

**LINCOLN ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
WEDNESDAY – MAY 15, 2019 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chair Jonathan Ham, Member Jack Daly, and Member Paul Beaudin

**Members Excused:** Member Delia Sullivan, Alternate Member Myles Moran,

**Members Absent:** None

**Staff Present:** Town Planner Carole Bont, Fire Chief/Forest Fire Warden/Code Enforcement Officer/Health Officer Ronald R. (Ron) Beard (sat in audience)

**Staff Excused:** Recorder Ellyn Franklin

**Guests:**

- **Joseph Chenard, resident, OWNER OF:**
  - Map 107, Lot 042, 257 US Route 3;
  - Map 107, Lot 043, 261 US Route 3;
  - Map 107, Lot 044, #LO US Route 3 (WS) owned with estate of Peter C. Chenard;
  - Map 107, Lot 045, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 046, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 047, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 048, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 049, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 050, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 051, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 052, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 053, #LO US Route 3 owned with estate of Peter C. Chenard;
  - Map 107, Lot 055, #LO US Route 3 (WS);
  - Map 107, Lot 056, #LO US Route 3 (ES);
  - Map 107, Lot 061, #LO US Route 3 owned with estate of Peter C. Chenard; and Vice Chair of the Planning Board.
- **Susanne (Susan) A. Chenard**, resident, 11 Liberty Road, Lincoln NH 03251 (Map 107, Lot 061) and Realtor for Loon Reservation Service, 264 Main Street, Suite 12, PO Box 785, Lincoln, NH 03251-0785, and owner of 19 Maple Street (Map 118, Lot 069), and newly appointed ZBA member.
- **Robert Wetherall**, resident, 13 Bog Brook Road, Lincoln, NH 03251, Trustee of Jean's Playhouse, 10 Papermill Drive, PO Box 1060, Lincoln, NH 03251-1060.
- **Lyn O. Winter**, nonresident, Managing Director of North Country Center for the Arts (NCCA)/ Jean's Playhouse, 10 Papermill Drive, PO Box 1060, Lincoln, NH 03251-1060

**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.

*Alternate Member Myles Moran was excused.*

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

- November 7, 2018 (Present: Chair Jonathan Ham, Vice Chair Don Landry, Delia Sullivan, Jack Daly, and Alternate Myles Moran)

**Motion to approve Minutes as Written: Daly**

*Beaudin said he would have to abstain as he was not a member at the time of the last meeting. Planner Bont indicated that there would only be two (2) members of the ZBA and to vote on the motion so they would not be able to approve the minutes until they had three (3) able to vote.*

**Motion to table minutes approval for the next meeting due to lack of quorum of members who were present at that meeting:** Beaudin abstained as he was not a member at the time of the last meeting.

**Second:** Daly

**All in favor:** 3-0

**Motion carries.**

**III. NEW BUSINESS (Staff and Zoning Board Member/Alternates).**

**A. Elect a Chair and a Vice Chair of the ZBA**

Jack Daly made a motion to elect Jonathan Ham as Chairman of the ZBA. Member Beaudin seconded the motion. The Board voted all in favor, and the motion carried.

Jack Daly made a motion to elect Paul Beaudin as Vice Chair of the ZBA. Jonathan Ham seconded the motion. The Board voted all in favor, and the motion carried.

**B. 6:00 PM. Special Exception for Sign – Extension of 5 Year Special Exemption Granted in 2014 for Off Premise Sign as part of Integrated Plan:**

**Tourist Attraction Property:** 34 Papermill Drive (Tax Map 119, Lot 001)  
(General Use District)  
“North Country Center for the Arts/  
Jean’s Playhouse

**Owner of  
Tourist Attraction Property:** North Country Center for the Arts  
34 Papermill Drive  
PO Box 1060  
Lincoln, NH 03251-1060

**Appellant:** Lyn Osborne Winter,  
Manager Director for  
“North Country Center for the Arts/  
Jean’s Playhouse”  
PO Box 1060  
Lincoln, NH 03251-1060

**Off Premise Sign Property:** Main Street #D LO (Map 118, Lot 002)  
(Village Center District)

**Owner of Sign Property:** TFG Lincoln Properties, LLC  
c/o the Finch Group  
6111 Broken Sound Parkway NW #150  
Boca Raton, FL 33487-2774

Under the provisions of the Lincoln Land Use Plan, Article VIII, Section A, Paragraph 2, Appellant Lyn Osborne Winter, Manager Director for the tourist attraction North Country Center for the Arts/Jean's Playhouse" located at 34 Papermill Drive (Tax Map 119, Lot 001), requests approval of an extension for a Special Exception requests an extension for up to five (5) years for a Conditional Special Exception to have an off-premise sign on property in the Village Center (VC) District owned by TFG Lincoln Properties, LLC (Map 118, Lot 002) as part of an approved Integrated Sign Plan for a tourist attraction not located on the main road so part of the purpose of the sign is to point travelers to the attraction when the attraction cannot be seen from the main road under Land Use Plan Ordinance Article VIII, Section A, Paragraph 2.

On January 28, 2014, the "Request for a Special Exception" was approved with conditions: "Within five (5) years (January 28, 2019) the applicant shall come back to the ZBA with an application for a more permanent sign or show good cause why Jean's Playhouse needs an extension to build a more permanent sign. If Jean's Playhouse receives a grant or funds to fix up the sign before the five years is up, Jeans Playhouse may come in and ask the ZBA to remove that condition." No funds or grants to support the sign have been received. The Appellant requests an extension of the Special Exception to continue the use of the off-premise sign.

**Discussion:**

**No Written Authorization from Property Owner Where Off-Premise Sign is to be Located:**

Vice Chair Paul Beaudin asked Planner Bont and Appellant Lyn Winter if the owner of the property owned by TFG Lincoln Properties, LLC (Map 118, Lot 002) had signed the application for a Special Exception or had submitted written authorization to continue to allow North Country Center for the Arts/Jean's Playhouse to put their off-premise sign on his/its property in writing to be submitted to the ZBA. The answer was "no".

According to Vice Chair Paul Beaudin, who was chair of the ZBA five (5) years ago, the last time the ZBA heard the request for a Special Exception for the off-premise sign for Jean's Playhouse, Andrew Noyes had a letter of authorization from the owner of the property where the sign was to be located. Vice Chair Beaudin said the property owner did not sign the application for a Special Exception. The property owner is supposed to sign the application. Joe Mercer who is the executive producer for the North Country Center for the Arts signed instead of the property owner of the land where the sign is supposed to be located. The property owner of the land where the sign will be located did not sign. According to Vice Chair Beaudin in this application for an extension, "We have no property owner's signature." The property owner is TFG Lincoln Properties, LLC. This means the ZBA does not have a valid application for a Special Exception.

Planner Bont asked Vice Chair Beaudin if he will require the property owner to sign the application "even if the sign is already there and the appellant is merely asking for an

extension?” Beaudin said the ZBA does not know for sure that the owner of the property is aware that the sign is going to stay there.

Member Jack Daly suggested that the ZBA continue with the hearing and if the ZBA grants the extension, the approval could be conditional on the ZBA receiving written approval from the owner of the property, TFG Lincoln Properties, LLC.

Lyn Winter said that when she was reviewing the prior application for the Special Exception, she saw that the prior application was signed by the Chair of the Board for the North Country Center for the Arts.

Vice Chair Paul Beaudin said that for the last application, the owner of the property wrote a letter to Andrew Noyes (the prior Appellant on behalf of North Country Center for the Arts/ “Jean’s Playhouse”). Look in the minutes for that meeting. Vice Chair Beaudin said to Member Jack Daly that the ZBA could not proceed with the request for a Special Exception without the written authorization of the TFG Lincoln Properties, LLC. Beaudin said the ZBA should not take action on the application if the ZBA does not know for certain that the owner is aware of the application.

Vice Chair Paul Beaudin said that Appellant Lyn Winter should know as an appellant before the ZBA that because there are only three (3) members of the ZBA present tonight that she has a right to a hearing and a decision of a full board. Right now, she should be made aware that because there are only three (3) members present, if one votes against granting the Special Exception then her application for a Special Exception is denied; it does not work.

Lyn Winter replied putting off the hearing provided two opportunities:

1. She gets to present her case before a full board.
2. She has an opportunity to get in touch with the property owner to get a letter authorizing them to continue to leave their signs on the property.

Chair Jonathan Ham asked the Appellant if she wanted the hearing rescheduled for the May 29 or June 5<sup>th</sup> meeting, requesting that she have a full ZBA board. Paul Beaudin said he will not be present on May 29<sup>th</sup>. He will not be back until the June 5<sup>th</sup> meeting. There are only three (3) out of five (5) members of the ZBA present at this meeting.

Appellant said she has to order banners and she does not want to order them and spend those resources if something goes awry and she will not be able to use them. She would prefer the May 29<sup>th</sup> date.

Member Jack Daly asked if they could take a nonbinding vote on the three (3) signs that are present. He has reviewed the documents. He knows all of the good works that the community benefits from by having Jean’s Playhouse in the community. He is in favor of what Jean’s Playhouse does. He asked Lyn if she had had any correspondence with the owner of the property with the sign that he did not want the sign to continue. It is “continue business as usual” so to speak. Lyn Winter agreed.

#### **More Than One Off Premise Sign**

Vice Chair Beaudin said he had some concerns with the application. This one sign is not the only off premise sign. There is a sign that was not shown on any of the documentation from when this particular sign was given approval. For example, there is a billboard sign directly

across the street from the Kancamagus Country Store that is shared with the sign for the Woodstock Station. It is one half of the Woodstock Station sign on the billboard located on land where the new Hampton Inn has been approved. Beaudin said “You are only allowed one off-premise sign” so that makes approving this sign a little trickier. Planner Bont asked if the billboard sign was a pre-existing sign. Beaudin said he did not think the billboard sign for Jean’s Playhouse on the Woodstock Station was a pre-existing sign.

### **Reed v. Town of Gilbert – Sign Ordinance Must Be Content Neutral**

Planner Bont said the “Jean’s Playhouse” sign is actually part of the Woodstock Station sign. To direct what is said in the billboard sign gets into the tricky territory of the sign content. The US Supreme Court case, *Reed vs. Town of Gilbert*, 576 US \_\_\_\_ (2015), 135 S.Ct. 2218 (2015)

*Reed vs. Town of Gilbert*, 576 US \_\_\_\_ (2015), 135 S.Ct. 2218 (2015) is a case in which the [United States Supreme Court](#) clarified when municipalities may impose content-based restrictions on signage. The case also clarified the level of constitutional scrutiny that should be applied to content-based restrictions on speech. In 2005, [Gilbert, Arizona](#) adopted a municipal sign ordinance that regulated the manner in which signs could be displayed in public areas. The ordinance imposed stricter limitations on signs advertising religious services than signs that displayed "political" or "ideological" messages. When the town's Sign Code compliance manager cited a local church for violating the ordinance, the church filed a lawsuit in which they argued the town's sign regulations violated its [First Amendment](#) right to the [freedom of speech](#).

Writing for a majority of the Court, [Justice Clarence Thomas](#) held that the town's sign ordinance imposed content-based restrictions that did not survive [strict scrutiny](#) because the ordinance was not narrowly tailored to further a compelling government interest.<sup>[1]</sup> Justice Thomas also clarified that [strict scrutiny](#) should always be applied when a law is content-based on its face.<sup>[2]</sup> Justice [Stephen Breyer](#) and Justice [Elena Kagan](#) both wrote opinions concurring in the judgment, in which they argued that content-based regulations should not always automatically trigger strict scrutiny.<sup>[3]</sup> Although some commentators praised the court's decision as a victory for "individual liberty",<sup>[4]</sup> other commentators criticized the Court's methodology.<sup>[5]</sup> Some analysts have also suggested that the case left open several important questions within First Amendment jurisprudence that may be re-litigated in future years.<sup>[6]</sup>

[https://en.wikipedia.org/wiki/Reed\\_v.\\_Town\\_of\\_Gilbert](https://en.wikipedia.org/wiki/Reed_v._Town_of_Gilbert)

According to the Town Planner, the Planning Board has not addressed the findings in ***Reed vs. Town of Gilbert*** yet.

Vice Chair Beaudin said, “I am in support of the sign because I don’t have a problem with it, however, I know that the Town has been trying to clean up all of the signs and changed a lot of the sign ordinances to address it. Planner Bont explained that the Town needs to revise the entire Sign Ordinance (which is part of the Land Use Plan Ordinance) in order to bring it into compliance with ***Reed vs. Town of Gilbert***. Majority Opinion: Adopted very strict test for determining whether a regulation is content-based. Basically, if you have to read the sign to enforce the code, then it is “content-based”. The Woodstock Station sign is a pre-existing grandfathered billboard sign for a business that is not even located in Lincoln. The content of the sign includes a supportive plug for the Jean’s Playhouse.

Vice Chair Beaudin said, the billboard sign on the Woodstock Station sign is actually a “Directional Sign” and off-premise directional signs other than real estate signs are not allowed. You can only have one off-premise sign. You cannot have a directional sign unless it is for the sale of real estate. Financial constraints of the appellant cannot be taken into account when someone is asking for a special exception. Financial hardship is not a relevant criterion. Financial hardship of the owner/appellant cannot be taken into account. He understands that the off-premise sign they have is important to Jean’s Playhouse, however, other matters need to be taken into account before the ZBA just arbitrarily says, “yes”. He would like to see these other issues looked at and addressed.

**How Many Signs Does Jeans Playhouse Have? \* (See Appendix A.)**

Vice Chair Beaudin said to Planner Bont, “The pictures you have in the packet are pictures of the signs that Jean’s Playhouse had out last summer.” Take a look at the one that is currently by the Bank of New Hampshire. It is only a white A-Frame board with a little banner on one side that says “Jean’s Playhouse”. Those are the types of signs that the Town does not really want to encourage or portray as “nice signs”. He does not know how many signs there are for Jean’s Playhouse.

- The sign that is shown in the photos as being at McDonald’s Restaurant is not there now.
- The sandwich board sign at the bank that is shown in the photo is now only a white A-Frame board on one side that says “Jean’s Playhouse” and on the other side it has a little line across the top that says “Buy Your Tickets Now”.
- The signs that were included in the packet.
- Jon Ham says there is one sign up on the US Route 3 highway. On one side of the billboard is the “Cog” Railway, and on the other side is the Woodstock Station & Inn with Jean’s Playhouse.

Vice Chair Beaudin said he knows that the Town was trying to clean up the signs and the Town has been unable to do that. Planner Bont said the town staff was trying to clean up the sign and had set a deadline to make all signs compliant by January 1, 2017. However, that was before the US Supreme Court case of Reed vs. Town of Gilbert in the fall of 2016. That effort was put on hold because the Town of Lincoln does **not** have a content neutral sign ordinance. For example, a directional sign versus any other kind of sign is not a content neutral sign. Vice Chair Beaudin said he does not know what the Town should do about the two (2) off premise directional signs that are not allowed under the Town Sign Ordinance.

Planner Bont said that before the ZBA addressed this particular off-premise sign that is the subject of this application for a Special Exception five (5) years ago, Jean’s Playhouse already had a number of pre-existing off premise directional signs. They were asking to add this off-premise sign to the stable of signs, including a number of off-premise directional signs, that they already had in the community. She could not tell the ZBA exactly how many signs and exactly where those signs were.

Vice Chair Beaudin said, that is something we need to find out: exactly how many signs Jean’s Playhouse had and exactly where those signs were located at the time the ZBA approved the off-premise sign with the life expectancy of five (5) years that was part of their

integrated sign plan. Beaudin said he does not recall either billboard (on land owned by Victor DeRegno on NH Route 112 and on land owned by Jared Ham on US Route 3) including a directional sign for Jean's Playhouse at the time the ZBA granted a Special Exception for the sign on land owned by TGF Lincoln Properties, LLC. Vice Chair Beaudin said he thinks the plastic signs are stretched over other pre-existing signs. The Town should be issuing permits for the new signs. Vice Chair Beaudin said that right now it seems that a couple of the signs owned and used by Jean's Playhouse are portable signs.

Member Daly said he believes there is a difference between having a fixed sign, a sign that is anchored in the ground and a sign that can be moved. He said he does not think that anyone is being harmed by the sign. The Townspeople pass ordinances sometimes and at the time we do not see what the ramifications of passing that ordinance are that the voters did not intend. In his opinion, there is a difference between a sign advertising a hot dog sale today and a sign that is more permanent like a sign for Jean's Playhouse. It might be a violation of the ordinance, but there is always an intent. In this case, the purpose of the ordinance severely limiting billboards, was based on the voter's intent to clean up the Town. Daly said he does not think the ZBA is seeing any disrespect to the Town or any unsavory issues with Jean's Playhouse. Jean's Playhouse is a good cause, it attracts tourists to the Town and it partners with the camp and the library in town for the benefit of the children. Everyone benefits from those partnership with Jean's Playhouse, so he wants to support them.

Chair Ham asked Planner Bont about sandwich board signs. Can they only be out a certain number of days per year? Do those sandwich board signs need to come in at night? Planner Bont said she thought they got rid of that requirement in Sign Ordinance portion of the Land Use Plan Ordinance. Those types of signs are known as "Portable Signs". Planner Bont went to get the Planner's Notebooks. Here is the description for "Portable Signs":

**r. Portable Sign**

- i. Description:** A sign capable of being readily removed or relocated, and not attached to the ground, a building, or another sign. This includes, but is not limited to, moveable signs mounted on a chassis with wheels or support legs, any type of "A" frame or sandwich board sign.
- ii. Standards**
  - a) Only one (1) Portable Sign is allowed per business.
  - b) The maximum size of a portable sign is twelve (12) square feet.
  - c) Portable signs shall be placed in a location that does not obstruct traffic, pedestrians, or drivers' visibility. The sign shall be located in a place that is close enough to the main entrance of the business or front door of the business so as to make sense and not to interfere with other businesses. The Planning Board shall determine the appropriateness of the approved location.
  - d) All portable signs must be removed from public view prior to the business being closed for a period of fourteen (14) consecutive days more.

Chair Ham asked Appellant Lyn Winter, how many signs Jean's Playhouse has. He started to list them:

1. You have one sign in front of the RiverWalk Resort;



2. You have one sign in front of the InnSeasons Resort;
3. You have one sign at the traffic circle near RiverWalk Resort; and
4. One sign just past the Town Offices that is the subject of this application...

Lyn Winter responded that Jean's Playhouse had:

1. Some tee-pee A-frame type sign boards that are used when Jean's Playhouse is in full tourist season.
2. One directional sign to leave Main Street (NH Route 112) and actually go down there;
3. Signs on the building (Map 119, Lot 001); and
4. Whether the Woodstock Station & Inn & Brewery includes our logo on their sign or not something she as the Managing Director can speak to.

According to Lyn Winter, that is one of the struggles that Jean's Playhouse has had – trying to conform to the sign ordinance that addresses off-premise signage because Jean's Playhouse is a tourist attraction located off the Main Street and is not visible from Main Street even though Jean's Playhouse is just off Main Street and Main Street is where most of Jean's Playhouse traffic comes from.

*You can get to Jean's Playhouse in one of the following ways:*

1. *Turn off Main Street/NH Route 112 onto a poorly paved private road named "Papermill Drive" which runs between Linwood Plaza and Lincoln Center North Plaza, running along the back of Lincoln Center North Plaza.*
2. *Turn off Main Street/NH Route 112 onto a well-paved private road named "South Mountain Drive" that runs between The Linwood Plaza and the Village Shops and is the main entrance for the Village Shops and RiverWalk Resort at Loon.*
3. *Turn off Main Street/NH Route 112 onto an unnamed dirt road between Lincoln Town Hall and a private road called Cooper Memorial Drive that dumps into Cooper Memorial Drive, turn right and follow Cooper Memorial Drive, take a right onto South Mountain Drive and follow it behind the InnSeasons at South Mountain Hotel and behind the Village Shops on your right and in front of the RiverWalk Resort (on your left) past the traffic circle and follow Papermill Road to Jean's Playhouse at the end of Papermill Drive.*

### **How Do the Billboard Signs Work? Who Owns Them?**

Member Daly asked Managing Director Lyn Winter if she knew who owned the billboard sign frames that the Woodstock Station has its signs on. Robert Wetherall, Trustee of Jean's Playhouse, answered that he believes that the three billboards located opposite from the Kancamagus Country Store are owned by Victor Del Regno, Trustee of the Toreign III Realty Trust, 6781 Fox Hollow Drive, West Palm Beach, FL 33412.

*There are two billboards located on Main Street Lot 2 #LO (Map 112, Lot 003). There is one billboard located on Main Street Lot 3 #LO (Map 112, Lot 002). The Woodstock Station, Woodstock Inn & Brewery sign with Jean's Playhouse sign is on Map 112, Lot 002.*



Joseph Chenard, former Planning Board member and current Vice Chair of the Planning Board offered to tell the ZBA what he knew about those billboard signs. According to Joseph Chenard, the billboard sign frames are owned by the property owners. Then other people or businesses lease the billboards to put their signs or letters on the billboards. All three (3) billboards on NH Route 112/Main Street, will be coming down in a month or two because there is a hotel coming in on those two lots.

Planner Bont said she did not think the Planning Board made a decision about those billboard signs. When the Planning Board did its Notice of Decision the Planning Board did not address the billboards. Early on in the Site Plan Review process, the Applicant Dipak Patel spoke to the Planning Board about possibly keeping those three billboards on the small second lot. Chair Ham and Planning Board Vice Chair said whether the billboards could stay was a “battle for another day”.

**Make a Better More Permanent Sign:**

Vice Chair Beaudin said when the ZBA initially approved the Special Exception for this particular off-premise sign he thought that five (5) years would be plenty of time for the North Country Center for the Arts (NCCA)/ Jean’s Playhouse to raise enough money to pay for a nicer and more permanent sign. Vice Chair Beaudin said he would like to see the Jean’s Playhouse sign stay there, but he would like to see a more attractive more permanent sign.

Lyn Winter agreed that the sign would look better if it were appropriately decorated.

Vice Chair Beaudin said that the sign in question is pretty important, as it is necessary to show people where Jean’s Playhouse is and how people get to Jean’s Playhouse. He wants them to have the sign and redo the sign so it looks good, but it has been five (5) years and no improvements have been made. Beaudin said he would probably vote “no” on the request for an extension of the Special Exception if he had to vote today, because he wants the sign to become more permanent and nicer than it is today.

Member Daly said he would like the whole of Main Street to look better than it does today, but he does not think that will happen. The Town has a whole mish mash of architectural styles with some old buildings, some new buildings, some logs, some New England style buildings, some contemporary structures. It is all a matter of money. Realistically, Jean’s Playhouse is a 501(3)(c) nonprofit organization on a shoestring budget. Electric digital signs like Rodgers Ski and Sport has costs over \$20,000. Financially, Jean’s has consistently been a struggling nonprofit trying to balance their resources. Requiring Jean’s Playhouse to purchase a better sign is not realistic.

Lyn Winter said she does not disagree with improving the Jean’s Playhouse signs in theory; however, she has been here for eight (8) months and the history of Jean’s Playhouse is that it has been a struggling nonprofit since the new building went up. The resources are being carefully managed and any money saved really needs to go into the product which will attract more tourists and people to come to the theater than in the previous year to see all of the business signs on Main Street. Even a two thousand dollar (\$2,000) improvement to that sign would mean they would not be able to deliver on some of their product and letting something else go. That is how this nonprofit theater business operates. Jean’s Playhouse is not in a visible location; location is no one’s fault. Jean’s Playhouse needs to let people know where they are located. Jean’s Playhouse has no resources to pay for a more modern sign and still may not within five (5) years.

Vice Chair Beaudin said we should push this off until we can have a letter from the property owner, stating they have no problem with this, and also a financial plan of what they think they can raise yearly toward that sign.

Planner Bont said that until the sign ordinance is updated, the Town will have difficulty enforcing the sign ordinance for existing signs.

Member Daly said the ZBA should leave Jean's problems to them in the nonprofit world. He agrees that the ZBA should get a letter stating the property owner has no objections to the sign.

**Motion to postpone this agenda item for June 5, 2019: Beaudin**

**Second: Daly**

**All in favor: 3-0**

**Motion carries.**

#### **IV. CONTINUING AND OTHER BUSINESS**

##### **A. Status Update: Michael and Sonya Hamori – Var 2018-07 M130 L120 Grant – Variance – build retaining wall within side setback.**

VARIANCE concerning Article VI District and District Regulations, Section B District Regulations, Paragraph 4 (Dimensional Chart) of the zoning ordinance known as the Land Use Plan Ordinance (LUPO) to build a retaining wall that encroaches into the twenty-five-foot (25') side setback areas.

Appellants requested a variance concerning Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule), Paragraph 4 (Dimensional Chart) of the Land Use Plan Ordinance (LUPO). The home and original driveway were built in 1978. The lot is steep and narrow. Hamoris' driveway runs along the northern boundary of the lot within the 25' side setback area. Appellant proposes to substantially expand and extend a retaining wall substantially greater than four feet (4') in height that will extend almost all of the way to the back of the lot. The purpose of the extended retaining wall is to support the driveway and the house and to mitigate run off from the Hamori lot onto the neighbor's lot.

Hamoris already built most of the proposed retaining wall without a Land Use Authorization Permit. The home is located in the "Beechnut I" development, however the Beechnut I Homeowners Association is not active. The home is located at 11 Beechnut Drive (Map 130, Lot 120) in the Mountain Residential (MR) District where the front, side and rear minimum setbacks are 25 feet. Almost the entire retaining wall as proposed will be located within the 25-foot front setback area.

The proposed retaining wall needs a variance as specified in the Land Use Plan Ordinance, Article VI Article VI District and District Regulations, Section B District Regulations, Paragraph 4 (Dimensional Chart) to encroach into the twenty-five foot (25') front setback area.

During the Public Hearing held on November 7, 2018, upon reading through the five (5) criteria, the Board found everything was addressed satisfactorily except Criteria 2.

- **Criteria 2 says: If the variance were granted, the spirit of the ordinance would be observed. The variance will in no way violate the spirit of the ordinance.**

The Board agreed that the Hamoris need a completed survey for this lot. If it turns out that the retaining wall is located entirely on Hamori's property, they can proceed as planned. If the retaining wall is not located entirely on Hamori's property, Hamori will need to secure an easement from Jim Burrows.

Review email letter from Hamori updating the ZBA on the status of survey.

**Discussion:**

Member Daly said one of the concerns the ZBA had was that the wall was built by the Town and it extended through the setback onto the abutter's property. This is when we asked Hamori for a survey.

Vice Chair Beaudin said there is still the fact that the rock wall is a structure built within the setback area. According to our zoning ordinance (Land Use Plan Ordinance) the setbacks are twenty-five feet (25') all around; the structure must be at least twenty-five feet (25') away from the property line in the Mountain Residential (MR) District.

Vice Chair Beaudin wanted to know why the Town had not issued a Cease and Desist Order when the Town learned that Hamori was building a wall within the setback area without a permit. Planner Bont said Hamori received a Cease and Desist letter.

