

**LINCOLN ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
WEDNESDAY, OCTOBER 30, 2013 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

APPROVED

Present: Chair Paul Beaudin II, Vice-Chairman Jonathan Ham, Board of Selectmen's Representative Patricia McTeague and Don Landry.

Members Excused: Ronald Comeau.

Members Absent: None.

Staff Present: Planning and Zoning Administrator Carole Bont, and Town Manager & Town Planner, Alfred "Butch" Burbank.

Guests: Douglas Hayward, Edna Hayward, Makaila Hayward, Fire Chief Ron Beard, and abutter R. Patrick Romprey.

I. CALL TO ORDER: by Chairman Pat Romprey at 6:00 P.M.

Chair Paul Beaudin II called the meeting to order. Ronald Comeau was excused for medical reasons. Chair Beaudin welcomed new Zoning Board of Adjustment member Don Landry to the Board.

II. CONSIDERATION OF DRAFT MEETING MINUTES FROM:

- March 29, 2012 (approved, only signature needed)
- May 23, 2012 (approved, only signature needed)
- August 1, 2012
 - a. *On page 4 of 6 subparagraph e. Precedent:* the minutes read:
 - "e. At Clark's Bears, when they erected two of their signs they took down some other noncompliant signs."
 - b. To add:

"In that case, the ZBA granted a Special Exception for "Clark's Trading Post and The White Mountain Central Railroad" a/k/a "Clark's Bears" to erect one (1) off premise freestanding sign with more than the maximum allowable square footage, but Clark's took down two noncompliant signs. The ZBA granted a Special Exception to put an 8'X10' freestanding sign 20' high with a sign accessory 4'x3' black bear on Map 112 Lot 003 owned by Victor R. Del Regno, Trustee of the Toreign III Realty (Sign Permit #11-02 then revised to Sign Permit #12-09). Clarks removed the sign on Map 109 Lot 008 (on land owned by W. Murray Clark & Edward M. Clark – near Maureen Clark's house on her side of the road) & another sign on Map 110 L014 (on land owned by Carol C. Govoni & Peter F. Govoni) across the river just beyond Fay State Park Parking Lot. According Clark's Special Exception they were only required to remove the sign on Map 110, Lot 007."

Motion to approve the minutes as amended.

Motion: McTeague.

Second: Ham.

Motion carried (3-0). *Don Landry abstained as he was not present at the meeting.*

III. NEW BUSINESS

A. 6:00 pm. **Application for Variance from Side Setback Requirement**

1. **Case #ZBA #2013-01**

2. **Map 118, Lot 078**

3. **Address:** 179 Main Street

4. **Applicant & Owners:** Douglas & Edna P. Hayward
206 Chester Road
Auburn, NH 03032

DESCRIPTION: Under Land Use Plan Article VIII, Section A, the applicants are seeking a Dimensional Variance from setback requirements per Article VI, Section B, 4, for property located at 179 Main Street (Map 118, Lots 78) in the General Use (GU) District, to build an exterior walkway from a door on the second floor to wrap around the back of the building to attach to the existing back deck on the second floor, to provide a second means of egress from the owner-occupied apartment (living space) located on the second floor above the business located on the ground floor. The walkway would protrude three feet (3') into the fifteen feet (15') side setback.

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.

Applicant Douglas Hayward and his wife are requesting a variance so they can create a second means of egress out of the building from the second floor living space because they do not presently have one. They run a restaurant (Café Nachos) on the first floor underneath the second floor living space. There is a potential hazard in case of a fire because a resident in the second floor living space might not be able to reach the other means of egress that is located way on the other side of the building. The bedroom is towards the front of the building. They have been thinking about creating a second means of egress closer to the bedroom for a long time.

Chair Beaudin expressed his concern that the current deck located on the outside of the second floor not be used as an expansion of the current business use – the restaurant. It would just be used as a deck for the upstairs residence. Beaudin wanted to be clear that the ZBA was not considering whether the Haywards would be able to turn the walkway and deck into part of the existing business in the future. This approval would be just for the walkway to reach the existing deck to serve the residential living space upstairs. The pre-existing deck and proposed walkway to the deck would not be approved to be used as outdoor space for the business. If the applicants want to add the deck or walkway to the business space they

would have to come back to the ZBA and ask. Hayward acknowledged that if in the future he had any plans to do such a thing they would come back to the ZBA and ask.

