



ZONING BOARD OF ADJUSTMENT

MINUTES MEETING OF MARCH 17, 2014
APPROVED MEETING OF APRIL 21, 2014

Present: S. Bogert, **Chair**; S. Perley, **Vice-Chair**; O. Gibbs, D. Greski, M. Foote, R. Smith, K. Geraci

Absent: D. Robitaille

S. Bogert called the meeting to order at 7 pm and welcomed everyone to the March 17, 2014 meeting of the Laconia Board of Adjustment.

MINUTES: The minutes from the January 21, 2014 ZBA meeting were discussed. The motion to approve the minutes, as written, was made by S. Perley and seconded by M. Foote with all voting in favor of approval, 5-0. There was no February 2014 meeting.

HEARINGS:

O. Gibbs recused herself from the first hearing and S. Bogert seated K. Geraci as a full board member.

Application # 2014-0001
736 Union LLC

MSL # 367-220-1
736 Union Avenue

C Zone
Special Exception

The applicant is seeking a Special Exception from 235-26, Uses Permitted by Special Exception, in order to make the property located at 736 Union Avenue a legal boarding/rooming/lodging house.

Applicant: R. Dyer appeared for the application. Also in attendance were the owner of the property, Matt LoGuidice and the property manager, Bill Allen. The property is located in the Lakeport Square area, across from Robbins Auto Parts. There is another apartment house next door and an 80 unit apartment building situated across the street.

The building was constructed in the 1900's and it has been a rooming house for a number of years. The literature they found in the Code Department at City Hall goes back about 14 years and that refers to this as a boarding house but R. Dyer said he feels it has been much longer than that.

During WWII the largest employer in Laconia was Scott Williams; they had 2500 employees. In the war years gas was rationed and there weren't as many cars, so the majority of people in the community walked to their jobs. They think this was a rooming house then as Scott Williams had a facility where O's Restaurant is now located.

They found references in the City records to this structure. Back in 2002 new smoke detectors were installed. In 2008 they updated lights and smoke detectors, and in 2009 this was issued a permanent Certificate of Occupancy for a maximum of 9 rooms. In 2010 more work was done on fire evacuation, with a new exit and



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door on the ground floor, and new landing/stairs on the second floor. Exit signs and hard wiring are in place, with 2 exits on each floor. This was inspected by the City on August 25, 2010 to determine compliance with city codes.

R. Dyer said his client bought this property in 2013. He has also purchased another in Laconia. He owns 2 rental facilities on Arch Street. There has been some history with 10 Arch Street and he is in the process of gutting the building and renovating it. He has spent \$125K to renovate and upgrade that facility. This will be a credit to the community and he thinks the Laconia Police Department will thank them for this property renovation.

On the 736 Union property, they treated the entire building for critters, and have put a monthly inspection program in place; they carpeted and painted the common areas; they hard wired smoke detectors and added new locks for security, as well as upgrading the common area lighting.

You might ask why they are here when the property has been used for decades as rooming facility. The owner wants to clean up the paperwork and have this legally made a rooming facility.

D. Greski asked about the increase in the number of rooms from 9 to 10 and R. Dyer said he would speak to that.

R. Dyer went over the criteria for the Special Exception.

The use is specifically authorized in the Commercial Zone with the granting of the special exception.

The requested use will not create undue traffic congestion or unduly impair pedestrian safety as the requested use will occur within the existing structure. There is no physical expansion. This has been used for a large number of years as such.

The requested use will not overload any public water, drainage, or sewer or other municipal system or increase stormwater runoff onto adjacent properties or streets. Again, the use is already in effect, this is a continuation of the current use. There are no anticipated changes and this use will not create any overload on public systems.

The requested use will not create excessive demand for police, fire, schools or solid waste. This is the same use. This is a continuation of residential occupancy that has existed here for decades. This will be upgraded for any life safety codes.



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There are no special provisions for the use set forth in the chapter.

The requested use will not create hazards to health, safety or general welfare of the public or be out of character with the neighborhood. There are multi use structures located in this area now. This is a high use, high density area and this is in keeping with the character of the neighborhood. There will be no hazards to health, safety or welfare of the public.

The proposed location is appropriate for the use. This is a mixed use, in keeping with the rest of the neighborhood.

