

Official

HOOKSETT ZONING BOARD OF ADJUSTMENT

Tuesday, May 13, 2014

HOOKSETT MUNICIPAL BUILDING

CALL TO ORDER

Chair Chris Pearson called the meeting to order at 6:32 pm.

PLEDGE OF ALLEGIANCE

ATTENDANCE: Michael Simoneau, Don Pare, Gerald Hyde, Richard Bairam, Roger Duhaime, Chris Pearson, and James Levesque, Council Rep.

EXCUSED: Phil Denbow and Jackie Roy

STAFF:

APPROVAL OF MINUTES

April 8, 2014 – R. Bairam moved to approve the April 8, 2014 regular meeting minutes. Seconded by M. Simoneau. Don Pare abstained as he was not present at the April 8, 2014 meeting. Motion carried unanimously.

CONTINUED PUBLIC HEARINGS

**JEFFREY LARRABEE Case #14-01
Hackett Hill Road Map 17, Lot 7
COM**

A Variance is requested from Article 20, Section E, 3 & 4 of the Zoning Ordinance to permit (1) 750 SF sign approximately 40 feet high as shown on submitted plan for various commercial uses including conference center, festival grounds and botanical park.

Nick Golon (TF Moran): With me is Jeff Larrabee, Morgan Hollis from Gottesman & Hollis of Nashua, and Cathy Champagne from Jutris Signs. We have had the opportunity to be before this Board before and we are back to provide additional information with regard to the site development and the application that is before you. That application is for a 750 sq. ft. digital message board that consists of three components. A top section that reads "The Lilac Center" at approximately 175 sq. ft., a bottom section that reads "The Botanical Park" at 117 sq. ft., and the message board portion which is approximately 456 sq. ft. I would like to give Jeff the

opportunity, as the owner, to say a few words.

Jeffrey Larrabee: We have been working on this project for a while. A lot of people do not realize that this is complimentary and in tandem with what Alex Ray was doing down the highway. We had two meetings, well over three years ago. He took off on the convenience development and I am working on the destination element. These are two similar type of products, but one is geared toward the traveler that has a few minutes of time. I am working on the traveler that has a few hours to spend. The reason why this sign approval is so important is because, being a destination, we are creating our own trademark; our own brand. It is all about branding and getting people off the highway. A lot of the other businesses in town cater to people that are in the area. Our development is geared towards the traveler. We have to catch their attention and advertise our festivals well in advance as well as the things we have on site that are an attraction. One of the attractions is the lilac collection that John Bentley is putting in with the John Bentley Lilac Project which is a 501(c) charitable group, with a design of being able to help children. This lilac collection has the ability to be the nicest one in New England and potentially the first or second best lilac collection in the United States. It would be a feather in the cap of Hooksett and our development, being our state flower and a real attraction. We have the lady who is the foremost propagator for lilacs in the United States on site. She develops the lilac cultivars for the Arnold Arboretum in Boston and The National Arboretum in Washington DC. This is taking shape into something that is not just a vision anymore, but a reality. This sign is a tool that is not wanted, but needed in order to create a festival park of this caliber. It is one thing to plant the botanicals, lilacs and gardens, but another to maintain them. We want to have certain events such as a lilac festival in the late spring, a wine festival in the fall, and a couple in between, as well as have some specialty retail, and a boutique hotel. We told this to the Planning Board and we got unanimous recommendation from them. I think they genuinely loved the project. It is something that is unique, but something that has also been done before across the country in places like Peddler's Village in Pennsylvania and the North Carolina Farmers Markets. We are hoping this Board will give this development the crucial equipment it needs to go forward and be something this community is proud of, that I am proud of, and everybody that is connected is proud of, and have a place that people want to come and enjoy and not just be a passer by, but spend some time in Hooksett, in this development, and enjoy the attraction and what we have to offer.

N. Golon: At our meeting in February we had some excellent conversations in areas where information was lacking, and what we needed to provide to this Board to allow you to make a full decision. I would like to read one of the things briefly that was by you, Mr. Chairman, when we were closing our remarks at the last meeting. "I would like to get some feedback from Planning to get some clarification as to what we are looking at. Even the variance as it stands, makes it hard because the sign and the tenants are not defined. I think Planning could help or at

least give us another set of eyes.” We had the opportunity to sit before the Planning Board and we presented them the site plan project as a whole. When we were before you in February, we looked at a bubble plan and gave some generics. We have progressed our site plan design since then. At that meeting with the Planning Board, we walked through the plan you have before you stating the uses and giving a better feel for where the components of this project would reside including this landmark sign. They did vote unanimously to support the application and looked forward to working with the project team to see this project progress. We took that as a good sign coming back to you. One of the other components we did not fully discuss was the characteristics of the sign itself. We have the ability to walk you through the plan as a whole as well as the ability to talk through the components of the sign as to site distance, height of lettering, and those type of order of magnitude questions. I am not sure if you have what you need relative to the Planning Board giving you some affirmation they are supporting the idea of this project. They did note a condition within their support. I would like to know from the Board what you would like from us. How much information would you like us to reiterate this evening?

C. Pearson: I will open it up to the Board members and ask how they would like to proceed.

R. Duhaime: For clarification, the Planning Board is supporting it upon an approved site plan?

N. Golon: I received a copy of their memorandum that Carolyn forwarded to you. I don't know if you have it or not.

C. Pearson: Yes we have it. Why don't you read it into record.

N. Golon read into record the email from Carolyn Cronin, Assistant Planner, with regard to the Planning Board's motion to support the ZBA application stating that any variance granted for signage should include a condition that it apply only to the proposed Lilac Center site plan, and the variance be conditional upon receiving an approved site plan from the Planning Board.

N. Golon: Their response essentially dove-tailed a lot of the conversation we had at the conclusion of our last meeting saying that if this is something that moves forward, how do we protect ourselves to make sure we are not setting the Planning Board up for a situation where they are going to be uncomfortable that something has been granted.

