

**MINUTES OF ZBA MEETING
OF SEPTEMBER 21, 2009
APPROVED AT MEETING OF OCTOBER 19, 2009**

PRESENT: S. Bogert, **Chairman;** P. Lambert, S. Perley, R. Tautkus, D. Greski (Alternate), J. Tivnan (Alternate)

ABSENT: O. Gibbs (Alternate)

STAFF: S. Saunders, K. Snow

S. Bogert called the meeting to order at 7:07 pm and welcomed everyone to the September 21 meeting of the Laconia Zoning Board of Adjustment. There are 4 full board members in attendance, as well as the alternates. Jay Tivnan was seated as the 5th member for the first hearing only, replacing D. Lasell who is gone from the board.

HEARINGS: (Continued from August 17)

Application # 2009-00030	MSL # 130-234-001	SFR Zone
Akwa Waterfront LLC	Scenic Road	Area Variance

The applicant is requesting an Area Variance from 235-37, Building Height, in order to allow the building height to exceed the 35' which is allowed in the zone.

Applicant: John Sokul, Chris Duprey, John Riordan and Catherine Broderick appeared. There was discussion on the height so the board requested topographical information. Cedar Lodge requested balloon testing. This was all done.

J. Sokul talked about the submittal and what had been included. He mentioned the traffic report and a letter from a broker and asked if that is still part of this presentation this evening; he was told yes, by S. Bogert. He stated that the intent is to do fewer, but taller buildings, to keep this more environmentally sound.

J. Riordan showed where the multi use variances were granted as well as the site where the taller 3 buildings, consisting of 72 units, are. He showed this in relation to Lookoff Rock. He stated these units are mid rise, 3 units, with access to Scenic Road, and some parking behind. There is good sight distance. They are utilizing land based control topo. He showed the contours and said the shallower slopes are in the front portion of the parcel adjacent to Scenic Road. He showed an aerial view of the site with the lot in question and Cedar Lodge. He said that the shaded representation of the 60 ft building shows accurate view line from the Cedar Lodge location. With reasonable allowance for tree height, and the wooded slope behind, the vantage point from Cedar Lodge is more obstructed by the existing vegetation. The view they want to have is of the lake so the proposed building isn't in their way.

One of the advantages of the parcel is its position in the landscape. There is a good backdrop of the treed woodland. They floated balloons, and he showed pictures of the area. The buildings being viewed from the lake will be shielded by the existing trees and vegetation. The structures will aid in storm water management; one reason they are asking for the increased height is to accommodate parking in the lower level. This is basically a 5 level structure; a garage under with 4 stories over. There are 24 units in each building, 6 on each level, and 3 buildings.

S. Saunders asked if the map with the topo was submitted for the record and was told it was not. She asked if we could get a copy for our records.

J. Riordan said that the balloons that were floated were done because of Cedar Lodge's request. The residents were told they were there but they could not be seen. In addition, they did a second balloon floating, from the southerly building, and this was not seen by Cedar Lodge either.

Public: Russ Poirier, Cedar Lodge, said that Akwa did a great job of keeping them informed. They knew about the test and it did not interfere with their views. The only concern they have is that this request is only for these buildings; if other buildings are proposed they request that another variance be done. He added that he feels the area needs something like this. He thinks this will be a shot in the arm for the area. There are fabulous views here and someone should take advantage of them.

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Board: P. Lambert said when this was seen the last time we were told these 3 units needed more land to go with them so they can exist. How do we address that this evening to ensure this parcel has 3 units. S. Saunders asked their intent.

We were told they only requested a variance for the 8.1 acre parcel, just for the height variance. The Special Exceptions were done initially so should be all set. S. Perley asked if the density is ok and S. Saunders said no. The Special Exception was across the board for the lots. P. Lambert said the Planning Board should handle the number of units. S. Saunders said these 3 units would be addressed this evening, any more would require being addressed by the board again. P. Lambert said the Special Exception was granted and S. Saunders said that was just for the multi use, and it made no mention of the number of units. The Planning Board could cut the number of units if they wanted but they could also add more. S. Bogert said as long as they don't exceed the requirements and P. Lambert said we are just granting these 3 units the variance for the height.

John Sokul stated if they go forward with the addition of more units, they could add more land to this parcel to meet density requirements.

