

**LINCOLN ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
WEDNESDAY AUGUST 31, 2016 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

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**Present:** Chairman Jonathan Ham, Vice Chair Don Landry, James Martin II, Ray D’Amante (alternate), Paul J. Beaudin II, Board of Selectman Representative Jayne Ludwig

**Members Excused:** Jim Welsh (alternate), Jack Daly (alternate)

**Members Absent:**

**Staff Present:** Town Manager and Town Planner Alfred “Butch” Burbank, Fire Chief Ron Beard, Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

**Guests:**

- **Thomas Tremblay**, President of Coldwell Banker LinWood Real Estate & Lin-Wood Real Estate, Inc.
- **Marion Deluca** of 164 Range Road in Windham, NH 03087

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- 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.  
*The meeting called to order at 6:00 PM*
- II. CONTINUING AND OTHER BUSINESS** (Staff and Planning Board Member/Alternates).
- III. NEW BUSINESS**
- A. 6:00 pm. **Election of Officers**

**Motion to nominate Paul Beaudin as Chairman of the ZBA.  
Nomination declined.**

**Motion to Nominate Don Landry as Chairman of the ZBA  
Nomination declined.**

**Motion to nomination Jonathan Ham as Chairman of the ZBA.  
Motion: Don Landry Second: Paul Beaudin All in favor: (5-0)**

**Motion to nominate Don Landry as Vice Chairman of the ZBA.  
Motion: Paul Beaudin Second: Jayne Ludwig All in favor: (5-0)**

**Motion to nominate Jayne Ludwig as secretary of the ZBA.  
Motion: Paul Beaudin Second: Jim Martin All in favor: (5-0)**

**IV. CONSIDERATION** of meeting minutes from:

- May 6, 2015

**Motion to approve the minutes of May 6, 2015 as presented.**

**Motion:** Jon Ham

**Second:** Don Landry

**All in favor:** (4-0)

*Jayne Ludwig abstained.*

**V. NEW BUSINESS (continued)**

- B. 6:00 pm. **Application for a Variance to put an addition onto a condominium unit encroaching into the fifteen foot (15') rear setback area by twelve and four tenths feet (12.4') and also into the fifteen foot (15') Right-of-Way behind 90 Rams Horn Drive in the Rural Residential (RR) District that benefits abutting land owned by CLP Loon Mountain LLC to maintain ski trails on property located in the General Use (GU) District.**

**1. Case #:** 2016 ZBA Var 2016-02

- 2. Location:** Condominium Unit  
90 Rams Horn #H6 Unit 45  
(Tax Map 126, Lot 023000-07-00045)  
Rural Residential (RR) District

**3. Applicants:**

Realtor Thomas Tremblay, President  
Coldwell Banker LinWood Real Estate & Lin-Wood Real Estate, Inc.  
189 Main Street, PO Box 700  
Lincoln, NH 03251-0700  
and  
Marion Deluca  
164 Range Road  
Windham, NH 03087

**4. Property Owners:**

Marion Deluca & William P. Deluca III, Trustees  
William P. Deluca III Revocable Trust  
164 Range Road  
Windham, NH 03087

also

**Addition is to be sited on common land owned by the Rams Horn Condominium Association**

60 Loon Mountain Road (Map 126, Lot 023) - Rural Residential (RR) District

also

**Right-of-Way is sited on common land owned by the Rams Horn Condominium Association**

90 Rams Horn (Map 126, Lot 023) - Rural Residential (RR) District

also

**Benefitted Estate for Right Of Way is land owned by the CLP Loon Mountain, LLC**

60 Loon Mountain Road (Map 126, Lot 020) – General Use (GU) District

**5. Application:**

Applicants Realtor Thomas Tremblay and Marion Deluca, request a **variance** from the zoning ordinance called the Land Use Plan Ordinance (LUPO), Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule) “Dimensional Chart” to allow building within the fifteen foot (15’) setback area.

