

LINCOLN ZONING BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
WEDNESDAY MAY 6, 2015 – 6:00PM
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH

APPROVED

Present: Chairman Paul J. Beaudin II, Jonathan Ham, Vice Chair Don Landry, James Martin II

Members Excused: Board of Selectman Representative Patricia McTeague,

Members Absent:

Staff Present: Town Manager and Town Planner Alfred “Butch” Burbank, Planning and Zoning Administrator Carole Bont, and Wendy Tanner (recorder)

Guests:

- **Rick Kelley**, President and General Manager of Loon Recreation Corporation, Inc. and Loon Mountain Resorts, and resident at 26 Conn Drive (Map 117, Lot 036)
- **Dennis Ducharme**, Managing Member of RiverWalk at Loon Mountain, LLC, at 33 Brookline Road, Lincoln, NH 03251, and RRP (Registered Resort Professional), President of Inn Seasons Resorts 212 Mid Tech Drive, West Yarmouth, MA 02673, including Inn Seasons at South Mountain and Inn Seasons at Pollard Brook
- **William R. Davidson**, P.E. of Hoyle, Tanner & Associates, Inc., Pease International Tradeport, 100 International Drive, Suite 360, Portsmouth, NH 03801
- **Erik Newman, Esq.**, of Gallagher, Callahan & Gartrell, P.C. 214 North Main Street, P.O. Box 1415, Concord, NH 03302-1415
- **Ron Beard**, Lincoln Fire Chief, Town of Lincoln, P.O. Box 25, Lincoln, NH 03251-0025

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- I. CALL TO ORDER** by the Chairman of Zoning Board of Adjustment; announcement of excused absences, if any, and seating of alternates(s), if necessary.

II.

The meeting was called to order at 6:02PM.

III. CONSIDERATION of meeting minutes from:

- November 19, 2014
- February 4, 2015

Motion to Approve the Minutes from November 19, 2014

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

All in Favor: (2-0)

Motion to Approve the Minutes from February 4, 2015

Motion: Jon Ham **Second:** Paul Beaudin

All in Favor: (2-0)

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

V. NEW BUSINESS

A. 6:00 pm. **Election of Officers**

Election of officers

Motion to nominate Paul Beaudin as Chairman.

Motion: Jon Ham Second: James Martin

All in Favor: (3-0)

Motion to elect Vice Chairman Don Landry:

Motion: Paul Beaudin Second: James Martin

All in Favor: (3-0)

B. 6:00 pm. **Application for a Variance to create five floors of living space in the Village Center (VC) District.** under the provisions of the Lincoln Land Use Plan, Article VIII, Section A, Paragraph 3

1. Case #ZBA #2015-01

2. Location: South Mountain Resort time share hotel
23 InnSeasons Drive
(Tax Map 118, Lot 047)
Village Center (VC) District

3. Applicant: Dennis M. Ducharme RRP d/b/a Southern Peaks Resorts, LLC
Southern Peaks Resorts, LLC
33 Brookline Road, PO Box 636
Lincoln, NH 03251-0636

4. Applicant Agent: William (“Bill”) R. Davidson, PE
Hoyle, Tanner & Associates, Inc.
Pease International Tradeport
100 International Drive, Suite 360
Portsmouth, NH 03801

5. Property Owners: Southern Peaks Resorts, LLC
Bluegreen Corporation
4960 Conference Way No. #100
Boca Raton, FL 33431
also
Southern Peaks Resorts, LLC
33 Brookline Road, PO Box 636
Lincoln, NH 03251-0636

DESCRIPTION: Under Land Use Plan Ordinance, Article VIII, Section A, Paragraph 3, Applicant's Agent, William R. Davidson is seeking a Variance to construct six (6) timeshare hotel units in the walk out lower level of the approved four (4) story, sixty-one (61) unit addition to the South Mountain Resort time share hotel (herein, the "Phase II Expansion"), located in the Village Center (VC) District where only four (4) floors may be used as living space above or below ground level. See Article VI, Section B, Paragraph 7, Height Requirements, Subparagraph B2 In the Village Center (VC) District, "There shall be no more than four (4) floors used as living space above or below ground level as measured through any vertical lane of the building." These units would make five (5) floors used as living space. The Project Name for the initial was: "South Mountain Resort – East Wing Addition, Phases 1 and 2". The project name for the six (6) additional units is "Phase II Expansion". Davidson is requesting a variance from ZBA.

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

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

ACTION: Approval, approval with conditions or disapproval of the application by the Zoning Board.

