

**LINCOLN ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
WEDNESDAY – AUGUST 16, 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 Myles Moran (alternate)

Members Excused: Ray D'Amante, James Martin (alternate)

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 Law Office

Guests:

- **Roger Harrington** – resident of 131 Pollard Road, PO Box 386, Lincoln, NH 03251 and owner with Sarah A. Harrington of 131 & 133 Pollard Road (Tax Map 117, Lot 003).
- **Robert (Bob) Dumont** – General Contractor, Mark & Robert Dumont Construction Inc., 3621 US Route 3, Thornton, NH 03285
- **Mary Huntoon**, resident of 26 LaBrecque Street, PO Box 189, Lincoln, NH 03251-0189, owner of 24 LaBrecque Street and 26 LaBrecque Street, and two manufactured homes, one at 24 LaBrecque Street and one at 26 LaBrecque Street.
- **Peter J. Malia, Jr.** – Town Attorney, Hastings, Malia, PA, 376 Main Street, P.O. Box 290, Fryeburg, Maine 04037-0290
- **Shawn Bergeron** – Code Consultant, Bergeron Technical Services LLC, 50 Seavey Street, P.O. Box 241, North Conway, NH 03860-0241
- **David Beaudin** – Lincoln Water Plant Operator and resident and co-owner with Mary Conn of 10 Louis Lane (Tax Map 116, Lot 004), Lincoln, NH 03251-0245
- **Denis E. Desmarais** – Denis E. Desmarais Trustee, of Denis E. Desmarais Revocable Trust of 2012, 11 Maple Street, PO Box 711, Lincoln, NH 03251-0711, owner of D. Desmarais Builder, LLC & Locksmith Services

- 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 Ray D'Amante, and alternate James Martin. Chair Ham seated Myles Moran.

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

- January 5, 2017

Motion to approve the minutes of January 5, 2017 as presented.

Motion: Jack Daly Second: Don Landry All in favor: (4-0)

Paul Beaudin and Myles Moran abstained.

Bont welcomed Myles Moran as a new member of the ZBA. Moran has attended a recent ZBA training.

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

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

- 1. Case #:** 2017 ZBA Var 2017-02
- 2. Location:** 24 LaBrecque St., 26 LaBrecque St.
(Tax Map 113, Lot 023)
The lot is located in the Rural Residential (RR) District.
- 3. Applicant & Property Owner of Record:**
Mary Huntoon
26 LaBrecque St.
Lincoln, NH 03251
- 4.** Applicant and property owner Mary Ann Huntoon requested a Variance for property at 26 LaBrecque Street, Lincoln, NH 03251 (Map 113, Lot 023) concerning Article VI District and District Regulations, Section B District Regulations, Paragraph 4 (Dimensional Chart) to construct a deck within the setbacks and onto an adjacent lot also owned by the Applicant. Applicant proposed to install a new 12'X25' deck behind her manufactured home located primarily on Map 113, Lot 023 with an address of 26 LaBrecque Street. Applicant also owned the adjacent lot with a second manufactured home located on Map 113, Lot 024 with an address of 24 LaBrecque Street. Her manufactured home with the address of 26 LaBrecque Street is located mostly on Lot 023, but a portion of her manufactured home encroaches and is located on Lot 024. A long time ago there was a deck that stretched along the back of the manufactured home. The proposed deck will be within the 10' side setback area and will encroach onto the adjacent lot owned by the Applicant. The lot is located in the General Residential (GR) District. The side setback in the General Residential (GR) District is ten feet (10'). The proposed deck needs a variance as specified in the Land Use Plan Ordinance, Article VI Article VI District and District Regulations, Section B District Regulations, Paragraph 4 (Dimensional Chart) to encroach into the side setback area and onto the adjacent lot.
- 5. ACTION:** Upon a finding by the ZBA that the application meets the submission requirements the ZBA may vote to accept the application for a variance as administratively complete.
- 6. ACTION:** The ZBA may conduct a public hearing, or schedule a public hearing at some future date established during this meeting.
- 7. ACTION:** The Zoning Board will vote to approve, approve with conditions or disapprove the application. Should a decision not be reached at the public hearing, this application will stay on the ZBA agenda until such time as it is either approved or disapproved

Presentation:

Huntoon wants to take down her current back deck and build a new one that extends out another ten feet (10'). She wants to make the deck half screened and half open. The deck will be twelve feet by twenty-five feet (12'x25'). Huntoon's mobile home sits on two lots. Huntoon owns both lots. The mobile home has been sitting on both lots ever since she first rented the property in 1985. Huntoon rented the place for thirteen (13) years before she bought it. She would like permission to build this deck over both of her lots.

