APPROVED

LINCOLN ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
WEDNESDAY, MARCH 19, 2014 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

Present: Chair Paul Beaudin II, Vice-Chairman Jonathan Ham, Board of Selectmen's Representative Patricia McTeague, Ronald Comeau and Don Landry.
Members Excused: None.
Members Absent: None.
Staff Present: Planning and Zoning Administrator Carole Bont, and Town Manager & Town Planner, Alfred "Butch" Burbank.
Guests: None.

I. CALL TO ORDER by the Chairman of Zoning Board of Adjustment; announcement of excused absences, if any, and seating of alternates(s), if necessary.

Chair Paul Beaudin II called the meeting to order at 6:00 pm.

II. CONSIDERATION OF DRAFT MEETING MINUTES FROM:
February 19, 2014

Motion to approve the minutes as submitted.
Motion: McTeague.
Second: Ham.
Motion carried (5-0).

III. CONTINUING AND OTHER BUSINESS (Staff and Zoning Board Members).

None.

IV. NEW BUSINESS

A. 6:00 pm. **Application for Special Exception for a Drive-Up Restaurant** as specified in the Land Use Plan Ordinance, Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule), Chart of Business Uses for Drive-up Restaurants under the Village Center District (V.C.), where Drive-Up Restaurants are allowed in the Village Center (VC) District by Special Exception as provided in Article VIII, Section A (Board of Adjustment), Paragraph 2, subparagraphs A-D.

1. **Case #ZBA #2014-01**
2. Locations: Tedeschi Food Shop
36 Main Street
(Tax Map 112, Lot 006)

3. Applicant: Tedeschi Food Shops, Inc.
14 Howland Street
Rockland, MA 02370

4. Property Owner: "36 Main Street Lincoln Corp"
(c/o CMRK, Inc. - Fawaz el Ehoury)
15 Railroad Drive
Northborough, MA 01532

DESCRIPTION: Under Land Use Plan Ordinance, Article VIII, Section A, Paragraph 2, Applicant Tedeschi Food Shops, Inc., is seeking a Special Exception to put in a Drive-Up Restaurant on property owned by 36 Main Street Lincoln Corp. (Tax Map 112, Lot 006) in the Village Center (VC) District which requires a Special Exception as specified in the Land Use Plan Ordinance, Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule), Chart of Business Uses for Drive-up Restaurants under the Village Center District (V.C.), where Drive-Up Restaurants are allowed in the Village Center (VC) District by Special Exception as provided in Article VIII, Section A (Board of Adjustment), Paragraph 2, subparagraphs A-D. Therefore, Tedeschi Food Shops is requesting a Special Exception from the ZBA.

ACTION: Acceptance of the application as administratively complete by the Zoning Board.

ACTION: The Zoning Board may conduct a public hearing, or schedule a public hearing at some future date established during this meeting.

ACTION: Approval, approval with conditions or disapproval of the application by the Zoning Board.

Background:

According to Bont, the Applicant Tedeschi's Foods, Inc. (Tedeschi) asked that the February 19, 2014, hearing be continued until the next month, Wednesday, March 19, 2014. Tedeschi has a lease with the property owner "36 Main Street Lincoln Corp". At the last hearing Tedeschi said that they did not have to notify the owners unless they are making a "structural change". They did not consider their proposal to put in a drive-up window (i.e., "drive-through restaurant") a "structural change", requiring notification of the property owner. At that time Bont informed Tedeschi that in order for the ZBA to act on an application, the property owner needed to sign an approval for the work, based on the ZBA's negative experiences with other earlier applicants when the owners were not notified of work being approved and in accordance with the ZBA By Laws 2011

ZBA By-Laws:
Article IV. Meetings
10. The Conduct of Public Hearings:

a. The Chairman shall call the hearing into session, and identify the owner of record, applicant, and/or agent. **If an agent is appearing before the ZBA and the applicant is not present at the meeting, the ZBA must have written authorization from the applicant stating that the agent has been appointed to represent the applicant at the hearing.** If neither the **owner of record**, the applicant, nor a properly authorized agent is present at the hearing without a formal request for postponement provided to the ZBA Chairperson or Zoning Administrator, the ZBA may vote to request that the applicant re-file with the ZBA an application for a new hearing, and the applicant will be responsible to pay administrative and public notice fees associated with the change of hearing date, including providing a new current abutter list and fees for notification of abutters of the change.

Katherine Wellington, Principal for IPS/Investment Property Specialists, Inc. of 29 Bartlett Street, Marlborough, MA 01752 and 945 Concord Street, Framingham, MA 01701, notified the town that she is responsible for making the application to NH DES on behalf of the property owner. She wants to make sure the monitoring wells function properly and that the traffic using the drive-through window will not interfere with the monitoring wells.

Today David A. Coonan, Jr., Director of Design and Construction for Tedeschi Food Shops, 14 Howard Street, Rockland, MA 02370, called and notified Bont that they had been unable to get the written authorization from the property owner. Coonan, on behalf of Tedeschi, asked for an extension to either April 15th or April 29th – at the next ZBA night meeting.

Chair Beaudin suggested that the applicant be given to the end of May to get Tedeschi's matters in order. The meeting was recessed and reconvened until May 21, 2014, at 6:00 pm.

Beaudin informed the ZBA that the ZBA By-Laws require the applicants to get the owner's permission for the proposed project regardless of what their lease says. The applicants do not have written permission from the owner for the proposal before the ZBA, so now the Applicant needs a chance to get written permission. The owners' representatives and the applicants have asked to continue this hearing to May 21, 2014.

Motion to Continue the Hearing to Wednesday, May 21, 2014 at 6:00 pm.
Motion: McTeague.
Second: Ham.
Motion carried (5-0).

V. OTHER BUSINESS – ZBA members/alternates, Zoning Board Staff

No other business.

VII. PUBLIC PARTICIPATION AND OTHER BUSINESS: Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Zoning Board of Adjustment will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

No public input.

VIII. ADJOURNMENT

Motion to Adjourn.
Motion: Ham.
Second: Landry.
Motion carried (5-0).

The meeting was adjourned by at 6:22 pm.

Respectfully submitted,

Carole Bont, Planning and Zoning
Administrative Assistant

Dated: May 21, 2014

Paul Beaudin II

Paul Beaudin II, Chair