Applicant proposes to construct an addition to the condominium unit 90 Rams Horn Drive #H6 Unit 45 (Map 126 Lot 023000-07-00045) owned by the Marion Deluca & William P. Deluca III, Trustees of the William P. Deluca III Revocable Trust, on common land owned by the Rams Horn Condominium Association.

The proposed addition would encroach into the fifteen foot (15’) rear setback area by twelve and four tenths feet (12.4’). The proposed addition would encroach twelve and four tenths feet (12.4’) into the right-of-way behind 90 Rams Horn Drive Unit #H6 (also referred to as Building 7). The right-of-way is for the benefit of CLP Loon Mountain, LLC that owns 60 Loon Mountain Road (Map 126, Lot 020). The purpose of the right-of-way is for access to maintain the ski trails on the property located on Map 126, Lot 020 behind the Rams Horn Condominium.

The subject property is located in the Rural Residential (RR) District. The abutting property is in the General Use (GU) District. The purpose of the addition is for modifications to enable handicapped access to the residential unit.

**ACTION:** Upon a finding by the ZBA that the application meets the submission requirements, the ZBA may vote to accept the application for a variance as administratively complete.

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

**ACTION:** The Zoning Board will vote to approve, approve with conditions or disapprove the application. Should a decision not be reached at the public hearing, this application will stay on the ZBA agenda until such time as it is either approved or disapproved.

*James Martin recused himself.*

*Ray D’Amante is seated.*

D’Amante mentioned that under New Hampshire law per RSA 674.33, if a variance is requested for someone that is disabled, hardship does not need to be proven.

Paul Beaudin asked about the use of the word “may” versus “shall” in the RSA. There was a brief discussion about the wording used in the RSA and how it could be applied to this case. “May” means the action is optional. “Shall” means the action is required.

There was also a discussion about how Part b) of the RSA states that if the need for that handicapped access goes away so shall the variance.

Paul Beaudin asked if that could be put into a condition of the approval.

D’Amante pointed out that in this application the applicant was requesting a lot more than a ramp. The applicant also applied to build a significant addition to allow for handicap access to other parts of the house. D’Amante said that would change his thought on the request for a variance, saying that the handicap ramp could be taken down if it was no longer required, but that also there is an addition on the home that goes along with the variance. D’Amante said it

would be unlikely that the Town would ask that the addition also be taken down. D'Amante said that the "may" gives the ZBA the right to exercise its discretion, but not the right to ask for proof of hardship. Points 1-4 would still need to be proven. Only the hardship point is covered by the RSA. D'Amante felt that a) in the RSA was a very broad standard. D'Amante made two additional points:

1. The variance appears to affect a common area so it is not a piece of land that is part of the unit.
2. It also appears that there is an easement involved.

Both of those impact on third parties. To protect the Town from potential liability the ZBA does not want to create litigation so the ZBA should consider those third party interests. If the ZBA says "yes" to the applicant's request for a variance, the ZBA needs to make sure that there is an agreement with the easement holder.

D'Amante said that this is not exactly a normal course of action and will require a decision by the ZBA.

Realtor Tom Tremblay (Applicant) said that the request is to put an addition on the condominium to accommodate Mr. Deluca. Part of the addition will include an elevator. Mr. Deluca could like to use his condominium along with his family and this addition would allow that to happen and the family could be together again.

Paul Beaudin asked for clarification on which unit at Ramshorn was owned by the Deluca's. The Deluca's own Unit 45, which is the second unit from the top.

