



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING JUNE 17, 2013
APPROVED MEETING OF JULY 15, 2013

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

Absent: O. Gibbs, K. Geraci

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

S. Bogert called the meeting to order at 7 pm and welcomed the public. In the absence of Orry Gibbs, a full board member, D. Robitaille was seated.

MINUTES: The motion to accept the minutes from the May 20, 2013 ZBA meeting was made by S. Bogert and seconded by S. Perley. All voted in favor of acceptance of the minutes, as written, 5-0.

HEARINGS:

Application # 2013-0010
S. Stewart

MSL # 434-243-21
14 Winnicoash St

SFR Zone
Variance

The applicant is requesting a variance from 235-19 (f) (1) (a) in order to construct a detached deck that will be located 15 ft from the shore and within the SPOD. This would be replacing an existing deck which is located within 7 ft of the shoreline.

Applicant: S. Smith appeared for the application along with Paul Stewart of the Sandra Stewart Revocable Trust. He let the board members know the lot is in the RS zone and has 16,774 SF. There is water frontage of 104 ft along Winnisquam. There is an existing residence with a boat house and an accessory structure. He showed this on the plan.

They are requesting a variance from the vegetated buffer. He passed out photos and plans. The sundeck is being proposed where the lot drops off as the property owners want to enjoy the water view. The shoreland permit was passed out as well.

This is located within the SPOD. The shoreline application was submitted. They want to remove the shed and build a sundeck further back into the lot. DES has a provision for people with shore frontage to build an accessory structure. They determine what the size can be, allowing 1.5 ft of structure per linear foot of shoreline, with a maximum of 900 SF. They still have to file the application, which they did, and the proposal met their standards.

The property was over the 20% coverage. By removing the shed, which totals 58 sf, and the new construction of 119 sf, and moving that back on the lot, they increased the coverage, so they had to provide storm management for the increase. As part of the proposal they show a stone barrier under the deck which will handle storm water. The water will go through the decking and be absorbed into the ground. This can handle a 50 year storm. It goes under the deck and the drip edge. The property owner is given a 50 ft segment where they will be active and meet landscaping for the state. There is substantial landscaping on the site with some sizable trees and large rhododendrons.

S. Perley asked if there will be a roof over the deck and was told no by S. Smith; there is a rail system. She verified that this won't obstruct any views and S. Smith said no, the lot is very well landscaped so it provides privacy for the owners and also for the neighbors.



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S. Smith said that not granting the variance would cause an unnecessary hardship for the property owners. This is located in the RS zone, as well as in the SPOD, with 56% located in the waterfront buffer, and side and front setbacks. There are two buffers in the city regulations, and the state has one as well. There is a 75 ft buffer in our ordinance but S Smith said he cited the 50 ft as he met with Seth Creighton for the determination on what to ask for.

The house is 28 ft from the buffer. The existing shed is 7 ft from the shoreline. They are removing some grass which will help minimize erosion. They will maintain a tree canopy, preserve the wildlife habitat, prevent siltation and stabilize soils, all of which are part of the criteria. This location does all of those things. No root systems are being removed. This won't impact water temperatures so it won't impact the lake with run off. They plan to remove a portion of the lawn closest to the lake. Removal of the shed will help protect the oak tree. The shed is currently attached to the oak tree, and that will be removed. The new sundeck will eliminate some lawn area. The existing tree line will provide privacy to owners and to abutters.

The property owners can't enjoy the lake frontage, and can't go sit by the lake itself due to a drop off. The proposed deck meets DES regulations. The proposal moves the structure further back into the lot so they achieve more benefit with this proposal. The lot will become more conforming.

The proposal won't harm the general public. This won't be contrary to public interest. The proposal will provide protection while allowing the property owner reasonable use of their property.

The spirit of the ordinance shall be observed and substantial justice done in the granting of the variance as the improvements proposed have taken into consideration both the DES shoreland regulations and the City of Laconia regulations to provide protection to public waters while allowing a reasonable use of the land owner's property.

There will be no diminution in the value of the surrounding properties as the proposed deck is a customary use within the residential zone. The deck meets side setbacks and all of the lot coverage requirements. It is located in an area which provides natural screening from abutting properties. The property owner contacted the NH Natural Heritage Bureau Customary and received a response saying there are no rare species located here.

The use is consistent with what the ordinance was drafted to do - protect the shoreline as well as the rights of property owners. This allows the property owner to be closer to the shore.

Public: No one spoke for or against the application.

Board: There were no further questions of the applicant.

S. Bogert closed the hearing to the public.

Board Discussion: D. Robitaille said that eventually the spaces between the decking will be filled with leaves and sediment, and wondered if the board should do anything about that. S. Bogert said that most people, in order to keep the deck from deteriorating, will clean it. It will cost them more money in the long run if not maintained. This is a good design, with good materials. He thinks they should be fine.

Motion: D. Greski moved to approve Application # 2013-0010 for a variance for construction of a deck which will be located 15 ft from the shoreline. They will be removing a shed that is currently located within 7 ft of the shoreline. The



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property has 16,774 SF, and the house is 28 ft from the waterfront buffer. They will remove the shed which is located 7 ft from the shoreline and replace it with a deck to be located 15 ft from the shore, going from 58 SF to 119 SF.