R. Duhaime: I am looking at this plan and I see G and F. Is that part of this whole site plan? What are the signs that we are going to be looking at later?

N. Golon: This is the master plan. It shows our uses, what they are, and the synergy within the site, because it does contain more than one lot. Relative to this application, which is Lot 17-7, we are proposing this one 750 sq. ft. sign. Relative to the other parcels, as site plan applications

move forward, those would include directional signage or otherwise for those lots.

M. Simoneau: You are referencing signs on Hackett Hill Rd.?

R. Duhaime: No. I am referencing whatever they decide to develop. Basically we are looking at Lot G and F?

N. Golon: Would it be of help to go through the site plan?

C. Pearson: Sure.

N. Golon: We have items A – H listed. Relative to conceptional master plan, I am going to start with Item G which is one of our headliner items. This is the boutique hotel and conference center. What is presently being proposed is a 90 room boutique hotel and an 800 seat conference center. That is the oblong object in the middle right hand corner of the plan right off of Hackett Hill Rd. In front of that, we have an appropriate amount of parking. That is defined by the site plan regulations and ordinances that would be available for that use. Item B is the winery and historic barn restoration. That is an area of about 7,000 sq. ft. One of the most important features of the site is the opportunity to showcase the historical content of this property. Item C takes up a majority of the plan and is located on the bottom half bisected by Item A. This is our festival grounds for stand alone events or for events that may be done in coordination with the hotel and conference center. This is an area of approximately 16 acres. Item F is the retail. It is a conceptual master plan and will be done in phases. The idea is that there will be about 50,000 sq. ft. of retail in this area. This a New Hampshire Project with a New Hampshire feel so the uses associated with that retail will compliment the wine and festival grounds. Item A is the lilac collection and botanical park. Jeff mentioned John Bentley's involvement with this. This is an area of approximately seven acres. One of things we have tried to provide is an interconnection to connect each space within the site with that use. That is why The Lilac Center and Botanical Park resides on the sign. It is one of the key components to this project and helps tie everything together. Item H, in the lower left hand corner, is the programmable digital message board. It has three sections, the top at 175 sq. ft., the bottom where it reads Botanical Park at 117 sq. ft., and the critical component which is the message board itself which is 456 sq. ft. At the last meeting there were a lot of questions as to why the sign is so big and what the area is we are trying to capture. The document we used which was also used, in part, by your sign committee, was the United States Sign Council document. What that takes into account, when designing size and letter height, is four key components. Speed at which you are traveling, viewer reaction time, a legibility index, which is a universal code that takes signs, depending on the background, color, or otherwise, to tell you how visible that lettering would be to someone at a distance, and road complexity. When we take all those components and plug them into the equation, we get a size of 760 sq. ft., with a letter height no

less than 30". What you have before you is an overall sign of 756 sq. ft. which is in keeping with that requirement. The letter height, as displayed on the handout in front of you, and a plan of record, shows those letters at essentially 30" in height. The programming of the sign will be done in accordance with the guidance document with the overriding factor being the town ordinance. At the last meeting, I believe I said the message would change every eight seconds. It is every fifteen seconds. When we talked about viewer reaction distance, we talked about where the signs were located, view distances, and how soon you can see it relative to the exit. Based off of the map, it is 1,144 linear ft. based off of travel speeds. What that accounts for is an appropriate reaction time, those four criteria I listed previously, as well as complexity of the roadway. We have a fairly complex road with open road tolling and barriers for Exit 11. Those have all been taken into account as part of those calculations. Relative to the site plan itself, there is the potential there may be tweaks along the way, but these are our primary uses. The message we want to send it this is supposed to be a New Hampshire project and is supposed to have a consistent feel to it. It is the Lilac Center and Botanical Park. I know there were concerns last time about what these true end uses would be, but we are hoping this plan and narrative offers light as to what Jeff is proposing for this project as a whole. At the last meeting we had a fair amount of folks from the audience that spoke in support of the project, some of them are here again to voice that support and we would like to know if there is additional information you need from us.

M. Simoneau: I see two entrances and exits off of Hackett Hill Rd. Is the intent to have two?

N. Golon: Correct. There is the main entrance. which is a dual drive, that provides your viewer experience as you are driving in to the main development. The second is a means of secondary access, and will provide a point of entrance for someone just going to look at the historic barn or winery. We are imagining that, from a site plan perspective, the fire department will want two points of access for the site. We are trying to think ahead to make sure we accommodated that in our master plan.

M. Simoneau: There are no other entrances or exits further up Hackett Hill Rd.?

N. Golon: They do have a road on Hackett Hill Rd. on the far side, right under where Item B is. We are not proposing anything now that would provide access from that point. We are looking at what would be the north side of Hackett Hill Rd. for the access for this site.

R. Duhaime: This helps me a lot and it is what I was talking about previously as far as getting a feel for what this property is going to look like. I have been talking about the Common Man and what is over the rest areas and liquor stores, and the barns they are putting up are signs in themselves. It goes with the rural character of Hooksett and that is what I am looking for. This project is what I am looking for, except for the sign. That is my only issue and that is why I

thought maybe the sign could be incorporated with the other buildings on the property. I don't necessarily have a problem with the sign, it is the size of the sign. Rural character wise, I am trying to figure out how a big sign fits into Hooksett.

N. Golon: It is an equal point and I think part of the rationale you see with our application has to do with it's location and who is viewing it. These are the people that are on Interstate 93, not the people driving by Robies, or anywhere else. If you were on I-93 you will see the sign. You are not seeing it from anywhere else. One of the things we thought was a benefit in this location is it protects the rural characteristics of Hooksett because it is a highway sign and is not located on a byway or access road where it would be viewed more readily by people who are not traveling on the interstate. We think it is appropriate when we look at it relative to that character that it is on the highway. If this was not located on the highway, we would not be able to make that argument, but when you look at the special characteristics of this site, the topography, and it's location, that is why this variance was applied for.

