

**Town of Boscawen, NH
ZONING BOARD OF ADJUSTMENT
Boscawen Municipal Complex**

**MEETING MINUTES – Draft
Tuesday, August 23, 2016 at 7:00 PM**

Members Present: Edward J. Cherian Jr., Acting Chair, Douglas Supry, Ann Dominguez and Tracy Jo Bartlett.

Member Ex-Officio: Roger W. Sanborn.

Members Not Present: Dr. Gail Devoid, PhD, Chair.

Others present: Katie Phelps, Planning & Community Development Clerk and Alan Hardy, Planning & Community Development Director.

Meeting opened at 7:02 pm.

Minutes: A motion to approve the Minutes as amended was made by Roger Sanborn, seconded by Doug Supry and passed by a unanimous vote.

A motion to recommend that the Board of Selectmen reappoint Douglas Supry was made by Roger Sanborn, seconded by Tracy Jo Bartlett and passed by a unanimous vote.

Old Business:

Continuation:

Application for Variances for relief of the following: Article V, Lot Dimension & Area, 5.01 Table 2-Coverage Limits More Than Allowed; Article VII, Sign Regulations, 7.05-Sign Size In Excess Of Area Allowed & 7.08A-Second Sign In Excess Of Area Allowed; Article XXIV, Outdoor Lighting Ordinance, III, Outdoor Lighting Design B.-Sign Distance To Property Line & H.-No Internally Lit Signs, submitted by Lisciotti Development Corp of 83 Orchard Hill Park Drive, Leominster MA 01453, owned by Peach Pond Trust, Martha Crete Trustee, 100 River Road, Boscawen NH 03303 with the location of the property at Map 81A, Lot 42, Boscawen NH, in the COM zone.

Ed Cherian Jr. gave an overview of the appeal. Alan Hardy said they were taking Public Comment when the hearing closed last meeting. A number of folks had signed up last month to speak, we will take that testimony now. Any abutters to the project who would like to speak on the revised application were given the opportunity.

Elaine Clow, 357 Queen Street, was here to testify for Beverly Lacoy, 351 Queen Street, who was at the Old Home Day event. She abuts Crete's property on the South side. Elaine read her letter into the record. She agrees with the concerns of other abutters. She is concerned with quality of life. She is concerned with the encroachment and lighting and the noise from delivery trucks.

Rachel Thayer, 170 King Street. She is new to Boscawen. Her family is from Boscawen and she recently moved back from North Carolina. She purchased a historical home. It was once a boys town, a legal office, the home of a colonel. She has a son who has severe autism. He is very sensory, lights, smells, sounds greatly affect him. The Dollar General will be directly across the street from her home. She would have to move. The town of Boscawen prides itself for home based businesses. There is a Dollar General 2.8 miles away in Penacook. She has seen a town grow from nothing to a big business town. This will put the small businesses out of business.

Her home was built in 1790. There will be trash blown from their store. Concerned with the goings on that may take place there after hours.

Paul Matthews, 151 King Street. The applicant used the words Spirit of and Intent of the zoning requests. He disagrees with their opinions. Adjusting the lot size for parking that would meet the Spirit and Intent he doesn't agree with. He feels the Spirit and Intent is based on the size of the lot and size of building. The intent is not to put too big a building on too small a piece of property. He feels they do not meet the Spirit and Intent. He believes this will interfere with the look of the neighborhood as well. His wife just purchased a new sign for her business "Marshall's Florist" and she needed to meet the intent of the Ordinance and did. He has concerns with the lighting they are proposing. He request the Board not grant any of the variances.

Norma Reed, 42 High Street. Lived in Boscawen since 1955. She remembers Main Street being beautiful. She now sees a junk yard and unregistered vehicles. Let's not make it any worse.

Lorrie Carey, 151 King Street. In opposition. She owns a small business in Boscawen celebrating her 25th year. She owns a home built in 1785. It was a home slated for bulldozing due to its condition. She's put considerable money into the home to save it. Article 7 Section 7.05 Signs – Dollar General is requesting 2 signs. Their size is non-compliant. The Dollar General says that the variance is not contrary to public interest. Abutters have discussed the negative impact this would have on the town. They say the Spirit of the Ordinance is observed. The variance in this case is double the allowable square footage. This doesn't slightly exceed allowable signage, it enormously exceeds it. They say substantial justice is done. Is it fair that Dollar General be granted a sign double in size? Dollar General says the value of other properties are not diminished. When businesses come in it lowers property values. It will negatively impact other businesses on the street also. She is adamantly opposed.

