

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

**MEETING MINUTES – Final
Tuesday, September 27, 2016 at 7:00 PM**

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

Member Ex-Officio: Roger W. Sanborn.

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

Meeting opened at 7:03 pm.

Roll call by Secretary

Review & Acceptance of Draft Minutes: Austin Turner of Bohler Engineering requesting edits to the Minutes of the 8/23/16 meeting. Point of clarification from last month's meeting. The changes that he would like to see made are on Line 112. The Minutes read "The short version is that they did not find this project would not 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 request a larger lot area than provided not only for this property but others in this corridor." Mr. Turner would like them to read "Mr. Turner summarized the fiscal Impact Assessment, which found that the project is not anticipated to have a negative impact on surrounding property values. The relief that is being sought for this project is not a product of the building program, but rather the evolution of the Zoning Ordinance. The existing lot configuration of the subject property and those proximate to same would require similar relief, as the Ordinance has changed while the existing geometry of the parcels has not. This situation is unique and a hardship exists for that reason." Recording secretary Rose Fife explained to Mr. Turner that what he has submitted for a change is not what was said at the meeting. As a recording secretary her job is not to interpret what was said, but to record what was said as if this case were to go to court and a transcript was done of the Minutes what he has submitted would not be in the record; what was said would be in the record. She agreed to change the double negative in the Minutes to make it read smoother and to note his request in the Minutes for September. A **motion** to accept the Minutes as amended was made by Supry, seconded by Bartlett and passed by a unanimous vote.

ZBA Draft Minutes Procedures and Review: Recording secretary Fife asked the Board if it would be alright for her to use just their last names when doing the Minutes instead of their full names. The Board agreed that would be alright. Fife also asked who the Minutes should be sent to first for review. Sanborn stated that he would like to have the Minutes sent to Hardy first. Cherian agreed. Supry agreed. Hardy stated that the State Statute says that Minutes need to be available for inspection within 5 days. Cherian asked if draft minutes had legal status. Hardy stated that some towns destroy them, but that's not the guidance from the attorney general's office. The final minutes approved are the official record.

- Application for **Variances** for relief of the following: **Article V, Lot Dimensions & Area, 5.01 Table 2-Lot Area Less Than Required; Article V, Lot Dimension & Area, 5.01 Table 2-Coverage Limits More Than Allowed; Article VIII, Off-Street Parking Requirements, 8.01 Table 3-Less Spaces than Required; 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 A.-Lumen Output & 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.**

Austin Turner, Bohler Engineering wants to continue his application. He has filed a new application with a revised plan.

Hardy suggested that they start with new information. Austin Turner, Bohler Engineering and Andrew Comollo testified.

Prior to the last meeting an independent consultant was acquired and a document was submitted to the Board from them. It shows similar properties which helps them determine that the development of this property before the Board would not be detrimental to property values immediately abutting the site or near it as well. RKG Associates was the company that did the assessment. He asked the Board if they had an opportunity to review the letter they submitted with that information. The Board took a few minutes to review the documents.