S. Bogert closed the hearing to the public at 7:30 pm.

Board: P. Lambert asked if the Planning Board reviewed a site plan for this yet and was told no. S. Saunders said 2 members saw architectural renderings only. P. Lambert asked if they would allow clear cutting here and if permits were done for cutting yet and S. Saunders said the Planning Board would not allow clear cutting, but the applicant can timber the lot all they want. Permits are done in the tax office. P. Lambert asked if they were within 50 ft of the water. S. Saunders said the state is 250'. P. Lambert asked if someone will have to submit to the state and was told yes. S. Bogert said the purpose of them going up in height is to reduce the cutting.

S. Bogert reopened the hearing to the public: J. Sokul said there is no intent to clear cut and they plan to keep cutting to a minimum.

S. Bogert closed the hearing to the public.

Motion: S. Perley moved to approve application 2009-00030 for the area variance to allow the building height to exceed the 35' allowed in this zone. Clustering the structures is a better use of the area than allowing the single units. It is a more effective use.

The special condition is the topography as it slopes steeply in the rear of the lot. By building this way the applicant can reduce the amount of disturbed area on the site and provide parking underneath which will conserve space.

The benefit cannot be achieved in another manner due to the challenging topography as it would likely result in clearing and grading the entire site without this variance. That would lead to increasing environmental impacts and additional costs to the applicant as well.

No one from the public spoke against this and one did speak in favor. The variance is consistent with the spirit of the ordinance as this variance will allow the larger portion of the site to remain environmentally sound. Substantial justice is done as this is for residential use, so it won't be out of character and is consistent with the Master Plan.

The value of surrounding properties won't be diminished as this has no effect on the abutters, and has a less intense impact on the site so it will enhance surrounding property values.

The board also added two conditions:

The variance approval is only for the 3 buildings discussed this evening and shown on the plan. The height is limited to 60' in height.

R. Tautkus seconded, and all voted in favor of approval, 5-0, with the following criteria being met:

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a) **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.**

i. **An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;** The topography slopes steeply in the rear of the lot; **AND**

ii. **The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance;** There is no other method for the applicant to achieve the benefit due to the challenging topography as it would likely result in clearing and grading the entire site, leading to increased environmental impacts and additional costs to the applicant; **AND**

(b) The variance will not be contrary to the public interest; No one from the public spoke against the proposal and one did speak in favor of it; **AND**

(c) The variance is consistent with the spirit of the ordinance; Granting the variance will allow the larger portion of the site to remain environmentally sound; **AND**

(d) Substantial justice is done; This is a residential use so it won't be out of character with the neighborhood and is consistent with the Master Plan; **AND**

(e) The value of surrounding properties will not be diminished; Values of surrounding properties won't be diminished as this proposal has no effect on the abutters. The less intense impact on the site should enhance the surrounding property values as well.

The board further added two conditions:

- 1) The variance being approved is only for the 3 buildings discussed this evening and shown on the plan.
- 2) The height is limited to 60' in height.

NEW HEARINGS:

D. Greski was seated as a full board member for the remainder of the evening and J. Tivnan returned to alternate status.

**Application # 2009-00036
Gianunzio/Rice**

**MSL # 17-155-2
2635 Parade Rd**

**RRI/RRII
Amendment to Special Exception**

The applicant is requesting an Amendment to the approved Special Exception from 235-26, Uses Permitted by Right, in order to allow people other than the City of Laconia to use their composting operation.

Applicant: Regina Nadeau appeared along with Patty, Patrick and Michael Gianunzio. She asked how many board members sat on the original hearing.

R. Nadeau said they got the Special Exception several months ago to allow composting on land they are obtaining from an abutter. The land fronts on Hilliard Road, which is a class 6 road. They currently have greenhouses, a farm stand with items for sale, and mulch piles on their approved plan.

P. Moynihan appeared as well for DPW. R. Nadeau said he had discussed with Petal Pushers the issue of taking waste clippings, which is currently done at the land fill. Petal Pushers wants to do an organic business, so this is a great source for them. They appeared before the board and obtained the Special Exception to accept city waste only. Their request was based on the deal with the city and numbers given by P. Moynihan, approximately 60 trucks per season, with 120 maximum. They were happy with those figures and it met their requirements at that time.

They are here tonight asking for a modification of one of the conditions. They are in agreement with the other conditions. The condition they are asking for modification on is for the source of the material. This came up because the case received publicity; landscapers in the area were asked to dump at another facility. They realized how fragile the situation would be if the sole supplier were the city and others were taking in waste at less than the city. This would become an issue.