Susan Chenard works for Loon Reservation Service and Mr. Hamori's neighbor, James Burrows' is a client who rents his property out through Loon Reservation Service. Susan Chenard mentioned that when the road was built, the water ran down the road and into Hamori's neighbor James Burrows' garage, so Mr. Burrows' had asked Loon Reservation Service to check that.

The ZBA will have Hamori return before the Board in June and July and answer the questions set forth about:

- Is the wall he constructed on his neighbor's property?
- If so, does he have an easement or is Mr. Burrows willing to sell him the land under the wall after a Lot Line Adjustment?
- Is the wall constructed within the setback area?
- Was the wall properly engineered and built in accordance with the engineering plans?
- Is there a structural engineer willing to sign off on the wall for Hamori; willing to sign a Construction Control Affidavit under penalties of perjury, certifying that the wall has been built in accordance with the State Building Code and in accordance with the engineering plans (never submitted).
- Whether or not the wall must come down.

**V. OTHER BUSINESS**

**A. 6:00 PM. Membership on both ZBA and Planning Board is Problematic.**

Board of Selectmen asked Zoning Board of Adjustment and the Planning Board to consider the issue that a member of the Planning Board is presently sitting on two (2) boards: as a Planning Board Alternate and a Zoning Board member. Both Boards must be made fully aware that although both boards are now fully elected, if the Boards put a member on both boards that

situation creates a “potential” major conflict of interest in the event one of the Boards must “jury” for the other. The BOS understands this can result in costly legal litigation and although it is “legal” it is not recommended. This has been made an agenda item as soon as possible so that both Boards are aware.

Also, the BOS want the Administrative Assistant to post the vacancies after the ZBA establishes who is sitting where and what actual seats need to be filled before making a decision about who will fill those seats.

**Motion to appoint Susan Chenard as a current member of the ZBA: Beaudin**

**Second: Daley**

**All in favor: 3-0**

**Motion carries.**

The ZBA now needs two alternates. The ZBA will advertise these positions on the website.

**VI. 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 Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

There was no public participation.

## **V. ADJOURNMENT**

**Motion to adjourn at 7:20 pm: Ham**


**Second: Daly**

**All in favor: 3-0**

**Motion carries.**

Respectfully submitted,  
**Ellyn Franklin**, Recorder

Date Approved: June 5, 2019



Jonathan Ham, Chairman

**Appendix A**

*These are the Jean's Playhouse signs Planner Bont counted using Google Maps and the interactive town tax maps:*

- 1. One billboard directional sign for the Woodstock Station and Woodstock Inn & Brewery that has a sign for Jean's Playhouse as part of its sign boards on one of the two "Hampton Inn lots" (Map 112, Lot 002) owned by Victor Del Regno Trustee of the Toreign III Realty Trust under a purchase and sale agreement with Dipak Patel d/b/a The Hampton Inn. (This billboard structure is grandfathered and rent for use of the billboard is paid to the owner of the billboard and property.);*
- 2. One billboard directional sign for the Woodstock Station and Woodstock Inn & Brewery has a sign for Jean's Playhouse as part of its sign boards at 451 US Route 3 (Map 105, Lot 023) owned by Jarrett Ham, PO Box 1451 Lincoln, NH 03251-1451. (This billboard structure is grandfathered and rent for use of the billboard is paid to the owner of the billboard and property.);*
- 3. One large 2-sided chained (somewhat portable?) sandwich board sign in front of McDonald's Restaurant;*
- 4. 1 medium-sized 2-sided (somewhat portable?) sandwich board sign in front of the Linwood Plaza at 78 Main Street (Map 113, Lot 003) to the right of the entrance to the Linwood Plaza owned by Bear Mountain Properties, LLC, 143 Club House Road, Brick, NJ 08723;*
- 5. 1 unpermitted oval "Jean's Playhouse" sign on meridian approaching RiverWalk with four (4) other unpermitted signs for RiverWalk, Seven Birches Winery, LaVista, Solstice North & Jean's Playhouse right before the traffic circle on South Mountain Drive;*
- 6. 1 small 2-sided portable sandwich board sign in front of the Bank of New Hampshire;*
- 7. 1 large rectangular unpermitted sign at the top edge of the gravel parking for RiverWalk (Map 118, lot 044) at 22 South Mountain Drive, opposite the back entrance to Lincoln Center North plaza near the movie theater;*
- 8. 1 large rectangular unpermitted(?) sign for Jean's Playhouse located on property of North Country Center for the Arts, 34 Papermill Road, at the turn into the gravel parking lot for Jean's Playhouse, just past the back entrance to Lincoln Center North Plaza (Map 113, Lot 002) off South Mountain Drive behind the movie theater;*
- 9. Two large permitted wall signs on the front of the Jean's Playhouse building & four unpermitted large poster signs on the side of the building advertising the shows.*
- 10. One large permitted free standing off premise sign on Map 118, Lot 002 owned by TFG Lincoln Properties, LLC – that has a permanent easement for parking granted to RiverWalk Resort at Loon Mountain.*

**Appendix B**  
**Reed v. Town of Gilbert (2015)**

**By David L. Hudson Jr.**



*Pastor Clyde Reed and his wife, Ann, who oversee the Good News Community Church in Gilbert, Arizona. (Photo courtesy of Alliance Defending Freedom.)*

In Reed v. Town of Gilbert, the U.S. Supreme Court, 135 S.Ct. 2218 (2015), unanimously invalidated an ordinance that treated signs differently based on their content.