Cherian asked the Board if they had any questions regarding the impact assessment. Cherian noted that the study mentioned other towns. What were the size of the towns mentioned? Were they similar to Boscawen? Mr. Turner stated that they mentioned Concord as it was in a neighboring community and it was in a commercially zoned corridor. It was the most direct comparison. Merrimack would be the outlet center on exit 10 in Merrimack NH and it was selected for comparison as it was of similar composition; a commercially zoned property abutting residential property. Greece NY he was not familiar with but it was similar to Merrimack in that it was a mix of uses. The most direct comparison would be Concord; it was of similar size, a commercially zoned corridor with similar uses in that corridor. Cherian asked who had the biggest impact on the changes of property uses. What are the primary factors that affect property values? Mr. Turner said the market. And if they were pursuing a use variance it would be different, but they are not pursuing a use variance as it is a commercial zoned parcel and the use is allowed. It would have a negative effect on property values if it weren't commercially zoned. Supry said that the store in Concord was a good reflection to this proposed use. Mr. Turner said the Concord site was not the same configuration and how it looked would not be the same but the composition was similar; it is a commercial use with similar uses in the area. Supry noted that the store referenced in Concord has now been encroached upon by O'Reilly's Auto Parts, which makes it different. Mr. Comollo addressed how they determined the property value; they go for the highest and best use. It may be a residential home in a commercial corridor but a higher use. An auto part store encroaching is retail following retail. There may be further demand for property in that area for that type of use. Cherian said that it was a commercial area and that was the use allowed. He also noted from a commercial value it would increase in value. Sanborn said that the residential area is composed of people's homes. Commercial use can go in there but is it the best commercial use of that land. Sanborn was surprised to hear them say that the best use would be wholesale. Mr. Comollo clarified his statement. He's not discounting neighbors. But for that lot a commercial program is on the higher end of what you could build for that value. Sanborn said that families have lived there for generations. A commercial use could be located there, but that is a large size building. Mr. Turner said what drives value is desirability. They were tasked with looking at the economic value which is bigger than the personal value. Developing a commercial use in a commercial zone is a better use. Supry said that it is a small parcel of land in a residential community. It is hard for him to envision another home owner selling out to allow another commercial use. Fisherville Road, Concord had a lot of land that was vacant in a commercial zone which is different than this situation. Mr. Turner noted that the zoning has evolved. Hardy noted that in 1976 this property was zoned commercial. Mr. Turner noted that there would still be residential uses around this property. Hardy stated that when you target for the future you see the change in zoning. Cherian said that the challenge is industrial areas allow residential uses and

commercial allows residential uses. The town is working on a mixed use regulation. Hardy said the Planning Board will continue to work on mixed uses. Commercial use has always been there along the King Street corridor.

Hardy asked Cherian if Dominguez would be voting tonight. Cherian said yes and with Dr. Devoid's absence Dominguez will be a voting member this evening.