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Right now they truck in mulch and compost, already packaged, out of Maine and Vermont. The board recognized this would displace some of that traffic. They plan to continue to limit the area of the compost piles and the height, but hope to displace some other traffic. They have landscapers signed up who get discounts. They want to give them the ability to do an in/out business with them. They are coming in anyway so they could drop off garden clippings, get their new product and leave which would result in no net increase in traffic and could reduce the amount of larger vehicles. There would be no foreseeable increase in traffic. If limited to one supplier it is a huge risk to her client to invest in the equipment.

S. Bogert said that in the original presentation it was stated that the one source would be financially viable for granting the permit. He said he feels that was part of why it was allowed to occur. They are now saying this is not financially viable; what changed within the past 3 months? He said he is not sure if the original presentation/findings would have gone the way it did had it been presented in this manner at that time. Part of reason they did agree is because the benefits allowed the overcoming of the faults of the site/proposal. S. Bogert said he doesn't doubt that there is further business to be found.

P. Moynihan, DPW: He said the city takes in 3500-4000 cubic yards a year, and are currently in trouble as there is no longer a place for it. The city is dealing with cost issues and the City Council approved a fee for the first time. Landscapers are now being charged which has cut the volume down considerably. The agreement, approved by the City Council, only gives them the approval for 5 years. This is a big investment on their part for a limited time. The picture has changed from May as the volume was cut back and the city will only do a 5 year agreement. P. Moynihan said there are two new things: the private location and the length of the agreement. The volume and the limited term impacted Petal Pusher's view on limiting use to just the city.

D. Greski asked how many of the 30 yard dumpsters have been delivered since May and was told none so far, as the agreement is not completed. He also asked if there had been any review with the DOT regarding the entrance.

R. Nadeau said that, pending the boundary line adjustment, they will need another driveway further north. The DOT looked at it, and will re-evaluate the existing drive permit when taking this operation into consideration. They got an amended permit last week. S. Saunders asked if they that looked at 2 drives and Hilliard Road and R. Nadeau said she thinks it looked at Hilliard Road as well. The DOT reaffirmed the existing drive and a new one for the compost, and she guesses the one on Hilliard Road, for an apron to come off of Parade Road. She let the board know they plan to do a 50 ft boundary line adjustment so after that they could not access the new approved driveway. As part of creating the new lot they had to give the access. It is not another drive for the business.

They looked at the likelihood of having significant deviation in the numbers originally mentioned. It would seem that if people can dump for free elsewhere, or for less money, they will do that. The work trucks already go in and out of here, so allowing this could result in a further reduction in the truck traffic.

D. Greski asked if Fire signed off on this yet and was told yes, on the footprint of the pile, the height and location; none of that will change. There are no special conditions here.

J. Tivnan asked if individual landowners can drop waste off and was told no, that had been previously discussed. Only their regular contractors, if coming in with an empty truck, might as well be allowed to bring clippings in. S. Perley asked how they would limit, what is the wording they want here.

R. Nadeau said this would be an in/out service, for their existing landscape contractor customers; they would dump, pick up and go. S. Perley said if limited to just the existing customers, it might not be a good thing for them.

Mike Gianunzio said they have contractors who set up accounts with them. Discounts are given to them as they purchase items in volume. This is contractor pricing; they have a list and contractors don't get on it for a year; they would limit use to that contractor list. A new person can sign up but it will take time for them to get added to the list. If the city does bring what they need, fine. The contractors come in with material now and they ask if they can dump. Right now they have to say no. S. Perley asked what the average sized truck is and was told regular pickup trucks; F350's for example, not huge trucks. They are already coming in so this doesn't cause additional traffic. D. Greski

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clarified that the individual customer still has to go the landfill and P. Moynihan said the fee being charged is only for private contractors, not homeowners.

P. Lambert asked how do we prevent someone from showing up with 10 bags and wanting to dump and R. Nadeau asked M. Gianunzio how they communicate with their landscapers. M. Gianunzio said we contact them via mailings. They know the contractors, and they won't be advertising regarding the ability to dump. M. Gianunzio said the composting area won't be accessible to the general public. P. Lambert asked if they would be charging them a fee and was told they are not planning on it now. They won't be charging the city.

P. Moynihan said the city is not looking to make a lot of money so the fee, if they end up making a lot of money, would probably be cut.

S. Bogert asked P. Moynihan if the city has any objections with Petal Pushers doing this for free and was told no.

Public: Catherine Broderick stated she is representing Tom and Joia Hughes, the direct abutters; Joia is also here this evening. C. Broderick said this is a residential neighborhood. They want this change dismissed without prejudice, so the applicant could return in the future. They feel they should wait and see how the city operation goes. The amount may or may not be less than originally anticipated. It is not this board's job to keep Petal Pushers in business or even to see if the city can deal with their compost problem. It is the applicant's responsibility to bring proof. Traffic could be an issue, it could increase. It is the applicant's duty to show proof it won't increase. The neighborhood would be negatively impacted.

She said that the Hughes' do appreciate all the work that Petal Pushers has done to bring this into compliance.

She asked the applicant how many contractors are on the list and how often do they come in. She asked if the board does grant the Gianunzio's modification, to consider a condition that all entrance to the composting operation is done through Hilliard Road. She said it sounds like that is already being considered. S. Perley asked her to show Hughes' property on the map. D. Greski asked if traffic is the issue with them and was told yes, that and changing the character of the neighborhood from residential to commercial.

No one else spoke for or against the application.

S. Bogert asked what the zone is now and S. Saunders said rural residential. P. Lambert said to consider this is Route 106 which is a heavily traveled road, and the contractors use the road anyway. He asked if any traffic study was done and said the traffic is already high. S. Saunders said they did not do one and there are no studies done by anyone in this area. The closest development is Windemere Heights and even that was 2004-2005; she is not sure if they submitted one then. P. Lambert said he doesn't like to travel this road during peak hours.

D. Greski asked if the DOT wouldn't do a traffic study before approving and S. Saunders said she doesn't know, as she doesn't see the DOT application, just the drive way permit itself. P. Lambert said normally you need to show sight distance.

J. Tivnan clarified that the Hughes' want the entrance to the composting operation on Hilliard Road so people using the area could not access the regular drive but use only Hilliard Road and was told yes.

S. Saunders said the traffic pattern was deferred to the Planning Board. R. Tautkus said she feels the Hilliard Road entrance is the more logical one for them to use and S. Saunders said Hilliard Road is not an accepted or maintained road. P. Moynihan said it has public status but is not maintained; the public has rights to it, and Petal Pushers has an agreement to maintain the portion that they use.

S. Bogert said if using this road for truck traffic they would have to supply access for Hilliard Road vehicles and asked would they have to bring that portion up to current standards. He was told they have a 15 year agreement, just to access the lot. When going to Planning they could ask for the portion that they use to be upgraded. The level of safety requirements could be increased per S. Bogert. If it becomes a requirement, P. Moynihan said that DPW might take a

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closer look at this. He said they have found that the largest amount of yard waste is from March 1 to April 15, and from October 1 – 15th. Those times of the year aren't the heaviest traffic times on Route 106.

R. Nadeau said they showed the current traffic pattern. If using Hilliard Road, they must grade and maintain it. They have no objection to a condition that the Waste Management trucks access through the upper portion of Hilliard Road so long as the Planning Board allows them to do just the large trucks. They feel the traffic won't increase. They feel this will mitigate the arrival of the trucks with the compost. They do have DOT approvals.

S. Bogert asked if they would agree to a condition regarding traffic patterns and R. Nadeau asked if they are being asked to turn around in the site and was told yes.

J. Tivnan asked if people dump, then return to get trees and was told no, the big tractors will make the loop by the greenhouses; the contractors will use primary entrance like they do now. S. Bogert asked where pick up trucks would go and M. Gianunzio showed. He said he feels they would dump first, then return to the front area to buy.

R. Nadeau asked if the contractors will let them know they are entering to dump compost and was told yes.

S. Bogert closed the hearing to the public at 8:43 pm.

Motion: S. Saunders said to make the motion for the amendment state that it meets the use of the previous special exception. D. Greski said Planning must supply input first.

D. Greski moved to approve 2009-00036, for the amendment to the special exception to allow people other than the city of Laconia to use the composting operation.

The use of earth material processing is authorized in the table of permitted uses. This change should not create undue traffic congestion but we would recommend that the Planning Board review the condition to use Hilliard Road as the entrance/egress or other alternative as presented by the Planning Board. Any added signage for traffic control should be discussed with DOT if it has not already been done. There should be no increased run off onto streets and there will be no excessive demand for fire, police, schools or solid waste services. This should lessen demands on the city. There are no special provisions here. There is no detriment to health, safety, and welfare. The proposed location is good. The use and reuse of existing matter is a good one.

