

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

**MEETING MINUTES – Draft  
Tuesday, November 28, 2017 at 7:00 PM**

Members Present: Gail Devoid, participated via telephone, Acting Chair Edward J. Cherian Jr., Ann Dominguez, Tracy Jo Bartlett and Mark E. Varney.

Others present: Kellee Jo Easler, Planning & Development Community Assistant, Alan Hardy Planning & Community Development Director and Rose Fife, Recording Secretary.

Not present: Doug Supry, Roger Sanborn.

Meeting opened at 7:04 pm.

Roll Call by Secretary

Members voting this evening include Dr. Gail Devoid via telephone, Acting Chair Edward Cherian Jr., Ann Dominguez and Tracy Jo Bartlett. Mark Varney, Alternate Ex-Officio will be a voting member.

Minutes from 10.24.17: A **motion** to approve the Minutes with amendments as noted was made by Devoid, seconded by Varney and passed by a unanimous vote.

Ex-parte communications were read into the record by Rose Fife, Recording Secretary as well as the decision letter from the 10.24.17 meeting and the agenda item for this evening's meeting.

**New Business:**

**Motion for a Rehearing, pursuant to RSA 677:2 submitted by Elaine A. Clow, 357 Queen Street Boscawen & Andrew Newcomb, 171 King Street, Boscawen concerning the Application for Appeal from an Administrative Decision regarding the Planning Board decision of 08.29.17 voting to accept application for Site Plan Review (Dollar General), concerning Zoning Ordinance Article V, Minimum Dimensional Requirements, Article VIII, Off-Street Parking Requirements, Parking Calculation & Use of Parking Areas for Maneuvering Areas, on property owned by The Peach Pond Trust, 100 River Road, Boscawen, NH, with a location of 169 King Street, Boscawen NH, Tax Map 81A, Lot 42, in a COM zone. Please be advised that the Board will not take input from the public while deliberating on this matter. Information on the motion for rehearing is on file with the Planning & Community Development Office. In the event that the Board grants the motion for rehearing, a public hearing on the matter will be scheduled for a separate date.**

Acting Chair Cherian asked the Board if they found either new evidence or procedural error. Those are the two standards that if met would allow for a rehearing to go forth.

Hardy asked the Board to introduce Mark Varney who is an ex-officio of the Board and a Selectmen. Doug Supry is in Arizona for the winter and will not participate. He is still on the Board, but not participating during the winter.

Hardy noted that Mark Varney was brought up to date on the case as well as the past history of the case.

51 Varney stated that he reviewed everything and sees no new evidence in the motion. Everything listed in the motion  
52 for rehearing has already been discussed. He feels that there is no new factual information.  
53

54 Devoid asked if Attorney LeFevre was present. Cherian stated that he was not.  
55

56 Cherian agreed with Varney. There have been 8 or 9 Zoning Board of Adjustment meetings and all matters were  
57 discussed. He sees nothing new that has not been considered. The decision regarding the non-conforming lot was  
58 made October 16 by the Zoning Board. Hardy determined that it was a pre-existing nonconforming lot. That  
59 determination was voted on and accepted. Hardy and Easler can make determinations and the Board can accept them  
60 or not accept them. The Board, at that time, made a decision to accept Hardy's determination. Dominguez concurs.  
61 The Board was thorough at entertaining all requests. She feels there is no new information. Bartlett also agrees.  
62 Devoid has not heard any new evidence nor has she heard any procedural error.  
63

64 Cherian discussed procedure. Some issues raised by the applicant speak to the number of members at the 10.17.17  
65 meeting. In his view the procedures clearly state that a quorum shall be 3 members. They had 4 members. Procedures  
66 also state that the Board shall make all efforts to have a 5 member Board. The Chair made all efforts to have a 5  
67 member Board. He sees no procedural error. Varney agrees based on the rules and procedures. Dominguez agrees.  
68 Devoid stated that they did have a quorum. They did all they could to get a fifth member. She sees no error in what  
69 they did.  
70

