

**LINCOLN ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
WEDNESDAY – SEPTEMBER 20, 2017 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chairman Jonathan Ham, Vice Chairman Don Landry, Paul J. Beaudin II, Jack Daly and James Martin, Myles Moran (alternate)

**Members Excused:** Raymond D'Amante

**Members Absent:** None

**Staff Present:** Town Manager/Planner Butch Burbank, Fire Chief Ron Beard, Planning and Zoning Administrator Carole Bont

**Town Attorney:** Attorney Peter J. Malia, Jr., Hastings Malia, PA, 376 Main Street, P.O. Box 290, Fryeburg, Maine 04037-0290

**Guests:**

- **Shawn Bergeron – Code Consultant, Bergeron Technical Services LLC, Applicant and Agent representing Herbert Lahout, 50 Seavey Street, P.O. Box 241, North Conway, NH 03860-0241**
- **Herbert Lahout – 64 Sunset Hill Road, Sugar Hill NH 03586, applicant and principal of Herbert Lahout Shopping Center, Inc. that owns the following Lincoln properties:**
  - (1) property where Lincoln Nail Salon is located at 31 Main Street (Map 112, Lot 027);
  - (2) property where Subway Restaurant is located at 159 Main Street (Map 118, Lot 075); and
  - (3) property where Lahout Square Shopping Center is located at 165 Main Street (Map 118, Lot 076).
- **Cheryl Bailey – resident of abutting property, 11 Maple Street, PO Box 711, Lincoln NH 03251-0711**
- **Denis E. Desmarais – resident and principal owner of abutting property owned by Denis E. Desmarais, Trustee of Denis E. Desmarais Revocable Trust of 2012 known as 11 Maple Street (Tax Map 118, Lot 066), whose address is 11 Maple Street, PO Box 711, Lincoln, NH 03251-0711, owner of D. Desmarais Builder, LLC & Locksmith Services**
- **F. Myles Moran – resident of 11 O'Brien Avenue, Lincoln, NH 03251 (Map 117, Lot 024) whose address is PO Box 184, Lincoln, NH 03251-0184 and**
  - Owns by quitclaim deed Map 117, Lot 0026
  - Principal/Broker for Moosilauke Realty, 104 Main Street, North Woodstock, NH 03262;
  - d/b/a Udderly Delicious Ice Cream Store at 121 Main Street (Map 113, Lot 094) owned by JKF Associates, LLC, c/o Peabody & Smith Realty, PO Box 789, Franconia, NH 03580;
  - d/b/a Kastmast Construction LLC;
  - d/b/a Conehead Ice Cream in North Woodstock, NH.
- **Paula Strickon – resident, co-owner of 127 Pollard Road, Map 117, Lot 023, PO Box 1510, Lincoln, NH 03251-1510, Planning Board member and former EMT & Fireman/Chief of Point Breeze Volunteer Fire Department, 29 Point Breeze Avenue, Breezy Point, NY 11697.**

- 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.

*Chair Ham excused and recused Raymond D'Amante, and appointed alternate James Martin to sit. Chair Ham also recused alternate Myles Moran who sat in the audience.*

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

- August 16, 2017

**Motion to approve the minutes of August 16, 2017 as presented.**

**Motion: Jack Daly                      Second: Paul Beaudin                      All in favor: (4-0)**

*James Martin abstained.*

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

A. **6:00 PM. Lincoln Zoning Board of Adjustment (ZBA) Request for Special Exception in Land Plan Ordinance per RSA 676:5,II(b).**

**Case #:** **2017 ZBA SE 2017-02 M118 L076 Herbert Lahout Shopping Center, Inc.**

**Location:** 165 Main Street (a/k/a "Lahout's Square")  
(Map 118, Lot 076)  
The lot is located in the Village Center (VC) District.

**Applicant/Agent:** Shawn Bergeron  
Bergeron Technical Services, LLC  
PO Box 241  
North Conway, NH 038605

**Property Owner:** Herbert Lahout Shopping Center, Inc.  
(Herbert Lahout principal)  
26 Union Street  
Littleton, NH 03561

Herbert Lahout Shopping Center Inc.  
(Herbert Lahout principal)  
c/o Daniel Keeler CPA  
260 Cottage Street Suite E  
Littleton, NH 03561-0260

**Overview:** Applicant Shawn Bergeron of Bergeron Technical Services, LLC, acting as authorized agent on behalf of property owner Herbert Lahout Shopping Center, Inc. (Herbert Lahout principal requests a **Special Exception** under 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) Chart of Business Uses to put in a new propane filling station.

Applicant proposes to install a new propane filling station behind the portion of the shopping plaza building that houses Aubuchon Hardware Store. The lot is located in the Village Center (VC) District. The proposed new business use (Gasoline/Fuel Oil Sale & Storage) is a propane filling station in the Village Center (VC) District. Gasoline/Fuel Oil Sale & Storage use requires a Special Exception.

*Chair Jon Ham recused alternate Myles Moran who sat with the audience, leaving four (4) sitting ZBA members. Chair Jon Ham appointed alternate James Martin to sit as a regular member of the ZBA Board.*

*At the last ZBA public hearing on August 19, 2017, there were only four (4) ZBA members able to sit on the case. At that time Town Attorney Peter Malia informed the ZBA and Applicant's representative, Shawn Bergeron of Bergeron Technical Services LLC, representing Herbert Lahout Shopping Center, Inc., that the ZBA's Rules of Procedure state that a matter before the ZBA needs three (3) affirmative votes to grant ZBA approval. If there are less than five (5) ZBA members present, the ZBA Chair shall give the applicant a choice of whether to proceed, or to have the hearing continued until five (5) members can be present to hear the appeal.*

LINCOLN ZONING BOARD OF ADJUSTMENT  
RULES OF PROCEDURE  
ARTICLE IV. MEETINGS

SECTIONS:

4. Quorum:

A quorum for all meetings of the ZBA shall be three members, including alternates sitting in place of members.

c. If there are less than five members (including alternates) present, the Chair shall give the choice to the applicant to proceed, or have the hearing continue until five (5) members can be present to hear the appeal. Should the applicant choose to proceed with less than five (5) members present that shall not solely constitute grounds for a rehearing should the application fail. RSA 674:33 III.

*Bergeron said he chose to have the hearing continued until five (5) members could be present to hear the appeal. The ZBA will need alternate James Martin to be present, as Myles Moran is an abutter and Ray D'Amante has a conflict of interest. Shawn Bergeron will speak with Bont before the next meeting to make sure the ZBA will have full board present. (He did.)*

*At that meeting, the ZBA voted to approve the applicant's request to continue the hearing and reconvene the ZBA public hearing for Herbert Lahout Shopping Center, Inc., on its request for a Special Exception to locate a propane filling station in the Village Center (VC) District to the third Wednesday in September (September 20 2017) at 6:00 PM.*

*This is the reconvening of that meeting scheduled for August 19, 2017.*

**Presentation by Shawn Bergeron, Agent for Herbert Lahout Shopping Center, Inc.**

Shawn Bergeron said that in order to obtain a Special Exception under the Town of Lincoln's Land Use Plan Ordinance (LUPO) there are four (4) criteria that must be met.

1. Architectural Compatibility
2. Traffic Access to and from the development

3. Lighting and noise level
4. Compatibility/Desirability

In the application he submitted he did address all four of those requirements. He will go through them and expand upon them a little bit and then answer any questions.