The vegetated buffer requirements are in place to protect public waters, minimize erosion and siltation and preserve wildlife habitat.

The proposal won't be contrary to public interest as this won't alter the essential character of the locality, or harm the public health, safety or welfare. By removing the existing shed and constructing further from the shoreline and eliminating some of the lawn, the property will be more conforming, and cause less pollutants. It won't harm any public or private rights.

The spirit of the ordinance is observed as this is an established neighborhood and placement of the proposed deck won't result in alteration of the shoreline vegetative buffer. The project meets DES regulations and they have obtained the required permit, which has specific conditions attached to that approval.

Substantial justice is done as there is no impact to surround properties. They got the DES permit. They contacted the NH Natural Heritage Bureau, who said there was no impact here. The site will be more conforming by moving the deck further back.

Values of surrounding properties are not diminished. The proposed improvement is customary in a residential zone, meets setbacks, and provides natural screening to abutters.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as the lot becomes less non-conforming by moving construction back into the lot, as well as removing some lawn, and reducing pollutants.

No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application as relief is granted to the property without frustrating the purpose of the ordinance.

The proposed use is reasonable. The ordinance was put in place to protect public waters, and this proposal will provide that and give the owner reasonable use of the property.

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

Steve Smith explained to D. Robitaille that the proposed drainage extended further than the deck to capture runoff.

Application # 2013-0011
Al Flateau (Agent)

MSL # 174-40-2
158 Channel Lane

CR Zone
Variance

The applicant is requesting a variance from 235-35 (B), side and rear setbacks, in order to replace existing stairs. The new stairways would be within the rear setback area.

Applicant: Al Flateau appeared for the applicant. He said the property has a 10.5 degree rise, a 10.5 ft rise, and a 10 ft run. The stairs are not to code, and are non-conforming. They want to build stairs that will be conforming. There would be approximately 4 ft from the stone wall to the water, with an 18 ft run in the 10.5 ft rise.



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D. Greski asked if a permit is required from DES and A. Flateau said none was required. S. Saunders said she can confirm with the state if needed. Al Flateau read from the DES on-line paperwork he received which said none was needed. S. Perley suggested we place a condition that it has to meet any DES requirements and that we do verify if any permit is needed.

Al Flateau explained the new stairs will be 9 -10 ft inside the setback, leaving about a 5 ft setback. S. Perley asked him to explain how the stairs will be placed and A. Flateau said parallel to the pad as they are less obtrusive that way. They come down and make a 90 degree turn. He showed on the plan. S. Perley asked what will happen with the existing concrete stairs and he said he is not touching the concrete. They aren't removing the existing stairs as that will cause too much disturbance. He thinks they might use them to place plants on. They don't want to disturb the natural flow, and won't be using the existing stairs for steps.

D. Greski asked if this deck is built out from the house. A. Flateau said the deck is there now, and the stairs will be cantilevered down to the existing cement pad. They will rest on that pad. At the 90 degree turn, they will use the existing cement pad. That will provide footings for the bottom pad and the turn. The plans given with the packet are not going to be used now. He showed the correct plans and said the stairs will have a pressure treated frame and composite decking.

S. Saunders asked if he spoke to the building director, and A. Flateau said he spoke to him and he said this is fine.

D. Greski said he has no issue with the design but that they are adding something new within 50 ft of the water. If DES says this plan is ok he is fine, but he does want that confirmation. He verified that we can remove the drawing that was submitted and was told yes.

S. Bogert verified this is a 7.5" rise and A. Flateau said the existing stairs are 12.5 and 13 ft now. He said there is a safety issue. D. Greski asked if it becomes a safety issue as they are leaving the existing cement stairs and was told the bottom of the new stairs will block them so they can't be used. S. Saunders said if they were removing those he would definitely need a DES permit. S. Bogert said that would create a mess. R. Smith said he likes the idea of using them for planters.

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

Board: The board members had no further questions.

S. Bogert closed the hearing to the public.

Board discussion: S. Perley said we should attach the condition onto any approval verifying whether the DES permit is required or not.

Motion: S. Perley moved to approve Application # 2013-0011 for the construction of a new set of stairs, which would be placed adjacent to the existing stairs. The set will encroach 10 ft into the setback, leaving a 5 ft setback.

The proposal is not contrary to public interest. There is no change in the use being proposed and this will correct a safety situation.



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The spirit of the ordinance is observed as currently there is a safety issue with stairs not being to code and this will correct that. It allows the property owner safer access to water.

Substantial justice is done as this proposal is consistent with other properties in the area. The benefit to the applicant outweighs any negative impact to the general public.

Surrounding property values won't be diminished. There is no view impact, so this has no impact on the neighbors.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of the provision to the property as the current stairs are not in code compliance. Adding the new stairs is a way to make the site more accessible to the lake, and it doesn't alter the essential character or threaten the public health, safety or welfare.

The proposed use is reasonable as other properties here have the same use.

We will add the condition that we require confirmation that the DES permit is not required.

D. Greski seconded the motion, along with the added condition, and all voted in favor of approval, 5-0.

Application # 2013-0012
Cantin Chevrolet

MSL # 388-152-8
14 Mechanic St

C Zone
Variance

The applicant is requesting a variance from 235-42 (E) (4) (c), street trees, on a minor expansion of their display area.