(The ZBA hearing date was changed from Wed. 4-22-2015 at 5:30 pm to Wed. 5-6-2015 at 6:00 pm due to a lack of quorum.)

Chair Beaudin explained the meeting format to the applicants and guests.

Dennis Ducharme introduced his Engineer, Bill Davidson and his Attorney, Eric Newman.

Ducharme explained that Phase I of the project, which is completed, consists of twenty-three (23) units. When they were building Phase I, they realized that they could not just build the building on a slab on grade with four (4) stories above and a mechanical room and some storage on the lower level as was their original intent. After doing soil testing they realized there was bark mulch and logs that needed to be removed. The builders had to dig out the entire area which resulted in their making an enormous hole which they proceeded to fill up with a very large basement that was unforeseen at the time the Site Plan Review application was submitted. Subsequently they ended up with a full size basement on the lower level of Phase I.

Moving onto Phase II, they did soil testing and found the same thing. They hit bark mulch, logs and some soil with low levels of asbestos. In excavating to build Phase II the asbestos soil will be transported to Waste Management in Merrimack, New Hampshire. They will dispose of the logs and the bark mulch and end up with another large basement under the Phase II part of the building. This means there will be a basement the entire length of the building. A significant portion of the basement will be wasted space. As they were building Phase I, Dan Hebert of Daniel Hebert, Inc. and their architects told Ducharme that the buildings already had plenty of mechanical rooms and storage rooms. Hebert suggested to Ducharme that he put more units in the lower level on one side where they could have walk out units.

Ducharme explained that in the Phase I building, on the lower level on the right hand side of the hallway there are two (2) empty areas presently being used for storage that large enough to put dwelling units in. As they build Phase II there will be room for four (4) more walk out units at that level.

Ducharme handed out pictures of the back of the building to show the Planning Board exactly where he is proposing that the units would go. There are two empty units at the end of Phase I. Ducharme explained that the area where the white boards in the back of the building are is where there could be two (2) more units with sliders a deck and rails. Another full sized unit could be located behind each areas presently covered with white boards. These units were not built at the time they built Phase I. Right now those areas are being used as empty storage space.

When they construct Phase II they would like to put in a total of six (6) more units in this lower level. When the entire building was approved by the Planning Board for Phase I and Phase II, the lower units were not included in the original application. Ducharme explained that he went back to the Planning Board to request Site Plan Review approval to build six (6) more units in the lower level. Two (2) of the units would be built in the Phase I building and four (4) of the units in the Phase II building.

The Planning Board approved his application for Site Plan Review pending the outcome of the ZBA public hearing for his request for a variance. Ducharme needs ZBA approval for a variance because it was brought to Ducharme's attention that according to the Land Use Plan Ordinance he cannot have five (5) levels of living space in a building; he can only have four (4). Ducharme said that is why he is here tonight to get approval to have six (6) units in the lower level which would result in five (5) levels of living space.

Ducharme explained that part of the reason for his wanting to build additional units in the lower level is to recoup some of his unanticipated costs. He incurred large extra expenses because he had to dig down so deep, then he had to extract the bark mulch and logs, grind up the logs and finally remediate the soil that was underneath. He had to send fourteen thousand cubic yards (14,000 cu.yd.) of soil to Waste Management in Merrimack, New Hampshire.

Chair Paul Beaudin explained that the ZBA could not take the developer's expense into consideration as part of the reasoning behind the need for the variance or as a hardship for the variance. The hardship has to be related to the nature of the property itself. Beaudin asked if others agreed with his understanding.

Other members of the ZBA and Planning & Zoning Administrator Carole Bont all agreed.

Chair Beaudin said that the developer's expense could not be considered, however, where Ducharme has already constructed the lower level of Phase I and is being hampered by the ordinance, in his view that was sufficient reason for a variance request. Beaudin explained that based on the fact that Ducharme had to build five (5) floors in order to deal with the ground area that had to be excavated, but then not being able to use that wasted space for living space, that would be the hardship that could be considered.

Ducharme said that they have already built the large basement under Phase I. That is the reasoning behind his request for variance. Ducharme laughingly said that he did not want to give his buildings & grounds man Jimmy Boyle that much storage space in the basement.

Chair Beaudin asked if the walkout space on the lower level would exit out onto the road. Ducharme said, “No”. There would be railings up so the guests/owners could not walk directly out onto the road. The units would have more like a private deck than a walkout.

