



**ZONING BOARD OF ADJUSTMENT**  
**MINUTES MEETING JANUARY 22, 2013**  
**APPROVED MEETING OF 2/19/13**

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

**Absent:** D. Greski

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

**S. Bogert called the meeting to order at 7:15 pm.**

**EXTENSION REQUESTS:**

**2009-0027, Akwa Waterfront:** Requesting a 6 month extension from January 18 to July 18, 2013

**2009-0028, Akwa Village:** Requesting a 6 month extension from January 18 to July 18, 2013

**2009-0029, Akwa Village:** Requesting a 6 month extension from January 18 to July 18, 2013

**2009-0030, Akwa Waterfront:** Requesting a 6 month extension from January 18 to July 18, 2013

**Steve Bogert let the applicant know that we would hear the reason for the extension requests together and then make individual motions.**

**Applicant:** Chris Duprey appeared for Akwa Village and Akwa Waterfront. He explained that their initial Special Exceptions and Variance were on 4 parcels off of Scenic Road. The Planning Board approval goes until October of 2013. They are continuing with the construction of the town homes and have one foundation left to go.

They are moving on with the mid-rise project. They had not anticipated the timeframe for the registration process with the Attorney General's office. It is taking longer than anticipated. They had to prove to the Attorney General's office they had the financial capability to complete the entire project; this took a year and a half. They had to close on a construction loan for the funds to build the project, although they did not need the loan.

They are in the process of trying to satisfy the financial requirements, and then can begin to take deposits on the buildings.

S. Bogert asked what has changed and C. Duprey said nothing, except they did buy a parcel that was located between these lots.

D. Robitaille said that across from the pumping station, the landscaping has changed and wondered what is being done in that area. S. Saunders explained that is the parking lot for the Marina and not involved in these 4 lots.

**Public:** No one spoke for or against the extension requests.



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**Motion: Application # 2009-0027:** S. Perley moved to grant the 6 month extension to July 18, 2013. O. Gibbs seconded and all voted in favor, 5-0.

**Motion: Application # 2009-0028:** S. Perley moved to grant the 6 month extension to July 18, 2013. M. Foote seconded and all voted in favor, 5-0.

**Motion: Application # 2009-0029:** S. Perley moved to grant the 6 month extension to July 18, 2013. O. Gibbs seconded and all voted in favor, 5-0.

**Motion: Application # 2009-0030:** S. Perley moved to grant the 6 month extension to July 18, 2013. O. Gibbs seconded and all voted in favor, 5-0.

**S. Bogert let the members know that the applicant for 2012-0030 has withdrawn their application and will re-submit a building permit that will meet current setbacks.**

**Application # 2012-0030**  
**Corbett Rev Trust**

**MSL # 215-266-9-001**  
**90 Prescott Ave # 1**

**CR Zone**  
**Variance**

The applicant is requesting a variance from 235-35 (B), side setback, in order to re-construct the existing non-conforming structure and add a second story.

**CONTINUED HEARING:**

**R. Smith and O. Gibbs recused themselves from the hearing for Application # 2012-0025. D. Robitaille and K. Geraci were seated as full board members in their place.**

**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%.

**Applicant:** Paul Bordeau representing the Gables. He stated that Joe Lucherini, Treasurer of the Association, is also here this evening.

P. Bordeau said that the application was filed some time ago. They ran into some issues that have since been resolved. They have a full board this evening so the application can go forward. He thanked everyone for their patience in dealing with this.

P. Bordeau said that the Gables is looking for a variance to change the coverage limitation. When The Gables was built and the plans approved, it was built under the PUD (planned unit development) which has since been repealed. Regulations have changed and evolved, have been fine tuned, and other tools have replaced them. He stated that is the situation here.



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He stated that Ordinance 235-36 (A) is the controlling ordinance. He read the ordinance into the record. **“Development, redevelopment or expansion of developing of existing and newly created lots of record shall occur in such a manner that green space in the amount as prescribed in the Table of Dimensional Requirements is retained or developed. The applicant shall make efforts to provide green area that provides a buffer to adjacent properties and adjacent streets, provides passive amenities to the patrons and employees of the development and is an integral part of the overall design and architecture of the development. Where lots are split by districts, green space will be calculated based on the proportionate amount of the lot in each district. Total green space provided may be distributed throughout the lot.”**

P. Bordeau stated that they are not proposing particular changes this evening. This is just the ordinance for coverage. After this is done it will go through a full Planning review. The SDRA has a building committee, which gives them specific powers. They realize that they must confer with the SDRA before they can move forward with any plans.

The Table of dimensional requirements now says 60% green space. They are asking to reduce the green space to 70% and allow 30% coverage. The previous PUD standards of 20% coverage are now gone so the current ordinance is now being applied.

P. Bordeau said that the SDRA thinks there will be an increase in the number of units. He said they have no intent to increase the number and will accept a condition to that effect. They will record that condition and state that no further units can be built so it will be a matter of record.

He stated that the decision of the ZBA tonight won't affect any decisions for any other village and no precedent will be created tonight.

P. Bordeau stated 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.

831 memberships were initially proposed at South Down. That was each property that could be developed for a single family to use at South Down. That was the projected build out. Changes occurred and now he believes they are in the 500-something unit range. They will end up nowhere near the 800 mark, nowhere near what was originally approved. He stated that drainage is a Planning Board issue and would be addressed at that level; it is not a ZBA issue. That is not a consideration for this evening.

P. Bordeau said when this was first designed/constructed, parking was - from the first - not as adequate as people thought it would be. He is not sure why but there has historically been a shortage of parking. 8 units here are owner occupied. There are 32 units all together, with many of them being vacation homes. Some are rented. He said that maybe the number of cars owned per family has changed since first approved. We are a mobile society; we travel a lot. Inadequate parking exists here. In the summer months the cars park on grassy areas, the sides of roads, and in the nearest overflow parking – the beach – which is a high demand parking area. People are parking there overnight.