S. Perley added a condition to the approval stating that instead of saying other people, the wording should say contractors and the City of Laconia. If not adhered to, that use will become null and void and this permit would be rescinded.

S. Perley seconded the motion for the amendment and all voted in favor of the motion, 5-0, with the following being met:

All previously approved conditions shall remain in effect, with the addition of:

Contractors who are on the approved Petal Pusher's ongoing contractor pricing list shall be allowed to bring in composting, along with the City of Laconia in an in/out service type operation. Any others will require additional ZBA approval. If this condition is not met, this amendment will become null and void.

**Application # 2009-00038
R. Mignanelli**

**MSL # 426-44-8
134 Church Street**

**DRD Zone
Use Variance**

The applicant is requesting a Use Variance from Table VI, Table of Sign Regulations, in order to install a roof sign which is not permitted in the DRD Zone.

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Applicant: R. Mignanelli, owner of the Brick Front Restaurant. He said he now has exposure to Union Avenue so he would like the roof sign for visibility, as his current sign cannot be seen from the road. The size he is requesting is 2' x 13.5' and would be a back lit sign. S. Perley asked if they would be removing the existing sign and was told no.

S. Perley asked if he is ok is on the sq footage and number of signs, just not the type, and was told yes. R. Tautkus asked what has changed with the business and R. Mignanelli said he is now visually open to Union Avenue. S. Perley said she feels he has more exposure now and R. Mignanelli said the three buildings that were there blocked the view. Even if putting the roof top sign, a person could not have seen it. He has to shut the blinds now because of the CVS lighting shining into the dining room.

The board suggested he could increase the height of his free standing sign instead. P. Lambert said he doesn't feel people know the restaurant is there. D. Greski said the sign there now is a good sized sign. S. Perley asked about placing another sign on the ground and K. Snow said they cannot have 2 freestanding signs on the site. R. Mignanelli said people cannot see the existing sign and that the new sign would be nicely done.

Public: No one appeared for or against the hearing.

R. Tautkus asked about placing a wall sign and was told it is all windows across the front. P. Lambert asked about projecting from the roof and S. Saunders said that isn't an allowed use either. D. Greski asked about placing it on the front of the building, but the location mentioned won't work per R. Mignanelli.

Further discussion was held and R. Tautkus asked if the design were similar to the current sign would that work better. She suggested a similar sign, just smaller. S. Perley read the section of the ordinance which outlines materials to be used in the zone.

S. Bogert said across the street, in that zone, this sign would be permitted. R. Mignanelli said this is a metal sign with plexiglass but he could make a sign out of wood and light it. S. Perley said that would work better, as it would meet the ordinance better.

R. Mignanelli said he can make another sign out of wood, go 2 x 9, and make it more complimentary to the structure of the building. He can make the size no larger than 18 sf. He said he could do lights hanging over so it won't bleed onto adjacent lots; downcast lights.

S. Bogert closed the hearing to the public at 9:15 pm.

Motion: R. Tautkus moved to approve 2009-00038 for a use variance for a roof sign. The applicant is trying to take advantage of increased traffic so the additional sign would give him needed exposure.

The zoning restriction as applied does not allow this type of sign in the Downtown Riverfront District, but given the nature of the building, it is difficult to place a sign elsewhere.

This won't be contrary to the public interest and no one spoke for or against the proposal. If the applicant uses the criteria for the signage, which would be the use of natural materials, and if it is done tastefully, it would be consistent with the spirit of the ordinance. Substantial justice would be done in granting the approval as the applicant would gain additional exposure for his business. This should not diminish the values, given the signage of surrounding businesses, and no one spoke against the variance.

She added the conditions that this be restricted to 18 SF, made with natural materials and be lit by downcast lighting only.

D. Greski seconded; the vote was 3-2 so the motion passed with the following criteria being met:

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a) **Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.**

i. **An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;** Special conditions exist as the applicant wants to take advantage of increased traffic in order to obtain needed exposure for his business; **AND**

ii. **The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance;** Given the nature of the building it is difficult for the applicant to place a sign elsewhere, other than the roof; **AND**

(b) **The variance will not be contrary to the public interest;** No one appeared to speak for or against the proposal; **AND**

(c) **The variance is consistent with the spirit of the ordinance;** The applicant will use the natural materials called for by the ordinance which would be consistent with the spirit of the ordinance; **AND**

(d) **Substantial justice is done;** The applicant would gain additional exposure for the business so substantial justice would be done in granting of the variance; **AND**

(e) **The value of surrounding properties will not be diminished;** No one spoke for or against the proposal and, given the nature of signage on surrounding businesses, this should not diminish the values in the neighborhood.