Becky Coulter, 329 Queen Street. She is concerned with the fact that they want to make more of the land impervious surface and with the water issue.

Kathy Reed, Signed in, but decided not to speak.

Theodore Houston, 25 North Water Street. He is not an abutter. It is 5 or 6 miles from his house. His family has been in town since before 1900. Mention has been made of the beauty of Queen Street. He has a picture in his home of Main Street and the elm trees along the street touched from side to side. That will never happen again but he feels that they need to try to keep as much of what they have vs. losing it. The town's people have spoken and they have said to keep it the way it is. He would like to encourage the members of the Board to look back at the number of times changes have been made to the regulations.

Alan noted that two folks whom have already spoken, have asked to speak again. The Chair may allow someone to speak a second time and Vice-Chair Cherian, allowed them to speak.

Andy Newcomb, 171 King Street. Direct abutter. Reiterated his previous opposition to this project and to the application. He doesn't believe they have the abutter's best interest in mind.

Elaine Clow, an abutter at 357 Queen Street. At least 2 long term abutters did not receive notification from the town of this ZBA application. The ZBA has already voted down another proposal they brought forward. The lot size has not changed. They operate 362 days a year. They will have 5792 hours per year that the lighting will be on. Security lighting is on 24 hours a day. The store generates very few full time jobs with benefits. Their homes will never be dark if this proposal is approved. She is 25 yards away from this store. There will be no more privacy of her land. The abutters still haven't seen the plans for this project. This will affect their quality of life.

Bruce Crawford, 357 Queen Street. He has concerns with grade, etc. of property. Concerned with vegetation. Too much on too small of a lot.

Ed Cherian closed the public comment portion of the hearing.

Alan Hardy said that at 8 pm they will continue onto the next item so this case would need to be continued. The applicant provided 2 documents, (lighting plan and a fiscal impact on abutting properties report), that were requested at the prior meeting.

Ed Cherian said that the applicant has an opportunity for rebuttal.

Rebuttal: Austin Turner, Bohler Engineering, and Andrew Comollo. Austin Turner said he heard many comments about lighting, soil, drainage, etc. This property is commercially zoned. The building itself meets all the requisite screening, etc. They talked about storm water at length at prior appearances before the board. This project will meet all the town's and state's standards for storm water. The Board had asked them to provide additional information and calculations regarding lighting and they did provide that. They also provided a fiscal impact assessment by an independent consultant and they did that a week ago. The short version is that they did not find this project would be detrimental to property values. Customarily the relief that they are requesting relative to open space that is a product of the building program proposed here. This situation is unique in that the zoning ordinance requires a larger lot area than provided not only for this property but others in this corridor. Any development that would be commercially oriented will be seeking similar relief.

Ed Cherian noted that the Board received 2 new pieces of information. He asked the Board if those two pieces answered what the Board was questioning. Alan Hardy said that at this point in time, the Board may not be able to make that determination as they have not heard a presentation on it. Ed Cherian stated that the new information would need to be presented at the next meeting. Alan Hardy agreed.

Austin Turner said that at the next meeting they will discuss the additional information. Ed Cherian said that after that information is presented, the public comment time is closed and the Board will move into deliberations. That date for the next meeting of the ZBA is September 27, 2016 at 7 pm.

A motion to continue this hearing to September 27, 2016 at 7 pm, was made by Roger Sanborn, seconded by Doug Supry and passed by a unanimous vote.

Rachel Thayer asked if those documents will be placed on line so that the abutters may see them. Alan Hardy said that they are already updated on line.

Rachel again asked the Chair if they have completely closed off public comment. Ed Cherian stated that the public comment period has been closed. The next meeting the Board can consider if they will open it up again to public comment. Roger Sanborn said that he feels that any new material that hasn't been seen by the abutters, they should have an opportunity to comment on it. Alan Hardy said that they can't open the public hearing if it hasn't been noticed as a public hearing. The Board has closed the public hearing. If the Board chooses to go back and rescind the vote to close the public hearing and let the public hearing continue, they can do that now.

Austin Turner submitted the information a week ago and he wanted to know when it was available for public comment. Alan Hardy said that day but it hasn't been discussed here yet. The information has been available but the information hasn't been presented or discussed. Roger Sanborn said he didn't realize it was there and others may not have either. He would like to continue the hearing and have opportunity to take public input. Ed Cherian suggested because this application has gone on for 3 or 4 meetings, that further comments be restricted to the new information. Alan Hardy said that it made sense to do that given the testimony to date.

A **motion** to rescind the closing of the public hearing to continue to the next meeting for discussion of new material only which was the new lighting study and the new property value study was made by Sanborn, seconded by Supry and passed by a unanimous vote.

Old Business - Continued:

Application for a Variance from NH State Building Code Sections 903.2.1.2 and 903.2.8, to omit sprinkler protection in the existing building located at 215 King Street, submitted by Pastoral Properties of New England of 195 Knox Mountain Road, Sanbornton NH 03269 with the location of the property at Map 81D, Lot 87, 215 King Street, in the COM zone.

Pastoral Properties requested a variance. An email was submitted by them requesting the case be continued to it's next meeting, which is September.

A motion to continue this case to the September 27, 2016 meeting was made by Roger Sanborn, seconded by Doug Supry and passed by a unanimous vote.

New Business:

Application for a Variance for relief from the following: Article V, Setback Requirement of 50' to allow 25' setback, submitted by Avaloch Farm Music Institute, 16 Hardy Lane Boscawen, NH 03303 with a Map 47, Lot 56, Sub lot 2 in an AR zone.

Fred Tauber, Founder, Avaloch Farm Music Institute, David Seaton, Avaloch Farm Outreach Director and Kevin M. Leonard, PE, Principal Engineer Northpoint Engineering, LLC, for Avaloch Farms testified.

Fred Tauber testified first. Avaloch Farm opened in August 2013. It has 20 resident rooms and 2 staff apartments. Since that time they have had an increase in people applying to the program. They have been completely filled this year. This year they received twice as many applicants than they could accommodate. This is a place where musicians can develop their artistic skills. They expect 3 times as many applicants as they can accommodate. They would like to build a 12 bed/3 studio building like South Wing, only one-story. They would like to place the building between the flag pole and the woods to the North and West. He submitted conceptual drawings and a site plan. Center Wing has the operating infrastructure, dining room and the kitchen. The new building, we are calling West Wing, will be between North wing and the wetlands/woods. We want to design a one-story building. It will have no impact on the agricultural land which is currently in use. They would like to go from 50 feet to 25 foot setback in the protective setback to the North abutting the Hardy property. They believe this is a benefit to the town as well. This will increase the economic impact the institute has and it is an educational activity.

David Seaton oversees the Outreach Program and he addressed the Board next. The new musicians come to work, practice, study, and compose music. They go out into the community and share their music. The growth of the outreach program has increased from 8 outreach concerts to 40 concerts. They go to various places to hold concerts including nursing homes, schools, etc. The musicians go out to do this willingly.

Kevin Leonard, Avaloch's Civil Engineer went over the plans and the positioning of the buildings on the property. The property is bounded by a stone wall between the Hardy's and Avaloch Farm. They are trying to make it functional by using the existing infrastructure, but continue to work to blend the West Wing into the environment. They also put a covered walk way throughout the whole perimeter of the buildings. The facility is served by a large septic system and water system. He gave the locations of those two systems. They can accommodate the

expansion of the facility without expanding the system. It is not contrary to public interest: The facility is valuable to the community.

Kevin, then moved to go over the five points of the variance, reading from the application. The design team is making sure that they maintain an agricultural style of the building and preserving the agricultural fields.

- Spirit of Ordinance observed: They are trying to mirror the setbacks on the property that already about the Hardy's. They showed the aerial photo and showed the tree line, etc. They are trying to keep the wooded buffer as much as possible. Fred Tauber noted that there is over 1100 feet between this building and the Hardy's home.
- Substantial justice is done: This location works well to get between one wing and another. The proposed building will not have any negative impact on abutters. Great care has been taken to site the building properly. This allows privacy also.
- The values of surrounding property will not be diminished: It is agriculture in nature. It is the same use as is there today. It provides cultural diversity and gives back to the community.
- Literal enforcement will result in unnecessary hardship: The setbacks are unique to this lot arrangement. Fred Tauber said the hardship is that it is more expensive than it would be to put it anywhere else on the property. Kevin noted that it will not detract from existing agricultural uses.
- Reasonable use: they feel that the land is largely agricultural in all directions around the facility. By allowing Avaloch Farm to site it where they want to it will utilize same well, septic and heating system which is beneficial to project and neighborhood.

Ed Cherian asked Alan Hardy about rear setbacks vs. side. Alan Hardy explained that his property fronted on Water Street and Avaloch Farm fronts on Hardy Lane. Because there is a side setback abutting a rear setback, the setbacks facing each other will not be equal. The front setback is rarely an issue because most folks want to keep their house back as far as they can from the road. Ed Cherian said the rear setback is normally larger. He also asked if it was a dormitory. Fred Tauber said yes. The musicians come for 1-3 weeks. They provide meals, there is a laundry room and a fitness room. Ed Cherian asked Alan Hardy about parking requirements. Alan Hardy said that the parking ordinance does apply but it will be addressed at the next meeting on the site plan. It will then go to either Planning Board or the Technical Review Committee depending on the criteria. Ed Cherian asked if they would come back to the Board for a variance for parking. Alan noted that from what they had seen so far, Kevin Leonard will be able to meet the parking requirement with the existing remote parking lot. This application would be viewed as an expansion of what was already approved.