Bont explained that the first condominium that Tremblay represented was the Finn's (Unit 46, the top unit). The addition to that unit was under construction in the images handed out to the Board. Mr. Finn asked about putting on an addition above the deck. When Bont looked at the tax maps the edge of the deck looked like it was right on the setback area boundary line in our records. Mr. Finn's application was discussed with the Town Planner and since the application implied that the addition would be only a foot into the setback, after contacting Loon Mountain (Rick Kelley), the application was granted. However, after going to the site in preparation for this application it became clear that the Finn addition encroached significantly further into the setback than was originally represented to the Town. Consequently, when the second application for an addition came up, the Deluca's application, Loon Mountain was contacted again and this time President and General Manager for Loon Mountain Rick Kelley was not willing to put anything approving the encroachment into the setbacks for the Deluca addition in writing.

Town Manager/Planner Burbank said that one issue that the Town has is that this area is the only access that the Lincoln Fire Department has to get around to the back of the complex. We have discovered that Finn's addition went from being one foot (1') to approximately nine feet (9') into a fifteen foot (15') setback. Town Manager/Planner Burbank said that the Town has been trying to enforce setbacks. We have discovered that rural setbacks, especially in condo complexes, have been abused. Now the Deluca's have submitted an application for another encroachment into the setback behind this condominium building. The way the common area behind this building is shaping up, as each adjacent unit owner adds another addition, the building is going to get closer and closer to the ski slope and the fifteen foot setback/easement around the back of these condominiums will disappear. The Town staff will be bringing a lot more of these

applications for a variance to the ZBA. The Planning Administrator and the Town Planner are unable to make a decision on a request for a variance for these types of encroachments. There is also a concern that the condominiums getting too close to the ski slopes and someday an accident may happen with a skier hitting a building. The town went through a lot of heartache to establish setbacks and too many people are abusing them.

Paul Beaudin asked if anything in writing had been received from the Fire Chief or Loon Mountain. If someone has complaints or concerns Paul Beaudin believes that it should be in writing.

Town Manager/Planner Burbank said that his concern is that although he does not want to stop these projects, the Town is being bombarded with these types of applications. It is a tough call that needs to be looked at by a Zoning Board of Adjustment to ensure that all aspects of the project are reviewed and all abutters are notified.

Paul Beaudin said that the ZBA has always allowed a lot of leeway with applications for variances and special exceptions. Beaudin understands that many of these applications will require the ZBA to make difficult decisions when it comes time for the Board says no.

Town Manager/Planner Burbank said that there are no other issues with the plans or the project. Building in the setback is the only issue.

D'Amante said that it is always good to have something in writing for the record, but any testimony that is given in an open public meeting is also on the record. The ZBA can act on evidence it receives through testimony. The testimony does not have to be corroborated in writing.

Paul Beaudin said that he just wanted to make sure the information gets into the minutes and that his concerns are addressed.

Fire Chief Ron Beard said that he and Carole Bont visited Ramshorn today for a site visit. The unit that is currently under construction (the Finn's, unit 46) is further into the setback than was originally represented. Mr. Tremblay had marked out the corners of the lot so measurements could be taken. The property shows that after the building is built, there will be about 5 feet of level area between the embankment and the spillways to the building. Fire Chief Beard said that he cannot throw a thirty-four foot (34') ladder straight up; space is required to give lean to the ladder for climbing. We already have access restrictions caused by the addition to the first condominium (the Finn's, unit 46). With the addition to the next unit in line (the Deluca's, unit 45) access is going to be really restrictive if there is ever a fire there. Fire Chief Beard is concerned that these additions have started a pattern that may continue with other condominiums in the row. Fire Chief Beard does have concerns because these encroachments into the setback area will limit the amount of space available for firefighting and will hamper operations.

Paul Beaudin questioned Fire Chief Beard about how much space he needs to fight a structure fire. In response to Fire Chief Beard's statement about needing space to put up a thirty-four foot (34') ladder behind the condominium at Ramshorn, Paul Beaudin said he thought there were

many places in town where it would be difficult to put a ladder up in the small spaces currently present.

Paul Beaudin asked if there was a road behind the condominium units. Tom Tremblay said that there is a road there. Tremblay said that when the proposed addition is complete someone could still get a pickup truck through there behind the building.