R. Duhaime: There is no other sign like this in Hooksett or on I-93.

N. Golon: You have very few sites in Hooksett like this one.

R. Duhaime: You can see Home Depot from the bridge and with this you will have some visibility with these other buildings. That is why I would like it if the sign was somehow incorporated with those other buildings. The Merrimack Outlet Mall has a very low key sign. Nothing scrolling. It fits in with the rural character or what I was looking for. I would like to see what these buildings are going to look like and if that sign could be worked into that.

N. Golon: We are looking for the opportunity to do so. To be able to go to the Planning Board with the opportunity to have a sign. The variance we have requested is for the size and height of the sign.

J. Larrabee: It is impossible to put the sign on any of the buildings and have is viewable by the highway.

Morgan Hollis (Gottesman & Hollis of Nashua): When Jeff first came to me, when I was working up the application, we were trying to identify where the sign could go, what the problems were, and why you would need a sign. I like to get to the bottom of the issue of why we are asking for a variance because they are hard to obtain and very difficult to obtain for signs. For this one it was clear, once I came to the site and looked, what the problems of the site are. You can drive though there and, unless you are on top of a tractor trailer, you are not going to be able to look down and see. The buildings are located close to that ramp and there is a berm as it goes down the side. Mr. Duhaime, I agree with you, when you drive through that hospitality center, those buildings are right there and you don't need to put a sign because

everybody knows what it is. That is not going to be the case here unless we put a building out where that sign is. We tried to figure out where we could put a sign on the property and that is the spot. When you look at where you can put a sign, you then have to determine what kind of sign you can put and that is where Cathy came into it. Her company designed what kind of sign. It is not just a plain square sign that has no detail around it. This is a three-part sign and we have tried to incorporate, without a building, building a frame around it. That is one of the reasons it is so large. We tried to frame it and still use identification features. In the evening, if there is nothing going on and the message is dimmed and subliminal, you have identification that this sign relates to The Lilac Center and Botanical Park. We are okay with that condition being on there, otherwise we go back to the Planning Board.

R. Duhaime: I understand you want to tell people what is going on, but I look at it from Home Depot or someone else's point of view of why they cannot get a scrolling sign because they have something going on. Other businesses are not seen from the highway but everyone finds them. I am afraid this is going to set a precedent. This is not what our zoning laws are looking for, at least from my perspective.

M. Hollis: You only grant variances if the property is unique and special and it meets all of the requirements. Each case needs to be taken on it's own. I know every Zoning Board feels like if they grant something are setting a precedent. I think we have set out enough ammunition for this Zoning Board to say this is unique. That does not mean someone will not come in and make a case for it, but everybody comes in to try to get something. You have to view each case separately. That is your duty. We think we have made a case that this is not like other properties.

R. Duhaime: I agree.

M. Hollis: It's a very big piece.

R. Duhaime: It is a very big sign. It is not low key. It is much higher key than what I think should be in a rural character setting.

C. Pearson: How close is this sign to reaching the maximum allowable size for a highway sign?

N. Golon: Relative to DOT's requirements?

C. Pearson: The state.

N. Golon: It is in keeping.

C. Pearson: How close is it to what the maximum would be?

M. Hollis: The sign that the DOT put in that would be right next to this that is above the highway is 779 sq. ft. They build their signs along the highway in keeping with research. According to their code, they needed a 779 sq. foot sign in order to have it safe for the traveling public. Ours is going to be smaller than that and it is not going to be overhead, but to the side. I think it is in keeping with the research of the people who design these signs and what they feel is in the best health and safety interests of the public.

C. Pearson: Cathy, would you know the answer to that question?

N. Golon: I think I can help too, because it is in the Manual On Uniform Traffic Control Device Design, the MUTCD, relative to the state highway. Their signage, is that where we were going with that?

C. Pearson: I know the state is not going to allow you to put anything on the side of a highway. It has to be a maximum allotable size per sign.

N. Golon: Relative to where the sign is located, we have reviewed with DOT the location of the sign and whether or not they had any jurisdiction requirements. It was confirmed they don't have an issue with what is being proposed.

C. Pearson: They have no issue or no jurisdiction?

N. Golon: Both. It was clarified they have no issue with it and no jurisdiction, the key point being they no jurisdiction on it's location. The same was similar with PSNH. They have an easement that runs though that area. They confirmed for us in a meeting that as long as our sign was not located within the easement, they didn't take issue with it because it was outside of their jurisdiction.

M. Hollis: 750.

C. Pearson: 750? And that is what you are proposing?

M. Hollis: Yes.

C. Pearson: Okay.

R. Duhaime: As far as lighting, you can flash as much light as you want from this sign on the highway? In that way there is no jurisdiction?

N. Golon: All I can repeat is the conversation and the email dialogue that we had with DOT. They said relative to what we were proposing, it was outside of their jurisdiction.

C. Pearson: Jeff, is your land for sale or lease? What is the status of the land right now?

J. Larrabee: I own it, I plan on developing this, and I have been adding to it. I just purchased a house across the street so the person who is developing this lilac collection can do that. I have a lease purchase agreement with the piece across the street. I get frustrated because this is a special project. I could put in a Carmax or a warehouse distribution, but I am trying to do something nice. If you think the project at the liquor store is nice, this is going to be in keeping. I had two meetings with Alex Ray long before the thing along the highway was born. There are so many things we want to do with this project and we are excited about it. I think the neighbors are excited about it.