Applicant: Tom Selling appeared along with Tom Cantin and stated he is representing the property owners, the Pino's, as well. He said that Cantin has secured a Purchase & Sales for the Pino property and want to expand the outdoor display area. They underwent a design audit with Chevrolet who needs maximum visibility for their product. The outdoor display area must be free of street trees.

He had the board members look at the pictures that were submitted with their packets of the existing Chevrolet lot and of the Pino lot. He passed out additional photos. There are many trees on the Pino lot with lots of branches and leaves.

The Mechanic street lot is 2 acres, with city water, and sewer, and has an existing 4 unit building. The lot is gently sloping with very little grass. There are 17 trees but most line up with the abutting property line. Cantin's now has to park about 30 ft from the existing property line to protect the new cars. Instead of street trees they are proposing a 17 ft landscaping buffer and bio retention swale, with junipers.

S. Perley asked if they are taking the existing house down and was told yes. D. Greski asked if there are trees there now, and was told yes. The idea is to raze the building, clear the lot, and add a paved display area. They will have 7000 SF of paved area, with 5000 SF of green space along Mechanic Street. The original building was built in the 1940's before zoning. Their main site has not had any trees since it has been used for autos.

They believe the spirit of the ordinance is observed. Trees are to give a rural appearance but trees here restrict this use. Instead they are proposing a 17.5 ft green area planted with juniper bushes. The removal of the trees will give the pedestrians more safety here.



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Substantial justice is done as this is a minor expansion adjacent to what already exists. The purpose is to make the dealership more visible. The general public has little to gain by leaving the trees in place as none have been here for 70 years. The dealership would lose sales.

Property values won't be diminished if the variance is granted. This is a minor expansion, part of a nationwide expansion, and would give a face lift to Laconia, as the current structure is poorly maintained. The remainder of the site hasn't had trees in 70 years and other commercial properties in the area have none.

Literal enforcement would result in an unnecessary hardship as this business dates back to the 40's, prior to the street tree requirement. They are not doing a revamping of the entire site, just a minor expansion, unlike several other businesses in the area. The back side of the Cantin lot is used for inventory and has a security fence and gate. Tree droppings and branches are a hardship for a car dealership.

There is no fair and substantial relationship as the city wants to recreate a rural atmosphere and that is not the use of this site. This has been here for 70 years.

The use of sales/service is grandfathered here and is permitted in the Commercial zone. T. Selling showed pictures from April and June of this year. The property line is heavily wooded, and they must park 30 ft away from the property line. He then showed pictures without the building that they altered using Photoshop software to show the impact of tree removal.

D. Greski asked if the proposed condition was shown for the landscaped area on the picture just submitted and was told no. It is shown on the plan. They propose bio-retention for water and for the green area. It will run the length of the Pino lot and into the existing Cantin lot. He stated he is unsure of the total length.

S. Bogert clarified that lots 7 and 8 will merge and was told yes, that the Pino lot will be part of the Cantin lot. The 17.5 ft buffer is the length of Pino's and into Cantin's lot.

S. Perley asked if they plan any fencing and was told no. Mechanic Street is built across part of the Pino lot and the Cantin lot. By removing the fence the corner will be safer. S. Perley said she agrees it is not a safe area now.

D. Robitaille asked how many trees are being removed and T. Selling said there are 17 there now, and all are being removed. T. Selling explained the picture. When removing the building, your eyes will be drawn to the trees on the slope.

T. Cantin said this is a simple proposal. They own the front lot, in the trusts name, and that joins the main property. They got a variance for street trees for that property. The Pino property has been sold a few times. They are now proposing to raze the existing structure, which is in poor shape, and make one basic parking lot to store cars. They will combine the Pino lot with the front lot; it will meet green space, lighting, and drainage requirements. They will deed the street back to the city, give all ROW's, and extend granite curbing all around. They will add 17.5 ft of buffer. He said he is unsure of how many cars will actually fit. That depends on how they are parked, the sizes of the automobiles, and other variables.

D. Greski said this request is different from last year, as there were no trees there then, and this lot has 17 trees to be removed. He asked for more explanation on the 17.5 ft buffer and what will be planted. Will there be anything beyond



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the proposed junipers? He said it is nice to keep as much of this green as we can and he doesn't understand how 17 trees being removed and the 17.5 ft buffer going in, is equal.

T. Cantin showed the plan, and said this meets the 20% coverage and viewers can enjoy the proposed buffer instead of green space in the center, which were there to meet the requirement, but that no one could see. This falls within the spirit of what the city wants. It is there for visual reasons, and for drainage reasons. He said that some of the trees that will be removed are nice, some are not.

S. Bogert asked about the green space. He said he believes that the object is to keep the kind of landscaping that is on Union Avenue and continue that around this lot. T. Cantin said yes, but it will be wider, and the junipers will be added. S. Bogert said that makes this more uniform, like it was all planned for initially instead of being done in sections.

S. Bogert asked if there will be any additional signage proposed here and T. Cantin said no. There will actually be less signage, as some have been hung on the fence. They are not proposing any new signs.

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

Board: There were no further questions for the applicant from the board.