Vice Chair Cherian then opened the public hearing for comment. Abutters who would like to speak in favor/opposed.

Gary Roy, 216 Corn Hill Road. He is an abutter at 181 Water Street. They have been good neighbors to Avaloch Farm. He is not advocating for or against the request. He has questions and concerns. He wants to confirm that this building is an addition and connected to the existing building. He questioned the issuance of a Building Permit. If he pulls this for this project for 24 students, initially the Board took in the information both pros and cons. Are the Board's consulted with as far as the issuance of the Building Permit is concerned. He finds it funny that in a previous request Avaloch Farm spoke against one of the abutters seeking similar relief. He commended Alan Hardy for his hard work and dedication to the town. He feels parking is an issue and how can the Board make a decision without that request before them. Parking would impact him. Alan Hardy said that the variance before the Board is for the setback. The parking would be reviewed by the Technical Review Committee. This is for an additional 12 students. Does this mean it is now approved for 36 students? Alan Hardy said that the expansion of the site plan which is the additional building will be reviewed by Technical Review. Gary Roy has concerns, both monetary and quality of life concerns.

Non-Abutters wanting to speak: Rachel Thayer, 170 King Street – she is for music programs. A lot of schools are having their music/art programs taken away. She said she didn’t like their statement that they would ‘try’ to maintain the pine trees. Could they do less of a setback encroachment? She likes the stone walls and trees which add to the agricultural appearance and feel. The 25 feet would not maintain that agricultural appearance on any of the sides. She feels they should not be approved.

Lorrie Carey, 151 King Street questioned the hardship. Hardship relates to the use of the land, correct? Ed Cherian’s understanding that is on the applicant, but economic hardship is not a valid crutch to rely on as the only reason. Roger Sanborn agrees. Alan Hardy said that Supreme Court case laws states that economic hardship has become one of the factors; not a sole factor. It can be one but not the only ones. He feels that this is a cultural asset to the families of our community.

Bruce Crawford, 357 Queen Street. He lives 5 miles away. This has been one of the greatest things to happen to Boscawen. He thinks the town’s planning board needs to look at the setback requirements. The placement of the building actually makes the property look better. The placement makes sense.

Gary Roy, 216 Corn Hill Road – the statement that the music hall was open May to November. Technically it is open year around. The intent of him increasing to yearly was so that he didn’t need to go for a second building.

Rachel Thayer, 170 King Street. Does the State of NH decide whether the building can be done at all? Ed Cherian said that the town issues Building Permits. Ms. Thayer asked what the public opinion was worth. Ed Cherian explained. Ed Cherian stated that he cannot bring his personal opinions for applications with him to the meeting. He has to go by the rules and regulations and laws in order to make opinions.

Kathy Reed, 1 High Street. If the Board gives this variance is it setting a precedent for future variances for other properties? Alan Hardy stated that the Supreme Court continues to hold the opinion that each variance is unique; each is decided on its own merits. As a consequence, the Court never allows a variance to be cited. When the variance is granted it stands alone. The Board goes through a lot of training to be aware of Supreme Court decisions. ZBA’s have to follow State Law and Case Law.

Rebuttal. Fred Tauber spoke in terms of the hardship. It will detract from the current land use if they have to move it to another site, i.e. where they do the haying. Kevin Leonard regrets his choice of words on trees, he should have said more. The trees are dangerous if they fall on buildings. Fred Tauber stated that whether the variance is granted or not the two trees need to come down – they are old and frail. Ed Cherian asked if they were a year-round operation. Fred Tauber stated that they operate June 1st to November 1st. They have the ability to be year round but they do not. They have a year around approval.

A motion to close the public hearing was made by Roger Sanborn, seconded by Tracy Jo Bartlett and passed by a unanimous vote.

DECISIONS: A motion to grant the variance as presented was made by Roger Sanborn, seconded by Doug Supry and passed by a unanimous vote.

A motion to adjourn the meeting was made by Doug Supry, seconded by Tracy Jo Bartlett and passed by a unanimous vote.

Next Meeting: September 27, 2016 at 7pm.

Respectfully submitted,
Rose Fife