71 Cherian noted that when there are lawyers involved coming before them, the Board generally wants to talk to Town  
72 Counsel. Their Attorney does not have to be present for the Board to have a nonpublic session with Town Counsel.  
73 Article 91-A:3 of the NH Planning and Land Use Regulation book allows this. The Board had questions regarding if  
74 the notification dates were correct and if it affected the schedule of meetings. Devoid stated again that she sees no  
75 procedural errors and the Board was behind closed doors so they could figure out what the best action was and  
76 considering all stake holders. Varney agrees. It's in everyone's best interest that the Board recesses and speaks with  
77 Counsel if they have a question instead of going forward blindly. Devoid believes they covered both conditions with  
78 which a rehearing could be granted. Bartlett feels the Board did their duty in determining each request.  
79

80 A **motion** to deny the request for a rehearing was made by Devoid. Her reasons are as follows: the Board discussed  
81 what they did and they see no procedural errors, as they stated previously, and there is no new evidence in the request.  
82 This motion was seconded by Varney and passed by a unanimous vote.  
83

#### 84 **OTHER ITEMS:**

85

86 Easler discussed the non-public minutes which are in draft form. They will become public minutes. 10.10.17 non-  
87 public minutes were reviewed by the Board. Those Minutes discussed scheduling. Easler noted that at that meeting  
88 they discussed speaking with Town Council by telephone, but instead they just discussed it amongst themselves.  
89

90 A **motion** to approve the draft Minutes and make them a public permanent record was made by Bartlett, seconded by  
91 Dominguez and passed by a unanimous vote.  
92

93 Election of Officers: it was decided by suggestion from Cherian to defer this action until Devoid was in attendance.  
94

95 Discussion regarding the December meeting schedule. Easler noted that December's meeting is scheduled for  
96 12/27/17 which is on a Wednesday. They scheduled Wednesday instead of Tuesday as the office is closed Christmas  
97 and the day after. That is also a vacation week. Does the Board still want to hold a meeting? Devoid will be traveling  
98 and unavailable. Cherian will also not be available. Easler stated that they have a possible applicant for December.  
99 Cherian asked Easler to follow up by email to see if the Board will have a quorum. Varney noted that if Sanborn is  
100 available, he will not be in attendance.  
101

A **motion** to adjourn the meeting at 7:34 pm was made by Devoid, seconded by Varney and passed by a unanimous vote.

*Respectfully submitted,*  
*Rose Fife*

**From:** Dr. Gail H. Devold, Ph.D. [mailto:gdevold@tds.net]  
**Sent:** Thursday, October 26, 2017 10:44 AM  
**To:** Alan Hardy <ahardy@townofboscawen.org>  
**Subject:** RE: Ex-Parte communication with ZBA Board Members

Elaine Clow approached me at the Salisbury Farmers' Market and tried to discuss the matter with me. I did not respond to anything she said. Mostly, her conversation was that she was going to do something to block the application, to which I had no reply.

Atty. Lefevre called my residence and left a message with Ricky that he wanted to discuss the minutes from the matter. I did not call him back.

I also had a call from the Concord Monitor; I informed them that the matter was ongoing and that I had no comment. That was quite a while ago, maybe a year.

So, basically, I have been approached several times and did not discuss anything with anybody. Nor do I intend to do so.

I am a little upset that they approached these two members when they should not be doing that.

Dr. Gail H. Devold, Ph.D.  
Boscawen Zoning Board of Adjustment  
Chair  
Office: 603-796-2551  
Cell: 603-738-1509

**From:** Dr. Gail H. Devold, Ph.D. [mailto:gdevold@tds.net]  
**Sent:** Thursday, October 26, 2017 11:32 AM  
**To:** Alan Hardy <ahardy@townofboscawen.org>  
**Subject:** RE: Ex-Parte communication with ZBA Board Members

The Concord Monitor approached me after the first ZBA meeting on the matter in 2016. That is the closest I can come to a date.

Atty. Lefebvre called while I was teaching at Cape Cod, Hyannis, MA, and I received word of it the day he called, which was September 15, 2017.