McTeague asked whether they would also be installing a new door from the second floor living space to the walkway. Hayward responded that there was already a big dormer located there with the big window. They intend to replace the large window with a door because there was already enough height to do so. The window opening is almost seven feet tall so it is almost a doorway anyway.

McTeague asked about the status of the driveway as the driveway was in the side setback that the proposed walkway would protrude over. Hayward explained that the driveway was a shared driveway with the neighboring ski shop. The ski shop only has that access into his lot because the driveway on the other side of the ski shop goes into Elvio's Pizza. In addition, Hayward has his own exclusive driveway on the north east side. If you look at the deed the Haywards own the actual driveway. In the past the building housed a trucking company called "Young". The prior owner of the building with the ski shop gave Young the right to use the driveway next to the ski shop because Young's trucks were going over the property boundary line every time they came in.

McTeague asked and was assured that the ski shop was actually sent an abutter notice by certified mail, return receipt requested.

Bont explained that the shared driveway straddles the boundary line between the two lots. In addition, Hayward has an exclusive driveway that comes around the other side of the building. Hayward showed the board a photo so they could see where the two buildings are located in relation to each other. Hayward's building is yellow. The owner of the ski shop already has a deck that comes out five feet (5') out into the fifteen foot (15') setback. Hayward presumes that the neighbor got ZBA approval for the deck when he was setting up the ski shop.

Beaudin asked whether Hayward was also going to build railings along the side so people do not throw stuff down over onto cars going through. Hayward assured the ZBA that he would.

McTeague asked if the deck was going to be cantilevered into the building. Hayward assured the ZBA that the deck would be cantilevered. Ham was also concerned that the support poles for the walkway not go all the way to the ground.

Landry expressed his concerns that if the ZBA decided to grant a variance in this situation that he did not want their decision to set a precedent by allowing a similar variance in a place where the buildings are located much closer together like Maple Street. He cited the principle as set forth in the case entitled Maureen Bacon v. Town of Enfield. If the ZBA says it is okay to have building within the fifteen foot setback think about what would happen if the ZBA then applied that same principle to Maple Street where the houses are very close together. What if they also want a second means of egress on the sides of those buildings where they are so close together? What would happen?

Beaudin assured Landry that the people on Maple Street would have to come before the ZBA. The ZBA would evaluate the request on a case by case basis. The advantage that Mr. Hayward's situation has over the Maple Street homes is that Haywards and their neighbor's houses are 30 feet apart. The situation would be different on Maple Street where the houses are much closer together.

Beaudin acknowledged that it is pretty hard for the ZBA to refuse a safety modification.

McTeague asked if the Haywards had spoken with the abutter. Hayward did not, however, he pointed out that the Town had sent out certified letters, return receipt requested, to all of the abutters including the ski shop owner.

Motion to Accept the Application as Administratively Complete.

Motion. McTeague.

Second. Ham.

Motion carried (4-0).

Motion to Open the Public Hearing.

Motion. McTeague.

Second. Ham.

Motion carried (4-0).

Romprey said that as abutters, he and his wife had no objections. He did ask about whether the proposal was called a deck or a walkway. He was assured that the proposal was for a three foot (3') wide walkway that connects to the pre-existing deck on the second floor.

Fire Chief Beard asked Hayward how he was going to support the walkway on the building. Hayward responded that he was intending to cantilever it with no poles down to the ground. Beard expressed his concern that if any poles came into the driveway that they would be susceptible to drivers who might take out a post.

Romprey asked about the head clearance of the walkway from the ground. Hayward estimated the ground clearance to the bottom of the walkway to be at least 12 feet.

Motion to Close the Public Hearing.

Motion: Ham.

Second: McTeague.

Motion carried (4-0).