**Criteria #1. The development is architecturally compatible with the surrounding residential district.**

The proposed propane filling station will be located at the **rear** of the building, not in view of Main Street. The propane filling station will be architecturally compatible with the district in which it is located. [It is located in the Village Center (VC) District.] The parking area at the rear of the building is configured with a concrete retaining all around the perimeter (above the parking grade), reducing the view from abutting and neighboring properties to the rear. The proposed filling station will be built with a fenced surround to further reduce visibility of the filling station to neighboring properties within view.

Bergeron directed the ZBA members to look at the 11”X17” plan that he gave to the ZBA members. He asked the ZBA to note the following:

- Location of NH Route 112/Main Street in relation to Maple Street that runs along the western side of the shopping center.
- Location of the parking in front of the Lahout Shopping Center building.
- Location of the Subway Restaurant in the lower left-hand corner of the lot.
- Location of Aubuchon Hardware Store which runs along the south westernmost section of the “L-shaped” shopping plaza.
- Location of the access and egress to the shopping center from Maple Street in the northwest corner of the lot.
- Location of the parking area along the concrete retaining wall along the back of the lot in the northwest corner.
- Location of the proposed propane filling station in the northwest corner of the lot slightly north and east of the rear parking area.

Bergeron said in the back of the shopping center, (northeast of the proposed propane filling station site) the shopping center property also had a storage container and a couple of dumpsters.

Bergeron said he wanted to show the ZBA what was, in his opinion, a proposed propane filling station that would certainly be architecturally compatible with the Village Center (VC) District in which it is located. Bergeron said that he talked with Gregory J. Moran who is President of Aubuchon Realty Company, Inc., and essentially an owner of the Aubuchon Hardware Store who was not present that evening. In that conversation Morin suggested to Bergeron that he would be very much content with what the Town of Lincoln would “enjoy” to make the propane filling station architecturally attractive.

Bergeron submitted a photo of another propane filling station at an Aubuchon Hardware Store in Hillsborough, NH which is located in the southwestern part of NH. (See attached photo in Appendix B.) Bergeron said that, “As indicated in the photo, the propane filling station does not even have to be something that you can see, so to speak.” Bergeron said he is not necessarily saying that Aubuchon/Herbert Lahout Shopping Center is tied to a propane filling station that looks like that design, however, certainly when it comes to “architectural compatibility”,

Aubuchon is ready and willing to do what is necessary, if anything, visually to make the propane filling station work well behind the Aubuchon Hardware Store.

**Criteria #2: Traffic access to and from the development will not alter the character of the district.**

The proposed filling station proposes no change to, and will have no impact on the existing driveways and traveled ways to, from, and around the site. The travel lane at the rear of the building will remain open and unobstructed.

Bergeron said it was important to understand how a customer would get propane from the propane filling station. Customers who need a propane tank filled would go into the Aubuchon Hardware Store. No one can carry a propane tank into a store so the customer will leave the tank in their vehicle and go into the store and ask the attendant for their propane tank to be filled. The customer will then have to bring their propane tank around to the back of the store, and their tank will be filled by the attendant. The customer will leave. Realistically, most people will not hand-carry a twenty-pound (20 lb.) propane tank around to the back of the store. The customer is going to drive around to the left side of the parking lot to the back of the Aubuchon Hardware Store to the propane filling station, take the tank out of their vehicle to be filled and then exit. That is really how the traffic access is going to work. The propane filling station will have no significant effect on what is going on at the shopping center right now.

**Criteria #3: Lighting and noise level will be of such design as not to disturb the tranquility of the district.**

No additional lighting is proposed as part of the proposed filling station. Noise from the filling station will be minimal, and limited to hours of business of the existing hardware store.

Bergeron said, as far as additional lighting is concerned, we would like to NOT put any lighting on this propane filling station. If the ZBA requires additional lighting we will use “appropriate lighting”, meaning maybe a fixture or two of dark sky-compliant lighting. Dark-sky-compliant lighting is currently “big” for most installations. Bergeron would use a dark-sky-compliant light fixture that is also compliant with the “erectile code” and the State Fire Code as being safe to be around such propane filling equipment, however, at this point they are not proposing any lighting.

Bergeron said, as far as noise is concerned, this propane filling station, when it is not actively filling a propane tank, is silent. It just sits there; it makes no noise at all. When the propane filling station is filling a propane tank it will make the same amount of noise as a residential air conditioner. It takes between three and five minutes to refill a propane tank and then it shuts off. That will be the extent of the noise.

**Criteria #4: The proposed use will not be incompatible with, or undesirable in relation to existing uses in the area.**

The proposed propane filling station is an integral service provided by businesses such as the existing hardware store currently located on the property. Pre-filled propane tanks are currently sold at the existing hardware store on site. The location and design of the filling station complies with the requirements of the applicable codes and standards adopted by the State of NH Building and Fire Codes.

Bergeron said that this propane filling station is essentially an “accessory use” to what is already

going on at the site (i.e., what is already going on at Aubuchon Hardware Store). The process of filling a propane tank is associated with the retail sales that takes place within the building. It is a land use that is allowed within the zoning district [Village Center (VC) District]. From what he can determine, and you all may know otherwise, I do not think there is another opportunity other than in Littleton where people can get their propane tank filled – not of the small barbeque type size. Aubuchon sells the tanks, you can swap out the tanks at Aubuchon, but I do not think there is another propane filling station in the area. If the ZBA approves this propane filling station, it will provide a relatively good service for the people and tourists in this area.

Bergeron said he was happy to answer questions and is willing to listen to any concerns that the ZBA may express to him to see if they can “make this happen”.

Beaudin asked for staff comments.

**Staff Comments:**

Town Manager/Planner Burbank said Fire Chief/Health Officer/Code Compliance Officer Ron Beard and Planning and Zoning Administrator Carole Bont worked together on this matter extensively.

**Town Manager/Planner Burbank:** Town Manager/Planner Burbank summed up the staff concerns.

1. **Access:** We have concerns about customer and delivery access.
2. **Fire Safety:** We have concerns about the amount of propane added to the amount of merchandise that is behind the building. During the years that Burbank has been in Lincoln and certainly since this issue has come up, Chief Beard has documented with photos the business that goes on out back there behind the Aubuchon Hardware Store. Aubuchon is storing large pallets of pellets (fuel) right next to the building in the fire lane. They are also storing other types of merchandise there. The area behind the building is no longer a clear access way. There is only one way in behind that building complex for fire protection. Fire Chief Beard will speak to that. Inadequate fire access to fight a fire is a huge deal with a facility of that size.
3. **Parking:** We have concerns about parking. The other issue that has been brought to his attention is that adding a propane filling station will bring some additional business to that shopping plaza which will increase demand for parking because there is no other filling station nearby.
  - a. [Burbank said he thought that Woodstock might have a propane filling station at one of their campgrounds. Paul Beaudin and Carole Bont interjected that there is a propane filling station at Country Bumpkins Campground in Lincoln.]

Additional business requires additional parking. Too few municipal parking spaces in town is an issue already. The Town has done a cursory count of the municipal parking spots in town. There are only seventy-nine (79) municipal on-street parking spaces on NH Route 112/Main Street. Parking at Lahout's Shopping Center is also an issue. The Town has done a cursory count of the number of spaces required for the uses and functions that are currently in the Herbert Lahout Shopping Center, Inc. Based on the public retail area and the number of seats currently in the restaurants the Herbert Lahout Shopping Center is about seventy-nine (79) parking spaces short.

4. Town Manager/Planner said that Bergeron's points are well taken in the perfect world, but this shopping mall complex presents some unique safety challenges that the Fire Chief should address.