Elaine Clow approached me September 11<sup>th</sup> or 18<sup>th</sup>, but I am remembering September 11<sup>th</sup>.

Dr. Gail H. Devold, Ph.D.  
Boscawen Zoning Board of Adjustment  
Chair  
Office: 603-796-2551  
Cell: 603-738-1509

RECEIVED

NOV 6 2017

Please respond to the Concord office

TOWN OF BOSCAWEN

November 2, 2017

Upton  
& Hatfield<sup>LLP</sup>  
ATTORNEYS AT LAW



**Attorneys at Law**

David M. Hillard  
David A. Raymond  
Robert L. Mayes  
William W. Shaw  
Thomas M. Smith  
Christopher J. Smith  
John A. C. MacDonald  
John S. MacDonald  
Peter W. Liberman  
Andrew S. Baffin  
Sandra C. Stevens  
Susan A. Brown  
Michael J. Brown  
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**Concord Office**

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**Hillsborough Office**

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**Portsmouth Office**

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**Of Counsel Firms**

Town, Clark & Smith, PA  
Portsmouth, NH  
Landrum, MacArthur &  
Portsmouth, NH  
Portsmouth, NH  
Portsmouth, NH  
Portsmouth, NH

David LeFevre, Esquire  
Tarbell & Brodich, PA  
14 Centre Street  
Concord, NH 03301

Re: Communications to Zoning Board of Adjustment Members

Dear David:

My understanding is that you left a voicemail message at the home of Zoning Board of Adjustment ("ZBA") Chair Gail Devoid on or about September 15, 2017, concerning a question regarding ZBA meeting minutes. Because you are currently representing Elaine Clow and Andrew Newcomb in an administrative appeal before the ZBA, please direct all communications to Planning and Community Development Assistant Kellee Easler. We ask that communications to any ZBA member be limited in order to avoid any *ex parte* communications regarding the application. Thank you in advance for your cooperation.

Sincerely,

Michael P. Courtney  
mcourtney@uptonhatfield.com

MPC/cmd

cc: Kellee Easler, Planning and Community Development Assistant  
Town of Boscawen Zoning Board of Adjustment

## Kellee Easler

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**From:** leda supry <dougnleda@gmail.com>  
**Sent:** Tuesday, November 07, 2017 3:28 PM  
**To:** Kellee Easler  
**Subject:** Re: Communication to ZBA members

Kellee, this note is to inform you that on Oct. 25/17 at 1:53 I received a call from Bruce Crawford, during the conversation there was reference that I had recused myself from the appeal, which was incorrect. I do not recall when I called you to let you know that I would be out of State for several month's, I told Bruce that was not correct, although during the call he made several more statements to the same. also he made reference to parking and square feet, delivery interfering parking. This all took app. 10 minute's. On Oct. 26/17 I received a call at 1:52 PM this time the caller was Ms Clow, I her that I could not discuss the appeal since I was not part of the Hearing, I also told her I had not spoken to anyone before or after hearing, that call was 2 minute's 28 sec,. At this time I can think of nothing else I can add. [ This the best I can recall ] Douglas Supry

On Tue, Nov 7, 2017 at 8:15 AM, Kellee Easler <[keasler@townofboscawen.org](mailto:keasler@townofboscawen.org)> wrote:

We will also be receiving letters from Doug Supry and Roger Sanborn, which I will send to the Board once received.

Kellee Jo Easler

Planning & Community

Development, Assessing,

Health Officer &

Deputy Treasurer

116 North Main Street

Boscawen NH 03303

[keasler@townofboscawen.org](mailto:keasler@townofboscawen.org)

603.753.9188 x309



# Town of Boscawen

116 North Main Street, Boscawen, NH 03303 | Telephone: 603.753.9188 | Fax: 603.753.9183

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## Board of Selectmen

### Members

Mark E. Varney  
Chair

Roger W. Sanborn  
Member

Bernard O. Davis, Jr.  
Member

Alan H. Hardy  
Co-Administrator

Nicole Hoyt  
Co-Administrator

To: Public & Zoning Board of Adjustment

From: Roger W. Sanborn

Date: November 27, 2017

Subject: Appeal of an Administrative Decision  
Clow/Newcomb 81A 42 Boscawen DC, LLC