Chair Beaudin asked if there would be any parking in the back. Ducharme said, “No”. Landry asked for confirmation that there was enough parking. Bont explained there was plenty of parking. Bont had e-mailed the board with a site map counting and highlighting the parking spaces accompanied by an excel spreadsheet with parking space totals. They have one extra parking space for the total number of units they have proposed.

Bont also explained that on the site plan map, there are eight feet (8') feet from the building to the property boundary line. The property boundary line on South Mountain Drive (called “Loon Mountain Access Road” on the site map) is not the edge of the road; there are another eight feet (8') feet before you hit the edge of the road.

Chair Beaudin said he asked the town staff for comments or suggestions. Public Works Director Bill Willey had mentioned the need for a state sewer hookup permit. Bont explained that Ducharme already has the state sewer hookup permit. The application was submitted to the State of New Hampshire and the permit has already come back.

Chair Beaudin asked if there were any concerns from the Fire Chief or Police Chief that were submitted to the Town. Town Manager Burbank said that the Fire Chief originally had a question about ingress and egress from a specific entrance, but his concerns were addressed. We learned that the entrance was a limited employee entrance for the laundry services. Chair Beaudin asked Fire Chief Ron Beard if he was all set with the plans. Fire Chief Beard confirmed he had no issues.

Bont said that for the record, with the full basement the building is not any higher above ground than it was going to be in the initial Site Plan Review approval, so the distance to the primary eave is the same. Chair Beaudin said that the height to the primary eaves on the front of the building is okay, but the height to the eaves on the back is not. Bont said that in the ordinance the height to the primary eave only has to be on one side – the uphill side.

7. HEIGHT REQUIREMENTS

B. In the General Use, Village Center, Rural Residential and the Mountain Residential Zones the following height restrictions shall apply:

1. The maximum structure height shall be thirty-five feet (35') measured from the primary eaves on the uphill side of the structure.
2. There shall be no more than four (4) floors used as living space above or below ground level as measured through any vertical plane of the building.

Town Manager Burbank said that for the record, from a planning standpoint, where the ZBA cannot consider the cost to the applicant, the ZBA could consider the benefit to the health of the community. Cleanup of the waste on that site, dealing with the run off and drainage is a plus for the health of the community. The ZBA could also consider the community's benefit from removal of the deteriorating soil and other contaminated materials. These actions improve the health of the community as a whole.

Landry asked if there was a laundry room. Ducharme explained that there is a laundry room in the lower level of Phase I. The laundry room was originally designed into Phase I.

Chair Beaudin confirmed that in the request for a variance the applicant is asking for five (5) floors of living space in both Phase I and Phase II. Ducharme confirmed that he was looking to build the dwelling units in the lower level of both the Phase I building and Phase II building.

Motion to open public hearing.

Motion: Don Landry Second: Jim Martin

All in Favor: (4-0)

Beaudin asked if Rick Kelley had any questions or comments.

Rick Kelley had no comments or questions.

Motion to close public hearing.

Motion: Don Landry Second: Jim Martin

All in Favor: (4-0)

Chair Beaudin read each of the items on the list of criteria on the applicant's Application for a Variance. Each section of the application was changed to reflect that the dwelling units in the lower level will be in both the Phase I and Phase II buildings whereas originally the applicant proposed putting all six units in only the Phase II building. The Application For a Variance will be revised to reflect this change. A copy of the revised application will be attached to these minutes.

Chair Beaudin read the first paragraph of the Application's **"Facts Supporting the Request:"**

1. Granting of the requested variance will not be contrary to the public interest because:

The Village Center (VC) District supports numerous resort accommodations such as are proposed for the six (6) units in the lower level of both the Phase I and Phase II Expansion and therefore will not alter the essential character of the neighborhood. In fact, their location in the lower level of the condominium will not result in any visible change to the exterior appearance of South Mountain Condominium [Time Share Hotel] compared to use of the lower level for non-dwelling purposes. The addition of these six (6) lower level units to the Phase I and Phase II Expansion fits with the engineering and Land Use Plan Ordinance requirements with respect to parking, traffic and pedestrian circulation and will be developed to the highest life safety and fire prevention standards.

As transient resort accommodations, the addition of these six (6) units will improve the overall tax base with minimal demands on municipal services.

Motion to Approve Facts as Presented in Paragraph 1.