The use is consistent with the spirit of the Master Plan as the ordinance speaks to these uses in the district. This use has occurred over a long period of time.

R. Dyer said at present, under the existing records, this was approved for a maximum of 9 rooms but there are 10, and they have been there for some time. The 10th room was being used before his client purchased the property. There was a letter from Code in 2003 which stated if they wanted to increase to 10 they needed to obtain approval from the appropriate board. They would like to ask for the increase to 10, instead of 9. They are suggesting that the approval be conditioned upon review by Code to determine that all life safety conditions are in place and that this is appropriate for the 10. They also want to suggest if the board grants approval for the 10 they would add hard wired CO2 detectors, which are not required by Code. There are some in the basement but they would voluntarily add these to the common areas.

Dave Greski said that the Certificate of Occupancy states this is for 9 and the tax records say 9. S. Perley asked how long there have been 10 and was told the 10th was in place when the owner acquired the building. B. Allen said there are 4 rooms on one floor, and 6 on the top floor.

S. Bogert said in 2003 they were told not to use the 10th room and D. Greski said that in 2009 the CO stated this was for a maximum of 9 as well. He said he would assume that the building inspector inspected this and approved it for 9. He said the approval for the 9 was specific, and he wonders why they didn't bless it for the 10th. He thinks the building inspector must have had a reason. R. Dyer said he agrees, and the ZBA can make it a condition of approval that Code and Fire check it first and make the determination. If they don't approve the 10th, it would revert to the 9.

D. Greski said our code requires a minimum of 1 parking space per unit and asked how many spaces are available now. B. Allen said there is only 1 space. R. Dyer said this is currently non-conforming. He said there is no possibility to add any parking, and they cannot add any land. D. Greski asked if this would require a variance for the parking after the inspector checks out the property.



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S. Saunders said she checked with legal and was told this is a quasi-grandfathered state. There are no records that go back far enough, but we know this rooming house has been there for a long time. If we feel the applicant can meet the SE criteria, then we can grant the SE and it will cover the parking criteria. If the board feels the applicant cannot meet the criteria, based on hardship, then we can have him get the variance for the parking.

S. Bogert asked where the tenants currently park and B. Allen said that only 1 person has a vehicle and he plans to sell it. He said the same clientele have been living here for some time.

M. Foote asked how many people currently live in the 9 units, and was told 11 adults, 1 teenage boy, and 1 pregnant woman. S. Bogert asked how much square footage there is for each unit and S. Saunders said there is no criteria for that. S. Bogert said 400 SF is required for an apartment and S. Saunders said that is the maximum requirement for an accessory apartment.

D. Greski asked if someone with a family of 6 wants to rent this, could they and S. Saunders said under zoning yes, but under health and property maintenance, maybe not. That would be another department.

S. Bogert said the property card says 9 person occupancy. S. Saunders asked where the 9 occupancy is stated on the card and S. Bogert showed her. He said the 2003 violation says 9 persons. S. Saunders said it is 9 bedrooms, but she is unclear on what that means.

S. Bogert said this states no more than 9 persons.

D. Greski said he wants to know why, when the CO was issued, if they approved this for 9 and the 10th existed, why they were so specific on granting just the 9.

S. Saunders said we don't have that answer as none of the people involved are still here. She said it could have been egress, windows, etc. she just doesn't know, but Code would check that out. M. Foote said someone could have put up an interior wall to make another bedroom. D. Greski said he wants clarification on what the 9 means.

S. Saunders said she recommends not limiting the persons. She will look at the building code but zoning wise this has been per unit criteria. Limiting the persons could cause problems across the board in the city.

M. Foote said if we can define the size of a parking space we should be able to define the space a human being can occupy.



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S. Bogert said he reads this as 9 person maximum boarding house and he is concerned with how many people can fit into one room. Adding people can cause issues. The garbage was an issue in the past. There is no cross walk close to this. Kids would cross the street in traffic. When going from 9 people – 9 adults - with no kids, there is a big difference.

S. Saunders said this talks per unit, not per person. D. Greski said it states 9 occupancy, 9 bedrooms, so he makes an assumption that means 9 people. He asked if there was an issue with the property that caused these 9 units to be built; was there a fire? S. Saunders said there was and interior renovations were done after the fire. The CO was done at that time and it said 9.