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In the winter the issues change. Initially snow storage/removal was not addressed. Now what happens with the snow in the winter? The Planning Board is now cognizant of snow storage and removal. At The Gables when approved, it was not a concern and not addressed. Guests still park at the beach when needed. He said that regularly there are vehicles there.

A resident there is aware of overnight parking throughout the winter as he overlooks the area. People have to walk in the traveled way. In daylight you can see but at night you can't, especially in bad weather. This is hazardous. At another meeting someone had previously testified that a guest had fallen and been injured. There hasn't been a pedestrian/vehicle collision so far but this is an issue. The variance will cure this. New parking will be created and shown to the Planning Department.

A petition from the SDRA was presented previously. There are approximately 220 signatures. There is a resident here tonight that will testify that only about 130 unit owners have actually signed, as frequently both a husband and wife signed, which is 2 signatures where it should only be one. Some of the individuals may not have understood completely what they were signing so he feels that the number drops again.

He said that the statement about being built out is not correct, as the approval was for 831 units, and this is not close to that. Planning will be looking at the plan for drainage, and parking and patios.

Granting the variance will allow them to build more homes but he has made it clear that they are not building any additional units. There is no basis regarding the statement for the lowering of real estate values, which was mentioned in the petition.

He said this won't be contrary to public interest. He asked if this conflicts with the ordinance and said that it does not, as they only want 30% and 40% is allowed today.

He stated this will not alter the character of the neighborhood as no more units will be built. All of the parking areas are internal. The Gables has a lot of land and most of the lots have 12,500 SF per unit. This gives them a perimeter buffer and the roads are built so that they provide a good buffer. If you are in a different village and look at The Gables, you will see the same sort of structures. You won't be able to tell that the patio dimensions have changed, as that will be minimal. That will be a Planning issue.

P. Bordeau said he cannot think of how this proposal would affect the health, safety or welfare of the public. He stated this will help the safety of the residents of The Gables. This mitigates the winter hazards.

He said this is consistent with the spirit of the chapter as the ordinance now requires 60%. The PUD ordinance no longer exists, and has been replaced by the current one so this ordinance now applies. There is a buffer between The Gables and other villages. They have 9 acres and 32 units.



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Substantial justice is done as there is no loss to the general public and not granting it would be an injustice. He said in denying this application what is the gain to the general public. There is a loss of safety to The Gables by not granting this.

Values of surrounding properties would not be diminished as there are no more units being built, the visual aesthetics will be minimal, and there is no increase in density. There should be no impact on real estate values. If the SDRA feels that is true, he feels they should have had a real estate expert submit information proving that statement.

There are no special conditions; they have inadequate parking and are nearest to the overflow parking so it gets used. The residents park in the road, and park in grassy areas. This meets green space requirements.

There is no fair and substantial relationship that exists between the general public purpose of the ordinance provision and application of the provision to the property. At the time this was built 80% greenspace was what it was felt was desirable. Over time those requirements have changed. It is a function of how the units relate to each other and the buffers to neighbors. This has no relationship to current standards.

The 60% current greenspace is sufficient to provide buffers, and is an important part of the design. They are asking to go to 70% so they still meet the requirements.

This won't injure the public or private rights of others. There is no evidence that there will be any harm. People in opposition are saying that surface water will become more of an issue, but that will be handled by the Planning Department. That is not a variance issue. There is no harm, no further build out, and no additional traffic. There will be the same owners, with the same guests visiting - they just will be able to park at The Gables and not have to walk unsafely in the road.

P. Bordeau said there is one document circulating in South Down, regarding The Gables talking points, which was written by Warren Murphy, and sent to all of the residents. It says that the safety issue is a red herring. That is not the case. No one has been hit by a car yet but it will take one icy night and someone will be hit.

After The Gables said they would sign an agreement saying that they won't build more units, the information changed. Now they are saying the safety issues are not real. He said he resents this on their behalf; the safety issues here are real.

The document says no one from The Gables has ever gone forward to say there are safety issues. Politics get complex in a large group and not everyone feels that the SDRA executive council looks after the best interest of the residents.

W. Murphy stated no one has ever seen a car parked in the overflow area overnight. Maybe those people asked have never seen one but it is being done. Obviously not everyone has observed this.



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It has been said there is only one year round resident but P. Bordeau said he knows of 4 for sure and feels there are 8 that visit year round, although they may not be living there year round. The area is not lit so maybe people are not seeing cars parked here.

While the Gables residents appreciate the efforts of the South Down Safety Committee, they feel they are not receiving the appropriate level of concern shown for their safety. He feels they are saying this doesn't affect them so they should turn a blind eye. The roads are maintained well but in the winter it is still not safe. In 25 years they have had only one fatality, with some slips and falls. They want to obtain the variance so safety is taken care of.

The SDRA says that The Gables don't participate in their meetings. Steve Cochran regularly attends their meetings. He said these are not the real issues here but feels the board should be aware that other issues are being dragged into this.

He feels that he knows they will be speaking to these issues so wants to address them as well.

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 was 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.

P. Bordeau said another point in the W. Murphy write up is that it states they need every square foot of impervious land to mitigate issues. If that is the case, then why did the SDRA pave the biggest land mass, all of the area between the beach. That was all hot topped. Why is it that they say this is now an issue.

D. Robitaille clarified that the two purposes of the variance are to increase parking and patio sizes and P. Bordeau said those are the only changes that have been discussed. D. Robitaille asked if these patio changes will be uniform for every unit. P. Bordeau said they will have to go to the SDRA, and that the Planning Board will look at those as well. D. Robitaille asked if till there be a site plan request.

Joe Lucherini said the requests will not be uniform as some already have the maximum and some people may not want to increase or have the maximum allowed. It does go to the SDRA and then to Planning.



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S. Bogert asked how many units there are and was told 31 and the pool house. He continued on that he understands first they will handle the needed parking, then how would the remainder be divided? Would that be divided equally between the 31 units or could one person possibly take it all? We've seen that happen before. Some homeowners have received more than others.