Huntoon said that when she put her manufactured home on both lots she was renting the lot and did not know the lot was comprised of two lots. The Town listed the lot as one lot of 100' X 100'. The Town did not know that there were two lots either.

When Huntoon bought the property, she discovered there were two (2) lots. She got deeds for both lots referenced from the date the lot was subdivided. When the Town received a copy of Huntoon's recorded deed Town staff was confused because the Town said the footage along the street was not big enough for two (2) lots. It turned out Huntoon had purchased two (2) lots – 24 LaBrecque Street and 26 LaBrecque Street, but somehow the Town had the lot in their records as one (1) lot.

Huntoon said she used to have a back deck that went along the whole length of the manufactured home. Years ago, Huntoon tore off the old deck. She had a smaller deck put back on, but now the smaller deck has got to be replaced; the deck has been up for more than twenty (20) years. If Huntoon is going to have to replace her deck, she wants part of the deck to be screened in. She wants the deck to be 12' X 25' feet. Part of the deck will be on one lot and part of the deck will be on the other lot. This means the deck would be in the side setbacks for both lots. The existing deck is on both lots. Her entire kitchen in her manufactured home is on the second lot.

Huntoon said when she first rented the lot to put her trailer on back in 1985, the current location was the only place that the trailer could go. The rest of the lot was heavily wooded along the sides and the back and the owner of the property had another trailer there that he rented to someone else. Everything was already set up for Huntoon's trailer to be backed in. At the time, Huntoon said she had no choice but to put the trailer in the location it sets now. Huntoon did not own the property at the time and the way the water and sewer tie-ins were set up she had no choice about where to locate her trailer.

Town Planning and Zoning Administrator's Response:

Bont said the Huntoon manufactured home predated the Town's adoption of a Zoning Ordinance (Land Use Plan Ordinance). Bont said the Town records now show the Town has been treating the property as two lots for many years. The Town does not have a problem with the property being two lots. The problem is that the Town Planning staff cannot give Huntoon a Land Use Permit to put the deck/porch on the back of her manufactured home because the deck/porch will be located within the side setback area. Granting a variance to build in the side setbacks is the job of the ZBA. The Planning and Zoning Administrator and the Planner do not have the authority to issue a permit in the setback area so Huntoon is coming before the ZBA to get approval to put a deck within the side setback area.

Zoning Board of Adjustment Questions:

Chair Ham asked Huntoon, how much of the deck will be on the second lot? Huntoon answered, no more than the percentage of trailer is now where her kitchen is. There is a gas vent on top of it at the end of her kitchen. Town Manager/Planner said that based on the sketch submitted it looks like the proposed deck/porch would overlap onto the second lot by about twelve feet (12').

Moran asked Huntoon if there was still a second trailer on the other lot. Huntoon said there was a second trailer on the other lot that also belongs to Huntoon. Huntoon owns both trailers and both lots. She has encroached on the other lot with the existing trailer already and has been since 1985. Moran said the biggest problem will occur when Huntoon goes to try to sell her property. Huntoon said she will be dead and gone by then and she does not care what they do then. Her kids do not need an excuse to fight. She is just helping them out a little.

Bont said that the Town does not have a problem with Huntoon's land being two lots, they simply cannot give Huntoon a permit because she is in the setback area. This is why she is coming to the board, because Bont does not have the authority to grant this permit. Huntoon previously had a deck on this same spot and would like to extend it again. The smaller deck has been in place for 25 years.

