

**LINCOLN ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
WEDNESDAY SEPTEMBER 16, 2020 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

APPROVED

These meetings will NOT be livestreamed any longer. Due to the current COVID-19 situation, and the number of members on the Zoning Board of Adjustment and staff, the Town Hall Conference Room can safely accommodate up to 8 public participants and seating will be on a first-come basis. This meeting will also be available via the Zoom Meeting Platform to allow for town wide participation as well as posted on YouTube.

Present: Chair Jonathan Ham, Vice Chair Paul Beaudin, Member Ray D’Amante, Member Jack Daly, Member Delia Sullivan, Alternate Susan Chenard (via ZOOM), and Alternate Margie Gozdoff (via ZOOM).

Members Excused: Alternate Myles Moran

Members Absent: None

Staff Present: Planning Assistant Lisa Peluso and Fire Chief/Health Officer/Code Enforcement Officer Ron Beard

Guests:

There were three blank screens present during the meeting.

- **Paul E. Aurette**, nonresident (ABUTTER) of 11 Naumkeag Court Litchfield, NH 03052 and co-owner with Lusa M.G. Aurette of 16 Beechnut Drive (Map 131, Lot 008) and 221 Black Mountain Road #LO (Map 130, Lot 088) (via ZOOM).
- **Cinda D’Amante**, resident (ABUTTER) of 188 Black Mountain Road, Lincoln, NH 03251, owned by Dannalea D. D’Amante, Trustee, GST Exempt Separate Family Trust, 18 Bay Street #1, Cambridge, MA 03129, President of Beechwood II Homeowners Association which is an active association, but not incorporated. (Beechwood II is an abutter to Beechwood I) and wife of ZBA member, Raymond D’Amante (via ZOOM)
- **Robert Dumont**, nonresident, of Mark & Robert Dumont Construction Inc., 3621 US Route 3, Thornton, NH 03285 (General Contractor and AUTHORIZED AGENT FOR APPELLANT).
- **William (Bill) M. Gregsak, PE**, nonresident, (APPELLANT’S ENGINEER), Gregsak Engineering, Inc., P.O. Box 271, Chester, NH 03036.
- **MaryAnn Marcoccio**, resident (ABUTTER) and co-owner with Mike Marcoccio of 45 Beechnut Drive, PO Box 806, Lincoln, NH 03251-0806 (Tax Map 131, Lot 013).
- **Matthew Tiano**, nonresident (APPELLANT) of 5 Pond Circle, Bedford, MA 01730 and co-owner of 11 Queens Way (Map 130, lot 089) with Donnamarie Tiano.
- **Donnamarie Tiano**, nonresident (APPELLANT) of 5 Pond Circle, Bedford, MA 01730 and co-owner of 11 Queens Way (Map 130, lot 089) with Matthew Tiano.

I. CALL TO ORDER

Chairman Ham called the meeting to order at 6:00pm.

II. CONSIDERATION of meeting minutes from:

October 16, 2019 (Present: Chair Jonathan Ham, Vice Chair Paul Beaudin, Member Ray D'Amante, Member Jack Daly, Member Delia Sullivan, and Alternate Susan Chenard.)

MOTION: “To approve the minutes of the October 19, 2019 ZBA meeting.”

Motion: Member Beaudin

Second: Member D'Amante

Motion carries with all in favor.

III. CONTINUING AND OTHER BUSINESS (Staff and Zoning Board Member/Alternates).

6:00 PM. Request for a Variance: Robert Dumont d/b/a Dumont Construction on behalf of Matthew and Donnamarie Tiano – [Var 2020-03 M130 L189 Tiano – Variance] to build retaining walls greater than four feet (4') in height within front, rear and side twenty-five-foot (25') setback areas.

Agent & Appellant:

Robert Dumont d/b/a Dumont Construction
3621 US Route 3
Thornton, NH 03285

Property Owners:

Matthew & Donnamarie Tiano
5 Pond Circle
Bedford, MA 01730

Properties:

11 Queen's Way (Map 130, Lot 089) Mountain Residential (MR) District
Part of “Beechnut II” Homeowner's Association

On 10/11/2019, **Matthew and Donnamarie Tiano** were issued a Land Use Permit [LUP 2019-41 M130 L089 Tiano] to build a single-family residence. The parcel is in the Mountain Residential (MR) District where the front, side and rear setbacks are twenty-five feet (25') to the property boundary line. The initial LUP application did not include any retaining walls greater than four feet (4') in height in the setback areas. Retaining walls greater than four feet (4') in height were then constructed within the twenty-five-foot (25') setback areas. A retaining wall greater than four feet (4') in height is considered a “structure” and if such a retaining wall is built within the twenty-five-foot (25') setback areas the wall needs a variance. The parcel is part of the Beechwood II Homeowners Association. Tianos need a variance to build retaining walls greater than four feet (4') in height to encroach into any of the twenty-five-foot (25') setback areas as specified in the Land Use Plan Ordinance, Article VI Article VI District and District Regulations, Section B District Regulations, Paragraph 2 Land Use Schedule, Paragraph 4 (Dimensional Chart).