J. Lucherini said the majority of the requested space will be given up to parking spaces. Approx 10-15% will be allocated towards the expansion of patios. Many are maxed out. Other individuals do want more. S. Bogert said in a year a new homeowner may want more and asked how this will be protected.

P. Bordeau said there was design work done internally. He showed a typical patio area. If people have a patio at that size already, they cannot increase it at all. The others will be allowed to go to the typical size but no more than that. If they don't want to go that large, the area will be preserved for future owners.

S. Bogert asked if they will have a green space accountant at The Gables to track this and J. Lucherini said they will have a person if this is approved.

D. Robitaille asked if all of the units end up with the typical size patio, is there enough greenspace for this and was told yes, more than enough, even after doing the proposed parking.

S. Bogert asked if there would be green space for sheds, outbuildings, and other uses and was told no. He asked if we can condition this so it could only be used for patios and parking and was told yes.

D. Robitaille asked S. Saunders if the Planning Board looks at these issues. He asked if these could affect drainage and was told yes, potentially. She said that in parking areas the drainage is looked at but not necessarily for patio/deck. D. Robitaille asked if decks could have a real effect on drainage and S. Saunders said doesn't think so here. She said they would look at the impervious area if they stay under the number they should be ok. This may cause puddling on a drive way but it won't wash out roads, or anything major. Paving could go to either minor site plan or to the planning board, depending on the area in question.

**Public:** Rod Dyer appeared and said there are two sides to every story. He will ask Allison Ambrose of his law firm to address issues. She will review what they feel is relevant dealing with issues of the variance. Then residents want to speak and he will summarize.

He said they had filed a request for findings of facts and rulings of law. They then filed a supplemental request. They had also submitted information with regard to pavers. He mentioned the declaration of covenants and restrictions and asked if the department had those; S. Saunders said yes. R. Dyer let the newer board members know he wrote all of the documents, restrictions, etc as the original attorney for South Down.



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**Allison Ambrose** mentioned jurisdiction and S. Bogert said he feels those issues were handled. A. Ambrose said that they feel the 30% lot coverage was a Condition of Approval which was set in place by the Planning Board.

Moving on, she stated that the burden is on the applicant to ensure that all of the criteria is met.

A. Ambrose said that The Gables is saying that safety is the issue here. She said to look at most of their rational behind each variance criteria. She asked if the ZBA members went out to view the property in the winter. She stated that she went out at 8 am on November 17 and submitted pictures that she took. She felt that would be a time that residents would be there and their guests would be sleeping in. Many buildings have attached garages and driveways that should fit 2-3 vehicles. When the pictures were taken there were not many vehicles shown at all. She noticed a large gravel area that could be used for parking as well.

The pictures were submitted and the board members took a minute to look at them.

A. Ambrose went over the criteria. She feels this would be contrary to public interest as this would alter the essential character of the neighborhood. There would be less green space, which could have a domino effect. Others may ask for the same. The run-off is a concern, as that would definitely alter the character.

Safety was raised here as well. The applicant's claim was that the safety and parking concerns could not be remedied by other means other than the variance. Grass pavers had been previously mentioned that will create an impervious area and solve some of the parking concerns.

In addition, presumably the parking spaces outside of the individual residences are filled by the residents and their visitors. Isn't there someone in the house that could pick the guests up and take them back and forth so they don't have to walk in the snow?

When this was created in the 80's, the developers intent was for "country living" and allowing additional patios, decks, and parking in one community will probably transfer to another community. That is not what people bought into.

If The Gables is granted the variance the entire SDRA may be affected in the terms of their compliance with their 20%.

Under substantial justice, this is not the only way to remedy the applicant's problem. Grass pavers can be used. They could possibly better utilize garages and drives, and existing parking. They can use a neighbor's driveway.

We are looking at significant run off for flooding. That will be addressed more in the hearing.

The first criteria was safety as well as the third and she feels those concerns can be remedied without the variance, and are not proven.



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On the property values, they tried to put this back on South Down that they should have gotten an appraisal. The burden is on the applicant. It is a possibility, but it was not proven. This could affect drainage, the aesthetics of The Gables and other communities could ask for the same issue.

On the literal enforcement of unnecessary hardship, A. Ambrose said to look at whether or not The Gables has a unique setting. She said she is unsure if there are any special conditions here. P. Boudreau has stated there is inadequate parking but that can be remedied by other means.

The burden is on the applicant. They are claiming safety is the issue, but that can be met by other means, so she feels they have not met the criteria.

**Public: Robert Smith stated he is speaking as a resident of South Down, 76 Admirals Lane:** He wants to speak against the variance. He said that the Gables is part of a planned unit development. Southdown began in 1985, and the ordinance changed in 1998, being replaced by the cluster development.

He said that, at that time South Down was significantly complete. He tried to retain the PUD in the ordinance but got an agreement at that time that they were more than 50% complete and should be completed under the old ordinance - the original one. Additions in South Down were done under the PUD. The approval was for 490 living units or lots. Condos and home owner associations are mechanisms put in place to allow joint owners to operate their property. These were initially done as vacation type units.

The South Down Rec Association later added storage units and parking for RV's, trailers, snowmobiles to remove things from the housing area.

In August South Down has over 1000 people living there. That varies during the other months of the year.

R. Smith stated that he was president of the South Down Recreation Association (SDRA) while there was a transfer of management. John Davidson was the developer and he was afraid that South Down would not be finished the way he had envisioned it.

He had envisioned this as a recreational community. The name states that, South Down Recreation Association. They have beach and boating facilities. He wanted to provide an environment different from a city and a structured suburb. He wanted things to be spaced out in compact multi unit villages. There were also 91 single family homes put in. These are large lots.

Long Bay was planned for larger single family homes to accommodate permanent year round residents. It is more of a Laconia suburban community. It was not substantially complete at the time of the ordinance change. By 1998 South Down was in place and substantially complete. There was an agreement with the Planning Board that South Down was to be finished under the PUD.