Paul Beaudin asked if Tremblay would be willing to address that concern and take more of the bank out to make a wider maintenance road. After some discussion they decided that the bank they were proposing to dig into was actually CLP Loon Mountain, LLC's property (referred to as "Loon") and not the common area of Rams Horn Condominiums, therefore, Loon would have to give permission for that to happen.

Town Manager/Planner Burbank said that with the approval from the abutter (Loon) he would encourage the applicant to see if that the 15 foot easement could be altered excavated and maintained. He did not think that would be an unreasonable request.

Looking at pictures and the hand drawn site plan of the lot, the Board discussed the drawings and how far into the setback the building would go. There would be two (2) feet, six (6) inches left in the setback after the addition was built.

Chairman Ham asked if there was any documentation from the condominium association as to what was and was not permitted by the association. Tremblay said that the Deluca's had the approval from the Board of Directors. Bont said that she has not received that approval. Tremblay said that he would send it to Bont. (Tremblay gave a copy of an e-mail to Bont and it is attached to these minutes as Appendix A.)

Town Manager/Planner Burbank asked if this addition would house the elevator. Tremblay said that the addition will not house the elevator, but that the elevator is quite large so they will be removing a bedroom by turning two bedrooms to one and enlarging a bathroom.

Paul Beaudin questioned whether or not the condominium association had given approval. He pointed out that the abutter, Loon, has not submitted any written objections to the application. He acknowledged that the Town has concerns about the rear setback and access for fire fighting. Beaudin said that if Loon will allow the access in the rear to be enlarged by making the banking a little flatter that may solve the fire safety access issues.

Chairman Ham agreed saying the ground work may be required to get the access required by the Fire Chief.

Town Manager/Planner Burbank said the Finn property would have to be included in whatever access is allowed. It appears that other condominium owners in the area would also like to expand their condo into the setback. It would not be fair to give permission to one owner and not the next.

Jayne Ludwig said that looking at the RSA 674:33 and taking the needs of a disabled person into consideration, if the Board does decide, it should be based on the facts of this case alone and not

set a precedent for every other person that would like an addition as well. Others may have issues but they won't have this specific situation that we have to work with for this application. Ludwig believes the disability makes this case different than any others that may have a similar request for a variance.

Ray D'Amante agreed with Ludwig saying that the facts in this case certainly make a difference. There are still other issues that arise in this case and those issues do include fire safety. D'Amante suggested it is not the responsibility of the Deluca's case to solve the Finn problem. Finns have no right to do what they are doing, but the Finn's actions should not come into play in this case. Courts have made people tear down houses because they were built in the setback. There are no rights granted here to Finn, this Board is only talking about the rights of Deluca.

D'Amante said that there may not be an easement, but there must be some type of pledge or some language that reads that the Deluca's addition will not remove the rear access and will not block it. Under those circumstances as it relates to the Deluca's and public safety, the Town has done its duty.

Paul Beaudin said that Loon still owns up to the property line. All that will change is that instead of having to grade closer to Ramshorn, it will be set back a little bit and the grade will change. It will not change anything for Loon Mountain except that the grade will be a little steeper. Beaudin thought that as long as Loon does not mind the change, and is willing to state that in writing or in a public meeting he could see clear to granting a variance. This change would also fix the safety aspect and help Finn with the problems that he is facing.

Jayne Ludwig stated that she would like to see a letter from the Fire Chief as well.

There was a brief discussion about hearsay.

Chairman Ham said that after looking at this application and looking at the pictures, the addition is based off of the deck, but the deck does not appear to be the same size as the decks for the rest of the units. Chairman Ham asked if a larger deck was ever approved.

Bont said that the two end units (Finn, unit 46 and Deluca, unit 45) have extraordinarily large decks, but she did not find any permits for any additions to those decks. Bont did say that the building at Rams Horn predated zoning by one year, but she did not have enough information to determine whether the decks could have been expanded before the town adopted zoning. Bont noted that there are other units in other parts of Ramshorn that also have larger decks installed. Our tax maps did not show expanded decks for these two units, however.