Lighting Plan: Mr. Turner submitted lighting plans. He was trying to get a more graphical representation of a lighting plan. They worked with a lighting model and a lighting bender. The town standard plan is arranged by the definition of the lighting distances and pole heights required when spaced as required by the town. One plan submitted identifies how the lighting would look by town standards. The access drive needs to be appropriately lit. There are a lot of dark spots. The light poles become low. That creates warm spots right under the light. There isn't a lot of 'forward throw' to the interior of the site. This creates the middle of the driveway to become dark. This would also create areas where lighting levels would be low. There isn't anything they can do to make the area brighter. The proposed plan shows the light pole heights higher. They are not using 20 foot height except for 2 locations. They are designed to be minimal which is the industries standards; bare minimal. The driveway needs to be appropriately lit. The lighting levels are far more evenly distributed into the site. There aren't as many dense hot spots. They need to increase the pole heights in order to light the driveway appropriately. It meets the spirit of the ordinance. The lights are designed with the shields and cut off but they need to increase heights. They are asking for higher light poles closer to the property boundaries. They are using fixtures that do not exceed 1800 lumens. Hardy said the cut off is 1900 lumens. Mr. Turner said the lighting would be equivalent to the light bulbs in this meeting room. For the parking lot access drive that wouldn't work. When both plans are put side by side you see the difference. The light poles are 4 feet tall. What they are proposing, as an alternative, is to use 20 foot poles in the middle of the site. This would be efficient use and will not create multiple points of light. Hardy clarified that 1800 lumens was a correct number. That reference in the ordinance is to provide a threshold for the Board's use. Mr. Turner said that the lights including in this site will be shielded. Supry asked if it would impact the neighbors. Mr. Turner said it would not. They need to light the driveway so lighting at the drive will extend into the road which is a responsible action. Sanborn asked if there were other stores that had that type of lighting. Mr. Turner said most facilities are similar in context. Mr. Comollo said that the store in Raymond NH would probably be the best reference. Mr. Turner said at the Raymond location the light poles are 28 feet tall in certain locations. There are mixed uses in that area also. Mr. Comollo said that it abuts a residential home, a storage facility and a baseball facility. Supry asked about standard height. Cherian said that in the July Minutes they requested a list of height and setback for each pole. He doesn't see that on the lighting plans submitted. Mr. Turner had that information. He explained. By town standard, going counter clock wise, the corner pole is 4.5 feet tall, next is 6.5 feet tall and then 9.5 feet tall, the next 3 are 6.5 feet tall along the right side property line. From finished grade. The rear right corner is 10 feet tall, 15 feet tall then 20 foot in rear left of property. Front left of driveway is 7 feet, the next two would be 11 feet. The proposed plan, counter clockwise would have a 15 feet pole in front, left of the drive would be 20 feet, right of drive is 15 feet; the next two would be 12 feet tall, then 15 feet and 20 feet around back. Twelve feet is the lowest he would go. Cherian asked about finished grade. Mr. Turner said they would need to lower site by 10 feet approximately. Dominguez asked how that would affect neighbors. Mr. Turner noted the neighbors would be looking down on it. The light poles are 12 feet higher than the road surface. Hardy asked how high the lights will be on side of the building. Mr. Turner said 12 feet high. The ones on the front of the building will be 12-16 feet high. They will be mounted on the building. The wall packs are only intended to serve as pedestrian lighting into the building. Supry asked about the distance from the property lines to the poles. How far in are they? Mr. Turner noted that they were calculated using the town standard's formula. They are about 10 feet lower in grade than that; similar in elevation as King Street. The neighboring properties to the south are higher than this property and the one to the north is similar to them. Supry asked if it would be correct to say that the most impact is to the north not to the south. Mr. Turner said that was correct. They are trying to do the minimum there. Supry asked if there was anything on the southern side of the building. Mr. Turner said it was building lighting mounted as required by code. On the northern boundary they are proposing 4 pole mounted fixtures. Cherian asked what hours the lights would be

on. Mr. Turner said that they will come on around a half hour before the store opened and shut off about half hour after the last employee leaves the facility. Then they go to security lighting level. The building signs will be off and pole lights go off and only one wall mounted light stays on. There will be a total of 4; one on each side of building.

Direct abutters testimony: Bruce Crawford, 357 Queen Street – he submitted his testimony in writing along with photographs. He made comparison of the Dollar General Store in Concord on Fisherville Road. The King Street store will be 60 feet from Newcomb and Clow’s homes vs. a quarter of a mile as is Concord’s case. The Board has not seen any kind of a finished plan showing finished grade. Will they put up a 10 foot fence so that they do not have to see those lights? This building doesn’t fit the neighborhood or the property. It is a detriment to homes in the historic district.

Rachel Thayer, 170 King Street – 2013-2015 is when they gave their assessments. She showed her home vs. the lot where the store would be. There are historical land marks in front of her home less than 60 feet away. The lights, wherever they are projected, will be in the windows of the bedroom of her autistic child. She looked up the hours and they are open until 10 pm at night. That doesn’t include the after hour closing. It will be lit up approximately 20 to 21 hours per day. The 20 foot pole will be right near Andy Newcomb’s property. It will directly impact his home. They need security lights because the crime rate will go up. There is another Dollar General 2.8 miles away.

Richard Thayer, 170 King Street. He is retiring from the Marine Corp after 20 years. He is shocked that a Dollar General is coming to town. That use doesn’t bring in the best of crowds. The lighting plan will be bright and impact all residence in the area. There has always been small businesses there. Dollar General’s not the answer. The lights do concern him as his son is high functioning autistic and it affects him. King Street is busy.