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On the variance, he said we have to understand the form of government that controls South Down and the unit owners. The SDRA is incorporated in New Hampshire as a not-for-profit corporation. A sub-developer did the Gables but was supposed to hold to the standards of South Down. The parcels were sold to developers or individuals with the condition that they are subject to all of the by-laws and rules and regulations of SDRA.

The corporations voting rights are vested, and unit or lot owners are the share holders. All of the condo and home owner associations and single family homes have representatives on the council. The Gables is not a share holder. The unit owners do exist, they vote, they have a representative on the council. They can make an application to the committee; they have that right but it doesn't mean they would be approved.

The ZBA has a variance application signed by a single unit owner at South Down. It implies that the other 30 unit owners are in favor of this but there is no evidence to support that.

The ZBA also has a number of signed petitions against this, signed by shareholders in the corporation. All shareholders must be treated equally. By granting this variance, by default, the ZBA would grant this use to all unit and all lot holders.

He said that he feels South Down is close to their 20% coverage limit now. If homeowners take advantage of this, the PUD would be non-conforming. Property values could well be diminished. He sees no unnecessary hardship, as all are equally constrained. There have been no other complaints from other Villages.

R. Smith said that he recommends the ZBA deny this variance application because granting it could cause the PUD to become a non-conforming property. It is contrary to the public interest, and values of surrounding properties could be diminished as a result of increased property density. There is no unnecessary hardship because all of the other 16 villages and 2 home owner associations are equally constrained by the same limits but are not claiming any hardship.

R. Smith read 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.”**

**Marge Linn, 51 Fox Crossing:** She stated she has lived here since 1996 and is a full time resident. She has been treasurer since 2006. She stated this is a sad time to see for the first time a village having a disagreement with the SDRA. They did not know about the variance application until it became public. She said she would have liked to have reconciled this amongst them and the SDRA council, but they never had the opportunity.



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She said that they do have a safety committee and they had never heard anything about this from The Gables. They have a contractor, CBH, who is fantastic. The roads are immaculately groomed and sanded. The beach parking lot is done each storm. She said she plays bridge at the beach house every week, and has never had a problem. It is a concern that have to park there as an overflow situation. She lives in Bay Hill, where there is not enough parking, either. They have patio issues, too. That was resolved and kept within the 20% by the use of pavers.

Everyone in her area takes turn taking their guests to the parking lot. It is totally doable and safe. She said that they had concerns about visitors and guests so they hired a private concern to look at speeds and roads. They installed speed tables, which reduced speeds by about 30%. She sees no problems with walking or the use of bikes or golf carts. This is of high sensitivity to them.

M. Linn said it is quiet in the winter, as only about 25% live there and some of them go south in the winter for a few months.

She said she is upset over it being said that they were not handling drainage issues. As treasurer she knows they work on these areas, clean them, and dredge the ponds. They don't want more green space used. The council has voted twice, and The Gables were there once, to vote against this application. One unit voted for it and the rest against. The council that represents all of the units voted against this.

She said that the executive committee does care about the entire community. They spend a lot of time and effort handling this. She came here for the beauty, quietness, and how South Down was designed and she asked the ZBA to please deny the variance request.

**Barbara Shea: 45 Lantern Circle;** She said is first wanted to read a letter from her neighbor, **David Barth** of **41 Lantern Circle**. He could not attend the meeting but wanted his comments to be heard. His letter is as follows:

**Gables zoning variance:**

**“I am David Barth a resident of the Hamptons village in Southdown an abutting village to the Gables.**

**Five years ago when my wife and I were looking for our new home in the lakes region, we looked in many towns and neighborhoods throughout the area. We were drawn to the Southdown for a variety of reasons. After choosing Southdown, we then began contemplating which village fit our age and lifestyle. We looked at two homes within the Gables.**

**We eventually chose to purchase a home across the street from the Gables because we wanted more space between homes, and knew that eventually we might find single floor living a necessity. The tennis court and the swimming pool at the Gables were appealing, but we chose other priorities in making our decision. We understood the zoning in Southdown and that adding on to our home would not be an option.**

**Having moved here from another state and a neighborhood that had roads that were not town roads and that had restrictions imposed by both the town and the community; we**



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made our decision of where to live quite carefully. We love this town and neighborhood and now enjoy wonderful neighbors and our beautiful surroundings. We now spend a significant amount of time volunteering within the community and the town. My point is this. We chose to live here knowing the benefits and limitations of the rules and regulations of the state, the town, and our community. We feel we understand the implications and precedent that a zoning variance could bring to the people and the infrastructure that support and protect us. Serving on the committees I do, I realize that our aging drainage system is already overburdened and in need of repairs that will cost many hundreds of thousands of dollars. We are already spending hundreds of thousands of dollars repairing and replacing roads within the community.

We are counting on this zoning board to uphold the existing regulations that we all understood or should have understood when we chose to live here. The council representing all the communities within Southdown voted unanimously to oppose this zoning variance application. Please do not change the rules of the game for a few shortsighted residents at the expense of the vast majority.”

**Barbara Shea** stated that on long weekends there is a population increase so on Sunday morning, at 8:30 am, she went to the Gables. She counted 12 cars there with lots of parking.

**Roger Legendre, 86 Captains Walk:** He stated he is an abutter and read all of the restrictions before he purchased. He felt he was protected. He knew what he purchased and what the restrictions were. He said he feels the residents of The Gables should have read that as well. He got the notice for the variance shortly after he purchased.

He was told the variance is for winter safety, and is related to lack of parking. There is a high vacancy there in winter months. He walks a lot in the winter; and The Gables is vacant. He doesn't feel there is a lack of parking. He feels there is possible mismanagement of what is there and doesn't think there is a safety issue. An alternate to paving was submitted; he has seen pavers or gravel used in the other villages. His property directly abuts them so he could be affected by any changes made to The Gables. He currently has flooding in his drive way. He submitted pictures showing the flooding. He feels that any change should have a full environment analysis completed. S. Bogert asked what the SDRA has done for him on his flooding issue and he said he has been trying to handle it himself but guesses he should contact them. He said he is not in favor of the variance.