C. Pearson: That is why I asked the question if it is for sale or lease. That is one of my concerns.

J. Larrabee: It is not for sale or lease. I am spending all of this money to develop this and I get frustrated that there is not more support from the town level, even though I have support from the neighborhood. I have spent ten years of my life with this exit and am going to see this trough unless it gets to the point where I don't have town support, then I will sell it. There are a lot of companies that would want to be across the street from Ritchie Brothers, that are in line with what Ritchie Brothers does. I want to bring something special to Hooksett. The first job I had was in this town and I haven't spent this long on this project to sell it to Carmax. It eventually does come down to dollars and cents. I am here before this Board, spending this money and increasing the size of this property, so I can do this development that Hooksett is proud of, that I am proud of, and drive by ten years from now saying I was a part of this and was glad I stuck it out because the town and traveling public love it. That is why I am here. As I told the Planning Board, I am happy to make this sign variance contingent upon my doing this development. I am not looking to get something that someone else is going to benefit from and for the town to be uncomfortable with. I need this sign for an event destination. There is no other event destination along the highway. If I was putting in retail and I had a trademark, I could live with a 550 sq. ft. sign. People don't know what I am selling or offering here. The traveling public needs to know and be reminded of what we are selling and offering as they are going up and down the highway. I am not asking for something that is a wish. It is a necessity. I have had consultants from Disney and from the people who did the marketing for the Patriots. That is why I came to this Board first, as opposed to going to the Planning Board, and spending over \$200,000 to get something approved and then come back to this Board and have you say you are only going to give me 550 sq. ft. There is no sense in spending that type of money if you are not going to get the equipment that you need to make it successful. I am not doing this to be a failure and Hooksett shouldn't either. If you want this, this is what I need. If Hooksett would rather have something else, I will sell it and put something else here. This is something I think the neighborhood wants and to put Hooksett on the map. I am hoping you will see our reasoning behind this size sign is because we are building a brand. We don't have a trademark where people can say we know what that is and we know what you are selling. We are going to

having different events and I hope you see the reasoning behind this. This is something that this type of project needs to make it successful.

C. Pearson: That was why I asked the question, and I am glad you made the statement regarding this being contingent with the lilac site. That makes a difference in my eyes.

Open to abutters.

Roger Letendre (97 Hackett Hill Rd.): I would like to voice my support. I understand what he is trying to do and I understand the importance of having the sign and the reader portion of it if you have an event coming up. You want people to know something is coming up well in advance. How do people do that? Places like the Verizon Center or the Casino at the beach, you go by and they have the venue and it gives you some advertising of what is coming up. Home Depot and Target are just that. You don't know what band is playing or what event is coming without some type of notification for it. It would be on the highway, not in site from anybody's house, and I don't see any issues with it being an eyesore or a problem for the residents of Hooksett. Foxwoods has it. For most festival events, most all of them have signage like that where they can advertise their upcoming events. As a local resident and abutter, I have no problem with Mr. Larrabee's request. That is what a variance is for, to make exceptions, and this seems to fit into the realm of where an exception would be. It is a big sign, but it is an 80 acre piece of land. It is a lot of land and the sign is small when you think of it that way.

Closed to abutters.

Open public hearing.

Scott Hilliard (served as the Merrimack County Sherriff): I am here in a dual capacity. I serve on the Katie Bentley Lilac Committee which John Bentley, who is also here, runs. I am aware of the concerns and the local regulations, but I had discussed with Jeff an idea that I, and other law enforcement people have proposed. As you are aware in many of the western states, the amber alert system is used regularly. I think this is an ideal location. I have a verbal agreement with Jeff. In the event of an amber alert, we are designing some message boards in New Hampshire. I think the closed one to this location is in the Bow area, this side, just south of the 89 interchange. There is also a roadside message board north on 93 in the Canterbury area. The amber alert system is very important to people and public safety. I think this would be an ideal asset for those of us statewide. I believe the state and local police have a similar agreement with the AutoServ family that has a very large messaging sign in the Tilton area that you can see very clearly from Rt. 93. I understand your concerns, but that would be an asset, not only for Hooksett residents, but any resident that is using the highways.

C. Pearson: We have approved variances for signs before and amber alert has been brought up

a lot. Do you keep a catalog of those companies in Hooksett that have agreed to amber alerts and do you keep that on file for subsequent administrations?

S. Hilliard: I do not, but the Department of Transportation would keep any messaging and they do have a log system of what message is displayed. For instance, law enforcement communities in Hooksett is part of our regional DUI task force. We have to display, for the court and in the newspaper, a messaging system of checkpoints. The written information has to be maintained by the law enforcement entity responsible and the messaging system is maintained by the Department of Transportation.

Close public hearing.

R. Bairam: How soon do you want to put the sign up?

N. Golon: It is going to be contingent on our ability to go through the site plan approval process.

J. Larrabee: It won't be until next spring at the earliest.

R. Bairam: You are going to put this sign up before you start on any of the rest of this?

N. Golon: No they are a tied use. The site plan has to be approved based off of the condition the Planning Board has put forward.

J. Larrabee: This is a long term commitment. The botanical garden will take 3-5 years to build out and I don't need the sign until I am ready for people to come off the highway and come to a festival. As soon as I'm ready for a festival, which would require Planning Board approval of everything that I am doing, then by all means. The purpose of this is to get the traveling public to come off of the highway and visit this site and spend money.

D. Pare: Is Exit 11, at the bottom, incorporated in the square footage?

Cathy Champagne (Jutris Signs): No, it is not.

D. Pare: That is part of the sign.

C. Champagne: It is part of the sign.

D. Pare: How many square feet would that add to the sign?

C. Champagne: It is about 75 sq. ft. Traditionally, whenever there is either an address or directional on the signs, I have never submitted an application that was required to include that in the square footage.

R. Bairam: So we are talking about an 825 sq. ft. sign which includes the exit?

C. Champagne: Including the address with the directional.

N. Golon: If that is something the town would consider as part of the calculation, then yes.

C. Champagne: In the past, I have done other projects in Hooksett and it has not been included. That is true of almost every city and town.

C. Pearson: That is something that you would have to work with the Planning Board on because if we approve 750 sq. ft. it is 750 sq. ft. Your application is for 750 sq. ft.

D. Pare: I didn't see anything point to that part of the sign.

C. Pearson: We are going to move to discussion.

G. Hyde: Roger, you mentioned us giving this would set a precedent. I understand what you are saying, but I don't think we are getting involved in the slippery slope because we have the protection of our ordinances. We have to look at each one individually and we have to look at it as is this unique enough for us to grant this sign. I don't think we have to worry about that, however, I see this is a difficult position that we have been put in, because we have to go on the fact that this is what this site is going to be. We have to grant 750 sq. ft. or 800 sq. ft., or whatever it is, based on the fact we have eight things that are proposed. The problem is they are proposed. As long as we can tie it to saying, given that there is a bit of flexibility, this is what we want to see. You probably won't be able to see if from anyone's house. As long as we can tie it to this plan as best we can.