Paul Beaudin said that the ZBA is here to help resolve the issues, but also to keep in mind that the additions here are providing taxes to the Town. That may not make any difference in the decisions made tonight, but there are times when the Board will have to be more flexible.

Tremblay said that the situation with Loon, looking at the photographs that were supplied to the Board, there is a drainage swale with heavy riprap in it which Ramshorn installed on Loon's property. Loon is aware of issues in the past caused by runoff coming from the ski slopes onto the Ramshorn property which have been addressed at various times by Loon and Ramshorn over

the years. Tremblay said that they have talked about cutting the bank back a little bit and did not think doing so would be an issue. The drainage ditch has filled up with dirt in the past and increasing the size of the ditch would only improve the drainage. Rick Kelley told Tremblay that Loon would approve the Deluca's encroachment into the setback, but told Tremblay that no other encroachments would be approved by Loon.

Paul Beaudin said that the problem would arise again. It would not have to be Tremblay asking for the encroachment. The thought of another developer in the future asking for another variance to build in the setback is still going to be an issue with the Town. This same issue will have to be faced again and again in the future.

The fact that the Town has nothing in writing from Loon Mountain giving their approval was discussed. The Board needs to base their decision on what they have before them.

Tremblay said that all the decks on that building have been extended over the years and are all in the setback by a few feet.

There was a discussion about whether or not a survey was available to show the encroachment measurements. An "as-built" was the only plan available to the Board.

Tremblay said it is the Rams Horn Condominium Association's land and building. Tremblay said that he has a verbal agreement from Rick Kelley at Loon.

D'Amante told Tremblay that if the Rams Horn Condominium Association says it can be done, the ZBA requires that permission in writing. If Loon says that the setback can be encroached upon, that permission will also be required in writing. For fire safety purposes the Board will need relief from Loon. The relief will not need to be a property line adjustment, but the relief sought will require the parties to adjust the slope so that there is adequate access for fire purposes. None of this sets any precedent for Finn, whatsoever. A survey would be a good idea because it would give the Board a real idea of what is being proposed. The drawings that the Board currently has are not to scale.

Tremblay stated that the plan is in the nature of the other buildings. With the approvals of additions from the association over the years, the property values have increased. The units are larger and architecturally increasing the value of the other properties in the area.

Paul Beaudin asked if the Rams Horn Condominium Association would be willing or if they could put into the covenants of the association that there would not be any further building behind these units.

D'Amante said that:

1. That is not before the Board and not part of the application.
2. Getting the fifteen feet (15') behind Deluca solves the Deluca problem and that is the one problem the ZBA is trying to solve today.
3. It would be interesting if the Rams Horn Condominium Association was to put something like that in writing and then someone else comes along with a disability. The statute is still here and the policy is still there so I think that this Board would not want to give up

its discretion. D'Amante believes this is a unique situation and that each application must be measured at its own merits.

Town Manager/Planner Burbank suggested that as justification for obtaining approval in writing from Loon, tell Rick Kelley that the properties up there are on the market and he may not want to do anything to jeopardize any sales up there. Furthermore, Rick Kelley may not be the General Manager for Loon forever. A subsequent general manager may have different ideas about whether to allow access to Rams Horn from Loon property or about encroaching in the setback areas. It is necessary to get something in writing granting these lots the permission they need because a new owner for Loon may come in and rescind the approval or decide to take back the land.

Fire Chief Beard asked if the plan submitted was the only design available or are there other alternatives that would take less area into the set back. Is there a design factor that could be changed so that you are not encroaching so aggressively into the setback?

Tremblay said that the “Ramshorn precedent that has been set” reads that if you have a deck you can build over that deck. Tremblay believes the plan will provide more room than there is right now instead of bringing the house all the way to the edge of the deck it was moved back from the edge of the deck.