**Phil Rhoades, 297 Davidson Drive:** He said he is treasurer of the association and a member of the SDRA council. He said he doesn't feel he has enough facts to make a fair decision. Regarding the petition disposition, in January of last year, this went before them and no one from The Gables appeared. They determined to deny this. That is when the petition came about. He presented it to residents of Daw Village thinking it was done in an unbiased manner. Now feels he fails his members in that regard.



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The council had to vote to even discuss The Gables matter. In June they wanted to hear The Gables side in order to make an informed decision. He added that he felt that there were incomplete things said at the meeting so he removed his name from the petition. He said that he understands others did the same. He feels that the petition was inappropriately and unfairly presented and it does not reflect the current feelings. He also noted they had several names signed that were for only one property. He said if you gave South Down the opportunity to re-sign the petition today, he feels that the signatures would change.

**Lauren Crocket, 111 Davidson Drive:** She stated that she is a single family home owner so has no vested interest. She has been there for almost 21 years. She experienced the build out and served on different committees. She said she is aware of the politics.

When she got the petition, she read it, and her perception was that it was speculative and alarmist. It spoke to what "may" happen. She stated that she approached The Gables herself to ask what was going on. She was given information, a diagram, and schematics, and was shown units that had only one parking space, not the approved two.

They stated they want to pave the gravel lot so it can be plowed in winter. She said she not see the detriment. The Gables is surrounded by roadway, and is almost a peninsula. All changes are to be made in the core, and they are not increasing density, or encroaching on an abutter or inhibiting views. She said why not let them do this. She feels they are entitled to be heard, and the ZBA is only one phase; at least 3 will occur: this goes before Planning and the South Down committee as well.

She said that in 1992 they were not built out. There were many challenges. They didn't allow vinyl siding or vinyl windows; they do now. There were no storage units but now they SDRA has some Captains Walk was a condo village with no single family homes. They did not have a paved beach lot; that is now paved. The boat club did not have paved parking and that is now done. They paved the school bus turnaround. She feels that The Gables deserve their time to be heard.

Regarding the petition, the affidavit said there were 210 signatures, and she counted 211. There are 490 units there, and at least 74 of the signatures were from the same units so that brings the number down to 137 units which is not the majority.

She said that she feels the weight given to the petition is not appropriate.

**Joe Lucherini: treasurer of The Gables:** He said he bought here in 1991. During that time, his family has grown significantly. The site plan designates parking for each individual unit. For the most part, 31 units are here, with just a handful of full time residents. Those are not always there, as some do go away for a few months. Most of them have either a garage or a parking space. There are three units, 51B, 87 and 57 that only have one spot. The president of The Gables has made most of these meetings; tonight he was unable to attend, as he is recuperating from quadruple bypass. He is in unit 57 and will need the second spot for medical reasons; they cannot deny him the spot.



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He said he is not going to utilize parking that is assigned to another unit. He mentioned an incident that occurred for him in February of 2011. He was here for the February vacation and guests showed up unexpectedly. He told them they had to park at the beach. One person walks with a cane, another has COPD and used an inhaler so he took their car down to the beach. It began to snow as he was walking back up and a plow came. He had to jump out of the way. He is having hip surgery soon so he won't be able to walk down there or get out of the way of plows easily. This is an impractical solution and doesn't satisfy the PUD requirements. The pervious area causes issues in winter with ice.

All 31 units want to go forward with this. They have no density issues, and feel that the safety of The Gables is not being preserved. J. Lucherini said that he knows that Daw Village residents only have one parking space each. The Gables wants to protect their family and protect themselves against future safety issues. They want to save the village from possible fatalities.

M. Foote asked how many parking spaces will be added. J. Lucherini said they need to supply the 3 units the spaces that they need and plan to add 8-10 additional. They haven't decided where they would be put yet. They need the approval first, then will do the design, then go to SDRA, and then to Planning.

**Susan Gilchrist, 17A Alpine Village:** She said that she understands the concerns of The Gables Village but that they are not the only village with this problem; She feels that other villages will come forth and ask for the same thing if this is permitted. She lives in the condo village and knew the concerns when she bought; so did they.

The Gables is one of the only villages that has overflow parking in their village, as well as a private tennis court, and a private swimming pool. Only 2 other villages have that. She said that if their safety is that much of a concern, why not eliminate a tennis court and give that up to parking?

**Rod Dyer:** He stated that he is here to present the issues as he understands them and provide relevant information to the board. He said the first plan was recorded in 1983 but the process began in 1980. This was created as a PUD, with 12 condo villages, and 113 individual homes.

He stated that there was no representation made that the petition was signed by 210 individual units, just 210 signatures. He said he was not aware of the fact that some people wanted to remove their names. Warren Murphy, whose name was mentioned by others tonight, had to go out of state so could not be in attendance this evening.

The Master Declaration was designed to cover all of the units with standard restrictions. All of the condo units are members of the association. The association has a 20 member board of directors chosen from all communities. The building committee must approve all construction. With the exception of The Gables there has been almost unanimous opposition. The Gables was approved as a 31 unit condo village and contained the condition on the 20% lot coverage. That has been consistent throughout history of South Down.



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The safety issues is the lynch pin for the variance application. They presented a reasonable alternative with the porous pavers. The Planning Board has approved their use in other areas. That option was presented on more than one occasion. He said he feels that if there is a reasonable alternative presented to the board, then the only other issue is that they want to add decks or patios, and he doesn't feel that is appropriate to be before the ZBA. The decision to change the lot coverage rules would have a retroactive effect in the sense that a new set of regulations would be placed throughout South Down.

Imposing retroactive land plans would be disfavored by the courts, in his opinion. That would set a precedent and other consequences would occur. If you put this into context, any decision will have a cumulative effect. Others could then ask for the same. He said he feels that South Down is substantially built out.

Granting this would create a new land plan for South Down. This would be changing the plan of development for the entire project. The association would then face bump out, not just in the condos, but in any new single family home. Owners have a vested right to have these standards kept in place.