Town Manager/Planner Burbank said it looks like the two lots combined barely make a legal buildable lot. He asked Huntoon if she would consider combining the two lots with a Voluntary Lot Merger form filed with the Grafton County Register of Deeds. Huntoon replied, no, because her two existing lots are "grandfathered lots". Her two lots are already divided between her children in her estate plan which indicates who gets what. She is not going to change her estate plan because it might cause a fistfight. She said her rule is that if one child wants to get rid of their portion of land, the other one has to buy it or they cannot sell it. Her children are happy with the situation the way it stands.

Chair Ham asked Huntoon if there was room enough on the one (1) lot to turn her mobile home in the other direction to bring it into compliance with the zoning ordinance or to "legalize it", just in case her kids had an argument about the land. Huntoon said no, and the rest of the board agreed. Huntoon stated she values her privacy. She has seventy feet (70') in her backyard that is private. She would not like to change this by moving the trailer. She also brought up the expense of moving the trailer, and whether the trailer could withstand the move. She put the new roof on the trailer and all the added weight might not hold up.

Moran said he has no concerns, because the trailer was there before the zoning laws were adopted. The proposed deck is not going to infringe about anything. The heirs are going to have to deal with this problem sooner or later.

Chair Ham began reading off the criteria on the ZBA Variance checklist.

1. **Granting the variance ~~would or~~ would not be contrary to the public interest because:**

Unanimous vote that granting the variance would not be contrary to the public interest because it does not alter the essential character of the neighborhood nor does it threaten the health, welfare or safety of the general public.

2. Granting the variance would ~~or would not~~ observe the spirit of the ordinance:

Unanimous vote that granting the variance would observe the spirit of the ordinance because it would not increase congestion, add to overcrowding, threaten wetlands, and would continue the current settled estate where there is already a deck in place and replacing the old deck with a new deck will not affect the public or anyone but Huntoon or her family because she owns both lots.

3. Granting the variance order would ~~or would not~~ do substantial justice because:

Unanimous vote that the variance order would do substantial justice because the proposed development or back deck is consistent with the area's present residential use. The deck is a residential deck added onto a residential home in a residential neighborhood. The benefit to the homeowner would not outweigh any public benefit realized by denying the variance.

4. For the following reasons, the values of the surrounding properties would ~~or would not~~ be diminished?

Unanimous vote that the values of surrounding properties would not be diminished because the properties would, if anything, increase in value because Huntoon is replacing an old deck with a new deck and thereby upgrading her property. Huntoon's residential use is consistent with abutting residential uses and will not decrease property values in the neighborhood.

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

- i. **There (is – is not) a fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**
- ii. **the proposed use (is – is not) a reasonable one because: [How would granting the variance affect neighboring properties and the Town's zoning goals generally?]**

Chair Ham asked for clarification as to how far Huntoon intended to extend the deck. Huntoon replied that she would extend the deck ten feet (10'), which is six feet (6') less than the width of her kitchen.

Attorney Peter Malia suggested to the ZBA that the Board should ask the public and any present abutters for comments. Chair Ham did so, however, there were no public comments.

Chair Ham reiterated that no one in the public is affected and there is no hardship at all.

Moran said the proposed use is reasonable one because a deck behind the manufactured home is an existing condition.

Huntoon said it is an unnecessary hardship if the board denies her this variance. Her deck in its current state interferes with the fire escape from her living room. The deck is also not functional for her cookout grill. The dual purpose of the deck extension is to serve as a fire escape.

Bont recommended that the ZBA vote to approve the variance because denying the variance would create an unnecessary hardship for the applicant. According to the special condition of the property, (i.e., that her house is on both of two adjacent lots owned by her), denial of her variance would result in an unnecessary hardship to her because she would not be able to safely exit from her second means of egress from her manufactured home. In her case, no fair and substantial relationship exists between the general public purposes of the setback requirement (i.e., to prevent overcrowding) and the specific application of that regulation to her property where she owns the adjacent lot.

Motion to grant the variance.

Motion: Myles Moran. Second: Don Landry.

Unanimous vote to grant the variance.