C. Pearson: When the applicant first came, that is what I struggled with. I like what the Planning Board did and they gave us a simple sentence that helps us if we add the contingency that the variance granted for the proposed signage includes a condition that it apply only to the proposed Lilac Center site plan and it be conditional upon receiving an approved site plan from the Planning Board. If you add that contingency to this then your concerns, and that is why my concerns went away. That is why I asked Mr. Larrabee about the land being for sale or lease and he said he had agreed with the Planning Board. That gives me a sense of relief that if we tie that it will be specific to a site plan that our Planning Board approves. We trust our Planning Board will do the right thing and this will stick with the Lilac Center. I am glad they wrote it out that way.

G. Hyde: The only other thing in response to not having support from the town, it is not a matter of not having support from anyone that works for the town or on this Board, or the Planning Board. It is the fact that we have a job to do. Roger is saying he has concerns because

he is doing his job. All of us may not be professionals at this, which you may be, and the people you hire may be. I just want to make sure everyone knows we are doing the best we can under the circumstances we have. We want to support every project we can. It isn't that we are going to shoot you down because you are asking for a variance. We just want to like it to.

R. Duhaime: My issue is the size of the sign. I have no issue with the project. I agree, let's get something done. That site should have been addressed years ago when it was a pit and it wasn't closed properly. My biggest problem is I can't see the whole picture. All I see is a big sign and from what I am see from signage, once you have it you can't get rid of it.

C. Pearson: Sometimes we have to see potential and leave it to our Planning Board.

R. Duhaime: I agree with that. The key thing is just the signage that affects the whole site.

G. Hyde: I think a parallel might be the variance we gave to the Performance Zone on Rt. 3 with the park on Dartmouth St. When this came in, the first think I thought of was we gave this variance to Performance Zone thinking we were going to improve that site and it sat there for however long it has been. We can see this applicant has spent much more time and money on this than that applicant and that this applicant is much more serious.

R. Duhaime: So you are saying with a conditional approval. You do a certain part of it and then we give you some.

G. Gyde: Yes, and it sat there doing nothing.

R. Duhaime: That is almost kind of what we are doing now. It is a conditional approval. Once they get their site plan they will do what they say they will and then get their sign.

G. Hyde: We can make ourselves feel better saying if their lilac and botanical garden isn't put in, they don't get their sign.

R. Bairam: With regard to messaging on the sign, can we limit that to just The Lilac Center. As part of the sign ordinance you can't advertise for any other business.

C. Pearson: Yes. You can't advertise for any other business off-site. For me, this is unique and having been on the Sign Committee this is something that we didn't talk about and something we should bring up to Planning at the end of this meeting that they put it on the docket to tackle this one last part of the sign ordinance for next year for signs along interstates. I think this is a unique site. If the applicant works with Planning and he does what he says he is going to do, this is definitely a destination site and something we could be proud of. If there is no more discussion, I will look for a motion, but I would recommend that we do add this contingency.

G. Hyde: I don't have a problem with it saying Exit 11, Hooksett, as long as it stays Exit 11, Hooksett.

C. Pearson: If we granted it for 750 sq. ft., that is up to them to work with Planning Board on the rest of it.

G. Hyde: They are asking for the 750 sq. ft. to be from the top of that sign to the bottom where it says Botanical Garden. If we were to add that in, they would have to change their application and continue. If we were to say we will give 750 sq. ft. that doesn't include that.

C. Pearson: I think the 750 sq. ft. is what they asked for.

G. Hyde: I like the identifier.

C. Pearson: They will have to work that out.

G. Hyde motioned to approve a variance from Article 20, Section E, 3 & 4 of the Zoning Ordinance to permit (1) 750 SF sign approximately 40 feet high as shown on submitted plan for various commercial uses including conference center, festival grounds and botanical park, including a condition that it apply only to the proposed Lillac Center site plan and that the variance be conditional upon receiving an approved site plan from the Planning Board. Seconded by R. Bairam. R. Duhaime opposed. Motion carried.

**KEVIN MOSCONE Case #14-04
1348 Hooksett Road Map 25, Lot 5
PZ**

A Variance is requested from Article 19, Section D.9 of the Zoning Ordinance to permit a State Motor Vehicle Inspection Station within the Groundwater Resource Conservation District.

C. Pearson: Were you here last time? I notice this is continued.

K. Moscone: I missed it last time. I mixed up the dates.

C. Pearson: Kevin, could you go through what you are asking to do and then I will have you read your application into record.

K. Moscone: I want to be able to inspect and repair my own vehicles.

C. Pearson: Do you want a full service garage?

K. Moscone: Yes.

C. Pearson: I know this site well. To give you some history, back years ago the owner of Auto Wholesalers came and asked for a variance.

R. Duhaime: I think he is in the property next door.

C. Pearson: Which one are you?

K. Moscone: I am in the red one in John's building.

R. Duhaime: He owns both those buildings. You are to the south?

K. Moscone: To the north.

C. Pearson: What is the name of your company?

K. Moscone: M & G Auto.

C. Pearson: At the time, we did a site walk. It sits on the town designated groundwater conservation district. He asked for a variance to do tire changes in that building. We put conditions on it that tire changing would be the only thing that would happen on that site. There would no automotive because it is against our ordinances in a groundwater resource district; no automotive repair, oil changes, or washes. He was okay with that and we granted the variance. There wasn't supposed to be car sales there either and that was part of the condition as well.