Single family lots and the villages are interrelated; a vote would require a vote of at least 80% of South Down residents. The development was created as a PUD and not as a group of cluster developments. The new ordinance does deal with cluster. He said he feels the application is premature; no evidence that all of The Gables interest in the common land would be impeded. This is common land owned by all owners.

R. Dyer added that The Gables has not submitted plans or specifications. He said that he spoke to the density in 1991. He agrees with Bob Smith in regards to John Davidson as he represented him. J. Davidson's constant theme was adequate lot coverage, heavily landscaped, trees, and to not let this get out of control.

He said the question is, should the ZBA change the community, which is opposed by the majority of the residents.

D. Robitaille asked him to explain the organization of the South Down council and R. Dyer said this was a Planned Unit Development, PUD. It was determined it was too large to do as a single project so they broke into individual villages, under the PUD, and provided a mix of housing types. The Master Declaration covers establishment of the individual villages. D. Robitaille asked if every village has representation on the council and was told yes and that the majority voted unanimously against this the first time and the second time two people voted for it.

S. Bogert asked **Paul Bordeau** to come forward to answer a few questions. He asked who pays for the upkeep of the road on the property around Davidson and Outerbridge Drives and P. Bordeau said each individual village is responsible for their maintenance. S. Bogert asked what about the pool area and was told that is common property in each village and is for that village. It is for their use, and is their responsibility.



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S. Bogert asked if there are there public trails going through The Gables and was told yes, by J. Lucherini. S. Saunders pointed out the trail area on the bottom of the plan that was submitted.

D. Robitaille asked if there was anyone who has purchased at The Gables on a condition that they don't have now but were told they were going to get it. He was told by P. Bordeau that that he was not aware of any; he feels they knew what they were getting.

M. Foote asked how will the extra parking spaces be allocated; will everyone be allowed their use? He was told that the three units that have one space will get another; the remaining will be common use and on a first come, first served basis.

P. Bordeau said that at the time of the PUD the ordinance for coverage required for 20%. It tracked that ordinance; it wasn't that the coverage was larger, it was language in the ordinance. He said there is nothing in the South Down master documents that speak to coverage limitations. The city ordinance has now changed and the cluster ordinance has replaced the PUD. It is similar in many ways but when the City Council passed the new ordinance they had to be aware of the previous ordinance and would not have put in the following language:

**“Development, redevelopment or expansion of developing of existing and newly created lots of record shall occur in such a manner that green space in the amount as prescribed in the Table of Dimensional Requirements is retained or developed.”**

He said he feels that the intent was that if the language changes, they would allow the change. It was not restricted by their language. Safety is the benefit that is enjoyed if the variance is allowed and the ordinance of today does allow it.

R. Dyer asked the chairman for permission to rebut Mr. Bordeau's statements and S. Bogert said no, that both sides had the appropriate time to make their comments and that they could continue to go back and forth all evening. He said he feels that both sides have had time to make comments to the board.

**The hearing was closed to the public at 10 pm.**

S. Bogert said that the Board heard a lot of information this evening. We are looking at granting a variance in The Gables. S. Perley said she feels it won't affect just The Gables; this affects South Down as a whole. She says she is finding it hard to get past criteria number one. She feels there is a lot of thought that needs to go into this and she feels the board needs to think about this. She said she can see merits on both sides of the argument and thinks we we should wait the 30 days to make a determination.

D. Robitaille said he has a question for S. Saunders. He said we have heard lots of things about how things have changed. A lot of paving has gone on. He asked how that is handled, as little bits done over 20 years, adds up. He said he feels there is no protection for that water right now. M. Foote asked protection of the water in what way and D. Robitaille said it goes into Paugus Bay and we drink it.



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S. Bogert said this is a neighborhood. What is the difference when someone in a neighborhood wants a variance or with this and S. Perley said if the entire neighborhood is against it, and in this case they are, how do you get past that.

K. Geraci said we received a lot of information tonight and a big picture, and she feels she would be rushing into making any decision. S. Bogert said he understands that, but feels a discussion should be held.

M. Foote said that The Gables takes care of their own plowing, maintenance, and mowing. Throughout the villages there are common areas that South Down takes care of. If South Down has final control over this, then shouldn't they handle the maintenance, plowing, etc?

S. Bogert said things have changed. There is a boat house, docks, and paved parking lot for the boating people – green space was taken away for that. They added storage units. Pictures submitted for The Gables show vehicles parked almost in the street. His own neighborhood has an issue with that so he is sensitive to that. One picture shows a truck that takes up the entire driveway.

S. Bogert said that maybe the 30% across the board isn't a bad idea. S. Perley said they had two meetings where residents were against it. One picture from an abutter showed ice all over his drive, which has been caused by the overall community. She said she understands that things happen, things change, and that she has no problems with the variance, but we have to deal with and address the 5 criteria.

D. Robitaille said that P. Bordeau stated we could place a condition about not building more units. He asked if we can we put a condition on this about controlling the water and run off and S. Saunders said we can place a condition suggesting that the Planning Board review the run off as it was mentioned as a concern. S. Bogert said build out was 12 years ago and D. Robitaille said additional paving has been done in Southdown since then. S. Saunders said that she does feel more paving has been done.

S. Perley said we approved this same thing at Long Bay so how can we deny this; however she said there was no one in Long Bay opposed to it and here we have people who are opposed. M. Foote asked if Long Bay was responsible to handle all of the maintenance. He said he feels that if South Down is saying they ultimately have the control then they should be doing all of the maintenance and plowing.

S. Bogert asked the board how they want to proceed and it was decided to finish the discussion tonight, think for 30 days then craft a motion, and vote at the February meeting.

M. Foote asked what more we would know in 30 days than we know now. K. Geraci said she feels there is too much riding on this, and that we heard too much information this evening to process it all. She doesn't want to push for an answer for this evening.

**Motion:** S. Perley moved to continue this hearing until the February 19 meeting for the purpose of making a final determination. M. Foote seconded with the vote of 4-1. D. Robitaille opposed.