S. Bogert closed the hearing to the public.

Board: S. Bogert said this sounds like a lot of trees are being removed but this will make the lot look more uniform. The buffer area will be continued around from Union Avenue, around this site. This will make the corner unified and more uniform than what is there now.

D. Greski said he isn't comfortable. He thinks this will impact the area, and he doesn't think we need another parking lot in Laconia. S. Perley said to look at the site plan. This entire area is all their business now, with a house stuck in the middle. It is all Commercial use now. S. Bogert said the property they are talking about is Commercial now as it is a 4 unit. He thinks this makes their image more uniform, and an island of green space that is there right now, will be moved, so all can enjoy the new space.

S. Bogert asked D. Greski what he wants to see here and D. Greski said more than just the junipers being stuck in there. S. Bogert asked if they should be planted in the same quantity or more and D. Greski asked T. Cantin if they will be driving cars off of the lot, over the buffer, and was told no. D. Greski said that adding more plantings would dress it up, and make it look nice.

He said that is how he feels. He wants more than what is on Union Avenue at this time. He said no trees were there, and the expansion made the question come up. Here there are existing trees. S. Bogert said some of the reason the variance was granted on Union Avenue was also because of the power lines there, too.

D. Greski said he isn't asking for tall trees. R. Smith said he has been at his house for 20 years, and planted junipers when they moved in. They are now 20 ft wide and he is removing them. They do grow. It all depends on what you want to see now. R. Smith said he thinks a good landscaping plan is a good idea. S. Saunders said different shrubs could be used. S. Perley asked if we could require more plantings on the site. S. Saunders said if they require a planting plan that is more robust, the Planning Staff will review it and if they don't feel the applicant meets the intent we would bring it back to the board for review.



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D. Greski said just don't throw some junipers in here and ignore them. S. Perley said Cantin has a good track record. D. Greski said he is just looking at the plan that was submitted.

S. Saunders said a variance goes with the property, so if in 20 years it sells, the street trees would not be reviewed at that point unless we condition the approval. D. Greski said he feels we should place the same condition we placed previously. S. Bogert said he agrees with that.

Motion: S. Perley moved to approve Application 2013-0012, for street trees.

This won't be contrary to public interest as Cantin's wants to construct a 17.5 ft wide green area with plantings along Mechanic Street, while removing 17 large trees.

Substantial justice is done in granting the variance as this is consistent with the current use and it doesn't change the character of the neighborhood.

Property values won't be diminished as this is a continued use, and is the same as exists in the neighborhood.

This is a reasonable use which won't alter the essential character of the surrounding properties. It is currently a commercial use, and that will be continued.

She added that the board wants to place a condition that if the property is sold or the business type changed, the owner must return to the ZBA.

Also add the condition that the landscaping plan be enhanced beyond the 12 junipers currently shown on the plan and the landscaping plan is to be reviewed by Planning staff.

The motion was seconded by D. Greski with all voting in favor of approval, 5-0.

Application # 2013-0013

MSL # 309-71-2

RS Zone

C. Richer

640 Elm St

Variance

The applicant is seeking a variance from 235-40-(B) (6) (c) in order to allow clustered housing on a plot smaller than the required 10 acres.

Applicant: Paul Bordeau appeared for the application. He stated he is representing himself and Bill Contardo. He put the plan on the board and passed out a Supreme Court interpretation.

He asked how many of the board members went to visit the site and 3 members said they did. He said they are proposing a cluster subdivision. He gave conceptual sketches and said this is not an engineered drawing. An engineer did review this and said they could possibly require some minor juggling. The city has a 10 acre requirement for a cluster development which they are seeking relief from. That leaves enough for a 50 ft setback from water, a 250 ft overlay for the shorefront requirement, and a 40 ft buffer. There are some wetlands with setbacks. This is a 5.6 acre site. Some other lots might not have the right geometry to be able to fit everything in with the other concerns but this one works.



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On the plan he said they will have access from Elm Street. Along Elm Street is Country Club Shores with Mallard Cove nearby. He showed a 0.99 acre lot with a single family home in the corner abutting the proposed site. You cannot see the house as trees are fully leafed in. They have a paved way that runs to the water. There is an easement granting that way, and it can't be enlarged, but they can have access to it. There is an 865 ft boundary to Lake Opechee. The Jenkins lot is not visible either.

There is an existing driveway on the site. There is a stone wall that is now in disarray. There is a mature tree line that grows on both sides, and they want to use that as the main entrance as it is the right width, the right location, and they want to keep the trees and the wall. There would be minimal disturbance doing that. The outlines shown in yellow are craftsman style structures. They will fit the site. They have shingles, vertical board, with different colors and trims and will fit the site, using greens and browns.

There is a large open field on the site. Some of the houses border with Mallard Cove. The tree line will be maintained so the buildings won't be visible.

There is another stone wall that they want to preserve if at all possible. The development will look mature from the start. They will be building in clusters, 8 and 4. One structure could sit inside a buffer area, and they may ask to reduce the buffer from 50' to 30'. That would be adjusted as needed.

S. Perley asked if they are not proposing what is shown on the submitted plans and P. Bordeau said yes, with just a minor change. They are unsure of how 2 of the units will fit. They could be smaller or wider in order to fit appropriately. None will be down slope any further than what is shown.