Town Attorney Peter Malia stated that he did not think Huntoon needed a variance at all. He found state statute RSA 674 39-AA, I, (c) which defines a “voluntary merger” as any overt action or conduct that an owner regarded said lots as merged such as but not limited to, abandoning a lot line. He clarified: when you build something over two lot lines, you are deemed to have merged the lots. Huntoon might still have estate problems if she gives each lot to one child and her two sons will only end up with one lot.

<p align="center">TITLE LXIV PLANNING AND ZONING CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS Regulation of Subdivision of Land</p>

<p align="center">Section 674:39-aa</p>
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<p>674:39-aa Restoration of Involuntarily Merged Lots. –</p>

<p>I. In this section:</p>

<p>(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.</p>
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Huntoon said that she gets taxed for two (2) plots and two (2) mobile home. She gets four (4) separate tax bills: one for each of the two (2) mobile homes and one for each of the two (2) lots. She prefers the Town continue this practice in case she needs to sell one of the lots in the future. Huntoon said that it has always been two (2) lots and the assessor has appraised it as two (2) lots the last time she had it assessed. Attorney Malia insisted that because of the house being sited over the lot line, the Town should be assessing her for only one (1) lot, even though the Town currently assess Huntoon’s property as two (2) lots.

Chair Ham asked Attorney Malia what happens if there are two (2) separate deeds. Attorney Malia replied that if that person takes an overt action to extinguish the lot line, the Town will abandon the lot line, regardless of what it says in Huntoon’s deeds.

Town Manager/Planner Burbank asked if the lot would revert back to two (2) lots when she leaves? Huntoon said that the property was considered one (1) lot when she got there to rent, but when she went to buy it, there were two (2) deeds to two (2) lots. She said the only section of the two (2) lots that was cleared of timber on her move with her trailer onto the lot was where her trailer is now. The siting of her manufactured home was not a choice she made when she rented. At that time, she did not decide to site her trailer across the lot line. “The same person can own

two (2) adjacent lots and not merge them, but when that person takes an overt action, like placing a home on the boundary line, that's considered to have abandoned the boundary line," Town Attorney Malia repeated.

Bont asked what would happen if Huntoon removed the manufactured home. Attorney Malia said that Huntoon's lot is not a subdividable lot because it is too small. Burbank agreed that she only has 16,000 square feet in the two (2) lots combined and today's standard minimum lot size is fifteen thousand (15,000) square feet. *(Note: Actually, on rechecking the zoning maps Huntoon's lot is in the General Residential (GR) District which requires 10,000 square feet, however, the two lots combined are still too small to subdivide into two lots.)*

Town Manager/Planner Burbank said that Huntoon should be aware going forward that whoever put the trailer on two (2) lots did not do her a favor, because that lot line is extinguished. "May the best man win," said Huntoon, referring to her sons.

A. Case #:	<u>2017 ZBA Var 2017-03 M124 L027 Dumont – Rome</u>
Location:	36 Governor's Lane (Map 124, Lot 027) The lot is located in the Rural Residential (RR) District.
Applicant/Agent:	Robert Dumont Mark & Robert Dumont Construction Inc. 3621 US Route 3 Thornton, NH 03285
Property Owner:	Jamie A. Rome and Leila M. Rome 88 Laurel Road Chestnut Hill, MA 02467

Overview:

Applicant Robert Dumont of Mark & Robert Dumont Construction Inc. on behalf of the owners Jamie A. Rome and Leila M. Rome, requests a **Variance** from the zoning ordinance called the Land Use Plan Ordinance (LUPO), Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule) "Dimensional Chart" to construct two (2) retaining walls greater than four feet (4') in height within the side setback area. The lot is located in the Rural Residential (RR) District where the side setback is fifteen feet (15'). The proposed four-foot ten-inch (4'10") high retaining walls would encroach approximately ten and a half feet (10.5') into the side setback area. The applicant needs a variance to construct the retaining walls so as to encroach into the side setback area.

Presentation:

Bont said that Dumont came in with an Application for a Land Use Permit. When she was reviewing the application for a permit, she realized that the four-foot-ten-inch (4'10") retaining walls proposed were actually in the setback area. That is why Dumont is asking for a variance. The retaining walls are by definition, a "structure" that needs a Land Use Permit because the walls are greater than four feet (4') high. The ZBA members had a small copy of the plan in front of them to refer to showing two (2) retaining walls in the side setback area. Bont directed them to look at the 2nd page of the plans themselves, 1st floor plan L1.1.