Andy Newcomb, 171 King Street. Abutter to the north of the property. It is not the best use of the property as retail attracts retail. If this comes in there will be more retail/commercial coming. Retail attracts retail. This will set precedence. They are a tight neighborhood. It’ll be an airport next to him with all the lighting. They haven’t heard a firm plan as to what their elevation plan would be. Where will the finished grade be? He will be flooded with those 20 foot lights in the back. There is an 8 foot high screen fence being proposed. He doesn’t know if a fence will go down his property line. He would like to see a fence on his side. Merrimack NH is much different than Boscawen. That was noted in their property valuation. This will be an obvious retail store.

Elaine Clow, 357 Queen Street. She abuts directly to the south. The lighting plan submitted is not a design document as noted on their plan. She stated that they still know nothing about run off, etc. She lived away from town for over 40 years. She’s happy to be back to town and is active in town. She has chickens and gardens. It is a loss of the character of the town that she fears. The town was established in 1733. She is worried that this will set precedence.

Dominguez wanted clarification of the size of the trucks coming in because their corridor is smaller than the Fisherville Road area. What size are the tractor trailers coming in? She’d like to have it clearer in her mind as to how it will enter the property. She thinks the store will be very busy and will attract a lot of people. Mr. Turner said that the standard Dollar General truck is a WB67; a conventional trailer mounted 18 wheeler. It is a standard tractor trailer. What they need to do when they design the site is assess the turning movements and they have done that. It will be done as to not require use of anything outside the property. King Street is a DOT controlled roadway so they will apply for the driveway permit from DOT. This requires them to show on site turning movements. They will show that to the Planning Board too. Mr. Turner said that they have assessed that. It is approximately 73 feet from cab to end of trailer. Sanborn asked what the width of the lot was. Mr. Turner said it varies. The front boundary on King Street it is approximately 174.8’. The rear boundary is 174.02 feet. Bartlett

asked how deep the property is. Mr. Turner said that on the southern boundary it is 417.20 feet and northern boundary 362.92 feet. Bartlett asked the size of the building. Mr. Turner said the building is 70' x 130'.

Ron Reed who is not an abutter but lives in the vicinity. The size of lot vs. size of development when looking at lighting and placement looks like the entire lot is lit up. The lighting will bleed to the neighbors. The size of the lot, the amount of development, and the amount of lighting too much for the size of lot. The height of the lighting poles seem inappropriate for residential property surrounding this property. The traffic flow and the distraction of the lights down by the end of the driveway are a concern. That would be hazardous to people driving. It is a congested area and the lighting will be more of a distraction. He is curious where the loading dock is and how do you get a truck in there during store hours with people there?

Cherian suggested that he look at previous minutes for some answers to his questions.

Sanborn asked about fencing; barrier fencing dealing with the lighting situation. He heard a remark made about fencing on the southwestern side. Bartlett wasn't sure if that was where the fencing was going on the dumpsters. Mr. Turner said it was fencing going along the southerly property line and they would be willing to do fencing on the northerly boundaries. Cherian stated that it would be 8 feet high fencing on the north and south side of the property. Mr. Turner agreed. Cherian said that this would go before the Planning Board for site plan review. It is okay to clarify it though. Hardy said that anything the applicant commits to will move forward. Their commitment to fencing will carry through. Cherian stated that the actions of the board may determine details that will go forward to the Planning Board. Hardy agreed.

Cherian asked for a motion to close public comment on all points. A **motion** to close the public testimony portion of the meeting was made by Sanborn, seconded by Supry and passed by a unanimous vote.

