



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING FEBRUARY 19, 2013
APPROVED MEETING OF MARCH 18, 2013

Present: S. Bogert, Chair; S. Perley, Vice Chair/Secretary; M. Foote; R. Smith; D. Robitaille, Alternate; K. Geraci, Alternate

Absent: D. Greski. O. Gibbs

Staff: S. Saunders, **Planning Director**; K. Snow, **Zoning Technician**

S. Bogert called the meeting to order at 7:05 pm and welcomed everyone to the February meeting.

R. Smith recused himself from the following hearing. D. Robitaille and K. Geraci were seated as full board members for the hearing.

S. Bogert reminded the public and the board members that the only people who would speak for the hearing were the board members. There is no public input.

Legal Counsel Laura Spector-Morgan was also in attendance and was available for input for the first two hearings.

DETERMINATION:

Application # 2012-0025

Gables/Paugus Bay Condo Assoc

MSL # 244-430-32

388 Davidson Drive

RS ZONE

Variance

The applicant requested a re-hearing for a variance from the 1988 Zoning Ordinance, Section 14.45 (b) (3), Lot Coverage, to allow the coverage to increase from a minimum of 20% to a minimum of 30%.

BOARD: S. Perley read her notes and said these are her observations on the project.

“The Gables is one village out of many villages at South Down Shores controlled by a Southdown Master Homeowner’s Association as well as a Gables specific homeowners association. The whole property was developed under the City of Laconia’s PUD ordinance. Despite the fact that that ordinance was repealed and replaced with a new cluster development ordinance, the original coverage called for in the development approval has been upheld in the City’s interpretation (as has been argued by the Applicant). **The Master Declaration is intended to cover all villages for one standard development plan.**

- All of the villages are subject to the Rules and Regulation of the South Down Recreation Association (SDRA).
- The SDRA is governed by a governing council comprised of representatives from all of the villages.



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- The request for the 10% reduction in green space was voted down twice by the SDRA Governing Council.

One of the functions of greenspace is to aid in the infiltration of storm water, especially in a development as large as this one, as well as provide for aesthetics.

Testimony provided at the hearing in January showed that South Down has been dealing with drainage issues for several years. From the January Meeting Minutes: *P. Bordeau stated that surface water flow and drainage issues do exist. Some surface water has flowed into The Gables from other villages which were not properly maintained and has caused issues elsewhere.*

P. Bordeau said that the surface water runoff is his last issue. They are saying that granting this will worsen the issue. They stated that there are 2 villages downhill that have issues due to The Gables. Road repairs have been made due to the Gables. The cause isn't necessarily what they are saying it is.

The Gables doesn't generate all this water; some is coming from other villages as well. There is a holding pond across from the beach which was designed to hold overflow during storms. It has been problematic over the years. The culvert was raised so there is now less capacity to handle heavy rains. This is a settling pond. When we now have a large storm, which we are having more frequently, one problem downstream is that the SDRA has been charged to maintain these. At least one issue occurred because they did not maintain this. Sediment dropped out and caused clogging issues. W. Murphy stated this was The Gables fault. This was a design error. The development is bad and has caused wash out of roads. There is rip rap on only one side of the road and that promotes wash out.

Purpose for the variance (as stated by the Applicant): Shortage of visitor parking at the Gables which causes an inconvenience and safety issues. The Applicant further states that the application of the provisions of the repealed ordinance requiring 80% green space causes a hardship with respect to parking and reasonable use of the property.

General Public Testimony against the variance at the January meeting:

- The 30% restriction was a condition instituted by the Planning Board in its approval process.
- There is no hardship in this case as all the villages suffer from the shortage of parking and are so constrained by this shortage.
- If the Gables is allowed this variance, it will open the door for the other villages to obtain the same variance.
- The majority of homeowners are against the change as evidenced by the two votes taken by the Governing Council representing the Association.
- There is no lack of parking, just mismanagement of the existing parking.
- An alternate to paving has been submitted; pavers or gravel are used in the other villages.
- The Gables is one of the only villages that currently has overflow parking in their village.

General Public Testimony (non-committal):



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- The petition circulated was inappropriately presented and misrepresented what the Gables was requesting.
- There has been an evolution of the entire South Down community over the past 21 years...change has happened and will continue to happen.

My observations:

Changing the coverage rules at this time as applied to the entire South Down parcel would result in a new land plan without proper full analysis.

The Gables comprises a 9.24 acre lot. The 10% request equals about 40,250 square feet of impervious surfaces that could be added to the site...almost one acre if approved.

Cannot look at the Gables in a vacuum – the result of the variance could result in a cumulative effect of lessening green space and adding impervious surfaces and increased drainage issues.

Relaxation of lot coverage will affect the entire development, not just the Gables.

While I am not against the Gables having reasonable use of their land, conditions exist and have been documented with drainage that can be exacerbated by the relaxation of the lot coverage rules.

I do not feel the hardship test has been met as it was stated that the other villages also suffer from a lack of parking and so there is no distinction between the Gables and the 18 other villages. The Gables is no less safe than any other village.

I personally feel that the future may bring other situations for South Down as a whole where the relaxation of lot coverage may be necessary. But until an engineering study is done of the entire property outlining the effects of improper drainage as well as the subsequent effect on Lake Winnepesaukee, I cannot support this one variance request.

From the OEP Handbook for Boards of Adjustment: **“By its basic purpose, a zoning ordinance imposes some hardship on all property by setting lot size dimensions and allowable uses. The restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exists.”**

S. Bogert said we need to look at South Down as it grows out. The Gables has 31 homes; this is a neighborhood in Laconia, which in his mind feels the same as the south end vs. the north end. Saying the south end cannot do this because it affects the north end isn't right. There is not enough parking; does the



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issue exist in all of South Down? S. Bogert said yes, it does. He asked if it exists in the entire city and said yes, it does.

They are trying to fix a situation and not park in the streets. The Gables is trying to alleviate that issue. If fixed they would not have to park in the street or off site. That is inconvenient.