The board also added the following conditions:

- 1) The size of the sign shall be restricted to 18 SF.
- 2) The lighting shall be downcast only.
- 3) The sign shall be constructed with natural materials that meet the requirements of the Zoning Ordinance 235-54 (B)

**Application # 2009-00040
P. Hodgkins**

**MSL # 310-304-28
67 Anthony Drive**

**RS Zone
Area Variance**

The applicant is seeking an Area Variance from 235-35 (B) in order to erect a storage shed which would project approximately 5-6 feet into the required 10 foot side setback.

Applicant: Pete Hodgkins lives at 67 Anthony Drive. The property has water frontage and there is a 75 ft setback from water. They have developed greenspace and did landscaping since moving here fulltime so they are limited as to where they can erect a shed. They re-located from a larger home and need a storage shed to store water toys and winter equipment.

S. Bogert asked about the location and was told their fence is 4-5 ft from the property line now. D. Greski asked if this would be to the left of the gazebo and was told yes. They downsized from 3500 SF to 950 SF so need the space now. S. Bogert asked if the location is where the stack of wood is shown and was told yes. That is about 81 ft from water. S. Saunders said she is unsure if they will need to contact the state on this. The setback is 50' with city and 250' with the state but she is unsure of the jurisdiction for the shed. S. Hodgkins said they can make the size a bit smaller. P. Lambert said it can be placed between the gazebo and water.

Susan Hodgkins said a gentleman downstairs sketched this plan out for her. He did setbacks around the entire property and showed her the area where she was told they can place the shed. They don't want to place it any closer to the water, although they could, as they feel it would not look good. They don't want to place it in front of the gazebo as it would obstruct views, which is why they chose the area they did. It would ruin their view looking out and the views of people looking in. If they conform to the 10' side setback, passage between the 2 structures would be minimal and P. Hodgkins said he doesn't think he could get a riding lawnmower between the landscaping, structure and gazebo. S. Bogert said the fence will hide this from the neighbor and shrubs will shield it from the road so he feels this is a good location for it.

S. Perley asked if they can change this to a 10 x 15 ft shed and S. Hodgkins said they could do that. P. Lambert added that if they stay with the 10 x 16 they have to go to the state for a permit. P. Hodgkins said it is more important to get it up so they could go with the smaller size.

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Public: No one spoke for or against the proposal.

Motion: P. Lambert moved to approve application 2009-00040 to allow the applicant to erect a 10 x 15 shed within the 10 ft setback.

Special conditions exist as this is located in the shorefront district with a 50 ft setback, allowing only a small area to place the shed. He feels they chose a reasonable area. The benefit cannot be achieved by another method as it would be difficult for the applicant to locate the proposed shed any other place.

This proposal will not be contrary to public interest as a shed is a permitted use and most of the neighbors have one. This is consistent with the spirit of the ordinance as it allows the use of an outbuilding, which is consistent with the neighborhood. Justice is done as outbuildings are allowed without adversely affecting neighbors. Values of surrounding properties won't be diminished as most of the abutters have outbuildings.

S. Perley seconded. All voted in favor of approval, 5-0, with the following:

a) Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; The area variance is needed as this property is located in the shorefront district, which has a 50 ft setback; therefore there is only a small area where the applicant could place the shed; **AND**

ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance; It would be difficult for the applicant to locate the proposed shed in another location on the site; **AND**

(b) The variance will not be contrary to the public interest; The use of a shed is a permitted one and most of the neighbors have one; **AND**

(c) The variance is consistent with the spirit of the ordinance; The ordinance allows the use of an outbuilding in this zone so this is consistent with the spirit of the ordinance; **AND**

(d) Substantial justice is done; Justice is done as outbuildings are allowed without adversely affecting the neighbors; **AND**

(e) The value of surrounding properties will not be diminished; Values of surrounding properties will not be diminished as most of the abutters have outbuildings.

