes	Yes	Yes	Yes
D	Yes	Yes	Yes	Yes	Yes

Motion: Dr. Lebold Grant request for Special Exception to Allow Family Apartment at 9 Whittier Drive.  
 Second: M. Lowry House will be stick built/modular and will follow requirements in place in zoning as  
 Yes: Unanimous of this date.

Case #2011-09 Request for Special Exception to Allow Family Apartment is granted.

**Case #2011-09 Charles E. McLaughlin, Trustee of Ledge Two Acres Realty Trust, 11 Ledge Road, Map 2, Lot 54 for Appeal From An Administrative Decision dated July 19, 2011 to Comply with International Residential Code: Section R.105.1, R.110.0, R.303.1 and R.313.1 (CONTINUED FROM SEPTEMBER 28, 2011)**

Attorney Stephen Ells appeared on behalf of this application. He stated that he had no additional information to present tonight. He said that he thought tonight was to receive the opinion of Town Counsel on this matter.

P. Garand stated that he had spoken about several issues at the last meeting and would like to present them into evidence. These papers will be added to the case file. The papers show what he found as history of the property. (All paperwork is attached to the original case file.)

Attorney Ells stated that he had a copy of the record from last month. He questioned this new material. He said this matter was continued to get legal opinion from Town Counsel.

M. Lowry stated that this was also new material to the board of adjustment. He said that the entire case was continued from the September meeting to the October meeting.

Attorney Ells said that he thought this matter was continued just so that the board members could get an opinion from Town Counsel. He stated he was unsure of the occupancy. He again stated that he thought this meeting tonight was just to get the legal opinion on this case.

M. Lowry stated that was the primary reason for the continuance but he still had questions about the case. He wanted to know how long the apartment had been vacant and if there was a tenant on the second floor.

Attorney Ells questioned the paperwork from the building inspector not being handed over earlier. He also said that his client's position is that there is no new evidence from them.

P. Garand stated that this was not new information. It was a copy of the supporting facts that he had stated at the September meeting. He had not submitted it as part of the case at the last meeting and tonight he had copies for everyone and wished to make it part of the case file. He said that he thought Attorney Ells' client was fully aware of what was required and he was trying to hide/cloud things. He said no final inspection had been done. He also pointed out that he wanted to fully cover things tonight.

Attorney Ells said that his client had given him all the information he had. He pointed out that he was handed new information tonight and that he thought this meeting was just to find out what the legal opinion Town Counsel had given on this case.

P. Garand said that Attorney Ells and the ZBA members were all just getting his paperwork tonight. He pointed out that they had discussed it at the last meeting but he did not pass it out to everyone. He said last month he did not enter this information in as evidence and this month he was having it put into the file.

Attorney Ells asked when this information was given to Town Counsel.

Attorney John Anthony Simmons, Town Counsel, stated that there was some confusion on the paperwork at the last meeting and that there was no promise to vote. He suggested that the board take a break so that Attorney Ells could contact his client to get him to the meeting. He also pointed out that he had not seen the information being presented at this meeting.

Motion: R. Fales Take a ten minute break so that Attorney Ells can contact his client and review  
Second: Dr. Lebold the paperwork handed out this evening.  
Yes: Unanimous

Meeting closed at 7:25 PM.

Meeting re-opened at 7:40 PM.

Dr. Lebold stated that the paperwork that P. Garand handed out was not new information and that it was just a copy of what had been covered at the last meeting.

P. Garand stated that was correct and he explained the paperwork again.

Attorney Simmons asked about some of the handwritten comments on the top of the paperwork.

P. Garand stated he had handwritten notes on the paperwork as he was reviewing it. He pointed out that the letter dated February 25, 2011 stated what was found on the property.

Dr. Lebold asked if the February 25<sup>th</sup> letter was when it was discovered.

P. Garand stated that this was work done as a result of a flood and this was what he found at inspection. He said that there was evidence of a living unit when he was asked to do a final inspection on this work. He said when this was discovered he refused further inspection on the property. He said he could not say when the plumbing was put into this unit.

H. Therriault asked P. Garand had anything on the second floor.

P. Garand said that he had never inspected the second floor. He said that the file does not have additional units noted and he was expecting C. McLaughlin to ask for a Variance on these matters.

Attorney Ells said that the paperwork from P. Garand showed in 2001 a second floor and basement were noted.

P. Garand said that the structure was moved onto the property in 1968/1969 according to the tax records.

Attorney Ells said that there was no zoning in place at that time and that there were two apartments there and he was not trying to hide anything.

P. Garand stated he was not hiding but was also not producing any information either. He said that C. McLaughlin would not let the Assessor in the building for inspection.

Attorney Ells stated that all the information was discussed earlier. He said that zoning was not in place when the property and the house first came in. He pointed out that tax records are notoriously inaccurate. He said that this property is a pre-existing non-conforming lot and feels his client has the legal right to do this.