Allowing the minimal disturbance of the green space would take care of this issue. If properly conditioned the 10% could only be used for parking. S. Bogert referred to the pictures that were previously submitted which show the existing parking which he thought was inadequate.

Expanding of the patios was another request. That is a horizontal situation so the adverse affect of the flat patio affecting neighbors on the other side of the road, won't have a visual effect on the development. S. Bogert said he doesn't think this will affect the home values. This won't be able to be seen from another village. If people are buying a home here and see the cars parked haphazardly, they would immediately know there is a parking issue. That could de-value properties.

Things change over the years. The number of cars owned by a family has changed; family mechanisms have changed. S. Bogert asked if this problem is the same as others and said yes but they all have the same mechanisms in place to fix the issue. This should not be closed to change.

The approval was done in the 80's, and we need to think about the improvements especially if there is no adverse affects on others. We could condition this in such a manner that it is only used for parking and patios and nothing else.

S. Perley said she does agree but they are part of the bigger community with rules and if we allow for this one, we will have to allow for all. She said that at some point they are going to have to make changes that will affect the entire community. She feels there are significant drainage issues that need to be looked at and she can't see how you can pull one piece of the pie out.

D. Robitaille said he agrees with both view points but doesn't want to be in the position of approving something that is for the minority. He asked what about the other villages? Where are the residents of The Gables? He said we have only seen the opponents. He would be upset if the minority were the ones to change the rules.

K. Geraci said she sees S. Bogert's view point on this. She feels it is congested there now. We are not looking at this as if approving them means we have to approve for everyone else; they are the only ones asking. We have to look at just this. But South Down does need to look at the big issue; only the Gables are here asking for this and she feels that they meet the criteria for what they are looking for.

S. Perley said they are no different than the other villages. When she drove out there she saw pull offs in the development. S. Bogert said their hardship is their inability to be able to do anything about this. They have been told no by South Down, so they came here to ask for the variance. They have the right to ask for this.



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K. Geraci said that is important to her. They do have the right to ask for this.

Laura Spector-Morgan said that the hardship has to come from the property, not the owners. The Gables proved they have the ability to ask.

S. Perley reminded the others how many people live there. The governing bodies held a hearing within themselves and said no twice to this issue. That is the public; they spoke against it. The board, as the spokespeople, said no. That is public input vs. one person, The Gables. Public opinion was against this. This is a gated community that exists within the City of Laconia.

L. Spector-Morgan said that political pressure cannot be considered. She said to look at the application, but what other people want doesn't count. She said that public interest and public opinion are not the same. Public interest is what the ordinance is trying to protect, for example drainage.

M. Foote said that the 31 units, as a part of their own, have directed some of their fees to their legal counsel to pay for this. They do their own mowing, snow removal, and pool upkeep. He said their Village is insulated. If you park on the lawn that is going to cause issues with mud and sedimentation that will flow down stream. He said they should have the ability to determine what they can do within the confines of their own community and will still have to answer to another authority on this.

S. Bogert said the board is not granting them the right to do this; they would still have to go to the master board to get the patios approved.

S. Perley said the patio wasn't mentioned on the application, just verbally. S. Saunders said that the patios were mentioned on the application and pointed out where.

S. Bogert said we can condition an approval to state that the 10% can only be used for parking and non-enclosed patios and it would still have to be approved by their Master Board. The 10% can be limited to what they have requested. The patios would have to have additional building permit approvals.

D. Robitaille said that we have a handle on pros/cons from The Gables. There was a petition from the other villages. He asked what kind of backing from The Gables we have. S. Saunders read from the letter from the board of directors. D. Robitaille asked if this were a formal vote of the board of directors so the owners could voice their opinion and was told yes. S. Saunders read from the letter which grants the permission.

S. Perley asked if the members don't think there is a bigger impact on the entire South Down community by approving this and S. Bogert said he doesn't think so. They didn't go to the safety board for this but neither did the property owner with the ice build-up in his driveway. He said he doesn't think this opens a can of worms as they can all look at their individual documents and see if they want to apply for a variance as well.



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They are not asking to build 14 more homes. That would have a dramatic effect on things. They are asking for the right to make their patio as big as what had been originally approved in 1990 and S. Bogert said he thinks that is fine. He said that no one seemed to be managing this very well and that in itself created special conditions.

S. Saunders said either way the Board must address the 5 criteria.

M. Foote said that they still have to go forward and be governed by the community even if we approve this. He feels they should be able to ask for this as they spent their time and money.

MOTION: S. Bogert moved to approve Application # 2012-0025 with the following conditions:

- A) There will be an increase in coverage from 20% to 30%
- B) This increase can be used for 3 things:
 - 1. to increase the number of parking spaces for additional off-street visitor parking.
 - 2. To add a second parking space to those units that only have 1 parking space now and,
 - 3. to increase the size of the patios and decks to the size which was originally approved in the 1990 site plan.
- C) No patio is to be enclosed nor is an addition to the house to be made within that space.
- D) The applicant must apply for approval from the Master Board and be in compliance with the govern documents.

The variance will not be contrary to public interest: The granting of the variance to increase the coverage from 20% to 30% lot coverage, with the aforementioned conditions, won't be contrary to public interest as The Gables is self contained. There is a perimeter road and green space that separates it from other villages and it won't impose any visual effects or encroach on any other part of the development.

The spirit of the ordinance is observed as there are only 32 units on 9.24 acres of land, and almost 80% green space. This exceeds the zone allowance. The approval allows The Gables to complete their process per their original drawings.

Substantial justice is done in allowing The Gables to increase from 20% to 30% lot coverage. With the aforementioned conditions, this will allow them to provide additional off street parking and allow some of the owners to grow their patios in agreement with the original approvals.

There will be no decrease in surrounding property values as using the previously stated conditions will provide for additional parking and provide safety. This allows uniform patio sizes as related to the 1990 site plan. This won't affect surrounding communities.



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Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as the current requirement cannot provide safe off street parking and this could create safety issues. Visitors currently have to park off-site and walk to homes.