**Fire Chief/Health Officer/Code Compliance Officer Concerns:**

Fire Chief/Health Officer/Code Compliance Officer Beard had the following concerns:

1. **Fire Safety Access & Fuel Stored Next to Building:** Fire Chief/Health Officer/Code Compliance Officer Beard said that recently Aubuchon Hardware Store received a tractor trailer load of wood pellets. The pellets were originally put on wood pallets in the fire lane marked area near the existing propane tank farm and the proposed propane filling station site. Since then Aubuchon employees have moved the pallets of wood pellets where they are now lined up along the other side of the building and stacked up the pellets two pallets high in the fire lane out in front of the building. If there is a fire in the building it will be difficult for the firemen to get to the building if Aubuchon is stacking merchandise and tons of wood pellets on pallets (i.e., fuel) in the fire lane. This practice will also affect the fire department's access to the sprinkler system. Right now, tons of wood pellets are lined right around the area where the sprinkler system Siamese pumper connection is located. There is not a lot of real estate there for the business to store product without taking up parking spaces. Bergeron has done a good job in trying to fit the proposed propane filling station in there, however, it appears from the site plan submitted that the propane filling station is going to take up some more parking spaces.
2. **Customers Access to Proposed Propane Filling Station:** Fire Chief/Health Officer/Code Compliance Officer Beard said that as far as drivers coming in with their vehicles to try to get their propane tanks filled, there is no easy way for drivers to just go around the building because of the way the building is designed and sited on the lot.

**Questions from the ZBA members:**

**Firefighter Access:**

Beaudin asked Fire Chief/Health Officer/Code Compliance Officer Beard if his primary concern was strictly for access to the building for fire-fighting purposes. Fire Chief/Health Officer/Code Compliance Officer Ron Beard agreed that in the event there was a fire there he would be concerned that his fire fighters would not be able to get access to the building.

**Greater Than 4,000 Gallons of Propane Stored on Site:**

Town Manager Planner Burbank said to Fire Chief/Health Officer/Code Compliance Officer Beard that Beard had indicated that if a business exceeds more than four thousand (4,000) gallons of propane storage, whether the propane is stored underground or not, that the safety rules that apply change. There are four thousand (4,000) gallons of propane stored underground on the site right now. If the proposed tank is added that means there would be four thousand five hundred (4,500) gallons of propane on site.

Fire Chief/Health Officer/Code Compliance Officer Beard said that what he had read was that when someone has more than four thousand (4,000) gallons of propane fuel stored on site he is "into the next category". He was trying to remember, but if Lahout exceeds 4,000 gallons of on-site storage it changes the classification of the facility.

**Is the Design NFPA Compliant?**

Beaudin asked Fire Chief/Health Officer/Code Compliance Officer Beard, from what he read in the NFPA requirements, did the proposed propane filling station meets all of the NFPA requirements? Fire Chief/Health Officer/Code Compliance Officer Beard said what Shawn Bergeron has diagrammed out on the site plan with regard to his placement of the proposed propane filling station “just barely squeezes in”. However, it does meet the NFPA requirements.

Beaudin asked Fire Chief/Health Officer/Code Compliance Officer Beard if he had any knowledge that the proposed plan does not meet the NFPA requirements. Fire Chief Beard said, as proposed the proposed propane filling station meets the NFPA requirements.

**Firemen Access, Delivery Access and Customer Access:**

Fire Chief Beard said that access is an issue. Currently, trucks that deliver product to the tenants have to park on Maple Street to do their deliveries or they use Cross Street to get over directly across Maple to get into the Maple Street exit which they use as an entrance. Fire Chief Beard said he was not sure how the businesses in the Lahout Plaza have the traffic pattern set up for deliveries or what the businesses tell the drivers who do the offloading. Chief Beard said that he did not know if members of the ZBA had viewed the area behind the building recently, but now there are two (2) additional dumpsters in addition to what has been depicted in the site plan presented to the ZBA at this hearing that are taking up additional parking spaces. Actually, the two (2) new dumpsters are in the fire lane right now. Obviously, the dumpsters can be moved, but there are now four (4) dumpsters and one (1) shipping container out behind the building now.

**Staff Comments Continued:****Planning & Zoning Administrator Bont:**

Bont said she had the following concerns:

1. **Propane Filling Station Too Close to Densely Populated Residential Neighborhood:** Bont is concerned about how close the proposed propane filling station is to the adjacent residential area that is in the Rural Residential (RR) District. Although the subject property is in the Village Center (VC) District, the line of demarcation between the Village Center (VC) District and the Rural Residential (RR) District is right behind the proposed propane filling station. The subject lot is directly adjacent to the Rural Residential (RR) District. She directed the members of the ZBA to look at the color map so they could see the many small residential lots that abut or are very close to the subject property and see how the subject lot is surrounded by a mix of densely populated residential and commercial uses.
2. **Maple Street Entrance/Exit Is Not Adequate:** Bont said the Maple Street access is not adequate. The Maple Street exit is not a two-way exit/entrance. There is a sign posted that says “Exit Only, Do Not Enter”. The entryway is too narrow for an elderly person who does not drive that well to maneuver over to the proposed propane filling station to get propane and then turn his RV around there so that his RV is facing the exit, particularly if all of the employees are going to be parking in that back-parking area. Are drivers going to turn their RVs around in order to exit? Are drivers going to back out? Drivers cannot go around the back and drive out.



3. **Aubuchon's Past Unsafe Behavior:** Bont said that very consistently Aubuchon Hardware Store stores all of its merchandise in the fire lanes – both in the front of the store and in the rear of the store. The reason they use the fire lane is because there is not enough room to store and/or display the merchandise that Aubuchon Hardware Store has right now. The Fire Chief has talked to Aubuchon about removing their product from the fire lane several times. The merchandise may disappear for a day, but then it is right back in the fire lane. Recently, there have been huge truckloads of wood pellets delivered to Aubuchon Hardware Store. What are wood pellets? Fuel! There are tons of fuel in the fire lane behind the building, obstructing the fire lane and access to the building.
4. **Parking Spaces Not Accurately Striped Means That Travel Lanes Within the Site Do Not Accurately Indicate Whether Ingress & Egress to The Site Is Adequate:** Bont said that poor quality lining of the parking spaces is not acceptable. Some of the lines are six and half feet long; that is not what our ordinance requires. [Initially the requirement was 10'X20'. Now the requirement is 9'X19']. There are no cars or trucks that fit into those parking spaces. Anyone who comes off from NH Route 112/Main Street has to maneuver through that parking area, avoiding collisions with other drivers in that parking lot. Because the parking lot is not lined properly drivers are unable to do a good job maneuvering past the vehicles, all of which stick out far into the travel lane areas, first to park so they can go in and pay for their fuel, and then to back up into the travel lane and then drive around the row of parked cars to the back of the building to get their fuel from the propane filling station.

**ZBA Questions Continued:**

Daly asked Shawn Bergeron the following questions:

1. **Will RVs be filled directly from this propane filling station?**

Bergeron said that he had talked to Moran, President of Aubuchon Hardware Store about this and Moran told Bergeron that "...he had no particular desire that that happens." One of the things that Bergeron and Moran talked about doing was limiting the hose length on the propane filling station so drivers cannot drive up to the filling station to fill their tanks. Bergeron said, "We don't mind posting this thing to say, 'No RVs Behind the Building'. We do not have to service propane to Recreational Vehicles. Bergeron said Aubuchon President Moran told Bergeron that he does not feel the need to service propane to Recreational Vehicles.

Daly said that obviously allowing RVs behind the building would only create more of an issue as they relate to turn arounds, trafficking and what have you. One thirty-two (32) footer would simply just discombobulate the whole situation back there. Bergeron said he was certainly very familiar with Recreational Vehicles. He has no issue with saying, "Look, we do not want them [RVs] behind that building."

2. **Where Are the "Fills" for the Currently Existing Four (4) One Thousand (1,000) Gallon Propane Tanks?**

Daly asked Bergeron where the "fills" for the current existing four (4) one thousand (1,000) gallon tanks were. Would you require another fill for this tank? Bergeron directed the ZBA members to look at the site plan that he had given the ZBA.

Daly said he saw the tanks on the plan. He wanted to know where the fills for the tanks

were. Is there a direct fill to each one thousand (1,000) gallon tank or is there one line or “fill” that feeds to all four of them? Bergeron said there is one fill sticking up of the ground between those four (4) tanks and it is painted yellow. Daly said he had driven around back there and was trying to sort it out and saw something yellow with a post in front of it. He assumed that was the fill, but he wanted to know for certain.

Daly asked if Bergeron would require another fill for the propane filling station tank. On the site plan, Bergeron pointed out the rectangle in the center of all of the circles filled with hash marks is the actual propane filling station. Bergeron said the rectangle represents the fenced-in area. Inside the fenced-in area is a single five hundred (500) gallon tank. That tank will be filled separately and independently from these other four (4) one thousand (1,000) gallon tanks east of the rectangle. These two propane tank systems are in no way connected to each other.

### **3. What Type of Tank?**

Daly said the diagram shows an oblong tank. Daly said he looked at one of Aubuchon’s upright tanks down in Winnisquam. Which type of tank is Bergeron proposing, an upright tank or an oblong tank laying on its side? Bergeron said his intention is to propose a ground-mounted horizontal tank system.

### **Legal Advice:**

Beaudin asked Town Attorney Malia to remind the ZBA members about what issues they could or could not address. The last time Attorney Malia commented about the inability for the ZBA to address parking.

Attorney Peter Malia said what he proposed was that the ZBA take all of the public comment and then make a motion to go into nonpublic session so that he can give the ZBA legal advice on the merits. He does not want to put his legal advice in the minutes and then the ZBA members disagree with his advice and then he would end up having to defend a ZBA decision with the Town Attorney on the record recommending something different from what the ZBA decided.

### **Appellant’s Request:**

Bergeron asked permission to speak which was granted. Bergeron cautioned the ZBA to remember that the request for a Special Exception is only part one of a two-part process. If he obtains an approval for a Special Exception from the ZBA he still has to go to the Planning Board for Site Plan Review approval. Bont agreed.

Bergeron said he feels that it is important that the ZBA limit the scope of its review process to the four criteria listed in the Land Use Plan Ordinance (LUPO). With all due respect, Bergeron said he believes that parking is an issue that he will need “to jump on” when he gets into the Site Plan Review process before the Planning Board. Parking is not part of the criteria to be considered by the ZBA when reviewing a request for a Special Exception. Bergeron asked the ZBA to be held to the four criteria listed in the LUPO with the understanding and knowledge that he is going to get into a lot more in deeper depth and greater detail when they appear before the Planning Board for Site Plan Review.

**Additional Questions by ZBA Members****Traffic Access to the Filling Station:**

Landry said he thought that the entrance/exit onto Maple Street was one way at one time. Bergeron said that he does not know if that was the case at one time.

Beaudin, Daly and Bont said that presently the sign at the Maple Street entrance says “One Way”, but people do not obey the sign. Bergeron said he was somewhat relying on his survey. Bergeron said he drove over there tonight and he thinks there is a sign that says “One Way”. Landry said that on the survey at the Maple Street entrance there are arrows going both ways (representing ingress and egress). Landry said he did not know if that would impact Criteria #2: Traffic access to and from the development will not alter the character of the district.

Bergeron asked the ZBA members to consider the process of how people obtain propane. I do not think you will find the customers driving back there and then walking around to the front of the store to get assistance and pay for the propane. Instead customers are going to park in front of the building and go into the front of the building to pay and then driving around to the back of the building to fill up their tanks and then leaving through Maple Street.

**Fire Department Access to the Sprinkler System & Main Shut Off Values:**

Beaudin asked Bergeron, in relation to the proposed propane tank, where is the access for the Fire Department to the sprinkler system? Fire Chief Beard answered that the access for the Fire Department to the sprinkler system is directly across from the present tank farm of four (4) one thousand (1,000) gallon tanks. Bergeron pointed to the map to indicate where the sprinkler system access was located.

Beaudin said, so if there was a fire at the propane filling station, the Fire Department would not have any access to the sprinkler system. Fire Chief Beard answered that depending on the location of the fire, that is correct. Town Manager/Planner Burbank agreed that if there were a fire at the proposed propane filling station the Fire Department members would not be able to get by the fire to get access to the sprinkler system. Beaudin said he did not know if there was another sprinkler system access located somewhere else within the shopping plaza or not. Fire Chief Beard said that spot was the only access to the sprinkler system. Fire Chief Beard said that the main control valve and a number of the main disconnects for Aubuchon Hardware Store and that part of that building are right near the access to the sprinkler system.

Bergeron responded by saying that it is important. The sprinkler system is an automatic sprinkler system. Its water supply comes from the municipal water supply service. This is not the water supply. This is an accessory booster. If the fire department feels the need to boost the sprinkler system inside the building because the system is not able to keep up otherwise, it makes a direct connection to what is known as the Siamese pumper connection.

Bergeron said, there is a fire hydrant right on the Herbert Lahout Shopping Center property. If Bergeron were fighting this fire and if he even needed to boost the sprinkler system he would make a connection from this hydrant to that Siamese pumper connection. There is no way that he would put a valuable piece of municipal fighting apparatus or anyone behind this building. It is just too close back there.

Beaudin said that fire fighters would have a hard time even trying to lay a hose through there if the propane filling station was on fire. Bergeron said, that is the reason why these types of

buildings are required to be protected by an automatic fire sprinkler system.

Beaudin said what he was talking about was the fire department's access to the sprinkler connection. Beaudin said he has had the experience where there was not enough pressure in the tank and the fire department had to get access to the sprinkler system in order to boost the water pressure.

Fire Chief Beard said when he was digging into the Fire Code he found where it said that it is your responsibility if there is a structure fire to accommodate supplementing the municipal water system in case of a water pressure failure.

Beaudin agreed. Beaudin said he felt at odds with what the NFPA requirements are if the propane filling station as proposed is said to meet the NFPA requirements. Beaudin questioned how the proposed filling station could be said to meet the NFPA requirements, but yet the fire department would not have access to a very valuable connection for the building needed to extinguish a fire.

#### **Local Enforcement of Fire Safety Code Violations:**

Fire Chief Beard agreed, particularly when the property owner and his tenants have added all kinds of other combustibles back there [i.e., pallets of wood pellets, merchandise, dumpsters and storage containers]. Fire Chief Beard asked the ZBA to take into account that fact that the fire department would have to be able to access the road behind the shopping plaza with their aerial ladder truck if the fire department needed to. Beaudin said he thought the fire department could set up the aerial ladder truck almost anywhere else on the site, but if firefighters could not connect that fire hose to the sprinkler system that would be a problem. Fire Chief Beard agreed that if there were a fire at the propane filling station the Fire Department would not be able to get past the fire to get to the connections. The Fire Department would have to mitigate that situation at the propane filling station to get to the back of the building.