Discussion of the Board:**Ski Trail Access**

Chair Ham asked about the ski access on the plan and why was the access is shown on only one of the two adjacent lots instead of both lots. Chair Ham said that in his opinion it looks odd that the ski access trail stops right at the edge of the neighbor's property, but not over the neighbor's property. [Note: The neighbor's property is 24 Governors Lane (Map 124, Lot 028) owned by Peter K. & Adriana Levitt Trustees, Peter K. Levitt Trust, 94 Lake View Avenue, Cambridge, MA 02138.] Chair Ham said he wanted to make sure that the neighbor property owner did not build his house right in the middle of the ski access trail. Chair Ham then realized that the subject property owned by Rome shown on the plan is the last lot in the Westwood Acre development at the end of Governor's Lane before the Loon Mountain Ski Area property next door (i.e., Map 126, Lot 020 – 60 Loon Mountain Road – owned by CLP Loon Mountain, LLC).

Landry tried to explain to the Board where the ski-access-trail is located and where trail comes out onto the property of the Loon Mountain Ski Area. Landry said that property owners in Westwood Acres use the ski access trail that comes in behind the location of the proposed house to connect up with the trail on Loon Mountain known as the Sarsparilla Trail, just up the hill from the Sarsparilla Carpet Lift. The Rome lot is the last lot in the Westwood Acres development before the main ski trail and just before the new cell tower.

Attorney Malia verified that the Verizon cell tower is next to the subject lot owned by Rome – to the right or the east of the Rome lot.

Retaining Walls Within the Side Setback Area:

Landry asked Dumont if the proposed walls were engineered walls. Dumont said yes. Dumont said the proposed retaining walls are poured concrete with a lot of rebar. Bont said the engineer who designed the retaining walls is William (Bill) Gregsak of Gregsak Engineering, Inc.

Chair Ham said the only reason the Rome - Dumont case is before the ZBA is because Rome is proposing to build the retaining walls, not the house, within the side setback area. Moran noted that even if Dumont shifted the house a little bit, the retaining walls are still going to hit the setback area. Moran asked Dumont if the idea was to limit the encroachment to one side. Dumont said he believed that was correct.

Bont showed the colored site plan to the ZBA so the members could see what the fifteen-foot (15') foot setback looked like on this particular lot. Bont said the edge of the house next door is right on the edge of their fifteen-foot (15') setback area.

Easement for Driveway

Paul Beaudin pointed out that on this particular map, it shows as a separate piece of property with an easement note. Bont said what looks like a separate piece of property on the plan is not a separate piece of property, but rather it shows the area of the easement for a driveway for an existing house. Moran said that on the plan in note 4, it says that the area in question is marked as an easement for a driveway. Paul Beaudin said that to him the area designated on the plan looks like a separate piece of property because it has metes and bounds on it. Bont said the area in question is not a separate lot, but rather the area indicated is an easement for a driveway to the lot next door [owned by Levitt, Trustees].

Dumont confirmed that the area in question was actually the driveway to the neighbor Levitt's

house. The survey pin is on the right-hand side of the driveway. Rome has title to the land in the area in question; he or his predecessor -in-interest has just given his neighbor (Levitt) an easement to use that land for Levitt's driveway. Daly pointed out that the driveway is a horseshoe driveway because the driver has access from both sides. Beaudin confirmed with Dumont that Rome owns the land underneath the area in question, and that Rome has just given Levitt an easement to go over it.

Townmanager/Planner Burbank and Daly asked Dumont who the owner of the right of way was. Dumont said that Jamie and Leila Rome own that property. According to Dumont, Rome told Dumont that the area in question with the metes and bounds on the plan was for "a right of passage" for the neighbor Levitt and was "not really a right of way".

Daly asked if the land under the ski trail access was owned by Loon Mountain Ski Area? Dumont said "no", the ski trail access is located on Jamie Rome's property. The ski access trail benefits the property owners within Westwood Acres to enable them to access the Loon Mountain ski area directly from their homes.