R. Dyer said client has had 11 years of experience in owning/running boarding houses.

Matt LoGuidice said he owns 100 units in Manchester, and an additional 200 in Concord and Laconia. He said he has been doing this for almost 12 years now. He has never had it happen that a family rents a unit. He said it is human nature to pair up so he does get 2 people in one unit. If we limited this to 9 persons, it would be violated within the first month. He said he only charges \$400 a month, with heat and utilities included. He said he is just trying to clean up the paperwork and make this legal unlike the past few owners. In the 100 rooms he has in Manchester, no one owns a cars. He feels this is an unrealistic fear on the parking spaces.

D. Greski said the reason for asking is to make this a legal boarding house. He said that nothing is mentioned until the write up which asks for the 10th unit. If this is a legal boarding house for 9, then this should have said 10.

S. Saunders said we could find no records indicating this ever received a Special Exception to make this a rooming house. He is here to look at the use of the property under the SE criteria. He is here to ask for the approval for the 9th. She said there is another step after this for the 10th bedroom. D. Greski said this is listed as 9 in Assessing, but we have nothing in our records. S. Saunders said the building permit begins in 2003, with the garbage complaint. There is nothing else in Planning or Zoning.

S. Perley said if we make a motion to approve this should we reference the 9 and S. Saunders said yes, but you can mention the 10. If the board feels the criteria could be met with 9 but not 10, they could limit that. The Planning Board would look at the other criteria.

D. Greski clarified again that it is missing why this was approved for 9 and not 10. He said he wants the building inspector to make the determination. S. Perley said we can make the motion that way.



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K. Geraci said that the building inspector could say only 8 rooms after his inspection and S. Saunders said she recommends Fire and Code both go out. R. Dyer said yes, he agrees. They fully understand that this needs to be reviewed through both Code and Fire life safety codes.

D. Greski asked if the parking criteria enters into that and was told no per S. Bogert.

Public: No one spoke for or against the application.

Applicant: Matt LoGuidice said that the property was sold as a 10 unit building. He found out about this issue immediately and is trying to clean this up. There are 10 units here; these are not “closets”, these are livable units. He said the 10th unit is there and if it isn’t approved he might have to close up one unit and just leave it vacant. It has been 10 units for several years, and is that way now. He is currently revamping the units, and trying to maintain the property nicely.

D. Greski said he commends him for trying to do the right thing. Somebody somewhere did something they should not have done.

S. Bogert closed the hearing to the public.

Board Discussion: S. Perley said she has no problem with granting the Special Exception as long as it is subject to life safety codes being met.

M. Foote said he has seen a number of these over a number of years. He worries that people do things, and then all of a sudden say this has been done for years – how long is that - 2 or 10? He said he would definitely want fire and building to verify the issues.

S. Bogert said he has parking concerns. He thought we were talking about 9 people, but now he learns this is 9 units, with any number of people. There is no square footage requirement, no occupancy number requirement. He said he cares about what is going to occur tomorrow. If there are 10 units with 2 adults in each, and each has a car, where would they park? They can’t be in the street, they can’t park in the Robbins parking lot and run across the street. He said he has concerns.

K. Geraci said this is a rooming house, and the residents are not the sort of population that has 2 cars per unit. D. Greski said as far back as 2003, per the tax records, people have been renting rooms there and parking has evidently never been an issue or it would have been brought up. He said he agrees with K. Geraci that the residents are not at that level of income but thinks it needs to be addressed somehow.



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S. Saunders said it can be placed in the rental agreement that there is no parking space associated with the rental of the room. S. Perley said she is sure they are told there is no parking. S. Bogert asked what if someone were building this type of structure now and S. Perley said that is a different situation; they would have to have the land. She said this code probably came into effect after this was done. D. Greski said he is surprised that parking was not brought up in 2003.

Motion: D. Greski motion to approve Application # 2014-0001 with the conditions based on the applicant's responses on the criteria A – H per the board discussion.

A. The use requested is specifically authorized in this chapter.

The use of the property is permitted by special exception. See 235-26. Table I describes "Boarding/rooming/lodging houses" as permitted by special exception in the Commercial District. See attached Table I.

B. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.

The requested use will not create undue traffic congestion or impair pedestrian safety. The requested use would occur within an existing structure which has long been on-site. Further, the property has been used as a boarding or rooming house for many years, with at least 9 occupants over the last decade. A review of historical Laconia municipal records indicates that the City of Laconia has been aware of this use for at least ten years.

The City Tax Assessor's property card reflects that the property is used as a "boarding house for 9", while Code Enforcement has corresponded with various unit owners as early as 2003 regarding the property's use as a boarding house, and further issued a permanent certificate of occupancy for 9 on March 4, 2009.

The property contains minimal amounts of off-street parking, and there is no on-street parking immediately adjacent to the property. While it is not anticipated that many of the occupants would have motor vehicles, those that do would need to locate an alternate location to park their vehicles. Further, as the contemplated use does not involve any changes to the site, it is not anticipated that there would be any visual distraction that would result in any adverse effects on pedestrian or motor vehicle safety or traffic congestion.



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- C. The requested use will not overload any public water, drainage, or sewer system or any municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets.**

As previously noted, the request for a special exception is not to seek an alternate use, but rather, full municipal recognition by the City of Laconia that the property is a boarding or rooming house. There are currently no contemplated plans to change the property configuration, increase parking, impervious surfaces, or otherwise alter the property.

The property currently has acknowledgment by two city departments that the property is used as at least a 9-room boarding house. The property actually has ten rooms that could be used as boarding rooms. The applicant requests approval for use as a 10-room boarding house.

- D. The requested use will not create excessive demand for municipal police, fire protection, schools or solid waste disposal services.**

The property will be used for continued residential occupancy as it has for at least the past decade. There are no anticipated increases in demands for municipal services based on granting the special exception.

- E. Any special provisions for the use as set forth in this chapter are fulfilled.** There are no known special provisions for use as a boarding house.

- F. The requested use will not create hazards to health, safety, or general welfare of the public, nor be detrimental to the use or out of character with the adjacent neighborhood.**

The contemplated (and historical) use as a boarding house will not create health or safety hazards, nor be detrimental to the character of the neighborhood. Union Avenue is a busy thoroughfare, with a variety of mixed-uses in the immediate vicinity, including multiple residential units and commercial activities.

- G. The proposed location is appropriate for the requested use.**

The location for the rooming house is entirely appropriate. The area is an active mixed use neighborhood, and a major thoroughfare through Laconia. The existing structure was recently approved and permitted in 2009 for occupancy as a 9 room boarding house.



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H. The requested use is consistent with the spirit and intent of this chapter and the Master Plan.

Use of this site as a rooming house is consistent with the intent and spirit of the zoning ordinance. The ordinance specifically contemplates that residential-type uses can occur within this zoning district.

The board also added further conditions of approval:

- 1) The proper inspections will be conducted to ensure that all Life Safety and Health Codes are observed. If, based upon those inspections, the departments determine that the property can handle the 10th unit, then that will be approved. If they find the 10th unit cannot be safely added, then the approval remains at the 9.
- 2) There will be no physical or material expansion, in any way, on the property.
- 3) The applicant has agreed to voluntarily add CO2 detectors to the property.
- 4) All of the rental agreements, except for one, shall state that there is no parking associated with the unit.

S. Perley seconded the motion. There were 4 votes for approval, with S. Bogert voting against. The motion passed, 4-1.

O. Gibbs was re-seated as a full board member, with K. Geraci returning to alternate status.

Application # 2014-0002
D. Gulezian

MSL 278-249-1
30 Weirs Blvd

CR Zone
Variance

The applicant is requesting a variance from 235-39 (D) in order to erect fencing along a portion of his property along the Weirs Boulevard frontage. Fencing in that area is not to exceed 4' and the applicant is proposing to erect a 6' fence.

Applicant: David Gulezian appeared for the application. He said that City ordinance says he can erect a 4 foot fence. He said he feels that many fences on Weirs Boulevard are over that now. His house has been broken into and they find people in their yard. They have pets and grand kids and want to provide for their safety, and they also want privacy. If they were placing a 6 foot fence at the streets edge, it would be dangerous but they are not proposing to place the fence right up to the drive so there is no issue with them getting safely out.