There is very little steep slope on the site. They have a concept plan to keep the nearest home 500 ft from Lake Opechee. These will be located the furthest away than any homes located here. There are 3 King Court properties that abut but are not visible this time of year. At the waterfront you can see Mallard Cove's roadway, with a small glimpse of the road.

There are some mature pines near the beach along with smaller growth. This is a rocky lakeshore, with tall pines which screen out smaller undergrowth. There is a dock that wasn't in the water when the plans were done, but that will show at the planning board level.

This is a large blocky contiguous space, with the possibility for hiking trails, and golf cart usage. It is a nice spot.

P. Bordeau summarized the addendum he passed out. There are 13 or 14 buildings shown on the plans. The lot has 5.6 acres, which is 2.5 homes per acre. Mallard Cove has a combination of single residences and duplexes on 11 acres. Their density is 2.73 homes per acre. The Schneckenburger lot has 0.99 acres with a single family home. There is another single family home on 1 acre. King Court has a 865 ft common boundary, all are at least 50 ft away through the woods. There are 4 single family homes. Density is 0.61 homes per acre there.

Country Club Shores, which was built in 2003-2004, has 12.329 acres, with 18 single family homes, which is 1.64 per acre density. There is a lot of open space but they are developed along the water. There is one single-family home on 4.4 acres adjacent to Country Club Shores; the lot is long and narrow. Bond Beach is on 33 acres, and that includes the school. Just past that is Opechee Shores, which was built in the early 1980's. There are 4 6-plexes in a cluster, 2 duplexes, and 2 single family homes. That abuts Bond Beach. They have 7.6 acres, which is 3.9 homes per acre.



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In total there are 78 residences, which is approximately 2.9 units per acre. They are proposing 2.5 so this is the average.

This means it won't be contrary to the public interest. The proposal won't change the locality, and plugs in the final piece of property in this area. This is consistent with what is there now.

The proposal won't violate basic objectives of the ordinance as this is a large open space, which will preserve waterfront, and proposes no threat to the health, safety or welfare of the general public.

This meets the spirit of the ordinance. In looking at Ordinance Section 235-40 B 2, it says a cluster is permitted, while preserving open space and making an attractive living environment. He feels they meet all of the criteria here. They offer flexibility, and a creative design (page 3 of their addendum).

This is a large tract of land. He said he thinks if they did a traditional development they could add more homes, and they don't want to do that. They want to avoid that and do the cluster. This leaves a 40 ft buffer around the property and a side setback of 10 ft.

They plan to create a large open space. They have a nice beach front, with shallow water and a sandy beach.

Their design allows a small space for things to fit. They are providing natural land and retaining trees and walls. This preserves the property without changing it. There will be a continuous open space. They will have scenic vista across Lake Opechee. They have a wildlife habitat there now and he is unsure of all that is there. They have seen deer tracks. There is water and sewer to the site. There is an easement that was created when King Court was built. That protects ground water.

On page 4 of the addendum, it states they offer a large open space, with 2.8 acres of build out. They meet all of the standards except one. The site is located on Elm Street in the midst of other developments.

Substantial justice is done. P. Bordeau asked if there is a gain to the general public by not developing this and said probably so. But is there bigger harm to the owner? He thinks so.

Property values are not diminished. These will be very attractive homes with high curb appeal. They will be of high quality, and in the price range with the existing homes in the area. Mallard Cove doesn't have a high turnover. People stay there.

Country Clue Shores, sold out in the price range of \$425K to a high of around \$500K. There has been only one sale in recent years and that was priced very reasonably as the owner took a new job. There is minimal turnover there, too. They want this development to be the same way. This should support and enhance the existing values of homes in the neighborhood.

P. Bordeau said he outlined one particular case but feels not permitting this cluster development would cause an unnecessary hardship owing to special conditions of this property that distinguish it from others. It fits all of the criteria except for the lot size. This is a reasonable use

You used to do either an area or a use variance. Here they are saying this is similar to simplex. There was a large hotel in Portsmouth, and the other party in the Harborside case he submitted, was also a hotel. They wanted parapet signage which passed the Zoning Board. They also wanted 2 marquee signs at 35', not the 20' that was permitted. He said you



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can take your reasoning from this case. The court noted the special condition of the property was the sheer mass of the building and the occupancy of the hotel.

They also found the purpose of the ordinance is to reduce visual clutter. The ZBA found it would not be disruptive and could enhance the streetscape. They found it reasonable and not overly aggressive. You must consider features of the land, buildings on the land, and signs on the land, not just the land. Take into consideration all of the other pieces of any proposal.

On page 2, P. Bordeau said this site is unique because it has all the characteristics he mentioned - the stone walls, the tree line, the sloping terrain, the open space to be preserved, the lines of sight, privacy, half of the space to be open space, the 40 ft buffer, 3 wetlands, and room for walking trails around them.

S. Bogert asked if there will be walking trails and if this will be a condominium association or singly owned and P. Bordeau said the path to the beach is about 9 ft wide, which people could use for golf carts. They want to extend and put on the other side and make a loop around. The path would be bluestone or something permeable.