Approval of the variance would provide for reasonable use of the property and allow The Gables to address safety issues with the parking.

S. Saunders said that the applicant mentioned that some of the units only have one parking space and they should have two. S. Bogert said we should add to the conditions to the motion to allow them to build out those units to the two units that were required by the original approval. **(See B 2 above)**

M. Foote seconded the motion. 4 voted for the application, with S. Perley voting against it, 4-1.

REQUEST FOR BUILDING CODE OF APPEALS HEARING:

R. Smith returned to the hearing as a board member and K. Geraci returned to alternate status.

Application # 2012-0039
J Remington

MSL # 151-269-40-1
183 Wentworth Cove Road

SFR Zone
Appeal

The applicant is requesting a hearing to appeal the determination made by the Laconia Fire Department on September 19, 2012 regarding the sprinkler system required by the City of Laconia at the above property.

APPLICANT: Rod Dyer appeared for the applicant. He stated that the Remington's are not present this evening as they are out of state. The contractor, Gary Cartier, is here as well and can answer questions.

R. Dyer said they are here before the ZBA because there is no Building Code Board of Appeals at this time. He said there are no variance or special exception issues; they are appealing a provision in the Laconia Fire Code.

He stated this is a single family detached home located at 183 Wentworth Cove Road. They applied for a building permit to build the home. The permit was issued with the dwelling being over 3000 SF. Attached to the issued permit was the provision that it should be protected by a sprinkler system.

The applicant's wife picked up the building permit and the yellow placard. She delivered the yellow placard to the site where it was displayed; however the remainder of the permit went to their out of state office. Neither John Remington nor Gary Cartier saw the condition that the internal automatic sprinkler system was to be installed.

The building went forward, and construction occurred following conditions set forth by the building permit. There were a list of items they followed: footings and forms, and the inspection; foundation walls prior to backfilling and the inspection; all electrical/wiring and plumbing prior to concealing, and an inspection; rough and inspection; and a final inspection prior to occupancy.



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The required inspections did occur. The final was done by James VanValkenburg, who was the Code officer for the City at that time. Gary Cartier said VanValkenburg went to the site, did his review, and told G. Cartier he could button up the property, which he did. With all of those inspections no one ever mentioned that internal sprinklers were required.

The building was finished and the application for the Certificate of Occupancy was filed with the city; there were further inspections for the CO. C. Roffo, of the LFD, saw the original building permit and saw, rightfully so, that the sprinklers were not installed so the CO was denied. That was in February 2012.

At that point John Remington spoke with the Planning Director, S. Saunders, who told him that his recourse was to file this appeal with the Building Code of Appeals. J. Remington then went to see R. Dyer to determine what their next step was.

R. Dyer looked at the fire code. He did see that any residence in excess of 3000 SF is required to install the internal sprinkler system. However there is a provision that the Chief of the Fire Department, with agreement of the City Manager, can waive this so they filed a letter requesting a waiver on September 6, 2012. They received a denial, which said the sprinkler was needed.

At that point R. Dyer said they had an intern from their office look into things and he found that the State law had changed and what was applicable in 2011 was no longer applicable in 2012.

R. Dyer said that the City cannot require a fire sprinkler system in a detached single family. While City code does state anything in excess of 3000 SF must be sprinklered the State changed their law. RSA 674:51 says this is not required.

He asked the board members to look at their exhibits, RSA 674.51: V states that no municipality or land use board shall adopt the practice of adopting the fire suppression system in any new or existing (RSA 672.7) single family dwelling.

R. Dyer said it is clear that the legislature in 2012 mandated that no municipal or land use board shall adopt any ordinance requiring the sprinklers. He asked if the local code states you require it and the State says you don't need, which prevails? The doctrine of pre-emption states when it contradicts or parallels, towns cannot compete with State law. Whenever there is a conflict between local or State, the State statute applies. Here it says that says a local community cannot require that a single family home has to have a sprinkler system.

RSA Chapter 153, fire control, Paragraph III, says fire code and association rules cannot require fire suppression in single family homes, adopted 6.18.12, and in effect. They are exempt from automatic suppression requirements.

R. Dyer said there were 2 decisions by the State legislature mandating that these cannot be required to be installed. The Remington residence is a single family, detached home used for residential purposes. R. Dyer



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said they feel that under the law the local fire code must be looked at under the state law. He feels that the CO cannot be denied for any reason relating to the fire suppression system.

S. Bogert asked when the building permit was provided and was told 2008. G. Cartier said it took some time and they began construction in 2009. S. Bogert asked if the permit was viewed by the contractor and was told just the yellow sheet. S. Bogert asked if he reviewed the entire packet and was told by G. Cartier that he never saw the original building permit, just the yellow cardboard placard that is placed on site.

S. Bogert asked if the City did provide the information and R. Dyer said yes.

S. Bogert said if the house was built to code by the permit this wouldn't be the issue. He stated that the house was not built according to the permit and was told that was correct.

R. Dyer said the law has now changed and as of today you cannot hold off granting the CO on the basis that the suppression system wasn't installed. R. Dyer said today that is not required. L. Spector-Morgan said it should have been built per the code that was in force at the time. She said the law doesn't say you cannot enforce a previously existing code. You can adopt new codes, but this should have been built to the code which was in effect at that time. She said that the City can require this and that the State knew that these laws were in effect in other cities.

R. Dyer said the house is done, and that the fire code is holding up the CO. S. Bogert said it was not built per the issued building permit.

S. Perley asked G. Cartier if the requirement was on the building permit and he said yes; he never saw it.

Gary Cartier: He said there are two different issues. He did not see the building permit as he wasn't involved in the application. He only saw, at the site, the yellow copy which was brought over by the property owners. The yellow copy doesn't say anything about a sprinkler system, and he didn't see the white addendum, as that went to their Florida office.

S. Bogert clarified that the package did go to the owners of the property and G. Cartier said that is correct. S. Bogert said it is the onus of the property owner, and not the City's fault. They should have got the entire packet to the contractor.