Bergeron responded that one of the things that he suggested over a year ago and then, again a few moments ago to the Fire Chief was that the individuals who were responsible for designing this particular propane filling station layout are all nationally certified fire protection specialists or State of New Hampshire licensed fire protection engineers. Bergeron said he does not think (and he does not say this to be derogatory or mean) that what goes into these NFPA compliant propane filling station designs is far above the working knowledge of a lot of people sitting at the ZBA public hearing so he recommended to the Fire Chief that this proposed plan be submitted to the State of New Hampshire Office of the State Fire Marshal for their review. The State Fire Marshal's Office can respond to this plan accordingly. Bergeron said that he did not want to respond to a lot of what he was hearing at the ZBA public hearing. "I am not going to sit here and argue with you about it, but I am not going to agree with you either."

Bergeron said that a lot of what he was hearing, for instance, is (and again, Chief, this is with respect for his position), the Fire Chief is unhappy with the fact that Aubuchon is storing wood pellets immediately adjacent to that building. That is really an enforcement issue. The Town of Lincoln, through its enforcement abilities and controls has tools that are offered to the municipalities through the State of New Hampshire and the Fire Chief should be enforcing those State Fire Safety Codes. As Fire Chief, Chief Beard should be contacting Aubuchon and telling them, "Clean out that fire lane!" No matter how many safeties fire safety engineers design into those projects if municipalities do not police those safeties down the road often those safeties get

overlooked. A lot of what is going on here at the Herbert Lahout Shopping Center is not related to the zoning ordinance and is not related to National Codes or the State of New Hampshire Fire Code. The complaints are operational concerns that need to be addressed locally. Bergeron said he thinks that is the most important thing for the ZBA to do is to look at the four criteria for granting a Special Exception under the zoning ordinance and not go out on branches.

Beaudin said, he knows that, but I have got to tell you, I would not send you or me or any fireman behind that building to connect a fire hose if that propane tank was on fire. You could not get close enough to connect a hose from the sprinkler system Siamese pumper connection to that hydrant. You can talk about what professionally trained fire departments and all of the professional fire chiefs would do all you want, but as you know, architects and safety professionals are human; we all make mistakes. When you are putting someone's life on the line there should be a little more consideration given than to allow just five, ten, fifteen feet – whatever the distance is right there. There is not much room between the propane tank and the building. Five hundred gallons is a lot of propane to go off. Then, as a professional, if you are going to ask a fireman to go behind that building to hook up a hose to the sprinkler system from the hydrant that is not fair. I do not think it is fair to expect that of a member of the fire department. Personally, I do not think you have come up with an appropriate answer to that.

Daly asked Bergeron, I am a lot older than you are and I do not know half as much as you do about fire suppression systems. Is it possible, if push came to shove about this project, to put some kind of a chemical system like we have in gas stations that would address the concerns of Beaudin and the Fire Chief? We do not rely on water to fight gas fires. We rely on a chemical system that is typically activated by temperature. Is it possible to do something like that? Bergeron answered, "It is." Daly asked if Bergeron's client would be willing to do that. Bergeron said yes, that his client would be willing to do so.

Ham asked Town Manager/Planner Burbank if he had any comments. He thought Beaudin's comments were well taken. As a former Fire Chief, Burbank said that Bergeron is correct in speaking about the expertise of the professionals who designed the sprinkler system. However, when the fire protection professionals designed that sprinkler system in the shopping center they did so many years ago. When they designed the sprinkler system with the Siamese pumper connection there was hardly anything out behind the building. Well, guess what!? There are plenty of things behind the building now. To continue adding hazardous materials to an area where the fire lane is supposed to be is a concern. Clearly, when the professionals who designed the sprinkler system put the sprinkler system connection back there behind the building there was a nice wide empty alley down through there. Now that alleyway is closed in with multiple dumpsters, a utility trailer, and the enclosure for the four (4) one thousand (1,000) gallon underground tanks are back there. Fire Chief Beard reminded people that since the original Site Plan from 1988 the owner of the plaza had added a cold storage section which took away both from parking and the space in the alleyway behind the building. At one point, as staff we would be remiss if we just keep allowing this type of development behind the building very close to densely populated residential properties. In the Town staff's opinion, locating a propane filling station back there is not a good thing to do.

Bont said that at this public hearing the parties want us to make the assumption that the professionally designed sprinkler system is operational one hundred percent (100%) of the time and that the system is in good repair. That is not necessarily the case.

Fire Chief Beard said that Herbert Lahout who is the principal for Herbert Lahout Shopping Center Inc., has been aware that the Fire Department has responded to a fair number of alarm calls this year and has been pretty good about responding to concerns that arose from those alarms. Since 2013 or 2014 the Fire Department has responded to 19 or 29 calls. (He could not remember the exact number because he did not bring his documentation with him), but it has been a fair number of calls to the complex for compressor failures. Herbert Lahout agreed that he had fixed the compressor failures. Fire Chief Beard said that the sprinkler system is an aging system. Herbert Lahout, to his credit, has spent a lot of money trying to replace pieces of the sprinkler system as they fail.

Fire Chief Beard said to Bergeron that he did not think that there had been a Life Safety Fire Analysis of the proposed propane filling station project. Bergeron said that the Town has not requested an analysis so an analysis has not been done. Bergeron said that he and the Fire Chief had discussed an analysis over a year ago but the Fire Chief has not asked for one.

Bergeron said there was a lot of conversation about the sprinkler system in the building. He recognizes the benefit of being able to access the sprinkler system connection, but the sprinkler system in the building is totally separate and distinct from the fire protection that is associated with this propane filling station. The building's sprinkler system has nothing to do with the propane filling station. Are we considering a situation where we might have a fire emergency at the propane filling station and a fire emergency taking place in the building next door at the same time? Again, from the world of fire protection design, one of the rules we always configure is, we always plan on a single emergency. A professional will not take into account the likelihood that the entire Town of Lincoln will burn at one time. If it is, that is not something we will be able to deal with. You always design to a "single fire emergency". Therefore, we are either looking at a fire associated with the propane filling station or a fire associated with the building. If that building were fully involved, we are not going to put personnel or apparatus behind the building, regardless. Bergeron said we have to be careful we do not go down the slippery slope by saying what if the building is burning and the propane filling station is burning? What if the whole neighborhood is burning? That should not be part of the equation.

Chair Ham asked Fire Chief Beard if it was possible to move the Siamese pumper connection for the sprinkler system down to the other corner of the building or was it a permanent fixture that cannot be moved. Fire Chief Beard said the sprinkler system would probably need to be re-engineered and a new waterline would have to go in. The sprinkler system needs to have its own dedicated service separate from the water service to the rest of the building. Chair Ham said, so it is not just a matter of just running a pipe down to the one end of the building using a "T" connection? Fire Chief Beard said that that sprinkler system is designed and installed directly off the main water line.

Bergeron said that the fire department connection which is what we are talking about is not connected to the municipal water service. We have run fire department connections a long way through buildings. Bergeron said he has not looked to see if he can relocate the sprinkler system connection elsewhere.

**Public Comment:**

*Chair Ham opened discussion to public comment.*

**Paula Strickon – Propane Tank is Too Close to Densely Populated Residential Neighborhood:**

Paula Strickon said to Paul Beaudin, “Probably for the first time in one hundred years, we agree.” She did not know whether any of the ZBA members had ever seen a propane explosion. She has. In the fire department that she used to work with [Point Breeze Volunteer Fire Department, Breezy Point, NY] she saw the results of a propane filling station explosion. The amount of propane on the site was twice the size of what Aubuchon is proposing, but the propane explosion blew out seven (7) houses. It killed four (4) people. It took out eight (8) cars. And, it killed a railway line on Long Island for five (5) days. It was not pretty. Strickon asked the ZBA not to grant the Special Exception to allow the applicant to put this propane filling station behind the small residential homes on Maple Street and O’Brien Avenue. People live in those houses. Could Aubuchon put this propane filling station somewhere else? Isn’t it easy enough for people around here to just go to the front of the building and just exchange their tanks? Exchanging your tanks is a very easy way to get your propane. You do not ever, ever, ever want to see a propane explosion. Please, don’t do it. Thank you.