There was further discussion on the setback which is required for the fencing.



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Dave Greski said he wants clarification on the ordinance. 235-39 D says "residential" and this property is located in the Commercial Resort (CR) zone. He feels that is not residential so he feels this is not applicable.

S. Saunders said she disagrees with that interpretation. If a residence is in the CR zone, then it is treated as a residential use. D. Greski said he feels the Table of Permitted Uses is clear and that the board needs to agree as a board, because if this is not Residential but Commercial, it would not be applicable and the applicant would not have to ask for the variance for the use.

S. Perley said if you refer back to the definition of Commercial Resort, it provides for Residential. D. Greski asked then what about Commercial and S. Saunders said it is treated accordingly. D. Greski said the Table of Permitted Uses has 6 residential codes, and CR is listed on the other side. S. Perley said that the definition of Commercial Resort includes Residential.

S. Saunders said that the interpretation to impose this in the CR came from the Planning Board because the CR has residential neighborhoods so both standards need to come into play. We have been doing that. If the board wants to question that, she will take their input on the interpretation.

S. Perley said the applicant is here for the variance, and she thinks we should deal with this and address the language later. D. Greski said when he gets a packet he spends a lot of time reviewing the applications and visiting the properties. He said he thinks the ordinance disputes one another.

S. Saunders said they can go ahead with this tonight, or determine that this definitely says residential and dismiss it or send this to the ZTF for review. O. Gibbs said we can work to modify the wording later but hear this variance.

D. Greski said we can review the language to be clear but keep the ability to apply residential criteria to the residences in the CR. S. Bogert asked how we look at condos and S. Saunders said we feel those are residential, as does Fire. Code however feels they are Commercial. S. Perley said the CR is filled with residences.

D. Greski said when a third party looks at this, a judge for example, he looks at the words, so we need to make this clear.

S. Bogert said we have been having all residences follow this and asked about Commercial business. S. Saunders said that would be approved under site plan and reviewed there. There is nothing in Zoning about that.

S. Bogert said this is what we have been following in the past. We will address the verbiage but follow the same interpretation we have used in the past. The residences in the CR will follow residential guide lines as far as fencing goes.

S. Bogert said that the board has now agreed on the interpretation. He asked if this is white vinyl fencing and D. Gulezian said yes, it is by his house now. S. Bogert said he had seen it. D. Gulezian said he measured from



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the white line. He understands that you don't want a 6 foot fence right by the road, as it would be hard to pull out. D. Greski said he should have measured from the center of the road and S. Bogert said he is making this more generous than required. He said this would go behind the tree shown in the picture and S. Bogert showed the others on the picture that was submitted.

Dave Greski asked why shouldn't fencing exceed the 4 feet and S. Saunders said she had no idea. D. Greski mentioned a spite fence and S. Saunders said that is state law. One reason is probably the sight distance. Another is the sense of neighborhood. If everyone put up a 6 foot fence, it negates the neighborhood feel. 4 feet permits you to "visit" neighbors. R. Smith said he lived in California where all of the fences were 6 feet and you never saw the neighbors.

S. Perley asked what is across the street, and was told the condos which are on White Oaks Road. She said the fence would not be blocking views. D Gulezian said he doesn't want to block all of the property.

S. Bogert said the applicant has no back yard so this would be making this yard area. He asked if the drive would be defined as an arch or will the entire front be parking and was told there is pea stone for parking, grass and shrubs now. He does plan to plant more shrubs.

M. Foote asked D. Gulezian if he had considered using natural shrubbery instead of fencing and was told yes but he was advised against that by the nursery because of salt. M. Foote said there is a retention area right across the street, where they used natural plantings with no issues. D. Gulezian said he thinks that is to catch the water. S. Saunders said the plants are salt tolerant to remove solids primarily.

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

S. Bogert closed the hearing to the public.

Board discussion: M. Foote said he thinks as we drive down by the lake, which is so central to us, we like to see the lake views. He asked if there are there any rules if planting arborvitae that grow to 30 feet. S. Bogert said just past this property, to the left, nature has taken the view away already.