Fire Chief Beard believed that if the plan could be changed with less of an encroachment into the setback, it may be easier for the Board to make a decision.

The Board again reviewed the images taken by the applicant.

Tremblay thought that the association was cutting trees on the slope behind the Deluca condominium today and some of those trees were endangering the units.

Paul Beaudin said that the Board would need something in writing from Loon. Beaudin did not believe that an approval could be given at this meeting and that there were still too many unanswered questions.

Bont commented that an email was received from Paul Finn as the approver from the Rams Horn Condominium Association for the Deluca's proposed addition.

There was a discussion about what will be required before Tremblay could return to the ZBA with the Deluca application.

D'Amante said that if the Deluca's do not meet all three of the conditions, they would be required to start over with a new application. If the conditions are met, it would be done.

Jayne Ludwig asked about condition 2 of the application *“If the variance were granted, the spirit of the ordinance would be observed because.”* The applicant mentioned in the application that the unit looks like all the other buildings in the area. Ludwig suggested that the other buildings were also not legal in their size and may have been altered before or after the Planning Board in

Lincoln was adopted in 1986. Ludwig asked if those altered buildings should now be discarded from the decision.

D'Amante agrees with Ludwig, but D'Amante suggested that the reason the Town put a setback requirement in the ordinance in the first place – as part of the spirit of the ordinance – is to help protect residences from potential fire hazards. If the applicant meets the condition whose purpose is to ensure safety from fire hazards (i.e., in this case we suggested that they get a written approval from Loon to move the bank back and flatten the area) then maybe the setback requirement should be a condition of the approval to meet the “spirit” of the ordinance. D'Amante believes that the most important “spirit” of the ordinance is providing for rules to ensure “Life Safety”. The primary underlying “spirit” of the zoning ordinance is “Life Safety”. Right now the application for a variance just does not meet the “Life Safety Spirit” of the ordinance because a setback of two feet six inches (2’ 6”) just does not provide enough room to allow for “Life Safety”. That “spirit” part of the ordinance is not met but it will be when you get that one condition satisfied.

**Motion to open the public hearing.**

**Motion: Paul Beaudin**

**Second: Jon Ham**

**All in Favor: (5-0)**

James Martin said that time is of the essence because it is getting close to the time of year when you can no longer put concrete in the ground. Martin believed that things should be moved along quickly to help the applicant get started on this big project as soon as possible.

Paul Beaudin said that with what was asked of the applicant, the three conditions should be able to be done in a reasonable time period.

Bont said that the Board could meet in another week.

Tanner asked if anyone had considered that there may be an easement on the property and if that was being considered.

Tremblay said that it is a setback and was not aware of an easement.

D'Amante agreed saying that if there is an easement on the property, this board has no authority to change private rights. That is why the Board is asking for something from Loon in writing as an abutter. D'Amante offered that an easement in this area would be the ideal solution to settle any further building within the setback. D'Amante did not believe that a precedent was being set here because this is such a unique situation.

Tremblay said that one option is an approval with conditions that the conditions could be given to Bont and she would check off the list and give the ok to build. If the conditions or documents requested are not produced, the approval would not be given to build.

Bont said that there have been problems in the past when applicants were given conditions and they continued to build and never met the conditions.

Deluca said that this is an encroachment of a setback, not an easement.

There was a question of whether there was an easement or not. Bont said that it was Rick Kelley who called it a “fifteen foot (15’) easement”.

Paul Beaudin said that was the reason to request a survey because that would show if there was an easement on that portion of the property.

Deluca said that certified letters were sent out to abutters for them to come and speak at this hearing. Deluca believes that since abutters chose not to come speak there was no “adverse possession”. The application shows encroaching into the setback, not going over the setback so there is no “adverse possession”.