G. Cartier said that is why we do the inspections. As a builder he does agree and tries to stay up on all of the codes, but he works in several different communities. He doesn't know all of the ordinances for each community. Should he have known, should he have asked J. Remington if there was an addendum to the permit? He said he goes by the inspections listed on the yellow permit and nothing was listed on that regarding the sprinkler. Fire did an inspection, and the sprinkler was not in but it was not mentioned at that time.

R. Dyer said he was candid in the fact that the application was mishandled.



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D. Robitaille asked Laura Spector-Morgan if we have a code that is enforceable and she stated yes, both she and Walter Mitchell feel it is enforceable. S. Saunders said to determine if the appeal was done properly.

R. Dyer said he hopes he stated his case appropriately.

S. Saunders said the board's determination this evening is whether or not the waiver was properly denied.

FIRE: C. Roffo, of the Laconia Fire Department, appeared, and said he handles fire prevention for the City. RSA 674.51 says specifically that a municipality cannot adopt after a certain date, and cannot enforce, sprinklers on manufactured housing. That is State fire code.

“Section 153:10-a III says the state fire marshal may adopt such rules pursuant to RSA 541-A as necessary to enforce paragraphs I, II and II-a, provided that under no circumstances shall the rules require the installation of a fire sprinkler system in a 1 or 2-family dwelling unit that otherwise meets the requirements of this section. The state fire marshal shall either enforce the provisions of this section or appoint the appropriate municipal authority to enforce the provisions of this section.”

Section 153:10-a, VI says any ordinance or bylaw enacted by a city, town, village district, or precinct, or any rule or regulation adopted for licensure by a governmental agency which contains more stringent requirements that the provisions of this section shall not be made void by this section and shall remain in full force and effect.”

C. Roffo said he feels confident that it is within our rights to require this system.

He did the building review and did the write up. He did a written response, which he forwarded to the Code Enforcement office. That yellow sheet is just for posting purposes, and one must review the attached addendums.

Public hearings were held when this ordinance was adopted. They were attended by local contractors who asked for some changes, those were done and then adopted.

C. Roffo said he is confident that their due diligence was done. Fire didn't try to hide anything. Other Fire inspections were done on appliances. C. Roffo did this inspection, and when he went to see the building and saw the size, he looked into the sprinkler requirement.

R. Smith asked if Fire can grant a variance and C. Roffo said the Fire Chief and City Manager can. R. Smith asked if this is centrally alarmed and was told there are hard wired smoke detectors.

PUBLIC: No one from the public spoke for or against the application.



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R. Dyer said he has high regard for the Fire Department and he is not here to complain about them or indicate that Fire or the City fell down on the job. He said he is just relating the facts as he understood them.

R. Dyer said it is clear that the Remington's made the error. The permit went to their office and they never saw it and the requirements. He said that their house is beautiful and to retrofit the system would be a major job. His feeling was that the law had changed and they should file the application with the board on the basis of that.

S. Bogert closed the hearing to the public.

BOARD: D. Robitaille said he doesn't feel that they mean to deflate the city's authority; he doesn't think that is an issue. But he feels someone slipped along the way. He said it is up to the individual to make sure everything was done properly and here it wasn't.

S. Bogert asked D. Robitaille if he is in agreement with the Fire Chief in denying the waiver and was told yes.

R. Smith said he looked at the house and he thinks he would like to have a sprinkler system just because of the Fire Department trying to get there if there were an issue, due to the location. He said he had talked with his insurance agent who is very much in favor of sprinkler systems as they do reduce loss. He mentioned that he read an article in the local paper where Chief Erickson said a building that holds up to 100 people does not require a sprinkler system. Here we are talking about 4 people and a dog and are requesting the system. He said he is torn but from a safety view point thinks this house should have a sprinkler system.

S. Bogert asked if he is agreeing with the Fire Chief and was told yes by R. Smith, the legal basis is there.

S. Perley said that the City Council and the Fire Department have looked at this and made their decision, she agrees with it.

M. Foote said this is hard but recognizes in his own dealings that if he misses sending a piece of paper in to someone, it is ultimately his problem. He said he has to agree with the Fire Chief.

S. Bogert said that based on the facts he has to agree with the determination made by the Fire Chief, as well.

MOTION: S. Bogert moved to affirm the denial of the waiver. D. Robitaille seconded. All voted in favor of upholding the decision which was made by the Fire Chief, 5-0.

R. Dyer said since this is not a ZBA hearing he doesn't think he needs to file a motion for a re-hearing and could file directing with the Superior Court. Laura Spector-Morgan said she was unsure and they could talk about it.



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Laura Spector-Morgan left the meeting.

S. Bogert asked if there was anyone in attendance for either the 105 Mechanic Street of the 606 Scenic Road hearings. There were none.

The board took a 5 minute break.

HEARINGS:

The applicant has requested he be moved to the March meeting due to illness.

Application # 2012-0037
As For Me LLC

MSL # 371-152-55
105 Mechanic St

RG Zone
Variance

The applicant is requesting a variance from 235-28, Uses Not Permitted under Table I, Table of Permitted uses, in order to construct a self storage unit with an office. The proposed building would meet all setback requirements.

The board returned and the following hearing was opened.

Application # 2012-0045
Lakehouses at Christmas Island, LLC

MSL # 216-248-4
630 Weirs Blvd

CR Zone
Variance

The applicant is requesting a variance from 235-19-F-2(b) in order to install a surface water treatment swale within the 50' Shoreland vegetative buffer.

APPLICANT: Regina Nadeau and Jon Rokeh appeared for the application. She said they were before the board about a year ago with a different design to condo the existing property. That plan was for 48 rental units and 2 freestanding houses.

A second story would have been built on the existing motel and the density would have been reduced to 18. They received Planning Board approval, and got ZBA approvals as well for certain areas of disturbance. When the owner looked at the cost for rehabbing the site, they decided to look at other options. They looked at razing all the structures on the site. This opens up the site.