What Zoning District Is Westwood Acres In?

Bont left to check her hand-colored zoning map and clarified the area of the property in the General Use (GU) and Rural Residential (RR) District. When she returned she clarified that the subject property, owned by Jamie and Leila Rome, is located in Westwood Acres at the end of Governor's Lane and is in the Rural Residential (RR) District. Loon Mountain is in the General Use (GU) District. Beechwood I and Beechwood II are in the Mountain Residential (MR) District. Rams Horn, Westwood Acres and The Landing at Loon are in the Rural Residential (RR) District. Bont clarified that the Rome lot and the entire area of Westwood Acres are in the Rural Residential (RR) District. Beaudin said he thought that Westwood Acres was in the Mountain Residential (MR) District. Beaudin said he thought that the Town Meeting had voted to change the designation of the Westwood Area from Rural Residential (RR) to Mountain Residential (MR) because everyone at the mountain wanted to have bigger lot size requirements. Daly said that he thought that "Beechwood I and Beechwood II" were in the Mountain Residential (MR) District. Westwood Acres is not in the Mountain Residential (MR) District.

Retaining Walls in Side Setback Area

Town Manager/Planner Burbank said that one of the concerns the staff had was the proposed encroachment into the side setback area proposed by Rome is in the side setback area closest to the neighbor Levitt's home. Staff did not know if the neighbors, (i.e., the Levitts), might show up at this hearing and have an issue with the proposed encroachment into the setback area. Burbank did not know if the neighbor attended the hearing. Burbank suggested that the Board see if the neighbor was present to give input.

Impact of Driveway Easement on Subject Lot

Beaudin said he had some concerns about the easement. He wondered, is an easement always reflected on a survey map with metes and bounds? In Beaudin's experience an easement is only described in language and not placed on a survey map with metes and bounds. He was concerned that the metes and bounds as indicated on the survey map was intended to create a deed for a separate piece of property.

Attorney Peter Malia said, ideally the easement is surveyed and the survey includes meets and bounds for the easement. However, you often see easements without a survey indicating metes

and bounds.

Attorney Malia wondered where “Note 4” was. Both Attorney Malia and Moran said they had looked for “Note 4” on the survey and were unable to find it. Note 4 should give the ZBA more information about an easement. The language should give you the ability to pass over the easement, but there is no language about an easement included in Note 4 on the plan. Inside the easement area the survey says “See Note 4.”

Attorney Malia said an easement is usually surveyed and has meets and bounds reflected on the survey. Sometimes an easement is described in a deed just through wording, however, now many of the easements do have meets and bounds as indicated on a survey. Attorney Malia said that presumably the easement was given to the owner of the Levitt lot (described as Map 124 Lot 028) to go over the Rome lot (described as Map 124 Lot 027).

Beaudin said the Board needs to see the easement language that is supposed to go in Note 4.

Chair Ham said that the only difference is that the language of the easement might affect the placement of the house on the lot. It may or it may not.

Town Manager/Planner Burbank said that if the survey had easement language that restricts what you can with your lot in some way that would affect what you can do where. The only difference in the result that would come from knowing what the language of the easement in Note 4 would be, would be the placement of the house. The language that defines the extent of the easement may change the structure of the land and the passage of that ski access trail easement. For example, the easement might say that the owner of the subservient estate cannot build closer than X feet from the easement area. If that is the case, that easement language is going to affect the subservient lot owner Rome with the ski access trail passage. Beaudin thinks the value of the land of Rome with the ski access trail easement across the middle of the lot will go down instead of up.

Town Manager/Planner Burbank said that abutter notices and public notices were posted about the ZBA’s Public Hearing on the Request for a Variance. If the neighbor Levitt was concerned about the Rome proposal he would have shown up or sent some kind of comment.

Beaudin said the easement should be reflected on the Rome’s property record card. Beaudin said he is concerned about the easement. Beaudin said he normally wants to see the language for the easement to determine its impact on the subject lot.