PROPOSAL:

Appellants the Tianos are requesting a variance to build retaining walls greater than four feet (4') in height to encroach into any of the twenty-five-foot (25') setback areas as specified in the Land Use Plan Ordinance, Article VI District and District Regulations, Section B District Regulations, Paragraph 2 Land Use Schedule, Paragraph 4 (Dimensional Chart).

Summary of Case by ZBA Members:

In lieu of reading the agenda, ZBA member Jack Daly summarized the purpose for the request for a variance. The purpose was to get a variance to build a retaining wall greater than four feet (4') in height in the twenty-five-foot (25') setbacks in the Mountain Residential (MR) District. Tiano was issued a Land Use Permit to build a single-family home a year or so ago. Dumont Construction put a foundation in. At that time, it was noticed that one of the walls was going to be over four feet (4') in height. A Cease and Desist Order was issued by the Town. Now Tiano and his builder are before the ZBA about building a retaining wall greater than four feet (') high in the setback area.

ZBA Member Paul Beaudin said he understood that the Cease and Desist Order also was given because Tiano and his builder had disturbed greater than 15,000 square feet, triggering the requirement for a Stormwater Management Plan.

Presentation:

General Contractor Robert Dumont was invited to present Tiano's case to the ZBA. Contractor Dumont provided updated plans to the ZBA which includes the rock retaining walls and updated stormwater mitigation plans. Contractor Dumont introduced Tiano's project engineer, William (Bill) Gregsak to the ZBA. Chair Ham commented that the plans were difficult to read because the type was so small.

Process:

Engineer Bill Gregsak asked the ZBA for some guidance about its process. Gregsak said that some ZBA members ask him to read the application and then the Appellant's responses to each of the questions (i.e., the 5 criterion). "Is that how it is usually done here?"

The members of the ZBA Board responded, "We have all read it." Chair Jon Ham said, "If we have any questions, we will ask you." Raymond D'Amante said, "That too."

Presentation Continued:

Appellant's Engineer Bill Gregsak gave some background on the construction project. The Appellant got a permit and construction was started. The Appellant was issued a Cease and Desist Order. Engineer Gregsak explained that his firm was initially hired to do a stormwater mitigation plan. Engineer Bill Gregsak explained that in preparing the Stormwater Management Plan it became clear that retaining walls would have to be built into the site plan. One of the influencing factors was there was an existing retaining wall that was built along Queens Way when the original developer constructed Queen's Way. They had to break through that pre-existing retaining wall to enter the property. The pre-existing retaining wall was on Tiano's property and only a few feet back from the property line. The other area where a retaining wall greater than four feet (4') in height was required was in the back of the property where the driveway circles around.

Appellant's Engineer Gregsak is proposing six-foot (6') high boulder retaining walls. Further, Mr. Gregsak explained that it is virtually impossible to keep the proposed wall out of the setback area in the back of the property without having to construct an eight foot to ten foot (8'-10') concrete wall in its place and would completely alter the existing driveway. If the six-foot (6') boulder wall were to be approved, the existing driveway would be able to remain in place.

Questions by ZBA:

Height of Wall in Setback Areas:

The ZBA reviewed the proposed plan. Member Delia Sullivan asked if the retaining wall in the front was also six feet (6') in height in the variance area (i.e., setback area). Appellant's Engineer Gregsak said yes. He directed her to look at a plan to see where the twenty-five foot (25') front setback line is in relation to the retaining wall. The setback line goes back pretty far and that means moving the retaining wall would push the wall pretty far back into the rear setback. Allowing the retaining wall to be built within the setback area would mean that the retaining wall would be a six-foot (6') high wall of stone versus a ten-foot (10') high wall of cement. Appellant could also keep his driveway where it is. The way the driveway is currently designed, the driveway comes up at a nice slope.

Process and Plans for Retaining Walls:

Member Beaudin verified with Appellant's Engineer which parts of the retaining walls were in the setback areas versus which lines on the plan are the setback lines (the long dashes) versus the limits of clearing line (the heavy dark line) versus the topo lines.

Member Beaudin asked if the Town had any copies of the retaining wall plans just submitted to the ZBA. Gregsak said he did not believe that he submitted any copies of the plans to the Town prior to the meeting.

Member Beaudin informed Engineer Gregsak that the Town requires an Applicant who wants to build retaining walls greater than four feet (4') in height to submit engineered plans for those retaining walls for third party review and approval prior to building the wall. Member Beaudin explained to Engineer Gregsak that the Town will need those engineered plans in order to issue a Land Use Permit to build the retaining walls. Once the plans are submitted, the Town Engineer has to have a chance to review the plans.

Member Beaudin asked Lisa Peluso (a new staff member) whether Town Engineer Ray Korber had a chance to look at the plans for the proposed retaining walls. Engineer Gregsak said that Town Engineer Ray Korber has looked at the plans for the retaining walls.

Member Beaudin asked what comments Town Engineer Ray Korber had. Engineer Gregsak said Korber's comments were that the retaining walls were in the setbacks.

Member Beaudin said in addition, there is a **Pre**-Construction Control Document that does not have to be filled out unless the retaining wall is going to exceeds four feet (4') in height. A **Post**-Construction Control Document also has to be filled out after the wall is completed.

Member Beaudin asked, whether the Town Engineer Korber had a chance to do a third-party review of the engineering design for the wall construction. Fire Chief Ron Beard responded that he did not think that Town Engineer Korber's analysis had gotten that far yet. First, a variance is needed. Then Town Engineer Korber would have preliminary review of the plans for the proposed retaining walls. Town Engineer Korber would give his comments prior to any

authorization to build the retaining walls.

Member Beaudin explained that there is a pre- and post-construction affidavit for any retaining walls over four feet to be constructed in the town of Lincoln. Member Beaudin questioned whether Town Engineer Ray Korber has looked at the construction design for the wall as he must approve the design. Too many times in the past the ZBA has said the 3rd party engineering review of the retaining walls is going to be a condition of approval but then the walls get built without 3rd party review and approval.

Member Sullivan stated that the purpose of the current ZBA meeting is to see whether the ZBA is going to allow the Appellant to build the retaining wall in the setback area and then once the ZBA has decided that then the Appellant can continue with the Pre-Construction Affidavit, the engineering design and the inspection (i.e., 3rd party review and inspection) followed by the Post-Construction Document.

Appellant's Engineer Bill Gregsak said that if Appellant could get approval tonight then they could proceed with this design and submit the design to the Town Engineer. If they do not get ZBA approval then the whole design has to change.

Member Daly stated that the ZBA could approve the variance for the retaining wall greater than four feet (4') high in the setback areas conditionally subject to review by the Town Engineer. If the Town's engineer fails to approve the design then the Appellant and his builder cannot go forward. They will have to go back to come up with another plan (i.e., the eight foot [8'] concrete wall). If the ZBA approves it, it is up to the Town Engineer. It will be up to the Town Engineer to say "yay" or "nay" on the design for the retaining wall. The design is pretty well spelled out if you look at the details of the plan and how the wall is going to be built with the capstone, the soil, and the drainage.

Enforcement:

Member Beaudin said, "Actually, it is not going to happen." Look at the plan. It is the exact same design for the wall that was constructed up at the Beechnut Drive hairpin corner and the retaining wall there was never built like the plan.

Member Daly said "The proof is in the pudding. There is the pudding mix right there; the way it is going to be done and then it is somebody's function to follow up to make sure it is built that way." Member Daly stated that he walked the site with the builder (Robert Dumont) at his own request in order to see where the proposed retaining wall would be constructed and exactly how they were going to mitigate drainage coming off from the bank behind it. Consequently, the builder explained the whole thing to Daly and maybe Dumont could go into a little more detail with the ZBA about how Dumont is going to construct the retaining wall. According to Daly, Dumont explained the need for that wall to Daly and it made sense. The ZBA is making a decision on a maybe a two foot (2') higher wall height above what normally could have been approved without being required to come before the ZBA for a variance because a four foot (4') or lower retaining wall is allowed in the setback areas without a variance.

Chair Ham asked Member Beaudin whose job it was to make sure the retaining wall was constructed in accordance with the plans. Chair Ham said he agreed with Member Beaudin that the retaining walls have not been built in accordance with the plans that the Town was given. The bigger problem is to make sure the walls are constructed the way they are engineered.

Manufactured Retaining Wall Versus Boulder Retaining Wall:

Member Beaudin said there are other ways to engineer a retaining wall other than a boulder retaining wall. They could erect an engineered retaining wall that is a manufactured vertical wall that could be out of the setback area. Engineer Gregsak responded that if they used such a pre-engineered retaining wall, they would end up with a steeper driveway leading up to the site.

Engineer Gregsak asked Member Beaudin, if he was saying keep the wall out of the setback. Member Beaudin said he would like to see the wall remain out of the setback. Member Delia Sullivan said, Engineer Gregsak already said he cannot do that. Member Beaudin said an engineered wall is a vertical wall that could be placed within the setback “and still retain”.

Management of Drainage:

Member Beaudin also questioned the direction of the flow of the water presented in the stormwater mitigation plan and asked if the water went into the two drywells. Engineer Gregsak said yes. Member Beaudin then asked where the water was going from the two drywells. Down into the ground? Engineer Gregsak said yes. When the drywells are full, where does the water go? Engineer Gregsak said “it just overflows”. Member Beaudin expressed concern that if the dry wells were to overflow, the direction of the water on the plan shows the water flowing over the rock wall and perhaps even saturating the ground behind the rock wall. Engineer Gregsak said it will be grass there and that the drywells are designed for twenty-five (25) year storms.

Member Beaudin said, when and if these two drywells overflow, where does the water go based on the plan? Appellant Engineer Gregsak showed Beaudin on the plan that the water would flow over the retaining wall “just like water has been flowing off of that hill for a very long time”.

Member Beaudin commented on the number of trees being cut and said he does not think it is a good idea to have water flowing over the rock retaining wall when the two drywells fill up. Were there any hydraulic calculations done because when the water goes down into the basin and flows into the drywell, it is going to hydraulically load that soil in the back of that rock retaining wall. Appellant’s Engineer Gregsak responded, “Oh, yeah. We have done the calculations.” The Town Engineer Ray Korber has looked at this plan twice. Korber is looking at it for a third time right now.

Member Beaudin said he is interested in hearing Town Engineer Ray Korber’s comments about that aspect of this design before making a decision. If Town Engineer Ray Korber is okay with the design then Beaudin is okay with it. Without having Town Engineer Ray Korber’s comments, he is reluctant to approve it.

Member Daly said Paul Beaudin does not have an engineering degree so he should not tell the engineer what he can or should do. Engineer Gregsak is being paid by Tiano the home owner. The engineer is preparing the design the way the homeowner wants him to. If Beaudin has other ideas maybe if he were going to build a house that would be Beaudin’s deal. However, Engineer Gregsak is here with a plan that has been designed at the homeowner’s request and with the builder’s input. Unless there is a major 25-year storm, the water is going to run down to the left and it is going to run northeast based on the topo that is up there.

Member Daly said he does not see granting a variance to put the retaining wall in the setback area as being a major issue for any property up there. He personally lives below that house. The ZBA has a letter from one of the homeowners up there, Mr. Katz. Katz lives up above Tiano and Katz is in favor of the ZBA granting the variance. Member Daly said he is in favor of the

retaining wall as proposed as an owner up in the Beechwood Area. He is someone who would be impacted. He does not see where the drainage and retaining wall as proposed is going to cause any harm. This granting of a variance would be subject to the Town Engineer Ray Korber having input and working with Engineer Gregsak and approving the way the retaining wall is proposed to be built.

Member Daly said to Member Beaudin if he feels uncomfortable, the Town could hire a building inspector through the CIP Program or through the Budget Committee process or the Town could have the Fire Chief go up there.

Member Beaudin said he is just uncomfortable without having the Town's Engineer look at this before he makes a decision about whether or not he should be using a rock retaining wall versus a manufactured engineered retaining wall here. Member Beaudin said there have been decisions made up at South Peak Resort where they have put in engineered retaining walls instead of boulder rock retaining walls due to the steepness of the terrain. It is important to get input from the Town Engineer. If the Town Engineer has checked the hydraulic analysis and he agrees with the Appellant's Engineer's calculations, then he would have no problem with approving it. Next time he thinks the ZBA should get the Town Engineer's comments about the design prior to the ZBA hearing and issuing any type of a variance.

Disclosure/Possible Recusal:

Member Beaudin asked Member Daly if he was an abutter. Member Daly said, "Not directly". The abutter list includes both Jack Daly and Raymond D'Amante as legal abutters. Member Beaudin said he did not know if Daly and D'Amante had a conflict of interest or not. Member Daly said "We are part of the homeowners' association up there."

Member Beaudin then disclosed that he works for the guy who bought and now owns "The Landing" Resort at Loon Mountain – the guy who owns the directly abutting properties both in front of the subject lot and behind the subject lot.

MOTION: To approve the request for a variance for the six-foot boulder retaining wall presented in the plans of Gregsak Engineering on behalf of the Appellant, Mr. and Mrs. Tiano, subject to review by the Town Engineer within 20 days and taking into consideration the issues that have been discussed.

Motion: Member Daly

Second: Member D'Amante

Discussion:

Lack of Input from Town Engineer:

Member Beaudin, said he was going to repeat for the record that he thinks the ZBA should get input from the Town Engineer before the ZBA gives any variances up. Member Daly responded that the ZBA is not giving a variance up; the ZBA is giving a conditional variance, subject to approval by the Town Engineer. Rather than bring everyone back and waste everybody's time, if the Town Engineer says no then we can get a revised plan.

Member Beaudin said "We should have had the Town Engineer here tonight, either via ZOOM or in person. We could have had the benefit of his comments. We should have had that. I don't know why we did not have that. When we have Planning Board meetings the Town Engineer is there. He gives us the benefit of his knowledge and if he has any concerns either for or against then he might say you really should be doing this instead of that." Beaudin said he truly believes

that the ZBA is not doing the right thing by granting a variance without the Town Engineer's input ahead of time.

Contractor Bobby Dumont said "I tried. He did not want to come."

Member Daly asked the Chair to move the question.

Overflow from Two Drywells Not to Go Over Pre-Existing Rock Retaining Wall:

Member D'Amante had a question. Member Beaudin brought up the drywells and what happens if there is an overflow. As D'Amante looks to the northeast, he sees a substantial amount of land that is owned by Tiano. If D'Amante follows the topo of 1250 north of the drywells, and then the whole lot slopes down from there to the northeast. D'Amante understands Beaudin's concern about having water flow directly over an existing boulder retaining wall along Queen's Way. It appears it may be possible for the engineer to address this so that any excess water is directed within the lot towards the northeast portion of the lot instead of over the rock retaining wall. The northeast appears to be downhill. It looks like a fairly simple solution to that question. Can that be done?

Engineer Gregsak said, "Sure. We could do that."

Member Beaudin said, "It should not go over the rock wall." There is a full road there, if you could bring the overflow water down into the other ditch. Member Beaudin requested that Town Engineer Ray Korber look at it and that someone convey that information to Town Engineer Ray Korber.

Limits of ZBA Review:

Member Sullivan said that she understands that if the ZBA approves a variance for the rock retaining wall within the setback area the wall is going to be over six feet high the wall has to be engineered. The design has to be given to Town Engineer Ray Korber to check. There is an application process for that; that is not the ZBA's job. The ZBA's job is to say whether or not the ZBA members think it is fair that Tiano build the retaining wall in the setback area. That is the only decision that the ZBA is here to decide.

Member Beaudin said he is not trying to put roadblocks in the way; he is trying to address the real problems that this Town has gone through, including one death related to a failed boulder retaining wall. That death is the reason why the Town has a retaining wall provision in its Land Use Plan Ordinance. If the ZBA starts granting requests for variances for retaining walls over four feet (4') in height to be built in the setback areas then where is the ZBA going to stop?

Member Sullivan said if the ZBA grants a variance the wall constructed has to be an approved engineered wall; that would be a condition of the approval.

MOTION: "Move the Question." Daly. Second. Raymond D'Amante. All in favor. (5-0) Beaudin did not vote. Confusion. Chair said they would revote on whether to move the question.

SECOND MOTION: "Move the Question." Daly. Second. Raymond D'Amante. All in favor. (5-0).

MOTION: To approve the request for a variance for the six-foot high boulder retaining walls with the twenty-five-foot setback area as presented in the plans of Gregsak Engineering on behalf of the Appellant, Mr. and Mrs. Tiano subject to review by the Town

Engineer within 20 days and taking into consideration the issues that have been discussed to address D'Amante's suggestions to address Beaudin's concerns.

Motion: Member Daly. Second: Member D'Amante.

Motion carries 4-0-1 with one abstention. Paul Beaudin abstained.

IV. ADJOURNMENT

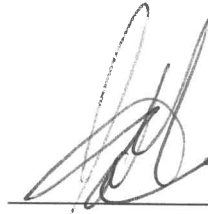
MOTION: "To adjourn at 6:30pm."

Motion: Member Beaudin

Second: Member D'Amante

Motion carries unanimously.

Respectfully submitted,
Recording Secretary,
Brook Rose



Chairman Jon Ham

Date Approved: February 17, 2021