*Paula Strickon left the meeting.*

**Herbert Lahout – There Are No Parking Problems at the Shopping Center:**

Herbert Lahout said he has owned the Lahout Square Shopping Center [located at 165 Main Street (Map 118, Lot 076)] for about twenty (20) years. During that time “parking has been a big buzzword”. Lahout said he was looking the ZBA members straight in the eye and said that other than during the Scottish Clan weekend (aka “the Highland Games”), he has never had a complaint from any tenant in the shopping center about the lack of parking. Lahout said all of his tenants are paying full market value for their space [except for the State Liquor Store which paid no rent for a number of years]. No one complains about parking. Parking is so adequate there that all of the employees park in the front of the building and take up customer parking. The employees do not need to park in the back of the building. “Believe me, if I owned a store and we had a parking problem, every employee would be parking in the back of that building.”

Lahout said there is a municipal lot right across the street (referring to Town Office parking lot Map 118, Lot 001) so if parking ever becomes a problem at the shopping center, the municipal parking lot is a very handy parking lot that was built for that very purpose.

Lahout said, thirdly, he used to sell gas as a kid. His dad used to have a gas station. He does not know of any gas stations that are NOT in a densely populated residential area. “That seems to be the nature of the beast.”

Lahout says he can see the ZBA’s point of view about being concerned about explosions in the residential neighborhoods, however, just about every gas station that he knows is in a thickly populated residential neighborhood or a thickly populated commercial area.

**Myles Moran – How Close are the Homes to the Proposed Propane Tank?**

Moran said he was an abutter to this proposed project (quitclaim deed to a ten-foot strip of land called a Right of Way to the garden lots - Map 117, Lot 026). He lives on O’Brien Avenue. How many feet is there between the proposed propane filling station and the closest house? Is there one hundred feet (100’) there between the proposed propane tank and the closest house (16 Maple Street, Tax Map 118, Lot 074 owned by Andrew Crowshaw & Mary Zmetra c/o Asset Management West, LLC 18831 Von Karman Avenue #380, Irvine California 92612)?

According to Moran, it does not matter whether the nearest house is fifty feet (50') or one hundred feet (100') away. His own house is less than five hundred feet (500') away and he is not technically considered to be an abutter. (Actually, Moran's house is 370 feet away.)

Moran said he did not care about the parking. He has nothing against a propane filling station. Moran said that from a public safety standpoint, however, the spot behind Aubuchon Hardware Store is just a bad location. In this specific location on Maple Street the propane filling station would be located in a densely populated neighborhood, similar to a neighborhood in New York where they build lots of small wooden houses very close together. People have said two or three times that if that building was fully engulfed there would be no way to get a piece of fire apparatus in there. Moran is concerned that if the propane filling station is fully engulfed, and the fire department cannot fight the fire and the wind is blowing hard northeast, the propane tank would be located too close to those neighborhoods.

Bont put up a map on the wall so that people could see how close the proposed tank would be located to the houses. She also included such a map in the ZBA members packet. The closest house to the property is about twenty-five feet (25') from the boundary line. The lot itself is only fifty-one and a half feet (59.5') wide. The house starts about half way into the lot or about twenty-five feet (20') from the boundary line. Directly across Maple Street from the shopping center are the homes of Denis Desmarais and Gloria Morin each located about one hundred feet (100') away from the proposed tank.

#### **Bergeron's Response:**

##### **How Close is the Nearest House?**

Bergeron said that from the location of the proposed tank to the center of Maple Street is about one hundred ten feet (110'). From the center of the propane tank to the property line is approximately thirty feet (30'). Bergeron said he could not tell them how far it is from the propane tank to the first house, but he can tell them that his land surveyor did not pick the adjacent homes up on the survey. Bergeron said he thinks the nearest house is greater than fifty feet (50') away.

##### **Are Propane Filling Stations Safe?**

Bergeron said he wanted to address the comments made by Paula Strickon about propane explosions. In the course of his training he has had the opportunity to put out propane tanks that are burning. He has had the opportunity to burn off propane tanks that are full and he was trying to get rid of the propane. He knows how propane burns and it burns really well. The fact of the matter is that when we have propane explosions inside of structures, unfortunately, they are damaging and magnificent in a horrible way. The propane explosion happens because propane has leaked and become encapsulated to the point where propane just collects in a structure and eventually the propane finds its way to a source of ignition and bad things happen. These propane filling stations are designed so that cannot occur.

Bergeron said that if any of us go to an Aubuchon Hardware Store and purchase one of those propane tanks that exist in the propane case right now, take it home, set it on this table, open that valve up wide, propane will not flow from that tank. The propane tanks are designed such that you will not get a propane flow from a tank until it is connected to an appliance that propane can be used. There are various safety devices that are built into these propane stations that are required by all of the various standards that we have to operate from or operate under that



prevent these horrible situations from occurring. Now if you say to me, can you guarantee with one hundred percent (100%) certainty that nothing is going to happen for the rest of my life, of course, I cannot because things happen; things fail. But, with proper maintenance, proper operation, propane fuel is safe and this stuff is what standards and laws allow us to put a propane filling station here. In fact, the law allows us to put it even closer to those things that you are concerned about. This propane filling station as proposed does not meet the minimum standards required. This design is in excess of the requirements or the standards.

**ZBA Should Limit Review to Four Criteria for Special Exception:**

Bergeron said he wanted to remind the ZBA members that tonight they should be addressing only the four criteria for a Special Exception that are spelled out in the zoning ordinance. This discussion is far away from those four criteria.

Beaudin addressed criteria #4:

**Criteria #4: The proposed use will not be incompatible with, or undesirable in relation to existing uses in the area.**

Beaudin said he believes that that fourth criteria gives the ZBA some latitude to be able to see how a propane filling station fits within the neighborhood. He is less concerned about the possibility of the propane tank blowing up because he has been a fire fighter and he has seen propane tanks being burned off. There is a propane filling station up at Loon Mountain where he used to work that has between one hundred (100) and three hundred (300) cars in close proximity to the propane tank. (Map 126 Lot 020). If that propane filling station goes up in flames those cars are all going up. If the propane filling station over at the Country Bumpkins Campground and Cabins (Map 108, Lots 041 & Lot 042) goes up then all of those campers in their cabins and tents will go up. It would be a horrible mess. Beaudin said he has no concerns about a propane tank explosion. However, there are a lot of other things that the ZBA can consider under that criteria. Beaudin said the parking, the ability to put out a fire, and some of the other issues that impact the neighborhood, like the access, meaning the traffic in and out of the plaza, are all meant to fit under criteria #4.

Bergeron said that, in response, to Beaudin's concerns like traffic access for customers, he has explained how that would work. Beaudin said that Bergeron has not addressed the fire department's access to the sprinkler system – how that would work. How would that work when Aubuchon stores merchandise back there in the fire lane? He knows that in a perfect world there would not be anything stored out back there, or the sprinkler system would work one hundred percent (100%) of the time. Unfortunately, there a number of time when things do not quite work exactly the way they are supposed to, like when Aubuchon stores stuff there or the sprinkler system is not working properly and that is the time when we get those situations that become terrible. That is why the ZBA has to look at the proposed location and decide is that location really a good place for that particular use.