RE-HEARING REQUEST:

Application # 2009-00039

MSL # 428-220-5

P Zone

Laconia Union & Church LLC

220 Union Ave

Motion for Rehearing

The applicant is requesting a re-hearing on the Administrative Appeal regarding signage at 220 Union, CVS. The decision was made at the July 20, 2009 ZBA meeting to uphold the decision made by the Planning Director at the June 15, 2009 meeting.

Only 3 board members, R. Tautkus, S. Bogert, and P. Lambert, can be seated for this hearing.

S. Bogert had a few questions before opening the hearing. He asked if we received this application within the 30 day criteria. S. Saunders said it had arrived on the final day so it meets that criteria.

The original attorney had the affidavit of service stating he could represent CVS. This is a new attorney and we did not get an affidavit from them stating he could represent. He does need the affidavit from CVS. S. Bogert said we cannot re-hear this tonight without that and asked to move the hearing to the October meeting to allow that affidavit to be presented.

**MINUTES OF ZBA MEETING
OF SEPTEMBER 21, 2009
APPROVED AT MEETING OF OCTOBER 19, 2009**

Motion: P. Lambert moved to continue this to the October 19 meeting, and that was seconded by R. Tautkus. All in favor, 3-0, of moving this to the October meeting.

OLD BUSINESS: 49 Eastman Shore Road S: N. Bucchiarelli gave the history of her project. K. Snow explained the issues and that the original NOA stated there could be no changes to the roof without first obtaining a variance. Susan Young added that the reason they had asked for the original variance was the roof did encroach 3 ft on either side. This one does not extend out at all.

S. Bogert said that the portion of the original variance asking for the roof was withdrawn so the ZBA could not mention that portion of the request in their Notice of Action. He asked if this was built within height and setbacks does this need a variance and was told no.

S. Saunders said she needs to find out what was built and if it meets zoning. She asked S. Bogert if he feels the ZBA erred in making the original condition as the variance did not speak to the roof at all and S. Bogert said you cannot condition a non-decision.

S. Bogert stated that what is being asked of the board can't be asked. They are not in violation of a variance but could be in violation of zoning. Since that portion of the application was withdrawn originally there was no variance.

Rosealie Ann Wright: She and her husband are the abutters who objected. She said that no notice was given to the abutters. The building was built high and it obstructed their view. She said they should have been notified as they were the last time they applied. S. Bogert explained and said if this meets the zoning criteria, then they would not have been noticed. A building permit would have just been issued if no variance was required. The original variance for the second floor portion was withdrawn so the ZBA could not have added a condition for something that had not been applied for. R. Wright said they applied for a tax credit, which is 5%, but she doesn't feel that makes up for the lack of the lake view. That was an important asset. She is a year round resident and they are not.

Susan Young stated this is her sister's property which is lakefront. She said that if you want to guarantee the lake view, you would have to buy on the lake side. Her sister pays almost twice the property taxes because she is on the water.

S. Saunders said she will look into this and find out exactly what was built and determine if they meet zoning. The owner and abutter will be notified as to the findings.

279 Lakeside: S. Perley says she feels the board was misled by the applicant. D. Greski agreed; the minutes were very clear this was for an office and a lounge for employees, with overflow dining space. The board members were all in agreement that their intent was for no bar. S. Saunders let them know that the applicant said this is not a bar but a service area, as there are no bar stools. P. Lambert said the board's intent was for no bar at all, with overflow dining and asked what action we now take and S. Saunders explained the process. She said we will write a letter, telling them they are in violation of their approval. P. Lambert said he feels a copy should be sent to the liquor commission as well. He feels they would revoke their license. S. Saunders said we will tell them to remove the bar. Whether or not they are able to request another variance was asked and discussed.

OTHER BUSINESS:

MINUTES: The motion to accept the minutes as written for the June 15, 2009 meeting was made by P. Lambert with the second by R. Tautkus. The vote was 4-0 for accepting (S. Bogert abstained as he was not in attendance.)

The motion to accept the minutes as written for the August 17, 2009 meeting was made by S. Perley with the second by R. Tautkus. All voted in favor of accepting, 5-0.

ELECTION: S. Perley moved to nominate P. Lambert as vice chairman; R. Tautkus seconded. P. Lambert said he would accept the nomination but only until January 1, when elections are held. All voted in favor.

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ADJOURNMENT: The motion to adjourn was made by P. Lambert with S. Perley seconding. All voted in favor and the meeting adjourned at 10:25 pm.

Submitted by:

Kristine Y. Snow, Zoning Technician