He isn't sure on the condo association yet. He said he favors individual lots with a homeowners association with restrictions on the individual lots, with a common area, and an exclusive use area. They would give deed to a lot but they would be subject to the home owners association who are responsible to protect the buffers, wetlands, and open space. He is leaning towards individual lots with a home owners association.

S. Bogert asked if these will be public or private roads and P. Bordeau said he isn't sure on that yet. That is something they will hash out with the planning board. He doesn't think should be a lot of traffic, as it won't go anywhere. S. Bogert mentioned snow removal, and P. Bordeau said there could be private plowing of the roads. All of the final details haven't been ironed out yet and a lot of that will be done at the Planning level.

S. Bogert clarified that there is 17 ft between the homes that are proposed and was told yes by P. Bordeau. The internal setbacks can be different for a cluster. P. Bordeau said he spoke to Fire on that. C. Roffo said he would prefer to have more space between homes but this is adequate. The designs chosen don't have as many windows on the side walls to permit more privacy. They will add vegetation, too. They will focus on the back of the houses with more windows where they think rooms like master bedrooms, or great rooms will be situated.

S. Bogert said we will want the appropriate amount of oversight given so that the lots are given the appropriate sizing.

S. Perley said she has no problem with the concept, but does think the homes are rather close together. She said she doesn't see a turn-around for fire, and no guest parking. She said she thinks this is incomplete. She said she feels they want the board to lessen the 10 acre requirement without really seeing what is being proposed. There is a lot is being removed to build. S. Perley said she lives in the area. P. Bordeau said the homes in Opechee Shores are close, and S. Perley said she agreed but that is not the ZBA responsibility. She feels the density is an issue, and wants to make sure of what the board is granting.

S. Perley asked S. Saunders if we can we ask for a more detailed plan and S. Saunders said yes. S. Perley said she wants to better understand the use of the site.

P. Bordeau stated where the homes are located. There are 8 along the side of Mallard Cove. There are 2 on the side facing down slope. The next 2, which are canted, line up with King Court.



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P. Bordeau said they didn't want to spend a fortune on plans until they were sure they can do this. He said that each home will have a 2 car garage with 2 parking spaces in front of that so each will have 4 spaces - 2 in, 2 out.

He said they carefully looked at the cluster ordinance and sincerely believe the site plan can meet all of the city's requirements. They are not asking for relief from anything except the lot size/density. This is the maximum number of homes they will build. It could be fewer, but will not be more than what is shown. They will do what the planning board asks of them. They just want the relief from the density.

D. Greski said he feels we need more detail – they are asking the board to approve something they are unsure of. He wants to see something that is more definite. He also thinks the 17 ft is close. This is almost 50% less than what is required and they are saying they will preserve 50% of that.

P. Bordeau said their intent was to file the site plan and be able to have it here tonight. Their engineer was injured and couldn't do the final plans. They had already submitted this application and the plan didn't get finished in time. Rather than a no this evening, he said he would feel comfortable if they want to continue this until next month and he can present the plans at that time.

S. Perley said she is not against the proposal but wants to see more detailed plans; D. Greski said he agrees.

Motion: S. Perley moved to continue Application # 2013-0013 for a variance for density, until the July 15th meeting. D. Greski seconded, and all voted in favor of continuing the hearing at the July meeting of the ZBA.

Application # 2013-0014	MSL # 387-220-5	C Zone
Capital City Pawnbrokers	570 Union Ave	Variance
The applicant is requesting a variance from 235-42 (a) (4) (a) (6) in order to allow a sexually oriented business to be located within 500 ft of residential properties.		

Applicant: Dave Byer appeared for the application. He explained that he had an administrative denial because he is within 500 ft of a residence. He had applied for a smoke shop and adult novelties. He was approved on the smoke shop, but denied on adult novelties. He wants to add those in the mezzanine of the store. The denial was because of the property being within 500 ft of residences.

S. Perley asked D. Byer to expand on what he means by adult novelties. He said movies, vibrators, books, magazines, and phallic type instruments.

D. Greski said the pictures he submitted don't show the items he mentioned. D. Byer said they are in the pictures and that D. Greski might not recognize the items. When people think of this type of instruments they think of different packaging. Most of the packaging now is generic. Some of the items are called by different names. An item could be called a prostate massager or something else. It is the same thing.

D. Byer said the items shown in the pictures are high tech instruments, not a novelty or toy. D. Greski said he sees in the pictures, condoms, and lubricants, but not novelties. On the top shelf, purple, red, brown, in the WalGreen photo, those are "utensils". Those are hardware. These are located in plain sight for everyone to see. He is proposing this as a



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store within his store. This is in the back of his store, there are warning signs, and no one under 18 can enter. This would be a destination, not a pass through like at CVS, Rite Aid, etc.

The smoke shop opened on June 10. He wants to add this use along with the smoke shop. S. Bogert asked if he could sell these products now since other stores are currently selling them and was told no.

D. Robitaille asked if he will carry products that are beyond this and D. Byer said it would not be called a prostate massager. S. Bogert said once this is granted the next person won't have to abide by this as it goes with the property. He asked S. Saunders if CVS and WalGreen are doing something improper now. They are retail. S. Saunders said she is going to have to go through the ordinance, read it all, and probably approach the stores and say these products have crossed the line.