Bergeron said, if we follow that mindset through, we will make no development of any type because our fear would be that even though the development, whatever it is, fully complies with the standards, it might not operate in accordance with those standards and therefore, we should not allow it to happen. For instance, we did all of the planned review for "Riverwalk". Per the Fire Code that building had to be fully sprinkler protected, otherwise, the building could not be constructed. Do any of us in this room know right now with a 100% certainty that the sprinkler

system is functioning tonight? We do not know. We work under the premise that the system was properly designed, properly constructed and it will be properly maintained. None of us can ever say with 100% assurance about those things.

**Fire Chief Should Cite Fire Code Violations:**

Bergeron said, going back to the merchandise that Aubuchon puts in the fire lane. If it is an issue, get it moved. Fire Chief Beard said “Then where is it going to go?” Bergeron said “That is not up to us. That is not our problem.”

Fire Chief Beard said that the merchandise will then be moved to the area at the end of the building where it will interfere with the traffic flow. Bergeron said:

- “That is absolutely incorrect! You have to say to Mr. Moran who is the operator of Aubuchon Hardware Stores, DO NOT STORE ANYTHING IN THAT FIRE LANE!”
- As Fire Chief, Ron Beard has the authority to cite Mr. Moran. If Mr. Moran does not move the merchandise, cite him. As Fire Chief, Ron Beard has citation authority in the State of New Hampshire.
- “You are bringing up too many what ifs. The fact of the matter is that as Fire Chief you have not done what you are supposed to be doing!”

**ZBA Questions Continued:**

Daly said to Bergeron, he appreciated Bergeron’s comments, but members of the ZBA were trying to learn. He was not going to base his decision on Bergeron’s answers to those questions, but he wanted to ask because he is learning.

**Operator Training:**

Daly wanted to ask about the operators who will actually provide the service to customers. What kind of training do they receive? What kind of regulation is there that requires the employees to go through some kind of specific training to dispense propane? Bergeron said, “It’s interesting. Because if you ask me, do they have to be licensed by the State of New Hampshire, they don’t. They do have to go through training in order to meet the NFPA standards.”

**Periodic Sprinkler System Inspection:**

Daly said in a previous job he was executive officer in charge of six (6) high rise buildings housing twelve hundred (1,200) or thirteen hundred (1,300) elderly residents. We were required to put our sprinkler systems through quarterly testing with the local fire department and the sprinkler companies. Daly presumes that requirements for the sprinkler system in the Herbert Lahout Shopping Center are different than the requirements for those six (6) high rise buildings. Is there a State regulation that requires the Lahout Shopping Center sprinkler system to be tested periodically? Fire Chief Beard answered that the sprinkler system has to be tested annually. There are separate guidelines for hood systems owned and operated by businesses (restaurants) within the shopping center.

**Neighborhood Informational Meetings:**

Daly said that in his previous job, when he had to site new developments they always had neighborhood informational meetings. Daly asked Bergeron if he had held any neighborhood informational meetings of any type to talk to the neighbors and address their concerns? Bergeron said they had not. The only neighborhood information that has been out there has been the legal

abutter notification that is required for this ZBA Public Hearing on their request for a Special Exception. Bergeron has not invited the neighbors in for a talk; nor has his client Herbert Lahout who owns the property d/b/a Herbert Lahout Shopping Center, Inc.

**Responses from Abutters:**

**Gloria Morin – Abutter Opposed:**

Beaudin said to the Chair, we do have in our ZBA packets, a letter from an abutter to put into the record. Gloria J. Morin lives at 13 Maple Street (Map 118 Lot 067) directly across Maple Street from the Herbert Lahout Shopping Center access onto Maple Street. On August 8, 2017, Gloria Morin wrote a letter in opposition to the proposed propane tank. Mrs. Morin was going to be away at the time of the public hearing on August 16, 2017, so she stopped by and wrote a note for the ZBA. She asked Bont to send her a copy of the plan so she could see what the set up for the propane filling station would look like. In her letter she formally objected to the plan submitted. She objected to anyone placing a propane filling station within three hundred (300) miles of her house. The Town has a sign at the access from the Herbert Lahout Shopping Center onto Maple Street that says “Exit Only Do Not Enter”. The trucks that enter the shopping center from Maple Street are always breaking the tree branches of the tree on my property. (See attached letter and attached google photo Exhibit 1.)

**Desmarais – Abutter Concerned About Access:**

Beaudin asked if the Town had received any other input in writing from neighbors. Bont said the Town did not, however, abutter Denis Desmarais was at the meeting on August 16, 2017 where this case was continued, and again he was in attendance at this meeting. (See attached google photo Exhibit 2.)

Beaudin asked Denis Desmarais if he had any concerns. Desmarais said that the only concern that he had was whether or not Recreational Vehicles (RVs) are going to be allowed to go back there to use the propane filling station. Beaudin said, “Not according to what was said tonight.” Bergeron said, “For the record, we have no issue. Mr. Morin [Principal/President and General Manager of Aubuchon Hardware Stores] has no issue with that. Mr. Morin has stated to Bergeron that he really has no need to have RVs being filled at this propane filling station. We can certainly shorten the hose-length to prevent filling RVs from back there. We can put up some signage saying “No RV Traffic”. Then if someone comes to the front of the store to have their RVs filled then the answer will be “No.”

Denis Desmarais said that the reason he brought up this concern is because just the other day a FedEx truck being driven by a driver who is brand new to the area was bringing product to Aubuchon Hardware Store. The driver pulled up Maple Street and he was going to back into the Plaza from Maple Street. His cab was up at Gloria Morin’s house and he was going to back in. The driver tried multiple times. Desmarais was watching the fire hydrant. The driver was getting closer and closer to the fire hydrant. When the driver got pretty close to the fire hydrant Desmarais went up to the driver and told the driver that most drivers usually come in through Cross Street or they drive around the block and then they drive in through past the exit sign. This means they drive into the plaza right past where the “Exit Only Do Not Enter” sign is. His concern is that if Aubuchon Hardware Store is allowed to fill RVs at a propane filling station located behind the store, he could just imagine what it will be like back there with drivers who do not know the area and do not know how to get in and get out of the shopping center, it is just

going to be a “cluster” back there.

Beaudin asked Bergeron:

- Will that be the same problem for the delivery truck drivers who either deliver propane to the four (4) tanks that is supplied to the businesses there or who deliver product to the stores back there – Aubuchon Hardware Store, Bass Shoe Outlet and Chutters?
- Does it matter which way the delivery trucks come into the plaza?
- Can delivery trucks enter the plaza to make deliveries any way they want (i.e., through the exit onto Maple Street)?
- What size trucks would come in to deliver the propane to the tanks already back there?
- What size trucks would come in to deliver the propane to the propane filling station?

Bergeron responded:

- The size truck that would deliver propane to the propane filling station would be probably be a “bobtail”.

Two kinds of trucks carry the moniker “bobtail.” Both are short, like the tail on a bobcat. One is a semi-tractor without a trailer. The other is a straight truck, in which all of the truck’s axles are attached to the same chassis. Straight trucks that transport propane gas are also known as bobtails.

The U.S. Department of Energy calls a straight truck that is used to carry propane a bobtail. Such trucks, DoE says are powered by propane and have a tank that is significantly shorter than other petroleum transport trucks.

- The size of the truck that would deliver propane to the propane filling station would be the same sized propane delivery truck that delivers propane to local restaurants.
- In all likelihood though, Irving Oil must use a much larger truck to fill those pre-existing four (4) one thousand (1,000) gallon tanks.