I am letting the public and the Zoning Board of Adjustment know that after the October 10<sup>th</sup> meeting of the ZBA, there was an attempt of *ex parte* communication between myself and abutter/applicant Elaine Clow, while I was at the transfer station. Elaine approached me and began to discuss Dollar General. I said, although I sympathized with her concerns, I did not feel it was appropriate to discuss anything further.

I did not participate in any of the meetings for the Appeal of an Administrative Decision by Clow/Newcomb 81A 42 Boscawen DC LLC and after the first meeting on 10.10.17, I spoke with Kellee Jo Easler, by phone and recused myself for any meetings or hearings in regards to Boscawen DC, LLC.

*R. W. Sanborn*



# Town of Boscawen

116 North Main Street, Boscawen, NH 03303 | Telephone: 603.753.9188 | Fax: 603.753.9183

## Zoning Board of Adjustment Members

Dr. Gail Devoid, PhD  
*Chair*

Edward J. Cherian, Jr  
*Vice-Chair*

Tracy Jo Bartlett  
*Member*

Roger W. Sanborn  
*Member Ex-Officio*

Doug Supry  
*Member*

Ann Dominguez  
*Alternate Member*

Rose Fife  
*Recording Secretary*

## Planning & Community Development Staff

Alan H. Hardy  
*Planning & Community  
Development Director*

Kellee Jo Easler  
*Planning & Community  
Development Assistant*

Linda Chandonnet  
*Planning & Community  
Development Clerk*

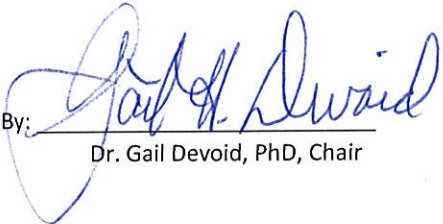
## PB 10.10.17 Appeal from Administrative Decision by Clow/Newcomb re Map 81A, Lot 42

You are hereby notified that by a majority vote of the **Boscawen Zoning Board of Adjustment** at the **October 24, 2017** meeting, the appeal of the Planning Board's August 29, 2017, decision to accept the Site Plan Application of Boscawen DG, LLC ("Dollar General") as complete has been **DENIED** for the following reasons:

1. The appeal raises several issues that were discussed and resolved at several Zoning Board meetings in 2016. The Board affirmed its past decisions that variances were not required for the following issues: minimum lot dimensional and area requirements, as defined in the Town of Boscawen Zoning Ordinance at Article V, Section 5.01; nonconforming status of the subject property, as defined by Article IX and calculation of parking spaces as defined by Article VII, 8.01. Please see the ZBA meeting minutes of October 24, 2017; June 28, 2016, July 19, 2016 and October 25, 2016 for further detail.
2. Furthermore, because an appeal of these zoning issues was not made in 2016, they cannot be raised through challenging the Planning Board's August 29, 2017, decision to accept the Site Plan application as complete. See RSA 677:2 and RSA 677:4
3. Lastly, as represented to the Board, the proposed site plan does not violate the requirements of Parking Areas for Maneuvering in accordance with Article VIII, Section 8.01. Please see October 24, 2017 meeting minutes for further detail..

**Date of Decision: 10.24.17**

Boscawen Zoning Board of Adjustment

By:   
Dr. Gail Devoid, PhD, Chair

NOTE: Any person affected has a right to appeal this decision within a thirty (30) day time period counted in calendar days beginning with the date upon which the board voted the decision. (RSA 677:2 and RSA 677:4).

Before any appeal may be taken to the courts, affected persons must apply to the Board of Adjustment for a rehearing. The request for a rehearing must be made within a 30 day time period counted in calendar days beginning with the date upon which the board voted the decision. Such motion shall set forth all the grounds on which the appeal is based

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