There are a number of non-conformities on site. This proposal gives them greater lot coverage, more green space, and they can upgrade water, sewer, and drainage. This is more aesthetically pleasing. They went for Planning Board approval, have submitted the alternation of terrain permit to DES and are here asking for a variance for placement of the drainage swale within the 50'. They are pulling out about 5700 SF of buildings and pavement.

J. Rokeh said that one of the existing buildings sat in the 50' buffer, and another jutted into it. The plan is to demo the existing site, buildings and pavement and put up new duplex units. This allows them to do infrastructure and drainage. This will be a closed drainage system. They can add treatment before it goes



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into the Bay. Now there is more coverage, more pavement and run off goes into the lake with no treatment.

The original plan is still approved, and they got an extension so it is still in effect in case this doesn't get approved. This plan reduces impervious area and adds treatment. This gets it closer to conforming with more greenspace. There are additional catch basins being added for treatment. The pipe now going into the Bay will be treated.

J. Rokeh showed the low spot of the site, where the swale will be located. He said that everything is now being pulled out of the 50' buffer, but part of the treatment swale is still there. They dug test pits. This process has been used on other parts of Lake Winnepesaukee and the State has no issue with this. They have received other permits for doing the same thing. This needs the ZBA approval; if the board doesn't have an issue, the State won't have one. This qualifies as part of a structure because it is part of the drainage system for the project.

M. Foote asked how the water is released and was told they have a rip rap head wall, and the energy will be dissipated in the rip rap. It loops back to get the right length for the State requirements. During a 50 year storm event it will go over the end and into the lake.

S. Bogert asked if there is anything in the documents that specifies the up keep and was told yes, that is part of the condo documents and the planning approvals. It speaks to repair, maintenance, etc.

Regina Nadeau went over the responses to the variance criteria. She said the whole purpose of the SPOD is to assure the integrity of the shoreline and appropriate filtration which is all intended to improve the current drainage.

This is not contrary to public interest as the purpose of the buffer area is for providing treatment of run-off before it enters the lake.

This is within the spirit of the ordinance as this limits impact on water quality caused by erosion and man-made triggers and enhances water treatment before entering the lake.

Substantial justice is done as this does not allow the inferior drainage which currently exists on the site to continue. They are going to improve the water quality so there is no adverse impact on the neighbors. The property was developed in the 1950's, and nothing was conforming. They are limited by the conditions and this is the only good location for this swale.

This will not diminish surrounding property values as they are improving the surface water issues which will have a positive effect on the values.

This is a reasonable use and is allowed by the City.



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D. Robitaille asked how they will keep construction debris away from the lake during the demo process and J. Rokeh said that the Conservation Commission asked them to place a double row of silt sock during the demo process and during new construction. They will all be monitoring this closely.

PUBLIC: No one from the public spoke for or against the hearing.

MOTION: S. Perley moved to approve application # 2013-0045 for the variance to install a surface water treatment swale within the 50' shoreland vegetative buffer.

This won't be contrary to public interest as the proposed swale will improve treatment and will aid in the protection of the water quality. It won't injure any public or private rights, and will enhance water treatment and limit erosion and other man made triggers.

The spirit of the ordinance is observed as this swale limits impacts on the water quality here. Impervious surfaces will be removed and the swale will enhance water treatment before it enters the Bay.

Substantial justice is done in granting the variance as there is nothing to gain by denying the application. This introduces water treatment to protect the water going to the lake. The benefit outweighs any issues to the public.

There is no fair and substantial relationship that exists between the general public purpose of the ordinance provision and the specific application of the provision to the property. This will make the property more conforming and both environmental and development standards. This won't change the neighborhood of threaten public health, safety, or welfare.

The use is a reasonable one and doesn't change the use of the property. There is no effect on adjacent properties.

M. Foote seconded the approval and all voted in favor, 5-0.

Application # 2012-0046
Al Flateau

MSL # 146-10-7
15 Baker Ave

CR Zone
Variance

The applicant is requesting a variance from 235-A, Front Setback, and 235-B, Side/Rear Setbacks, in order to add a second floor deck. The property is currently non-conforming. The required front setback is 15' although the existing structure is currently 2' from the property line; the required side setback is 10' although the existing structure is currently 6' from the property line. The footprint of the structure will not be altered.

APPLICANT: Al Flateau stated the owners are in attendance as well. The house was built in 1890 and is currently non-conforming. They want to make substantial repairs, including siding and windows to make the home more energy efficient and more attractive. Almost the entire structure is non-conforming.



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The Planning Department looked at this plan. He showed the existing roof line. The roof has since come down because of its bad condition. They want to make this area a deck, and the railing would be non-conforming and is why they are here tonight. This won't go any further out, and they are not changing the footprint.

S. Perley said it appears that construction was already begun and A. Flateau said yes, they applied for the building permit and found they had to come here first so they got the permit to do all but the deck. If they don't get this approval they would re-build the roof and not do the deck.

S. Perley said this is very close to other properties and asked if it will impact views. A. Flateau passed out Google Earth pictures and said it won't impact any views at all.

S. Perley asked if they are cutting into the roof and was told no, they are taking part down as shown on the diagram. They are taking it off and flattening. M. Foote asked on which side of the house and was told the Lake side. S. Bogert asked if there is a door currently there and was told no, they will install that. The living room is located below.

Al Flateau said this won't be contrary to public interest as they are improving the property, which will be an asset to the community.

The spirit of the ordinance is observed as they are not changing the footprint of the property or the structure.

Substantial justice is done because there is no impact on the surrounding properties or the environment.

Surrounding property values are not diminished because there is no impact to other properties. This does not encroach on views or the owner's ability to use their own property as they currently do.

There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property as there is no other space on the lot to accommodate this or any similar improvement. There is only 60SF of lawn and it is not buildable. If the owner had to conform to the ordinance restriction the deck would be only 24SF.

The use is reasonable for the existing conditions in the area and allows people to enjoy the outdoors.

PUBLIC: Blair Anthony stated that he is an abutter on the side closer to the Lake. He showed pictures. He said he owns 17 and 21 Baker Avenue and the property to the Lake.