Fire Chief Beard said Irving uses a bigger bobtail truck; it is not a ten-wheeler truck. Bergeron said he does not share the concern of Desmarais about the average propane truck driver, but he does share the concern of Desmarais when it comes to the guy who has retired from Massachusetts who is driving a forty-foot (40’) RV. “We just do not need them back there.”

Bont asked about the other delivery truck drivers who deliver product to the various businesses in the shopping center. Do they drive in off from Maple Street through the exit to deliver their produce? Bergeron said he did not know. Herbert Lahout said he could answer that question. Most deliveries come in the front of the store. For example, deliveries of liquor come in through the front of the State Liquor Store first thing early in the morning.

Bont asked about the delivery truck drivers who deliver product to Aubuchon Hardware Store. Fire Chief Beard answered that the Roadway trucks park on Maple Street. The other company that does deliveries to Aubuchon, sometimes, if the driver arrives early enough he will come across Cross Street, across Maple Street and enter through the “exit”, take a hard corner and off load right there.

Herbert Lahout said Aubuchons is a very well-run business and they are very accommodating. Lahout said he was sure that if the Town gave Aubuchons a “heads up” that the Town does not want trucks to go this way or that way Aubuchon staff would more than happy to do whatever

the Town suggests. The stores are very well run.

**Motion to Close the Public Comments.**

**Motion: Jack Daly. Second: Paul Beaudin. Unanimous vote in favor.**

**Motion to go into nonpublic session under RSA 91-A:3,II,(I).**

**Chapter 91-A. ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS**

**91-A:3 Nonpublic Sessions.**

II. Only the following matters shall be considered or acted upon in nonpublic session:

(I) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

**Motion: Jack Daly. Second: Paul Beaudin.**

**Roll Call Vote:**

<b>Paul Beaudin</b>	<b>Yes.</b>
<b>James Martin</b>	<b>Yes.</b>
<b>Jon Ham</b>	<b>Yes.</b>
<b>Don Landry</b>	<b>Yes.</b>
<b>Jack Daly</b>	<b>Yes.</b>

*At 6:58 PM the ZBA went into nonpublic session. Other persons present during the nonpublic session:*

- 1. Town Attorney Peter Malia;*
- 2. Town Manager/Planner Butch Burbank; and*
- 3. Planning and Zoning Administrator Carole Bont*

*See Nonpublic Session minutes.*

**Motion to reconvene the Public Session:**

**Motion: Paul Beaudin. Second: Don Landry.**

**Roll Call Vote:**

<b>Paul Beaudin</b>	<b>Yes.</b>
<b>James Martin</b>	<b>Yes.</b>
<b>Jon Ham</b>	<b>Yes.</b>
<b>Don Landry</b>	<b>Yes.</b>
<b>Jack Daly</b>	<b>Yes.</b>

**The ZBA reconvened the public session at 7:25 PM. The minutes shall not be publicly disclosed.**

**Motion to not publicly disclose the minutes for the nonpublic session under RSA 91-A:3,II,(I) until after the Planning Board has finished the Site Plan Review process because it was determined that divulgence of the information likely would render the proposed**

**action ineffective.**

**Motion: Paul Beaudin.**

**Second: Don Landry.**

**Roll call vote to not publicly disclose the minutes for the nonpublic session.**

**Paul Beaudin Yes.**

**James Martin Yes.**

**Jon Ham Yes.**

**Don Landry Yes.**

**Jack Daly Yes.**

**Board Reviewed Whether Application Meets Special Exception Criteria:**

Chair Ham moved on to review the criteria on the ZBA's Special Exception checklist.

**1. Criteria #1. The development is architecturally compatible with the surrounding residential district because...**

a. The proposed propane filling station will be located at the rear of the building, not in view of Main Street. The propane filling station will be architecturally compatible with the district in which it is located. [It is located in the Village Center (VC) District.] The parking area at the rear of the building is configured with a concrete retaining all around the perimeter (above the parking grade), reducing the view from abutting and neighboring properties to the rear. The proposed filling station will be built with a fenced surround to further reduce visibility of the filling station to neighboring properties within view. (A photograph of a filling station was attached as an example of what the filling station would look like and is part of the record.)

**b. Unanimous vote that the development is architecturally compatible with the surrounding residential district.**

**2. Criteria #2: Traffic access to and from the development will not alter the character of the district because...**

a. The proposed filling station proposes no change to, and will have no impact on the existing driveways and traveled ways to, from, and around the site. The travel lane at the rear of the building will remain open and unobstructed.

**b. Unanimous vote that traffic access to and from the development will not alter the character of the district.**

**3. Criteria #3: Lighting and noise level will be of such design as not to disturb the tranquility of the district because...**

a. No additional lighting is proposed as part of the proposed filling station. Noise from the filling station will be minimal, and limited to hours of business of the existing hardware store.

**b. Unanimous vote that the lighting and noise level will be of such design as not to disturb the tranquility of the district.**

**4. Criteria #4: The proposed use will not be incompatible with, or undesirable in relation to existing uses in the area because...**

- a. The proposed propane filling station is an integral service provided by businesses such as the existing hardware store currently located on the property. Pre-filled propane tanks are currently sold at the existing hardware store on site. The location and design of the filling station complies with the requirements of the applicable codes and standards adopted by the State of NH Building and Fire Codes.
- b. **Unanimous vote that the proposed use will not be incompatible with, or undesirable in relation to existing uses in the area.**

**Motion by Chair Ham to vote to grant the Special Exception with the following conditions:**

1. **The Applicant shall go to the Planning Board for Site Plan Review. The ZBA urges the Planning Board to carefully examine the following as part of the Site Plan Review process:**
  - a. **Parking;**
  - b. **Emergency Access; and**
  - c. **Circulation and Safety.**
2. **No Recreational Vehicles (RVs) shall be allowed to use the propane filling station.**
  - a. **The applicant shall install a shortened hose to prevent Recreational Vehicles (RVs) from using the facility;**
  - b. **The Applicant shall post clear signage to the effect that no Recreational Vehicles (RVs) shall be allowed to use the propane filling station.**
3. **The Applicant shall install and maintain a fire suppression system specifically designed for a propane filling station.**
4. **The ZBA recommends that the Planning Board consider requiring the applicant to complete a Fire Safety Analysis to be reviewed by the State of New Hampshire's Fire Marshal's Office.**

**Second: Paul Beaudin. All in favor: Unanimous.**

Jack Daly spoke directly to the Applicants, Shawn Bergeron and Herbert Lahout, on behalf of himself and other members of the ZBA. Daly said that he was very concerned about the Applicant's plan to site a propane filling station at this location. Daly personally would not feel comfortable living near such a station in this location. There were a lot of valid concerns raised during the hearing about siting a propane filling station at this location, however, the ZBA was constrained to consider only the four very general criteria as set forth in the Land Use Plan Ordinance. Consequently, Daly believed that the ZBA members could not deny the application for a Special Exception based on those four criteria.

The ZBA respectfully requests that the Planning Board consider revising the Special Exception criteria in the Land Use Plan Ordinance to better address the concerns the members of the ZBA had about this proposed project. They would like to see clearer language and stronger set of criteria, if possible. Attorney Peter Malia offered to check to see if he could find clearer and

better language for criteria to approve a Special Exception. Bont and Burbank will convey the ZBA's concerns to the Planning Board for their review.

**IV. ADJOURNMENT**

**Paul Beaudin made a motion to adjourn the meeting at 7:30 p.m.**


**Second: Jack Daly**

**All in favor: Unanimous**

Respectfully submitted,

Carole Bont,  
Planning and Zoning Administrator

Date Approved: 10/18/2017

  
\_\_\_\_\_  
Jonathan Ham, Chairman