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S. Saunders suggested we ask legal counsel to attend the hearing as well.

**S. Bogert let the audience know that, due to the lateness of the hour, they would not be able to accommodate all of the applicants at this hearing and asked if anyone would wait until the February meeting to be heard.**

**The applicants for 105 Mechanic Street and 183 Wentworth Cove indicated that they would wait until the February meeting.**

**K. Geraci left the meeting and O. Gibbs and R. Smith returned. D. Robitaille remained seated as a full board member. O. Gibbs was reseated.**

**RE-HEARING:**

**Application # 2012-0033  
J & B Ganong**

**MSL # 241-248-7  
355-357 Weirs Blvd**

**CR Zone  
Special Exception**

The applicant is requesting a Special Exception from 235-26, Table of Permitted Uses, in order to allow a used vehicle dealership in the CR zone where it is an allowed use with the granting of the Special Exception.

**Applicant:** Pat Wood appeared for the applicants, who were in attendance, as well. He let the board members know that the Ganong's are well known in the area. They sponsor Brenda's Ride and other local events. They reside here and have lived in Laconia for many years. They have been active and contributing members of the community.

P. Wood passed out copies of the zoning map, highlighting the property. Paugus Point Condominiums are located across the street. This property is not waterfront. P. Wood submitted a letter from Paugus Point Condominiums stating they have no issue with this proposal.

P. Wood said the applicant is requesting a Special Exception in order to have a 6-8 vehicle used car lot. This used to be the real estate office for John Ganong, until medical issues forced him to sell his business. He is still in real estate, but not as the owner of his own business. He has prior experience selling used vehicles, and has a license from the State of New Hampshire.

At the prior hearing, it was stated by the board that his was shorefront property. This is not on the shorefront as Paugus Point Condominiums are located across the street.

P. Wood mentioned the 8 criteria for the Special Exception. He said that first one is the use. It is permitted with the granting of this Special Exception. In the Commercial Resort zone there are a number of similar



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uses. Marine vehicle sales/services is permitted by right and this is a similar use, so this would not be out of character with the zone. Outdoor storage is also permitted.

Permitting this use will not create undue traffic congestion or unduly impair pedestrian safety. P. Wood submitted photos of the property. There is one entrance on the north side and one on the south side of the property. There is parking on either side and in the front.

This is a straight portion of Weirs Boulevard so the sight distance here is great. There is a barrier between Weirs Boulevard and this property. That is shown in the pictures. This was used for a real estate office. One of the prior uses was a restaurant, and it is now a restaurant with traffic coming in and out of the site with no issues.

The requested use will not overload any public systems or any other municipal system or increase any runoff. They are not changing the site at all. They received previous site plan approval. There is a culvert on the north end of the property. There would be no servicing of autos on the site. There may be some washing but that would be limited. There would be no maintenance and no extra demand on water, or sewer. It would be less intensive than the restaurant use.

There will be no excessive demand for police, fire, schools or solid waste. The use would not exceed the demand any more than any other small business. There would be no excessive use of fire protection, and less solid waste demand than the restaurant. There would be no impact on the school systems.

There are no special provisions set forth in the chapter. That is the same determination that the board made when Benson's appeared before them a few months ago for the used car lot request.

There are no hazards to health, safety or the general welfare of the public. The sight line visibility here is substantial. There are two separate drives, and the sidewalk is separated from Weirs Boulevard by a chain fence. There are barrels with plants in the summer. The condos are across the street so the area is a blend of commercial, single and multi-family units.

The proposed use is not out of character with this area.

The proposed location is appropriate for the requested use. The site, due to its configuration, is good. There is enough parking for the proposed vehicles. There is plenty of maneuverability for people to enter. This is an appropriate use for the small commercial use that is being proposed.

The requested use is consistent with the spirit and intent of the chapter and of the Master Plan. P. Wood said they feel it is consistent. The Supreme Court has talked about similar issues. There are two driveways that meet one of the criteria. They will enhance their access. They have streetscapes and pedestrian ways.

The Ganong's have been an important part of the Laconia community for many years. One objective is to preserve and enhance the economic environment. That is consistent with our Master Plan.



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They feel this is an appropriate site for the proposed use. A list of other uses that are permitted here was submitted. This is an opportunity for the Ganong's to wind down and allows them to maintain a business with their home adjacent to it.

M. Foote asked about washing of vehicles there; how is it going to be contained or will it go into the storm drain. P. Wood said they will basically just rinsing cars.

John Ganong said he previously had a used car dealership on Union Avenue, which was located by the Water Department. They used an eco-friendly soap and would use the same here if approved.

S. Bogert asked if the Planning Department would take a look at that and S. Saunders said yes, they would review that.

**Public: Troy Taruo:** He stated he is an Evergreen abutter resident and he is not sure how he feels about having a used car lot there. He has seen other car lots that are in disarray. He said this is a concern of his. If this is not done well, he would not want it allowed here.

S. Bogert asked him if we familiar with any of the permitted uses and he stated no. S. Bogert read him a few of the uses that are permitted in the zone and Troy Taruo said he would probably have an issue with those as well.

S. Bogert said he just wanted the public to be familiar with some of the uses that would be permitted by right here.

John Ganong said there is a buffer between his lot and the Evergreens. He mentioned other permitted uses, such as a taxi cab, and commercial storage. He said he lives there, too, and wants to keep the neighborhood nice. He said he feels traffic would diminish with this use as with the current ice cream shop there are cars in and out all day.

Troy Taruo said this still isn't something he would necessarily want here, even if better than some of the permitted uses.

M. Foote asked the level of vehicles that would be here and J. Ganong said nice vehicles that would be affordable for this area, probably beginning at \$1000.00 and up. He would be going to Hughes Automotive on Union Avenue for mechanical work and inspections. He doesn't want to sell the public a vehicle that would become an issue. He will have no junk cars here.