He said he has seen the construction but not the drawing. This will be essentially a balcony over his property. He showed pictures and asked why anyone would want a deck there. He said it will look right into the windows of both of their houses.



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A deck is noisier. He said the applicant already has a deck that has a view of the Lake so why would they want a deck with a view of another house. He said it will devalue their property. It is right on top of their property. This diminishes his privacy, whether sound or visual. Someone will be looking down right onto his property.

He cancelled his trip to Cancun because this meant so much to him and his family went without him.

He said there are no other roof decks in the neighborhood so he feels this would be completely altering the structure of the neighborhood. It will block some of the sun from their house. He said this is a privacy issue so he feels it opens a Pandora's Box and that any application like this would. He plans to redo the property at 17 Baker and already did the property at 21 Baker.

S. Bogert let him know that each case is handled individually and this wouldn't be a Pandora's Box.

Blair Anthony said that the building was constructed 100 years ago and nothing has significantly changed in 100 years. This deck would be a substantial change to the neighborhood and it would be contrary to public interest.

S. Bogert let him know that the application is not for a deck, it is for the rail fencing. He can put up the deck.

Blair Anthony said that substantial justice is not done as this will have a negative impact on his property, and is creating a potential eye sore, with them placing deck furniture and a grill, all within just a few feet. This will be a completely different change to his structure. There is no real benefit to the other property owner that mitigates this and they already have a deck.

He stated this will definitely diminish his property value and he asked who would want to buy a house with a deck overlooking their house. He said most buildings are rental properties.

He said there is nothing that distinguishes this house from any others. All are small and all have some type of deck and a Lake view. All can access the Lake and swim. There is no hardship for them if this is not allowed, but it is for him. He asked why they need a roof deck?

He doesn't feel that any of the 5 criteria are met. This will diminish his family's use of their property. They will have no privacy. This will diminish the fun they have on their property and they will be a spectacle with everything that they do here.

He asked the board to please deny this application and protect his family rights and his rights as a taxpayer in the City of Laconia.

Tim Seger said he is an agent for the owner of 15 Baker. He said he is a real estate appraiser and has been doing this for 15 years. He went and looked at the property to see if there would be any diminishing of the property values. He said they are all very close, and are all non-conforming, and have been that way for a



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long time. There is not a lot of privacy now. This proposal, because of the natural topo of the land and the proposed railing, doesn't seem viable to be able to see into the other property. Most people have window treatments. He said he does appreciate the privacy issue that Mr. Anthony mentioned. He doesn't feel there is a noise issue as it is always noisy down here. He said he feels the city would like to see properties renovated. He stated that Mr. Anthony did a great job of renovating 21 Baker.

S. Bogert clarified that, based on him being an appraiser, he doesn't think this will diminish property values and Mr. Seger said that is correct; a lot of properties here are in disrepair now. He said that Mr. Anthony already renovated his property at 21 Baker and his clients want to do the same thing.

Brian Gear said his parents bought 15 Baker some time ago. They are trying to make their location nicer, and the neighborhood better. The roof was damaged so they have to either replace it or add the deck. They were going to flatten the roof but the railing is in question. He said this won't extend past the current non-conformity. He said they are willing to listen to any questions. He stated that they haven't rented this property out in some time and his mother wants to move there full time. Most of the repairs are being done inside. They are trying to make this better for everyone in the neighborhood, including Mr. Anthony. His mother is 70 so she won't be adding to the noise.

Blair Anthony said he feels he could find an appraiser that will say his property values will go down. He said that maybe the mother is 70 but she won't be there forever and the next person could be totally different.

R. Smith asked if he is not invading any more space than currently exists and was told that is correct. S. Perley said that Baker Avenue slopes down so there won't be any viewing right into his house.

S. Perley asked Al Flateau if they can put a deck there now and was told not without a variance as the railing would be in the setback. They can replace in kind without the variance. S. Bogert asked if they could build out, and was told yes, with the same type of variance.

S. Bogert closed the hearing to the public.

BOARD: D. Robitaille said he feels it is nice they are fixing this up as they all need work. He said he is glad the neighbor was here to talk about this as the variance does goes with the property and not the owner. He would be leery about the deck himself, as he does feel it will increase the noise level. He said he is familiar with the parties that go on here in the summer. He said he doesn't see the hardship to the property owner.

S. Perley said they can just as easily have a party on the ground and D. Robitaille said it is different when it is up higher; it is a lot more intrusive.

M. Foote said there is a deck on the hotel to the west side which is at the same level. S. Perley said she initially felt this was harmless, but now is not sure. M. Foote asked when the neighbor redoes his house, will he be doing in kind.



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S. Perley said the applicant has a house in the Weirs, but it is a tiny little house, with no place to enjoy the outdoors.

S. Bogert said one person thinks they are sitting outside to enjoy it and the other person feels he is destroying their life. It is all in the perception. S. Bogert said the open railing has to go here, as they need to get rid of snow, or it could cause a roof collapse.

S. Bogert said the needs of one outweigh the needs of the other. D. Robitaille said he doesn't know if the hardship has been established.

R. Smith said that in the backwards sense, the area can't be used. M. Foote said there are laws about excessive noise but they are hard to enforce. S. Bogert said the owner has limited space.

R. Smith said this is a congested area and that he would have had to back out of the street if this were summer. M. Foote said the building was already there, they are dropping the roof, putting a rail up, and a new entrance.

MOTION: R. Smith moved to approve Application # 2013-0046 in order for the applicant to construct the deck and railing.

This won't be contrary to public interest as the property is currently non-conforming as are many other properties in this area, and the footprint won't be altered. Anything being done will improve the property and give neighbors an incentive to do the same. This should improve the overall appearance of the Weirs and be an asset to the community.

The spirit of the ordinance is observed as they are not changing the footprint and this will provide additional living space without increasing the footprint. We did have a complaint from an abutter who stated this is going to change his home as well.

Substantial justice is being done for the owner as they can take advantage of existing space that is currently not usable.