D. Greski asked if they are within the 500 ft of residences (CVS, Rite Aid, etc) and was told yes.

D. Byer said this was brought forth over a month ago. He took these pictures after a conversation with S. Saunders. He said he is not here saying the other businesses shouldn't sell these. These are products that people want to buy. They are large groups and they have focus groups that determine what people want to buy.

S. Perley said we are only looking at 570 Union. There are 2 residences that come into play, one across the street, and one next door.

D. Byer said the gentleman across the street gave him a letter which he submitted to the board. S. Bogert read the letter into the record.

"To Whom It May Concern:

I am in receipt of your registered letter of 6/5/13 regarding the proposed new activities at 570 Union Ave.

Let it be known I am very clear as to Mr. Byer's intent with the property interior and I have no problem with his intent regarding an adult toy/novelty area within his already existing business. Sincerely, Mike Dubois 603-528-5747 if you have any questions."

Mr. Dubois owns the property at 17 Van Dyke Drive.

D. Byer said he is a pawn broker so the perception of bottom feeder is already there. He said he works well with the community and the police.

He said he is proposing generic signage. It will be psychedelic. The packaging for the products are K-Martish, not the old type of packaging. He wants the store to reflect a K-Mart type not a bordello. His pawn shop is more like a thrift store. He wants the store to be appetizing.

Public: Donald Sorenson said he owned a business across the street, 559 Union Avenue, which is across from the apartment house. He said he is disturbed about the degeneration of Union Avenue in general. He moved to Laconia about 30 years ago and was proud of the city then but he is not happy now. He said he likes the ice cream store that opened where the tanning salon was.



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He said he doesn't know what is in the letter D. Byer submitted from the abutter. He said he served on a planning board elsewhere, so he knows what S. Bogert said about the variance following the property, not the owner, if correct. The variance is good as long as D. Byer owns the property. If he sells it tomorrow, the way the property is used could change.

He said he is concerned that children could go in. At the end of the Gables Mall is Open Door Day Care. This abuts Mechanic Street where there are younger children. These are not mercantile products we are talking about. He said he is sure the pawn shop is good and that D. Byer is working in the public interest, taking in goods that people don't want and re-selling them but there is a big difference between pawn or "bait". He said he doesn't care, these products don't belong on shelves here or at WalGreen. This is not in the interest of the residents of Laconia.

He said he listened closely on the Cantin application. The board had to make a decision on taking down the trees or replanting with junipers. They took everything into consideration, and they considered the trade off. What is the trade off on putting pornographic materials here with such a high traffic count on Union Avenue?

No one else from the public spoke for or against the application.

S. Bogert read the letter into the record from Jennifer Brook Law Office which is in opposition.

Jennifer J. Brook Law Offices. PLLC
Jennifer J. Brook

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Laconia, New Hampshire 03246
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June 17, 2013
City of Laconia
Zoning Department 45
Beacon Street Laconia,
NH 03246

VIA FACSIMILE ONLY - 603-524-2167

RE: VARIANCE APPLICATION OF
GOOD VIBRATIONS SMOKE SHOP / CAPITAL CITY PAWN

Dear Board Members:

The purpose of this letter is to bring to the board my concerns relative to the above Application for a Variance. While I understand that the Applicable Ordinance relates to Residential

- Jennifer J. Brook



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and not necessarily Commercial property and abutter issues, I would like to lodge my objection to the Application. Not only do I feel that such a business would serve to further deteriorate this area of the City I have concerns with regards to the local residents as well.

I do a fair amount of Probate Law, Estate Administration Law and Family Law at my practice that is located across the street from the Applicant's businesses. I have had occasions to be appointed by the Court to represent one or more individuals that reside and has resided at the residential building abutting the subject commercial property in Guardianship Matters for Incapacitated Adults and related issues. I do not believe that the people I represented or any of the residents in the area would benefit from allowing such a Variance and in fact the proposed business and the clientele it would bring to the area could be extremely detrimental to the residents and put them at risk of irreparable harm.

Would you kindly consider the issues raised herein in reviewing the subject Application.

Sincerely,

Jennifer J. Brook, Esq. JJB/blb

D. Greski clarified that the business is less than 500 ft from a residence and asked how far. He was told about 125 ft across a parking lot, then heavy vegetation, then a house. D. Greski asked if this is apartments and was told yes. There is a circle shown on the plan, and there are actually 4 residences within 500 ft.

S. Saunders said there are some commercial units here, too. She said across the street is a single family home, next door is an apartment building, and she is unsure on the other two. S. Bogert said he thinks they are also apartments.

D. Robitaille asked if this is currently this is zoned business/retail and S. Saunders said this is a Commercial zone so you can have retail here. D. Byer said the building has multiple tenants.

S. Saunders said his request is to operate a sexually oriented business and she read some of the criteria.

D. Byer said dancing girls are mentioned and tucking money into bikini bottoms, which he is not doing. S. Bogert said unfortunately if the variance is granted the entire "wagon train" goes with it. D. Byer asked if they can't condition this. S. Bogert said that would have to be done by product, or things they do, and that would be a massive task.