K. Moscone: I was told by somebody that building was built as an alignment shop.

C. Pearson: Yes. Tire and tire alignments.

R. Duhaime: It says it right on the plan. Vehicle alignment and tires.

C. Pearson: Yes. That was it and that is what we allotted him to go in there. There are strict codes against doing automotive in that district. What we recommended to Mr. Kelly was to drill test it because it was a low consensus of people on the Board, at the time, who knew there is no real groundwater in that area, but it is in the groundwater resource area. I will have you go through the application but I wanted to give you that history. We set some pretty strict conditions on what he could and could not do.

K. Moscone: Most alignment shops can't always align a front end because sometimes repairs have to be done, so even alignment shops have to do repairs.

R. Duhaime: What they were probably looking at was anything to do with oil or antifreeze or that type of thing.

K. Moscone: I don't need to do oil changes. I can't make any money on them if I am going up against oil change places.

C. Pearson: Please read your application into record.

K. Moscone and C. Pearson read the application into record.

R. Duhaime: It is hard to know if the environment surrounding the area is being preserved. That is why they asked for monitoring laws if you want to do anything there.

C. Pearson: What were you getting at in the application when specifying the swamp that borders the property?

K. Moscone: It is a good distance from the building. It is a good walk before you get to it.

R. Duhaime: What you are saying with regard to: "the proposed use is a reasonable one because EPA rules and regulations still protect the area and absolutely no fluids will be drained that will hurt the environment," is that you are regulated now as far as your antifreeze? You have to recycle it, you can't dump it, and things like that?

K. Moscone: Yes. I have companies that want to do business with me and take fluids. Oil and everything.

C. Pearson: So, you are asking for strictly state inspections? I asked you if you wanted to be a full size garage.

K. Moscone: When you do state inspections you have to do some type of repair work. Front ends, brakes and other safety things like that.

G. Hyde: I am assuming running a dealership you are buying cars from auction and you talking about If the vehicle needs an oil change, has a leaky radiator, or the brake fluid needs to be changed, and the draining of that type of fluid.

C. Pearson: When you purchased the property, did you know this was part of the agreement of property?

K. Moscone: I don't own the property. My neighbors right next to me are allowed to this.

C. Pearson: Yes. I think the groundwater on the map comes around and capsulates your area.

R. Bairam: It will be a full service garage then. If he is putting inspection stickers on, even if he puts them on his own cars, it will still be a full service garage which isn't allowed there.

K. Moscone: It affects me to be competitive with everyone else on the street, that I have to pay other people to do those things, and I am a dealership.

C. Pearson: If I go back in time, there is not supposed to be a dealership there.

K. Moscone: I am not the one that started it. Marty got that going as a dealership.

C. Pearson: It was never supposed to be a dealership. There are strict contingencies on what the original person who came to us that put that building in wanted to do, and it was for alignments and tires.

K. Moscone: I was happy to find the place, because at the time I could not find anything. I thought it was a stroke of luck to find that place on Hooksett Rd. It doesn't get any better.

C. Pearson: I understand, but it isn't supposed to be a dealership. There were strict contingencies put on that variance.

K. Moscone: I like where I am. It is a great spot.

R. Duhaime: There was a lapse in Code Enforcement Officers and that is how the permit was issued for the dealership. We had specifically said no dealerships, but the town issued one, so now you are in the position that you are in because we had all of these requirements on the site.

C. Pearson: Our hands are tightly bound on this because of the district. What we told Mr. Kelly, at the time, was that if he wanted to pay the money and do his testing and bring it back to the town and get you out of the groundwater conservation district, that was the avenue. That was when he said he just wanted to do tires.

K. Moscone: I guess that is why he folded up the shop and left after he spent the money to build it.

C. Pearson: Yes.

G. Hyde: I am assuming you have the ability to inspect these things before you take them for inspection. You know what it takes to pass and what doesn't. I see an application for an inspection station. What we can do is give you an approval for an inspection station because that doesn't require any repairs, but what do you do if that vehicle doesn't pass?

K. Moscone: That is another problem because I have to hire it out to someone else and it hurts me to make a good sale on the vehicle.

C. Pearson: That would be impossible for Matt to police.

G. Hyde: That would be something that I would make in the discussion section. What would be the point in giving him an inspection station if he can't do the repairs. That doesn't make sense.

K. Moscone: The repairs would only be safety repairs.

R. Bairam: That still involves breaks and exhaust.

G. Hyde: That was the point. If we approve your application as it stands, it is just an inspection station. You still can't do any of the repairs.

C. Pearson: Unfortunately, this is what we wanted to avoid in the past. It should never have gone down this route because you got your foot in the door and this is what happened. Now it puts him in this position but we have to do our job.

G. Hyde: It falls on the owner of the property to prove that they are not in a groundwater conservation district?

C. Pearson: Yes, because it is an already mapped out groundwater conservation district.

R. Duhaime: What you can do is prove you are not in that district.

G. Hyde: How often do we change that?

R. Duhaime: No one has ever argued that and I think they should.

G. Hyde: Unfortunately, it doesn't make sense for the applicant to do this. It could cost thousands of dollars for him to test for this.

D. Pare: And he's taking a chance it will fail.

R. Duhaime: We have had other people that have been in groundwater conservation districts and we have had them pave everything. All the vehicles had to be on pavement, they had to clean the water up, the whole area had to be contained, and no water can go off of the property. That was just for washing vehicles. He spent a ton of money to meet the requirement, or he could have spent a ton of money to prove that he wasn't in a groundwater conservation district. That is their choice.

J. Levesque: I remember the variance and it was for alignment only, no repairs. John Kelly was going to do his own alignments. So he gives up doing alignments and rents this property out. If it was a change of use, why wasn't it picked up by the Community Development Department and the building inspector. Now this person rents this thinking he can sell cars. He can't sell cars because it was specifically supposed to be no dealership. We can't turn around and give the repairs because it is in a groundwater district, our hands are tied on that, and John Kelly is at fault because he knew what the stipulations are on that piece of property. He rented it to this man under false pretenses that he could run a dealership out of it. The town should have picked up on this and John Kelly falsified what this man could do at the property.

K. Moscone: I have him as my inspection station which hurts me even more because he is a

dealership. Whether the car is a good car and everything will pass inspection, they are going to find something wrong with it so I don't make any money on the car.