Moran said that the area of the easement is thirty feet by thirty feet (30X30) square feet; it is not very big. If Levitt or his predecessor-in-interest wanted the easement to get access to his lot, he could not be too picky and would not be putting restrictions on the guy who was giving him the easement. Beaudin said, you would think so, but did anyone know Mr. Ed Mercer way back when? Moran said he knew Ed Mercer. Ed Mercer was Moran’s neighbor. Moran used to live across the street from Ed Mercer.

Chair Ham said he was concerned about development on this lot affecting the people whose lots were downhill from this one.

Landry said the easements for the ski trail access and the driveway easement for the benefit of the neighbor Levitt is going to change the nature of the land and the ski trail passage. When Dumont does excavation and then construction to build Rome’s house and those two retaining walls it is going to affect the terrain and therefore the driveway access for the neighbor Levitt

and the ski trail access because he thinks the land is going to down as opposed to up.

Beaudin and Town Manager/Planner Burbank suggested that the ZBA could put the following conditions upon their approval:

1. Dumont should provide a copy of the easement to Bont to put in the file and get a copy of what was in “Note 4” as shown on the plan.
2. Approve the variance **providing** the language in the easement does not prevent the house from being built on the site where it is proposed. The Town should make sure that the verbiage for that easement gets put in the Town file. The Town should make sure that the beneficiary of the easement did not place any restrictions on what could be done close to his driveway easement. (Setting the wall in the side setback area may or may not be an issue depending on the language in the easement.)

Beaudin said he thinks that it is highly unlikely that the owner would purposefully place restrictions associated with the easement, but if Mr. Mercer was the prior owner of the lot and Mr. Mercer was a different kind of individual, Mr. Mercer might have done something unexpected by placing certain restrictions on the subservient lot associated with the easement.

Public Comment:

Chair Ham opened discussion to public comment.

Town Water Plant Operator David Beaudin said he does not know exactly where the proposed project is going to go, but he knows there is a watermain that runs down Governor’s Lane. The watermain may be out of the way from where Dumont is doing the work. David Beaudin wanted to make sure of the location of the watermain relative to the proposed lot development. The Board verified that the watermain goes across Governor’s Lane to the stairs that go up to the ski slope, so the watermain is down at the other end of the slope.

Town Water Plant Operator David Beaudin also wondered where the new driveway for the lot would be located in relation to the proposed house and where the driveway would be located relative to the location of the watermain. The Board consulted the plan and located the driveway the owner would use to access the house on page L-1.1.

The Board shared their concerns about the distance between the driveway and the ski access easement. The Board also discussed their concern that snow removal would be an issue for these two adjacent lots.

Chair Ham closed public comments.

Board Reviewed Whether Application Meets ZBA Variance Criteria:

Chair Ham moved on to review the criteria on the ZBA Variance checklist.

1. **Granting the variance ~~would or~~ would not be contrary to the public interest?**
 - a. The Board agreed that granting the variance would not be contrary to the public interest because putting up two retaining walls to keep the earth back would increase the safety of the public. It would not alter the essential character of the neighborhood. It would not threaten the health, safety or general welfare of the people in the neighborhood. It will not alter the traffic, decrease the tax base or damage water quality.

b. Unanimous vote that the variance would not be contrary to public interest.**2. Granting the variance would ~~or would not~~ observe the spirit of the ordinance:**

- a. Bont suggested that granting the variance would not create congestion, threaten wetlands, or cause overcrowding, so the cumulative impact of this variance is not going to negatively impact the spirit of the ordinance. The retaining walls in the side setback area are required to hold back the earth on a steep lot to allow the owner to build a house. The walls are only four feet ten inches high, not as high as a building, and will not obstruct the neighbor's views from their house. The separation between houses will be maintained.
- b. Beaudin had a question about whether the plan for drainage on the lot associated with the proposed retaining walls was in compliance with the Storm Water Management (and erosion control) Ordinance. Bont said that if Dumont is disturbing less than fifty percent (50%) of the lot and less than fifteen thousand (15,000) square feet, he does not need to address the issue of whether the drainage is in accordance with the Stormwater Management Ordinance. The lot is relatively large; because the lot extends in back, way past the ski access trail, and they are doing most of their work in the front of lot, Dumont will be disturbing less than fifteen thousand (15,000) square feet, so the size of the disturbed area does not reach threshold size to require a Stormwater Management Plan.