D. Byer said all there would be is a psychedelic sign that says good vibrations smoke shop, and he would add wording about adult novelties. That would be the complete exposure outside. Once you go into the store, he takes pride in how it looks. He has 4 children, 3 adult daughters and they hold him to a standard well beyond what the board will hold him to. Within the store, it is then a destination within the store. While he is carrying the torch you will get exactly what he says, no more, no less. S. Bogert said the key words are as long as he is carrying the torch.



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D. Greski asked if this is zoned commercial residential, and S. Saunders said this is a Commercial zone but residences are permitted here, too. D. Byer said the residences are located in a Commercial zone. He said unless he goes to the Weirs there is no 500 ft spot he can do this. He is within 2 lots of being able to be here.

D. Greski said on the first criteria, which is the variance won't be contrary to public interest and won't alter the character of the locality, he has a problem. There are a residences, children, and apartments in this area. The types of people this could draw could be an issue. With families living here, with children, he cannot answer the first 2 questions.

D. Byer said he disagrees. He feels that attitude sensationalizes this. He said you would not know that portion of the store exists. All they will see is the sign. Anyone would be welcomed into the pawn shop but that young person is not ever going to see a movie or phallic object that would be considered naughty.

D. Greski said there is a place on Washington Street in Boston that drew in a clientele that made it unsafe. He is looking at this from that standpoint, and exposing families – children – some people may not be of the best character visiting his location. D. Byer said he is talking about the sale of flesh there. He is not talking about there here or anything like that. There would be nothing warm-blooded.

D. Byer said that seedy characters have been mentioned. He said he monitors the people coming in but he is sure he would get someone in that is less than desirable but even Wal Mart kicks people out. Before a customer get to the stairs, they have to walk by him or the manager. At that point they see nothing slightly off color. You have to walk through a curtain, and another on the other side to buy movies. Men and women shop differently for these items. When you go up the stairs there is a smoke shop first.

D. Byer said he is already dealing with some low life. He has had people arrested right at the counter. He takes the monitoring of his store very seriously.

D. Byer said he would be agreeable if the board wanted to set conditions. They could contact him back in 3 months and monitor. S. Bogert said we cannot do that. D. Byer asked about some type of license that is renewed yearly and again was told that isn't possible.

D. Greski said that D. Byer has a good reputation, and he is trying very hard, but the variance goes with the property. The next person may not do the same. D. Byer said anything he has any control over would be of the highest quality but he cannot control what happens after. He said he really would like to see something happen where he could do this and be monitored.

S. Bogert closed the hearing to the public.

R. Smith said he visited the site. This area is located at the very back end of the store and could be controlled easily. But, again, that is today.

S. Bogert said we are looking at the big picture, as the entire place could be turned into something else. D. Robitaille said he moved here about 2 years ago, and his biggest concern was motorcycles. He said he has learned a lot here tonight.



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S. Saunders said if the board approves this she would follow up with the administrative application.

D. Robitaille said he doesn't doubt that D. Byer runs an honest business and would continue to but he doesn't want this in the city. S. Perley said she agrees.

S. Bogert said neighborhoods have been changed in the past with churches, etc. and they changed the character of the area. He said we have enough issues in the city without adding more character changes.

S. Perley said she doesn't see a hardship. D. Byer has other uses are available, which he is currently using, and these products are available elsewhere.

M. Foote said this is a slippery slope. It is a degradation of society. He said you can do what you want in your home. There are other businesses like this located in Laconia now.

D. Greski said he has a problem with residences being located in the area.

Motion: S. Perley moved to deny Application # 2013-0014. She said that granting the variance will affect the public interest as this is a very public site on Union Avenue and this would have negative effects.

The spirit of the ordinance was written to regulate these types of businesses, and denying this follows the spirit.

There is no hardship to the business owner as he currently has the ability to operate other businesses, and is not being denied the use of the property.

S. Bogert asked if she wants to do other criteria and S. Perley said she did 3, when we only need one to turn an application down.

D. Greski seconded the motion to deny.

S. Saunders said she was going to have this reviewed by legal counsel. S. Saunders said she feels it is appropriate to motion to table this and refer it to legal counsel to help draft the decision, and then come back at the next meeting, and vote.

Motion: S. Bogert moved to table the application and send for review by legal counsel. S. Perley seconded. All voted in favor of tabling the application until the next meeting, July 15th, 5-0.

OTHER BUSINESS: a) Zoning Task Force; S. Saunders said that S. Bogert, M. Foote, and S. Perley are on the task force along with 3 Planning Board Members, and 3 members-at-large. Their first meeting will be Thursday, June 27, at 10 am. S. Bogert said he will be working and cannot attend but to get him information. M. Foote said he cannot attend either. Both said they do want to remain on the committee, to get them information and they will proceed in that fashion. S. Perley said future meetings won't necessarily be held during the day. The first two items to be covered will be signs and chickens, with chickens being first.

D. Greski requested that Planning verifies the Wal Greens, CVS, Rite Aid, etc currently sell sexual implements. S. Saunders said she is sure that they do and are not in compliance.



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b) Any other business that comes before the board.

ADJOURNMENT: The motion to adjourn was made by S. Bogert and seconded by S. Perley. All voted in favor, 5-0, and the meeting adjourned at 10:20 pm.