Open public hearing.

No public comments.

Close public hearing.

C. Pearson: We will move to discussion. This is that we wanted to avoid and we are caught in this. Jim is correct. This man was told he could do something on this site that he is not supposed to be doing. At that time, there was a lapse in code enforcement, and it could have been during one of the many changes we have had over time. I am not sure where it happened, but here we are and our hands are tied.

R. Duhaime: We specifically said for this not to be a dealership because we knew we were going to run into this instance. Now it is a dealership. I have to say the applicant keeps a nice looking location, but the rules are the rules. I don't know what we can do, but I would recommend postponing this until we have Matt's recommendation about what he can foresee we are allowed to do and he thinks is enforceable. Our other option is to talk to Council.

D. Pare: What happened when he turned this into a dealership that he did not get shut down on the spot.

R. Duhaime: It went from an alignment center, I think they were selling marble and granite before that which was retail.

K. Moscone: Marty was there before me. They are the ones that came to see you to make it a dealership.

R. Duhaime: They did not come to see us because the answer would have been no. They were given it by the Code Enforcement Officer. It should not have been issued and they allowed it to be. That is how the car dealership came to be.

D. Pare: It isn't reversible at this point.

C. Pearson: The car dealership? I don't know, because I don't know how long the permit goes for.

R. Duhaime: I think that would be up to the Town Council.

J. Levesque: I think we should let this one ride for the next month and get some information from the Planning Department on how this happened.

C. Pearson: I think that would be the fair thing to do for the applicant.

G. Hyde: As Jim was saying, the town has screwed this up. It is not the applicant's fault. I think the town needs to make it better.

J. Levesque: It is not the applicant, but the town and the property owner.

C. Pearson: The property owner especially, who knew exactly what variances he got and what contingencies went with that variance.

G. Hyde: The town attorney should be carbon copied on any of this communication as well. I would like to see the town go after the owner of the property.

C. Pearson: Let's make a motion to continue and let's add any discussion points we want brought up to the town. I will ask each one of you what you want to see from the town on this. Do you understand where we are going with this? Our hands are tied. The variance is something that we really can't do. The town needs to work with you, find out what happened, and try to make it right.

J. Levesque: Tomorrow night, when I do my sub-committee report, I will bring this up to the Town Administrator and he can look at this.

K. Moscone: It is hard to have a dealership and not be able to be a full dealership and inspect your own cars.

R. Bairam: You are right. Your hands are tied as well as ours.

R. Bairam motioned to continue. Seconded by G. Hyde.

R. Bairam: I want to make sure we talk to Planning or the Town Administrator to find out what happened and see what we can do about it.

C. Pearson: Jim, can we do that with Town Council?

J. Levesque: I will bring it up to Dr. Shankle.

R. Bairam: We don't need the Planning Department then?

C. Pearson: We can also get Matt involved. If we can send a note to Matt to get with the town to find out what happened and what can be done to help the applicant.

D. Pare: How long have you been in there?

K. Moscone: A year and four months.

D. Pare: Matt Labonte was the Code Enforcement Office then.

R. Duhaime: I think it was in between Peter and Matt.

R. Bairam: There was another inspector in between the two of them.

C. Pearson: Gerald, you wanted to carbon copy the town attorney?

G. Hyde: Whatever the procedure is, but I would like the town attorney to be aware of this.

C. Pearson: Why don't we go through the procedure, if that works. Why don't we ask Matt to generate a letter to send to the Town Administrator about the situation and how we should proceed. We are also asking our Town Council representative to bring it up to Town Council. This means we continue to the following month. It is always the second Tuesday of the month.

K. Moscone: Okay.

Motion carried unanimously.

NEW PUBLIC HEARING

**BRIAN GORDON Case #14-05
16 Doris Drive Map 26, Lot 114-9
MDR**

A Variance is requested from Article 5, Section E.2 of the Zoning Ordinance to permit a garage 10 feet from the side property line, where a minimum of 15 feet is required.

Brian Gordon: I am looking to build a 24' x 30' single story garage, 10' from the property line as opposed to 15'.

Application was read into record by B. Gordon.

D. Pare: Is there a boat on the property? It looks like there is one from the aerial picture.

B. Gordon: That was my boat, but we no longer have it.

Open public hearing.

No public comments.

Close public hearing.

J. Levesque: The property that you are abutting is going to be within 10'. Apparently they received the letter and don't have any concern with it?

B. Gordon: I have talked to him numerous times to make sure. Friendship is better than enemies. If he was against it I would not have done it.

R. Bairam motioned to grant the variance from Article 5, Section E.2 of the Zoning Ordinance to permit a garage 10 feet from the side property line, where a minimum of 15 feet is required. Seconded by D. Pare. Motion carried unanimously.

**3B LIMITED PARTNERSHIP Case #14-06
5 Lindsay Road Map 25, Lot 18-3B
PZ**

A Variance is requested from Article 10-A, Section E of the Zoning Ordinance to permit (two) single family residences within the Performance Zoning District.

Joe Wichert: With me is David Scarpetti from Sierra Realty. They are marketing the property. This is currently an undeveloped lot. In 2008, there was a site plan approved for a two-story office building. It is almost 11,500 sq. ft. of space. The subject property is zoned PZ. The lot existed when they rezoned that area to performance zoning. It is a non-complying lot for the performance zoning standards because it only has 24' of frontage on Rt. 3 where 100' would normally be required. The applicant has had the approved site plan since 2008 and has had almost zero interest in the property for an office space. They have looked at different options. There has been an auction to try to make the property move. They have reduced the price. Whether it is a function of the distance off of Rt. 3, the lack of visibility to the highway, or no direct access to the highway, we are not sure, but the property is not selling for the commercial use. We are here to ask for a variance to allow residential on this property, and to sub-divide it so we would have two residential lots to replace the one commercial lot. The subject property and the property around it, the elderly housing, is zoned PZ. The lots in front on Rt. 3, across Lindsey, are zoned PZ. The rest of properties around there are zoned medium density residential. If you look at the abutters list in the plan, you can see the curb cuts into the Roy residence and the Chagnon residence. We are trying to match both the use and density to the surrounding neighborhood. If you would like, I can go through what we wrote down on the questionnaire. We can answer questions. However, you would like us to do it.