c. Unanimous vote that the variance would observe the spirit of the ordinance.**3. Granting the variance order would ~~or would not~~ do substantial justice because:**

- a. Daly said that Dumont had answered that question in his petition. Without the retaining walls, he will not be able to build on the lot. There is a ski access to the lot that essentially dictates where the house must go so the variance would do substantial justice.

b. Unanimous vote that the variance would do substantial justice.**4. For the following reasons, the values of the surrounding properties would ~~or would not~~ be diminished?**

- a. Daly asked Dumont for an estimate of building costs. Dumont replied that the estimated building cost of the house would be roughly \$600,000. Beaudin said that the house being built would be consistent with the value of the other homes in the neighborhood. Daly said that adding a \$600,000 home would not diminish the property values of the neighborhood.

b. Unanimous vote that the variance would not diminish surrounding properties' values.**5. Owing to the special conditions of the property that distinguish it from the other properties in the area, denial of the variance would result in unnecessary hardship because ...**

- a. Town Manager/Planner Burbank said the lot has two (2) special conditions that distinguish it from other properties in the area: (1) the steep terrain and (2) the ski

access trail that goes through the middle of the lot. In addition, in order to site the house two retaining walls are required.

- b. Daly suggested using what Dumont's application says: the proposed use is reasonable because the two (2) shorter retaining walls are required to build a residential home in a residential neighborhood. Without the two (2) retaining walls it would be difficult or impossible to maintain the ski access for the neighbors in addition to building a home. Dumont said he could build a house where the current ski access trail is located, however, that would mean he would have to move the ski access trail. The neighbors would have to walk or ski around the house to use the ski access trail. It is much more reasonable to use two (2) shorter walls to hold the earth back. This proposal tries to limit the property's impact on the neighbor by building two (2) shorter walls instead of one (1) higher wall. Without the retaining walls, the Romes cannot build a house.
- c. As the condition of approval, reference the "New Residence Governors Lane, Lincoln NH, Permit Set, June 7, 2017, by McKay Architects, 35 Bryant Street, Dedham, MA 02026, First Floor Plan, Page L-1.1 of McKay plans, which references an easement. Do you want to see the easement and note 4?
- d. **Unanimous vote that owing to the special conditions of the property that distinguish it from the other properties in the area, denial of the variance would result in unnecessary hardship.**

Motion by Chair Ham to vote to grant the variance with the following conditions:

1. **Dumont shall provide a copy of the easement for the driveway over the subject lot to benefit abutter Levitt's lot (described as Map 124 Lot 028) to Bont to put in the file.**
2. **Dumont shall provide a copy of what was in "Note 4" as shown on the McKay Plans entitled, "New Residence Governors Lane, Lincoln NH, Permit Set, June 7, 2017", by McKay Architects, 35 Bryant Street, Dedham, MA 02026, First Floor Plan, Page L-1.1 of McKay plans, which references an easement.**
3. **Approve the variance providing the language in the easement does not prevent the house from being built on the site where it is proposed.**

Second: Paul Beaudin. All in favor: Unanimous.

B. Lincoln Zoning Board of Adjustment (ZBA) Request for a Special Exception per RSA 676:5,II(b).

Case #: 2017 ZBA SE 2017-02 M118 L076 Herbert Lahout Shopping Center LLC

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.

Myles Moran recused himself from the Board and left the table to sit with the audience, leaving four (4) sitting ZBA members.

Legal Opinion on Applicant's Right to Choose a Full Board:

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 can 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.

Daly made a motion 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.

Second: Ham All in favor: Unanimous

IV. ADJOURNMENT

Paul Beaudin made a motion to adjourn the meeting at 7:10 p.m.

Second: Jack Daly All in favor: Unanimous

Respectfully submitted,

Ellyn Gibbs,
Planning and Zoning Recorder

Date Approved: ____/____/____



Jonathan Ham, Chairman