The property values won't be diminished. R. Smith said he feels they will be increased, and that this will provide an incentive to other property owners in the area.

Literal enforcement would cause a hardship to the owner, as they want to upgrade the property but they cannot build without impacting setbacks and they can't fully utilize the footprint that is in place now without impacting setbacks.

The use is reasonable and is allowed in the zone.

M. Foote seconded the motion.



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S. Bogert said he would like to suggest a change. He would like to remove the comment about the abutter saying this will change his home.

M. Foote seconded that change with the vote being 4-1 in favor of approval. D. Robitaille voted against the proposal.

K. Geraci was seated as a full board member for the following hearing with R. Smith sitting out.

Application # 2013-0001
Stafford Oil

MSL 455-54-64
227 Court Street

C Zone
Variance

The applicant is requesting a variance from Table VI, Table of Sign Regulations, in order to exceed the 3 signs permitted in this zone. The applicant is requesting a total of 7 signs totaling 164.98 SF which would be under the 189 SF they are permitted to have.

APPLICANT: Jeff Pearson appeared for the application. He said they want to re-image the gas station on Court Street. Citgo provides them with certain guidelines they are required to follow. The new image doesn't add any more signs than there are there today. They currently have more signs than what is permitted, as well as more square footage than they are currently allowed.

He showed the freestanding sign as it exists now. This is an internally lit sign that currently shows prices for 3 grades and for diesel. They want to change that sign. The new one will only show two prices, regular and diesel. It will be an LED illuminated sign. Under that they will add a 2' x 5' reader board to display a message. The size will go from 60 SF to 50 SF.

There are two canopies. There is one large one that is attached to the service station. That says Citgo on 3 sides; each is considered a sign. They are proposing to change that. The freestanding canopy by the diesel pump has Citgo on 4 sides. They will remove 2 sets of letters and keep the name on just the south and east views.

They currently have 10 signs and will remove 3 sets of Citgo letters, which brings them down to 7 signs. They will have approximately 165 SF of signage and are allowed to have 189 SF. They are staying under the allowed square footage but going over on the number of signs.

All of the gas stations in town need labeling and all have to convey that to the public. If you portray your image to the public, you will be more likely to keep it up.

S. Bogert asked if that wouldn't be considered a hardship because they need to maintain their corporate image.

D. Robitaille asked if the sign will change or be stagnant. He was told it is digital changeable copy. D. Robitaille asked if they plan to do advertising for other businesses and J. Pearson said possibly for an event, like a parade, but they will not be advertising for other companies.



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S. Perley asked about the lighting on the larger canopy and if new lighting is being introduced. She was told no, the letters will not be lit. J. Pearson said they are keeping the logo and changing the letters below it.

PUBLIC: No one spoke for or against the application.

S. Bogert closed the hearing to the public.

BOARD: S. Bogert said we are seeing this happen with car dealerships, and other businesses up and down Union Avenue.

MOTION: S. Perley moved to approve application # 2013-0001 to allow a total of 7 signs to be permitted on this site.

She said this proposal won't be contrary to the general public. This is an existing business, in a commercial zone. They already have more signage than they are permitted and are reducing that so this will lessen the impact.

The spirit of the ordinance is observed as they are reducing the amount of signage and upgrading the quality of signs on site, which will be more aesthetically pleasing for the community. There is no substantial change in use on the site. They are just adding newer signs. There is no threat to the public health, safety or welfare caused by the proposal.

Substantial justice is done as the benefit to the applicant outweighs any negatives to the general public.

Values of the surrounding properties are not diminished. There will be no direct effect on abutting property. The applicant will not be adding more intrusive signs than what is currently there.

There is no fair and substantial relationship that exists between the general public purpose of the ordinance provision and the specific application of that provision to the property. The business has been here for some time with more signs than allowed. They will be bringing the property more into conformance. They are under mandate by their parent company to do updates, so this is a hardship. They need to compete for business. The proposal doesn't alter the neighborhood.

This is a reasonable use and is allowed here.

The board added two conditions to the approval.

The changeable copy sign shall be used to advertise for the on-site business only. They can do public service announcements but cannot advertize for any other businesses.

The changeable sign shall not be illuminated more than 40% of the full illumination limit of the sign.

M. Foote seconded, and all in favor, 5-0.



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The applicant for the following hearing has requested that they be moved to the March ZBA meeting in order to deal with some abutter issues.

Application # 2013-0002
Akwa Village LLC

MSL # 124-234-003
616 Scenic Road

SFR Zone
Variance

The applicant is requesting a variance from 235-37, Table II, Table of Dimensional Requirements, in order to construct a multi-family structure that will exceed the permitted structure height. The permitted height in the zone is 35 ft and the structure would be approximately 60 ft in height.

Application # 2013-0003
P. & A. Algeo

MSL 31-253-11
12 Leighton Ave N

RR1 Zone
Variance

The applicant is requesting a variance from 235-35 (B), side and rear setbacks, in order to raise the roof in an existing loft area and add dormers. The property is currently non-conforming and there will be no further encroachment into setbacks.

APPLICANT: Don Miller appeared for the application. He stated he is the contractor. S. Bogert asked if he had the owner's permission and D. Miller handed the board a letter of authorization from the property owner.

He stated this is wood construction. The asphalt roof is being replaced. They got the building permit to do that. This is a long, narrow property. It is about 34' wide, with a 25 ft setback. Some of the building is actually situated on the neighboring property. The house is small and they want to make the interior square footage of the lot usable. They have 4-5 ft in the upper level room and want to expand this north to south with a 15 ft shed-style dormer on the building.

S. Perley asked if this would be obstructing any views and was told no. D. Miller said he spoke with the neighbors at 16 Leighton, who stated they had no issues. There could be some light that sheds on the neighboring property at night from the windows.

There is currently living space but it is not livable. There is an available window for egress and a set of stairs that goes up to the loft now. S. Perley asked if they are changing the footprint at all and was told no. S. Bogert asked if they are changing walls and was told no.