S. Saunders said that neither fence nor wall has a definition and she is unsure of what a fence of arborvitae would be. We would have to make a determination. Landscaping is not defined, nor is vegetation. S. Perley said she thinks that is addressed in the re-write. S. Bogert said he doesn't think you would even notice a 6 foot fence here with the curve. He said he doesn't feel that a 2 feet difference is that much, and you have the same viewpoint because of the setback. The line of sight will be above that but this would permit privacy to the applicant.

Motion: S. Perley moved to approve application # 2014-0002.

Granting of the variance would not be contrary to public interest. No one spoke for or against the application.



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The spirit of the ordinance is observed. Erecting the fence doesn't violate basic zoning objectives. The use is permitted – the height is in question here. This is a fairly small, oddly configured lot. Permitting the fence would allow the applicant privacy and safety for pets and children.

Substantial justice is done as this causes no harm to abutters or to the general public. This doesn't alter the character of the neighborhood.

Values of surrounding properties are not diminished. This has no effect on the other properties in the neighborhood.

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. This doesn't alter the character of the neighborhood or threaten public health, safety or welfare.

The proposed use is reasonable as fences are permitted here, just not 6 feet.

Dave Greski asked what happens if a neighbor has problem after the fence is installed; should he speak to them and was told no, the abutters were notified and are aware of what is going on.

O. Gibbs seconded the motion, and 4 members voted in favor, with M. Foote voting against. The vote was 4-1 in favor.

OTHER BUSINESS:

- a) **Zoning Task Force;** S. Perley let the ZBA members know that the signage draft went to the Planning Board for public hearing. The business people came out and said they want the electronic signs. The Planning Board decided to amend the chart to permit those in more districts than originally was proposed. That was a major consideration so they couldn't approve it that night.

This went back to ZTF for a re-write and now will require another public hearing. ZTF did a re-write on electronic changeable copy. They are all EMC, and can all do the same thing. They met with a sign manufacturer. The wording was again re-worked, and the ZTF will be meeting again on Monday, March 24 for final changes. The EMC's will be permitted only by Special Exception. They won't be flashing like Thurston's; that is still only in the CR. This way we will have the right to look at all of the applications.

S. Bogert asked if we can look at the sign functions and was told yes; static or movement, the change of 1 minute, and to ensure the EMC portion of the sign cannot exceed 50% of the sign area. D. Greski asked if



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there was discussion on renting out signs and was told those are considered off premise signs, and will require approvals. S. Saunders said they can do public service announcements.

S. Bogert asked if the digital part is included as the sign area or are we adding the embellishment included and S. Saunders said not the sign frame. They cannot just have electronic messaging; only 50% of that can be used. S. Bogert asked about nits and S. Perley said they are the same as candelas. She said they cannot exceed 500 at night, and must turn in paperwork stating that; it will be in the permit. They must certify that they can turn this down. S. Saunders said this is all controlled by computer, and we can request a printout if we feel they are not in compliance. Signs just continue to become more sophisticated.

S. Bogert asked about the downtown riverfront district and was told they don't want this type of signage. D. Greski asked about billboards and S. Perley said they won't be allowed. S. Bogert asked if all of the signs can do the same thing; it is just in the programming and was told yes.

S. Perley mentioned tracer lights like in the Weirs Beach sign. We are keeping the animated definition, and creating EMC static display and dynamic display categories. They are never permitted in a residential district, and will be reviewed via the Special Exception for placement, location, brightness, and nearness to other properties. S. Perley let the board members know the cost of one of these signs ranges from 25K to 100K.

M. Foote asked if there is a grandfathered billboard sign, can they convert to EMC or animated and was told they must come before the ZBA. He mentioned that Alpenrose is advertising the Crazy Gringo, and S. Perley said this would not be permitted.

S. Perley said the ZTF worked hard to address the issues. She let the ZBA members know they can attend the public hearings. S. Saunders said the ZTF has been meeting a lot on these changes.

S. Perley said they will meet one last time, on Monday morning, to go over the final draft.

b) Discussion of the revised ZBA Rules and Procedures: This will be handled at the April meeting.

Other Business: There was no other business.

Adjournment: M. Foote moved to adjourn the March 17 meeting of the Laconia Zoning Board of Adjustments. O. Gibbs seconded and all voted in favor. The meeting adjourned at 9 pm.



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Respectfully Submitted by:

Kristine Y. Snow