Deluca said that there is also a letter from the Rams Horn Condominium Association stating that they did not have a problem with this project. Deluca wanted to make the point that Loon did not show up at this meeting to say, “No”.

Deluca would like to have the project manager work with the Fire Chief to ensure that safety measures are followed because it is very important to her to protect her family.

D’Amante said that the point that other abutters did not attend this meeting to object, does not mean that they cannot appeal the Board’s decision tomorrow. The Supreme Court has stated that you do not need to attend or show up to be able to challenge something in the future. It could also be challenged after it is built. The ZBA is here to protect her investment as well as the abutter’s interest. If an abutter came in with a “Motion for Reconsideration” it could take thirty (30) days to apply for another hearing and a thirty (30) day appeal period, so sixty (60) days could pass by and they are looking at 2017 to build.

Deluca asked when the next time the Board could meet.

Bont suggested one (1) week. After a brief discussion, Thursday, September 8, 2016 was a possible date for the next meeting.

Tremblay asked the Board to keep in mind that the building is owned by the Rams Horn Condominium Association. At Ramshorn the paint on the wall is owned by the homeowners like Deluca.

Chairman Ham said that if the building is owned by the Rams Horn Condominium Association, the condominium owner cannot be the applicant; the condominium association would have to apply.

Tremblay said that the association has approved the project.

There was a brief discussion about association approval and how that applies to the application.

The Association President Dave Roberts was copied on the approval sent in by Association Board Member Paul Finn.

Town Manager/Planner Burbank said that the recently adopted Stormwater Management Ordinance would come into play because of the drainage issues. The Town does have an interest in protecting where the runoff is going and Burbank would encourage the ZBA to include stormwater management as part of this application. The addition could be causing problems for a neighbor or the next building down. From a staff stand point, Town Manager/Planner Burbank would like to see a survey, a written signed association document (not an email) and something in writing from Rick Kelley (Loon Mountain).

D'Amante said that RSA 674:33 should be shown to Rick Kelly to help explain what a unique situation this is and that written authorization will not be setting a precedent.

**Motion to continue this application until the 8<sup>th</sup> of September, 2016 at 6:00 PM when the applicant will meet the conditions as noted below.**

**Motion: Paul Beaudin Second: Jayne Ludwig All in favor: (5-0)**

**Conditions will need to be met before the ZBA can make a decision on this application:**

- 1. A survey showing accurate measurements, any easements on the property, drainage and appropriate access for firefighting.**
- 2. Written approval from the Ramshorn Homeowners Association (not an email) to build the addition.**
- 3. Written approval from Loon Mountain or someone authorized to make decisions on behalf of CLP Loon Mountain, LLC (abutter) to encroach in the setback. Also in that approval, permission to use Loon Mountain property for firefighting purposes.**

The Board again looked at the images and maps and further discussed drainage.

Tremblay explained that the drainage would not change and that they will only be creating a flatter spot for access purposes.

**Motion to close the public hearing.**

**Motion: Jon Ham Second: Jayne Ludwig All in favor. (5-0)**

*Jim Martin returned to the sit with the Board.*

Town Manager/Planner Burbank said that there are a lot of issues in town that on the surface appear minor but the ZBA should be looking at and the staff might be leaning on the ZBA more than the town traditionally has in the past. The staff has enforcement latitude but there are questions, like the unit next door to tonight's applicant, the town went up there only to find out that it is all built way into the setback.

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

- 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.

**VIII. ADJOURNMENT**

Motion to adjourn at 7:46 P.M.

Motion: Paul Beaudin

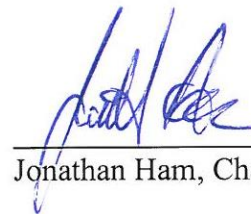
Second: Jayne Ludwig

All in Favor: (5-0)

Respectfully submitted,

Wendy Tanner,  
Planning and Zoning Recorder

Date Approved: 9/8/2016



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Jonathan Ham, Chairman