Using the Variance Worksheet the ZBA voted as follows:

- 1. Motion that granting the variance would not be contrary to the public interest because adding the walkway would provide a second means of egress from the second story living space in case of fire and that would increase the safety of the inhabitants in the living space.**

Motion. Beaudin.

Second. McTeague.
Motion carried (5-0).

- 2. Motion that granting the variance would observe the spirit of the ordinance because Article 2 of the Land Use Plan Ordinance says the purpose of the ordinance is to promote the health safety and general welfare of the inhabitants.**

Motion. Beaudin.
Second. McTeague.
Motion carried (5-0).

- 3. Motion that granting the variance would do substantial justice because the safety loss to the inhabitants of the second floor living space if the ZBA does not grant the variance is not outweighed by the gain to the general public if the ZBA denies the variance to prevent anything from being built within the side setback. The harm caused by the intrusion in to the setback is minimal. The walkway is small, is located above the travel space and does not interfere with adequate ingress and egress into the two adjacent lots through the shared driveway.**

Motion. Beaudin.
Second. McTeague.
Motion carried (5-0).

- 4. Motion that granting the variance will not cause the values of the surrounding properties to be diminished for the following reasons:**

- a. The intrusion into the setback area is small and located above the traveled way in the shared driveway.**
- b. The intrusion will not interfere with traffic or parking or any other aspect of the neighboring properties.**

Motion. Beaudin.
Second. McTeague.
Motion carried (5-0).

- 5. Motion that owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:**

- 1. There is a fair and substantial relationship between the general public purpose of the ordinance provision (i.e., safety) and the specific application of that provision to the property because the variance would allow a second means of egress from the second story living space which is the proposed use of the walkway addition; and**
- 2. The proposed use is a reasonable one because having a second means of egress out of a pre-existing second-story living space enhances the safety and is, therefore, in the best interest of the people living in the second floor living space and the community as a whole.**

Motion. Beaudin.
Second. McTeague.
Motion carried (5-0).

Approval With Condition:

Motion to grant the approval of a variance to place the proposed walkway three feet (3') into the fifteen foot (15') side setback PROVIDED that the proposed walkway shall only be used for residential purposes as a residential walkway and shall not to be used in any way for any future addition to the business portion of the property.

Motion: Beaudin.

Second: Ham.

Motion carries (5-0).

Mr. Hayward was reminded that even though he has received a variance, he still needs to get a building permit. He has one year to start the project. If he does not start the project within one year he will have to come back to the ZBA.

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

A. The ZBA discussed the possible scheduling of two additional cases.

1. *Jeans Playhouse - Off Premises Sign needs a Special Exception.*
2. *Gypsy Café wants to put a handicapped access ramp right in the front setback, but there is not enough room between the sidewalk and the front entryway to construct an ADA approved handicapped ramp and there are concerns about the State Right Of Way and interference with sidewalk and road maintenance.*

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: McTeague.

Motion carried (5-0).

The meeting was adjourned by at 6:28 pm.

Respectfully submitted,

Carole Bont, Planning and Zoning
Administrative Assistant

Dated: January 29, 2014

A handwritten signature in black ink, appearing to read "Paul Beaudin II", written over a horizontal line.

Paul Beaudin II, Chair

Appendix A**Variance Worksheet**

The purpose of the worksheet is to assist the board in reviewing all 5 variance criteria after reviewing the petition, considering all of the evidence, hearing all of the testimony, and by taking into consideration member's personal knowledge of the property in question **before making a motion to approve or disapprove the request.**

1. Granting the variance (would - would not) be contrary to the public **interest** because:

2. The **spirit** of the ordinance (would - would not) be observed because:

3. Granting the variance (would - would not) do substantial **justice** because:

4. For the following reasons, the **values** of the surrounding properties (would - would not) be diminished:

5. **Unnecessary Hardship**

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1. There (is - is not) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

2. The proposed use (is - is not) a reasonable one because:

B. The criteria in subparagraph (A) having not been established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The property (can - cannot) be used in strict conformance with the ordinance because:
