

**LINCOLN ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
THURSDAY OCTOBER 16 2014 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

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**Present:** Chairman Paul J. Beaudin II, Jonathan Ham, James Martin II, Board of Selectman Representative Patricia McTeague

**Members Excused:** Vice Chair Don Landry,

**Members Absent:**

**Staff Present:** Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

**Guests:**

- Daniel F. Duris of 65 Banjo Drive, Thornton, NH 03285, d/b/a Gypsy Café on property owned by Duris Enterprises, LLC of 67 Kidder Street, Manchester NH 03101
- Claire F. Duris, registered agent for Duris Enterprises, LLC of 67 Kidder Street, Manchester, NH 03101

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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 was called to order at 6:05PM.*

*Don Landry was excused.*

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- II. CONSIDERATION** of meeting minutes from:

- August 19, 2014

**Motion to approve the minutes from August 19, 2014**

**Motion:** Patricia McTeague      **Second:** Jon Ham

**All in favor: (3-0)**

*Paul Beaudin abstained from the vote.*

- August 26, 2014

**Motion to approve the meeting minutes from August 26, 2014**

**Motion:** Jon Ham      **Second:** James Martin II

**All in favor: (3-0)**

*Patricia McTeague abstained from the vote.*

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- III. CONTINUING AND OTHER BUSINESS** (Staff and Planning Board Member/Alternates).

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**IV. NEW BUSINESS**

- 6:00 pm. **Application for variance to put addition within side and rear setbacks.**

**1. Case #ZBA #2014-05**

- a. Applicant:** Daniel Duris d/b/a Gypsy Café  
65 Banjo Drive  
Thornton, NH 03285
- b. Property Owner:** Duris Enterprises, LLC  
65 Banjo Drive  
Thornton, NH 03285
- c. Project Location:** Gypsy Café  
36 Main Street  
(Tax Map 112, Lot 006)  
Village Center District

**DESCRIPTION:** Under Land Use Plan Ordinance, Article VIII (Board of Adjustment), Section A (Board of Adjustment), Paragraph 2, Daniel Duris d/b/a Gypsy Café on property owned by Duris Enterprises, LLC, is requesting a dimensional variance for setback requirements for the Gypsy Café property located at 117 Main Street (Tax Map 113, Lot 079) in the Village Center (VC) District, to put an addition on the back of the building by enclosing the rear deck and expanding the dining area and rear kitchen, in part to meet requirements of the State Fire Code.

1. Article VI, Section B, paragraph 4 (Dimensional Chart), requires primary buildings be set back 15' from the rear property line and 10' from the side property line. Side setback in the Village Center District is 0' for additions to existing structures already in place within the 10' side setback as of January 1, 1997. The building existed prior to 1/1/1997 so the side setback of 0' will be met. The proposed addition to the primary building will be set back 2' from the rear property line. Other portions of the building are already only 2' from the rear property line.

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

**Motion that the appeal is administratively complete.**

**Motion:** Paul Beaudin      **Second:** James Martin

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

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

**ACTION:** Grant the appeal, grant the appeal with modification, or deny the appeal by the Zoning Board.

Daniel Duris explained to the Zoning Board of Appeals (ZBA) that the abutters have been notified and no negative feedback has been received. The abutter directly behind the Gypsy Café, Dominic Vecchione Jr. sent a letter to the ZBA stating no issues with the application.

Duris explained that he had spoken with Ken Chapman of the Linwood Medical Center



who stated that the Linwood Medical Center had a meeting regarding the Gypsy Café appeal and they had no objections with the changes being made.

Chair Beaudin asked if a written letter could be obtained from Ken Chapman so that there was record in the file of the approval from Linwood Medical Center. Duris stated that he would ask for the approval in writing.

Duris explained there were two parts to the application, one is for fire code. The insurance company of Gypsy Café would like them to move equipment under a hood fan, a deep fryer and a griddle. In order to move the two items Duris will need to renovate the kitchen to add a new hood fan and new fire suppression system in the current kitchen layout. To keep the items needed to stay running Duris stated a back area will need to be added. Items that are currently in the area where the hood fan will be installed and the fire suppression will be installed will go into the newly made back room while the correct venting is installed.

Duris explained on a drawn plan what was going to happen and clarified the changes for the ZBA.

McTeague felt that the dumpster was close to being in the street. Duris stated that the items behind the dumpster and a shed would be removed and the gas tank would need to be replaced. All that will be behind the dumpster after the restructure will be recycling buckets. Duris explained that the items that are by the dumpster right now would be moved, they are only there temporarily so that other work can begin. McTeague was concerned that the dumpster would stay so close to the street that plowing would be an issue. Duris stated that he did not want to move the dumpster because it would infringe on the 4 parking spaces on the side of the building.

Jon Ham asked if there were currently 4 parking spaces there. The clinic lets the customers from the Gypsy Cafe park in the clinic parking lot. They can use both the front lot and the back lot after 5:00pm when the clinic is closed, but the back lot is not advertised.

The second part of the request is to enclose a deck on a presently existing concrete slab. Duris explained the reason to enclose the deck would operate the area during the winter months as well as the summer months. This would mean that he could keep his staff on all winter and not have to lay off help at the end of the summer. Enclosing this deck area would mean having to give up seats (3) in the current restaurant, but that was worth it to be opened in the winter and Duris explained that the restaurant would flow better.

McTeague questioned parking for the enclosed space. It was explained that the parking was approved at a Planning Board meeting chaired by Pat Romprey for the extra space on the deck.

Chair Beaudin asked the ZBA if it was considered conflict that Beaudin has plowed for the Gypsy Café in previous years. Beaudin explained that he has never taken money for plowing but has traded favors instead. There was a quick conversation among board members and all agreed that Beaudin should continue to hear the application and vote on

the application.

Beaudin wants to support the businesses but they are getting close to not giving approvals for expansion because of parking issues in town.

**Motion to open the public hearing.**

**Motion: Patricia McTeague Second: James Martin II**

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

Bont pointed out for the public input there was a letter from Dominic Vecchione Jr. (abutter) and that Duris was going to see if he could get something in writing, a letter or email to Bont, from the owners of the Linwood Medical Center.

**Motion to close the public hearing.**

**Motion: Patricia McTeague Second: Jon Ham**

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

McTeague asked if there was an issue with the sewer line. Bont stated that it was an old sewer line that was clay tile and may need to be replaced. The issue is that the sewer line is located underneath the back expansion of the Gypsy Café.

Duris spoke with Ken Chapman of the Linwood Medical Clinic today about the sewer line issue and the problems that the Clinic was having been found to be issues with people within the Clinic putting things down the drain that should not be put down the drain. Chapman told Duris that the issue with the drain has been remedied internally at the Clinic.

Duris stated that the sewer line does go under the cement pad that is in the back corner of his lot, the cement pad that Duris is planning to build on. McTeague stated that Duris would be taking a big risk if there ever was a problem and the sewer line needed to be dug up. McTeague stated that the cost to move the sewer line would not be at the town's expense but at the property owners' expense if the line needed to be moved. Bont stated that would be an issue between the two owners and the town would not be involved. Bont had spoken with Bill Willey, Public Works Director, and Willey wanted to be sure that the two owners had that conversation before the further building took place.

Chair Beaudin asked if it was only a service line. Bont said that it was her understanding that it was a service line.

Chair Beaudin stated that where there is already an existing foot print (cement pad), to build on top of that is not really a ZBA issue. Chair Beaudin stated that to expand the building and change the setbacks is a ZBA issue.

The ZBA discussed the difference between building dining space on the approved pre-existing cement pad versus the expansion of the kitchen area on the back of the building. The ZBA members believe that to turn the cement pad used as outdoor dining space into a room with tables would only require a building permit and was not a variance issue.



Since the applicant already had permission to put the cement pad in and to use that space as restaurant space, there is no issue for the ZBA to vote on, so the enclosure of the cement pad is going to be removed from consideration of the ZBA.

The expansion of the back kitchen area and changing the setback is a ZBA issue. The Board will be continuing only with the expansion and setback issue.

Chair Beaudin asked for a vote to separate the cement pad enclosure from the expansion and fire suppression installation. All members agreed.

The ZBA focused on what is now described as the storage area and expansion of the kitchen on the right rear of the building.

Chair Beaudin read through each condition taking a vote on whether each condition was met by the applicant. The ZBA voted on each of the following conditions:

Condition 1. Granting the variance will not be contrary to the public interest:

- Bringing the kitchen to fire code

Chair Beaudin agreed that safety was one aspect. A letter from the direct abutter has expressed approval.

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

Condition 2. Granting the variance would observe the spirit of the ordinance because:

- The building will not be any further in the setback than any other part of the building
- The direct abutter does not have an issue with the expansion.

McTeague stated that it would clean up what she considers an eye sore right now.

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

Condition 3. Granting the variance would do substantial justice because:

- Allows to create a safer environment for customers and employees

Chair Beaudin and McTeague stated that the fire safety issue alone justifies the expansion.

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

Condition 4. For the following reasons, the values of the surrounding properties would not be diminished:

- Because the building is already close to the property line
- Bringing the building up to fire code would be safer for neighbors.

Bont felt it would increase the value because it would visually look nicer in the back of the building.

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

Condition 5. Unnecessary hardship:

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

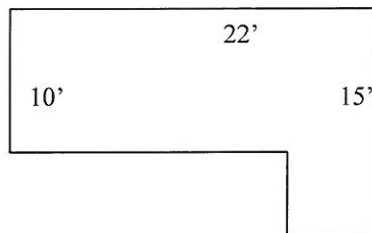
- Would not allow Gypsy Café to meet fire code or keep current insurance.

Chair Beaudin stated that the entire application is about safety and not allowing the changes would be a transgression.

B. The proposed use is a reasonable one because:

- Meet fire code and provide a better experience to customers.

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



**Motion to grant the variance on the part of the application to extend the back kitchen with an L shaped room that is 10' x 22' x 15' and add duct work and fire suppression equipment to within two feet of the property boundary line.**

**Motion: Patricia McTeague Second: Jim Martin II**

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

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

**A. ZBA Bylaws**

Chair Beaudin stated that in the ZBA Rules and Procedures there is nothing that discusses applicants submission of applications. This tends to create problems with applicants applying at the last minute and not giving enough time for the ZBA to research issues and

get paperwork together for the Zoning Boards review.

McTeague asked to check with other nearby towns to see what the average requirement is for paperwork submission.

Chair Beaudin stated that there needs to be a reasonable time for posting in the newspaper, notifications to abutters and prepare information for the ZBA.

Chair Beaudin stated that Bont does a great job preparing the packet that is given to the ZBA members before each meeting showing all the aspects and issues of the applications to be reviewed during a meeting. Chair Beaudin stated that it is the responsibility of the applicant to provide all required paperwork needed for the ZBA to review the application. Chair Beaudin said that it was not Bont's responsibility to have to school the applicant to obtain the correct paperwork. McTeague stated that it has been the policy of the town to help the applicant in any way possible. Chair Beaudin thought that was a problem because it takes too much of Bont's time. Chair Beaudin said that applicants are asking permission to do something and that the applicant should then be responsible to provide all paperwork necessary to review the job.

Chair Beaudin stated that if there was a time placed on the applicant, for instance, 30 days before meeting with the ZBA the applicant must provide X. This would give Bont more time to look over the application to ensure everything was there prior to ZBA meeting. Chair Beaudin gave a few examples that could happen once the paperwork was received.

- A better drawing is required
- It does not need to be an engineered plan, you could hand draw this one
- You skipped the description on the application

Chair Beaudin felt that the applicant needs to do more of the leg work to complete the application.

There is a problem having to ask the applicant for information before the meeting. The plans, documentation is not always intact and many times the applicants are missing information. It should be written in the rules and procedures that the applicant is responsible to provide the ZBA with all the information required for the board to make decisions.

Drawings that are illegible is a problem with many applicants. Anyone that comes in with poor quality drawings should be responsible to provide the accurate and legible drawing and documents.

Chair Beaudin thinks that Bont should push back on the applicant to get all the paperwork and drawings required by the town. Chair Beaudin thinks that people are taking advantage of Bont to do the work for them.

McTeague disagreed and said that Bont should be helping the applicants.



Chair Beaudin said that yes, we do have to help the applicant, but not to such an extreme. The applicant is the one that wants the project to be approved; it should be the applicant's job to provide all the required information. Allowing more time would alleviate some of the pressure on Bont.

Chair Beaudin will check with surrounding towns to see if they have a set number of days that paperwork must be received by before the actual ZBA meeting for the application. Once the research has been done, then the ZBA will look at changing the ZBA Rules and Procedures to include this requirement.

Chair Beaudin said that Bont could call him if she needed help with an applicant. Bont stated that Town Manager Burbank was very helpful in this area as well. McTeague offered her services as well.

#### **B. Herbert Lahout's Proposed Off Premise Sign**

Chair Beaudin asked if Mr. Lahout has sent in any new information about having an off premise sign. Bont responded that nothing new has come in from Mr. Lahout.

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- VI. 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.
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#### **VII. ADJOURNMENT**

**Motion to adjourn at 6:55PM**

**Motion: Paul Beaudin      Second: Patricia McTeague**

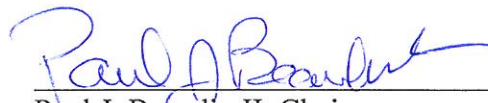
**All in favor: (4-0)**

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Respectfully submitted,

Wendy Tanner, Planning and Zoning  
Recorder

Dated: October 16, 2014

  
Paul J. Beaudin II, Chairman