D. Robitaille asked if there would be any change in the signage and was told that the size would remain the same.

**S. Bogert closed the hearing to the public.**



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D. Robitaille asked why the board had denied this initially and S. Perley read from the denial which stated that the board felt the location was not appropriate for the neighborhood.

O. Gibbs said doesn't think anything new was submitted. She feels this would make this a non-conforming lot and Mr. Ganong will manage it well but the next owner may not. At least the other mentioned uses are allowed, although not any more attractive.

S. Perley said this is a major scenic corridor. This is a resort neighborhood. This application has already been denied once and, while she missed the last meeting where the re-hearing was granted, she did not see where the board made a mistake.

M. Foote said this was a drive- in restaurant at one point. S. Bogert said the real estate office was a more intensive use than a car dealership. The 8 cars would be sitting still with just a few entering/exiting. There would not be a high intensity level of traffic going in or out of this site.

S. Saunders said the board can attach conditions to the approval. D. Robitaille asked if conditions can be placed regarding drainage and was told yes. He said his biggest concern, aside from water quality, is what could happen here if the owner changes. He said if this were located on Union Avenue he would have no problem with this.

**Motion:** M. Foote moved to approve Application # 2012-0033. He said the use is authorized with the granting of the Special Exception.

He stated the use will not create undue traffic congestion or unduly impair pedestrian safety as there has already been a history on the site of more intensive businesses. In the past there has been a real estate office and a restaurant which were more intensive uses.

The requested use won't overload public water, drainage or sewer and there will not be an increase in runoff. The board can place a condition of approval that if the applicant is washing vehicles, they must use a biodegradable soap and capture the water.

S. Saunders said that the DES had recommended the use of a sponge in the catch basins in the past. We could add that as a condition.

M. Foote said this won't create excessive demand on police, fire, schools or solid waste. He stated he doesn't think it would create any extra demand on police, or fire, none on the schools, and less on the solid waste.

There are no special provisions that need to be met.



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The requested use will not create any hazards on health, safety, or welfare of the public. There has always been a business here and have not caused any issues in the past. This is in the Commercial Resort zone and won't be out of character with the neighborhood.

M. Foote said he feels the use is consistent with the spirit and intent of the chapter and of the Master Plan. He doesn't feel this use would be a detriment or out of character.

S. Bogert seconded the motion and added the condition that there could be a maximum of 8 vehicles for sale on the site. He also said the applicant must come up with an appropriate plan for the unloading of the vehicles so as to not cause traffic issues.

M. Foote agreed to the conditions.

There were 2 votes in favor of the application and 3 against. The Special Exception was denied.

**NEW HEARINGS:**

**105 Mechanic Street will be moved to the February meeting.**

**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.

**Application # 2012-0044**  
**NH Ball Bearing**

**MSL # 376-324-3**  
**155 Lexington Drive**

**IP Zone**  
**Variance**

The applicant is requesting a variance from 235-37, Building Height, in order to install a rooftop antenna which will be 40' in height. The building is 14' high, and the zone allows 35' with an additional 15' for an antenna which means this will still be 4' higher than what is permitted.

**Applicant:** Ron Dumont and Herb Parkhurst appeared. R. Dumont said they want a communication antenna which will ultimately be about 54 feet high. The antenna will cover for power outages. It will have no impact to the public. The antenna is triangular shaped and is 12 x 12 x 12 inches.

He said the spirit of the ordinance will be observed: many times they had loss of communications, which means loss of money, and employees sent home early.

The antenna is small in size. They need to be able to communicate with Northfield, NH. Literal enforcement of the ordinance would cause hardship to the business. Any business today is dependent upon data, both internet and interoffice communications.



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D. Robitaille asked we have a picture of this and was told that they submitted a picture of what it looks like on another business site. This would be the same type of antenna. They showed the location on the building.

**Public:** No one spoke for or against the application.

**Board:** D. Robitaille clarified that the value is about \$1000.00 and was told yes, it is not real expensive. H. Parkhurst said other opportunities have been exhausted. S. Perley said she feels we will be seeing more of these types of requests.

**Motion:** S. Perley moved to approve application # 2012-0044.

She said this is not contrary to public interest. The site is commercial, and is located in what is considered a commercial zone. It is not visible from the road and no one from the public spoke for or against the proposal.

The spirit of the ordinance is observed in granting the variance. This doesn't injure the public or private rights of others, and allows the business a reasonable use as telecommunications are needed for any business.

There is no substantial change in the change in use and this doesn't affect the safety or general welfare of the public.

Substantial justice is done in granting the variance as this is consistent with the current use and doesn't harm abutters.

This will not diminish property values. There will be no direct effect on the adjacent properties.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance and the specific application to the property. This doesn't alter the character of the neighborhood, or cause any safety or health issues. This is a necessary component of a business.

This is a reasonable use, and is allowed in district.

M. Foote seconded the application with all voting in favor, 5-0.

**Because of the time approaching 11 pm, the remainder of the applications were moved to the February meeting.**

**Application # 2012-0045**

**Lakehouses at Christmas Island, LLC**

**MSL # 216-248-4**

**630 Weirs Blvd**

**CR Zone**

**Variance**



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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.

**Moved to February:**

**Application # 2012-0046**

**MSL # 146-10-7**

**CR Zone**

**Al Fecteau**

**15 Baker Ave**

**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.

**REQUEST FOR BUILDING CODE OF APPEALS HEARING:**

**Moved to February**

**Application # 2012-0039**

**MSL # 151-269-40-1**

**SFR Zone**

**J. Remington**

**183 Wentworth Cove Road**

**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.

**OTHER BUSINESS: Election of Officers:** S. Perley nominated S. Bogert as Chairman. The second was made by M. Foote and all voted in favor.

S. Bogert nominated S. Perley as Vice-Chair/Secretary and the second was made by M. Foote. All voted in favor.

**MINUTES:** The minutes from the meeting of November 19, 2012 will be addressed at the February ZBA meeting.

**ADJOURNMENT:** The motion to adjourn was made by S. Bogert and seconded by M. Foote. All voted in favor, 5-0, and the meeting adjourned at 11:15 pm.