S. Saunders asked if there is an easement in place to allow them to have the property on the neighboring property and D. Miller said he hasn't seen one. S. Saunders suggested they obtain one.

S. Bogert asked if we can legally grant a variance for something that is on someone else's property and S. Saunders said yes, if the easement exists.

S. Saunders said the board can grant the variance as this is a civil issue between the property owners, and would require the easement. D. Robitaille asked how much of the structure is on the neighbor's and was told it is only inches.



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S. Bogert said he doesn't think we can grant the variance to build on a structure that is on someone else's property.

S. Saunders said the application can be tabled, while the applicant obtains the easement, and then they can return. S. Bogert asked if we should get a legal opinion on this and S. Saunders said we can request the easement unless the attorney says it is not needed.

Don Miller said he hasn't seen the deed; it could be there now. He will check and if there isn't one, they will obtain one.

S. Bogert told him to contact us and let us know when they have the easement and then we will put them on the next agenda.

S. Bogert moved to continue Application # 2013-0003 until the easement requirement is answered. M. Foote seconded and all voted in favor of continuing the hearing until the easement is furnished, 5-0.

Application # 2013-0004
J & R Barthelmess

MSL # 145-83-10
17-19 Foster Ave

CR Zone
Equitable Waiver

The applicant is applying for an Equitable Waiver for 17-19 Foster Avenue. The owners purchased the property as a multi-family, with supporting approval documentation issued by the City of Laconia. While the use of a multi-family unit is permitted in the CR zone, the property does not meet the density.

APPLICANT: S. Saunders explained what happened. The previous owner had come in to obtain a building permit to do renovations on the rental cottage out back, as indicated on the building permit and inspection report. Assessing has the property listed as a two-unit but the property had been a 3 unit for some time.

The City became aware of the third unit after speaking with an abutter so the Zoning Technician, K. Snow, wrote a letter to the property owner. The property owner called and stated that they thought it was legal as they had documentation from the city, which was provided to them by the previous owner. K. Snow then investigated the Code files and found the supporting documentation.

The property does not have the density to support a three-family but they can have the multiple family use in the Commercial Resort zone.

S. Saunders read the equitable waiver criteria. She said that the owner did follow procedure and obtained the required building permit and got their Certificate of Occupancy.

K. Snow said the owner will contact the Assessing Department as soon as they get this approval and make the needed changes there. They will also work with Planning and Zoning to bring parking into compliance and create more green space on the property.



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S. Bogert said the property owners didn't create the issue. The third unit has been in existence for some time. The current owner purchased the property, thinking the units were legal.

PUBLIC: No one from the public spoke for or against the proposal.

S. Bogert closed the hearing to the public.

MOTION: S. Bogert moved to approve Application # 2013-0004, with the criteria as submitted with the application.

- (a) **The violation was not noticed or discovered by the owner, former owner, owner's agent or representative or municipal official until after a structure in violation had been substantially completed or until after a lot of other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;** The violation was not discovered by the owner until the City's zoning enforcement sent a letter regarding the fact that there are 3 units and that a variance would be needed to have the third unit. They informed us that they had a Certificate of Occupancy, dated November of 2005, which had been issued by the city for the third unit; **AND**
- (b) **That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of any owner, owner's agent or representative but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent or by an error in ordinance interpretation or applicability by a municipal official in the process of using a permit over which that official had authority;** The owner of the property had a copy of the Certificate of Occupancy which was signed and issued by the City of Laconia which specifically addressed the third unit so they were under the impression that it was a legal unit. The Certificate of Occupancy was signed by the appropriate City officials and issued by the Code Enforcement Department; **AND**
- (c) **That the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area nor interfere with or adversely affect any present or permissible future uses of any such property;** The third unit does not diminish the value of other property in the area as this is the Commercial Resort Zone, where many legal multi-family structure's exist. There have been no complaints of nuisance, noise or parking. After the Equitable Waiver is granted, the property owner will contact Assessing to ensure that all city records are brought into compliance; **AND**
- (d) **That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.** The third unit is



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located in a separate structure so, short of removing the building, there is no easy way to convert this back to a two-family. There have been no complaints about the property in the years it has been 3 units.

M. Foote seconded and all voted in favor of approval, 5-0.

OTHER BUSINESS: a) Zoning Task Force: S. Perley mentioned that the Ordinances are being re-written and that one thing that came up are the extension requests. Current ordinance allows an applicant to request a 12-month extension for variances the first time, and after that it is every 6 months. The Planning Board allows a flat 12 month request, no matter which request it is. We would like to make the language for the ZBA the same as Planning and change to 12 month if there are no issues with the other ZBA members. They were all in agreement so S. Perley said we will make that change in the ordinance.

b) Other issues: S. Bogert let the board members know that it was suggested that we move the approval of previous minutes to the first part of the meeting. S. Perley said she feels that is a good idea as we sometimes do not get to the minutes and it isn't good having them be in limbo for any length of time. The board members were in agreement so, beginning at the March meeting, the minutes will be moved to the first part of the agenda.

S. Saunders said she does agree but if there are any major issues with the minutes then she feels the public should not be made to wait. She asked board members to let us know immediately if they notice any required changes so everything is handled before the meeting.

MINUTES: The minutes from the meetings of November 19, 2012 and January 22, 2013 were reviewed.

MOTION: November 19, 2012: The motion to approve the minutes of the ZBA meeting of November 19, 2012 was made by S. Bogert and seconded by K. Geraci. All voted in favor and the minutes were approved, 5-0.

MOTION: January 22, 2013: S. Perley noted one correction in the minutes. The spelling of an applicant's name was incorrect and K. Snow stated she would make that change. The motion to approve the minutes of the ZBA meeting of January 22, 2013, with the change as noted, was made by M. Foote. The second was made by S. Bogert and all voted in favor of approval, 5-0.

ADJOURNMENT: S. Perley moved to adjourn with the second by S. Bogert. All voted in favor and the meeting adjourned at 10:15 pm.

RESPECTFULLY SUBMITTED:

Kristine Y. Snow
Zoning Technician