The Court's majority opinion reaffirmed the vitality of the content-discrimination principle as an animating principle of First Amendment law.

While all the justices agreed the ordinance was unconstitutional, they disagreed significantly over how expansively to apply the content-discrimination principle.

**Arizona town put size, time limits on directional signs**

In Arizona, the town of Gilbert's ordinance imposed far more restrictions on "Temporary Directional Signs Related to a Qualifying Event" than on "Ideological Signs" or "Political Signs." The temporary directional signs could be no more than 6 square feet and could be displayed only 12 hours before and one hour after the qualifying event.

Pastor Clyde Reed of the Good News Community Church posted signs indicating the times of church services. The church did not own its own building and met at elementary schools and other locations around town. The town's sign code compliance manager cited the Church for violating the sign code. Reed had unsuccessfully tried to reach an accommodation with the Town's Sign Code Compliance Department.

**Pastor who posted church signs challenges ordinance on First Amendment grounds**

He then sued in federal district court, alleging First Amendment violations. The federal district court granted summary judgment for the town; a decision affirmed by the Ninth U.S. Circuit Court of Appeals. The Ninth Circuit deemed the sign ordinance content-neutral because town officials did not adopt the ordinance because they disagreed with the content on any particular signs.

The U.S. Supreme Court reversed, finding that the town's sign ordinance was patently unconstitutional.

The Court first determined that the sign code was content-based, not content neutral. In his majority opinion, Justice Clarence Thomas reasoned that the law was content-based on its face, because it treated signs differently.

"The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign," Thomas explained. He rejected the Ninth Circuit's reasoning that the law was content-neutral because there was no underlying purpose to discriminate against particular messages. "In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral."

**Supreme Court: Sign restrictions based on content is violation of First Amendment**

*Good News Community Church Pastor Clyde Reed, center, smiles as he leaves the Supreme Court in Washington, Monday, Jan. 12, 2015, with his wife Ann, left.*

After oral arguments, the Supreme Court appeared likely to side with the small church in its fight with a Phoenix suburb over limits on roadside signs directing people to Sunday services. Liberal and conservative justices expressed misgivings Monday with the Gilbert, Arizona, sign ordinance because it places more restrictions on the churches' temporary signs than those erected by political candidates, real estate agents and others. (AP Photo/Susan Walsh, used with permission from The Associate Press.)

Thomas also reiterated a message the Court articulated in Chicago Police Dept. v. Mosley (1972) – that laws are content-based when they restrict speech based on subject matter. He also explained that laws can be content-based even if they are viewpoint neutral. In other words, viewpoint discrimination merely is a subset of content discrimination.



Because the ordinance was content-based, Thomas evaluated the ordinance under strict scrutiny.

The town had offered two justifications for its law: aesthetics and traffic safety. Thomas assumed that the ordinance furthered these compelling governmental interests, but said that the ordinance was “hopelessly underinclusive” because all types of signs can cause visual clutter and impact traffic safety. “The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs,” Thomas wrote. “If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.”

Other justice opinions differed on what might be reasonable sign regulations

Justice Samuel Alito wrote a concurring opinion, stressing that cities could still enact “reasonable sign regulations.” He listed a series of restrictions on signs that he felt were permissible and content-neutral.

Justice Stephen Breyer also wrote a concurring opinion, questioning the rigid application of the content discrimination principle. He reasoned that the rule should be a “rule of thumb” rather than an “automatic strict scrutiny trigger.”

Justice Elena Kagan also wrote a concurring opinion, but she disagreed sharply with Thomas’ analysis. She warned that Thomas’ opinion called into question sign ordinances across the country. She said that strict scrutiny should be applied when there is a danger of illegitimate governmental purpose, not rigidly to any law that draws any content distinctions.

The Court’s decision in *Reed v. Town of Gilbert* has had a palpable impact on First Amendment jurisprudence. Lower courts have relied on the decision in invalidating sign ordinances, panhandling regulations, and an assortment of others laws.

Thomas remanded the case for reconsideration in light of the Court’s opinion.