P. Garand spoke to the property cards that he had in the packet he handed out. He said there were notes on them and the client had at one point requested a pool be removed from the cards. He also said that he had received calls from some abutters about a trailer on the property, however none of them were at the meeting to talk. He said that things cannot be done without approval.

Attorney Ells stated that there were no rules when this residence came into existence. He said this all came to be when zoning did not exist.

P. Garand said that he was trying to determine when it came to be.

H. Therriault pointed out that building permit 86-353 did not have a cellar.

P. Garand said that was the original section of the house was with a basement.

M. Lowry asked if the basement was vacant. He asked if the second floor was rented.

C. McLaughlin said it has been vacant since April or May when the pipes broke. He advised that the second floor was rented.

Dr. Lebold asked if there were renters in the building in 1981.

C. McLaughlin stated that he was not sure. He said that renters were not there all the time.

P. Garand said that in 2001 codes were in place from the state of NH when some of the work was done. He stated that he told the contractor, Mr. Bickford to remove the kitchen in the basement at that time and that when he was called back in 2011 for inspections the kitchen was back.

C. McLaughlin said that he knew this, He said that if he had been told to go to the ZBA in 2001 he would have done so.

P. Garand said that in 2001 occupancy was removed after the fire and there was no apartment there. He said that the Town of Seabrook counts living units by the number of kitchens in the building.

T. Rowe questioned someone having a bonus room with kitchen.

P. Garand said that a wet bar was allowed, not separate living areas.

M. Lowry asked if there was a kitchen on the second floor.

C. McLaughlin said there was.

T. Rowe asked if there was permits for this.

P. Garand said that there were no permits.

Dr. Lebold asked if it was all on the same septic system.

C. McLaughlin said the basement was on one septic system and the first and second floor was on another septic system.

Dr. Lebold asked if there were septic system applications.

P. Garand said there were none in the records and that these would have been applications to the State of New Hampshire.

T. Rowe said that 1982 paperwork showed the basement as a recreation room, 1980 showed four bedrooms, 1991 showed a single family home and 2002 second family was noted.

C. McLaughlin said the assessor may have looked in the windows.

P. Garand said that the 1986 tax card noted that the Town of Seabrook was not admitted into the building. He said that when he did the final inspection in 2011 the kitchen was not compliant and the contractor could not answer questions about an additional unit.

C. McLaughlin said that everything was up to current codes.

P. Garand said that it was not a living unit.

C. McLaughlin said that if he was being deceitful he would not have called.

P. Garand said that the sewer inspections he made in the 1990's were only to look for pipes and greywater connections.

C. McLaughlin said that there was no occupancy on any property in town.

P. Garand said that new codes require occupancy permits.

C. McLaughlin said that DPW said that he did not need a driveway permit.

Attorney Ells said that there were no records on the property, He said that deeds confirmed the start of the property, witnesses confirmed the apartment, the building inspector is doing his job, public records are incomplete and there is no new evidence in this case.

Dr. Lebold asked if there was a need for both apartments, the house and the business at this location. He pointed out that this was non-conforming with the business at this location.

C. McLaughlin said it was an office only at the house and there was a need for all apartments.

Attorney Simons said that the ZBA submitted the case to him and he is not here to give an opinion on it, just to make sure the standards and rules are followed. He said he is not a member of the ZBA and is only there for review of the matter. He stated that the application rises or falls on its own merits.

Dr. Lebold stated that if relief was granted he would want to put some conditions like one or two apartments.

H. Therriault said this was a matter whether or not to affirm the July 19, 2011 letter as it stands about two illegal apartments or acknowledge evidence shows three units prior to zoning and it is grandfathered property.

Attorney Ells said that the board could affirm or deny part or all of the letter dated July 19, 2011.

Attorney Simmons advised he agreed that they could consider all or part of this letter.

H. Therriault said that a lot of people have testified on the living units but nothing supports the apartment on the second floor.

Dr. Lebold noted the business at this location.

Attorney Simmons said the board should define the business in any motion.

Motion: Dr. Lebold Grant relief from the administrative decision for two dwelling units at 11 Ledge Road with the following conditions: 1) update all life safety codes for the apartments; 2) no further enlargement of the structure; and 3) the grandfathered non-conforming Business remains at 11 Ledge Road referencing ZBA Notice of Decision 2001-25 that states the three lot subdivision would be residential only. The paperwork administration portion of the business would stay at 11 Ledge Road.

Second: M. Lowry

Yes: Dr. Lebold, M. Lowry, T. Rowe and H. Therriault

No: R. Fales

**Other Business**

Motion: Dr. Lebold Adjourn meeting.

Second: M. Lowry

Yes: Unanimous

Meeting adjourned at 8:35 PM.

  
Henry Therriault, Chairman

11/3/11  
Date