C. Pearson: You can condense it but please touch on each point. There is 18-3-B-2 and 18-3-A. Does 18-3-A surround 18-3-B-2?

J. Wichert: Yes. That is the elderly housing lot. It goes around and has frontage on Lindsay, but it also has that weird looking tag of frontage to 3.

C.: Pearson: If I look at 18-3-B-2, where would you be proposing to put the two single family houses? What area of the property?

J. Wichert: The property is a four acre lot. The way it sits is we have a large public service company that runs on the back, a drainage pond, and some access easements that run the perimeter. If you go north of the power line, west of the elderly housing, and east of the road, those are the two spots we are looking at. Either in the circle or box which is what the Planning Board would normally require.

C. Pearson: If you look at the first box and think there is a driveway coming out of that, how far would that driveway be from Rt. 3?

D. Scarpetti: It is quite a ways up.

J. Wichert: We have a total of almost 750' of frontage. I think that is one of the drawbacks of the property for selling it for the commercial use. If you came from the intersection and say we put a driveway opposite this one, we are probably a little over have 500' off of Rt. 3. We feel granting the variance would not be contrary to the public interest. We think what we are proposing matches some of the uses. Before it was zoned PZ, it was probably some sort of residential use. We are not asking for any more density than what is allowed in the surrounding neighborhood. We don't feel that granting the variance would be contrary to the spirit of the ordinance. The intent of the ordinance is to promote the efficient development of the property. Prevent overcrowding, protect the health, safety and welfare of the public. The way we have it structured is almost like a rezone but we can't ask you to spot zone it so we are asking for relief. In regards to the substantial justice, the way we are looking at this is Dave and his firm have tried to market this. Dave can talk about different ways they have marketed the property but, in hindsight, one of the issues is because a two-story building can't be done in phases. It is not even an issue of the price being to high, he is not getting any offers at all. We can see no benefit to the public by denying the request and the loss to the applicant would be substantial. It is our opinion the cost to the applicant would greatly outweigh any perceived public gains, therefore, we believe the variance should be approved. The value in number four is the proposed use and this would not diminish the surrounding property values. On some level this may help some of the neighbors. The apartment building is kind of an anomaly, but we are looking at houses that would be in the \$280,000 to \$360,000 area. I think they are going to be comparable to the houses that are there should the variance be approved and should the Planning Board approve the subsequent sub-division for the two houses. I don't think there will be anyone to say it will be an eye sore or will reduce their value. Going to 5-1, allowing the applicant to sub-divide the property is a reasonable alternative based on the fact that there has been something done. This is unique in the sense that most times we have gone for a variance we don't have an approved site plan and all of that work that has been done. We have this six-year lag where the applicant has not been able to sell the property. We believe that although residential is not in a large use in the PZ district, residential use in that neighborhood is a reasonable use.

D. Scarpetti: This was approved for an 11,400 sq. ft. two-story building. We have been back to the Planning Board to get extensions on the approvals once or twice. Even with the approval we could not market the property. No one was interested in it. We even offered it as an auction just to make an offer to MLS. That goes out to 4,000 realtors for 90 days and no one was interested as commercial use. It is an unusual thing because it is a 5,700 sq. ft. footprint, two-story, so you can't phase. You have to build the whole building all at once.

C. Pearson: You are far enough away from the PSNH easement?

J. Wichert: That is correct. We believe the lots, as configured, would comply to the town ordinance.

R. Bairam: Does it have water and sewerage?

J. Wichert: Yes. There is municipal sewer and water available.

R. Duhaime: This is a sought after neighborhood and I don't think you will have a hard time selling the lots.

D. Scarpetti: It will fit in and be traditional like the rest of the homes.

D. Pare: These are two separate lots with two separate driveways?

C. Pearson: It has to be sub-divided. We are just granting the approval to allow the homes in the PZ zone. They will have to go to the Planning Board to approve the sub-division.

J. Levesque: This is one of those cases where the Performance Zone is a good idea but, like over on Alice Ave., a lot of those houses probably got put into the Performance Zone and they didn't need to be.

R. Duhaime: What will be done with rest of the property that is left over?

J. Wichert: It is going to be all part of the bottom house lot. The northerly lot, as we are proposing it, becomes a hair under 33,000. I think 32,670 is required. The other lot is going to have 3.65 acres, but out of that 3.65 acres there is a hair under 21,000, that is buildable, under ordinance. You can argue we should have split up better, but the thing we were looking at was the wetlands and the pond to buffer it to 3 and the intent would be to not disturb that, or build it up.

C. Pearson: That and the natural curve of Lindsay.

R. Duhaime: My only question is that corner is unsightly. I have always been amazed how that corner is not maintained. I did not realize that property went down to that corner but that

explains why it has not been maintained.

Open public hearing.

No public comments.

Close public hearing.

R. Bairam: I think it is good use of the property.

G. Hyde motioned to grant the variance from Article 10-A, Section E of the Zoning Ordinance to permit (two) single family residences within the Performance Zoning District. Seconded by R. Bairam. Motion carried unanimously.

OTHER BUSINESS

Excavation Sites Review

Brox Industries

Pike Industries

Severino Trucking

C. Pearson: Matt would like to visit all of these in June. Brox takes about 20 minutes, Pike takes a little longer, and Severino won't take long. Realistically, we could do all three on a Saturday morning. Can we do a tentative date of June 14, Brox at 8:30, Pike 9:15, and Severino at 9:45? We will ask Matt to send out a calendar invite and confirmation and go from there.

R. Bairam motioned to adjourn. Seconded by R. Duhaime. Motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 8:30 pm.

Respectfully submitted by,

AnnMarie White

Recording Clerk