DECISION:

Coverage limits V Lot Dimension and Area, 5.01 Table 2 – Coverage Limits more than allowed. This is a 58,919 s.f. area lot. They are allowed a 40% maximum lot coverage and are requesting 58% coverage. The maximum lot coverage is increased due to the number of parking spaces requested. The request was dated 7/11/16. An earlier version of this request was denied by the Board. The applicant came back with the required number of parking spaces which necessitates a larger coverage area. Sanborn has a problem with the area of the lot vs. size of the business. Safety factor concern. He feels there is not enough room to turn a tractor trailer around on that property. He feels a small entity would be more appropriate. He is in favor of businesses. It's a hard thing to accept a business of this nature on a small lot such as this. He cannot support it. He looked at other Dollar General stores north of here to check out their sites. Cherian stated that the challenge he has is that it is zoned commercial and as a town it is okay for it to be a commercial use in a commercial area. Sanborn said something of a smaller nature would be better; something that would only have approximately 50 cars per day maximum. Cherian asked Hardy about maximum lot coverage and where those numbers came from. Are they designed for drainage concerns? Hardy said that was the relationship. Cherian noted that it is a non-conforming lot so some type of variance would be requested. Hardy stated that the recharge calculations will have to be met. They can't design a structure and put it on the property and not meet that goal. The engineering has to work out. Cherian asked how the figure of 40% was arrived at. Hardy stated that it was a table built into the ordinance quite a while ago. It has not seen modification as long as he's been working with the town; 2006. It is designed to keep from having a situation where there is a lot of nothing but pavement and building. Cherian would be in favor of granting a variance like this as it is non-conforming otherwise you are telling the owner of a commercial lot that they can't build commercially on it. Hardy asked about the proposed building and lot area of this application vs. the one at Cumberland farms lot. Cherian stated that Cumberland farms would probably be a higher percentage there. Sanborn noted that the Cumberland farms lot has been there 60 years plus. Hardy noted that the Cumberland farms lot is .5 acres, and their building footprint is 11,500 s.f. Sanborn felt it was totally a different topography. Hardy noted Cumberland Farm's lot is 1/3 of the size of this lot being requested. Dominguez noted that

Cumberland Farms have a pull through drive. Hardy said the Cumberland Farms building is larger by 2500 s.f. Sanborn had concerns with access. Cherian asked if a DOT driveway permit was required. Hardy said yes. Supry stated that if they continue to grant variances for businesses along this corridor they will exacerbate this situation. Hardy said it was incumbent upon the applicant to show how they would address these issues. Supry noted that previous testimony from the applicant addressed how they would pull in and back around the building. Barlett stated that the hours are 8 am to 10 pm and delivery was to be before business hours. Mr. Turner said about ½ hour before opening. Cherian asked Hardy if the Planning Board regulated the hours of operation. Hardy said yes. Supry was concerned that they couldn't give them a definitive elevation other than 'like the main street'. Hardy said that the change of elevation can't affect properties on either side. Sanborn asked if they could stipulate for example 3:1 slope. Hardy said no. In order to maximize the use of a space it needs to be a retaining wall. Hardy asked how important backing the trailer in is to making their decision. Hardy asked Mr. Turner if they could show the Board a turning radius. Mr. Turner said yes, but asked how it is relevant to lot coverage. Supry asked about the 9,100 sf building; is that size definite. Mr. Turner said it was, that this was their building footprint. Cherian asked Sanborn if he was concerned that the lot coverage was too small to turn a truck around. Supry asked if when they designed the store on this lot size how they determined what size store would be placed on the lot. Mr. Turner said the dimensions are their customary size of the Dollar General building no matter where it is. This size building meets their operational needs. Mr. Turner stated that the Dollar General is a general store and he doesn't believe they can get 2 access points. The DOT looks at their access points all the way to the 1971 deeds. It is decided for one access to King Street.

The applicant has committed to an 8 foot solid fence on both the north and south sides of the property.

A **motion** to continue this case to the next meeting on October 25, 2016 at 7pm was made by Sanborn, seconded by Supry and passed by a unanimous vote.

Winthrop Carter case has been withdrawn as the application before the State Fire Marshall's office has been denied.

A motion to adjourn the meeting at 9:13 pm was made by Sanborn, seconded by Supry and passed by a unanimous vote.

- 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.**

This case was continued.

Next meeting: October 25, 2016 at 7pm.

Respectfully submitted,
Rose Fife