Motion: Jon Ham **Seconded:** Don Landry

All in Favor: (3-0) *Beaudin abstained from the vote.*

Chair Beaudin read the second paragraph of the Application's **"Facts Supporting the Request:"**

2. If the Variance were granted, the spirit of the ordinance would be observed because:

The Village Center (VC) District encourages denser development than other districts and the approval of six (6) units in the lower level achieves that objective without any material outward visual change to the appearance of the Phase I or Phase II Expansion, or impacts to protected resources. Although located in the lower level, these six (6) units will each enjoy windows and full sliding glass doors to the walk out rear side of both the Phase I and Phase II Expansion wings. Also, increasing the number of resort accommodations will promote the commercial goals of the Village Center (VC) District by bringing more vacationers to downtown Lincoln to support the other retail, restaurant, and business that are located in the Village Center (VC) District.

Members of the ZBA asked why the application states "walk out rear side" when earlier they were told it would not be a walk out.

Engineer William Davidson said that it only means "walk out" to the deck, but that the deck would be railed.

Motion to Approve Facts as Presented in Paragraph 2.

Motion: Jon Ham **Seconded:** Don Landry

All in Favor: (3-0) *Beaudin abstained from the vote.*

Chair Beaudin read the third paragraph of the Application's **"Facts Supporting the Request:"**

3. Granting the variance would (or would not) do substantial justice because:

The additional six (6) lower level units impose normal public "costs" but promote important public benefits such as increasing the tax base and supporting other businesses.

On the Application Attorney Erik Newman had added a second sentence to paragraph 3 that cannot be considered and Newman proposed that the sentence be deleted. The second sentence that was deleted read:

~~"It also does justice to the developer by offsetting some of the considerable expense of environmental remediation associated with the ground on which the Phase I & II Expansion will be developed which is a legacy of the old mill".~~

Attorney Newman added the following sentence to paragraph 3:

“It clearly improves the environmental condition of severely compromised land and additionally does substantial justice to the applicant by allowing him to make productive use of space which was not part of the original plan and otherwise would not serve any useful purpose”.

The proposed revision is to delete the second sentence on the application for this paragraph and to add the new statement to read as follows:

Granting the variance would (or would not) do substantial justice because:

The additional six (6) lower level units impose normal public “costs” but promote important public benefits such as increasing the tax base and supporting other businesses. It clearly improves the environmental condition of severely compromised land and additionally does substantial justice to the applicant by allowing him to make productive use of space which was not part of the original plan and otherwise would not serve any useful purpose.

Motion to Approve Facts as Presented in Paragraph 3 as revised.

Motion: Don Landry **Seconded:** James Martin

All in Favor: (3-0) *Beaudin abstained from the vote.*

Chair Beaudin read the fourth paragraph of the Application’s **“Facts Supporting the Request:”**

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The addition of these six (6) units will have no outward physical change to the Phase I or Phase II Expansion wings, except for the addition of windows and sliding glass doors to the rear profile, which will enhance the aesthetic appearance of the Phase I and Phase II Expansion wings. The condominium [Time Share Hotel] is located in a commercial district, surrounded by similar resort accommodations and businesses and is therefore in keeping with the overall character of the location. The additional resort accommodations will benefit the other retail, restaurant, and business that are located in the Village Center (VC) District.

Chair Beaudin read the fifth paragraph of the Application’s **“Facts Supporting the Request:”**

The Applicant removed the following part of the third sentence in the original application and reworked the sentence:

~~“Accordingly, allowing applicant to recapture some of that additional expense through these additional units and making a productive use of space which the Phase I and Phase II Expansion otherwise has no need for, is abundantly reasonable.~~

The fifth criterion was proposed as follows:

“AND”

1. Unnecessary Hardship

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

- i. The public interest in limiting the density of development by capping the number of floors that support living spaces at four is not well served in its application to this particular location. Both the Phase I and II Expansions are surrounded by similar resort developments. The space embodied by the proposed six (6) units does not equal an entire upper floor and therefore the relief in this instance is not tantamount to allowing a complete fifth floor.
- ii. The applicant developed South Mountain Condominium [Time Share Hotel] on environmentally compromised land that others would not touch, at great expense beyond a conventional development. The only reason a full lower level has been designed below the Phase I and Phase II Expansion wings is because the State required removal of contaminated soil and logs from the old mill to a depth that makes construction on a slab at grade, a much less expensive means of construction, impossible. Allowing these additional units six (6) units would make productive use of space which the Phase I and Phase II building expansions otherwise would have no need for and is reasonable.

Chair Beaudin asked the applicant to confirm that applicant is only asking for six (6) new units in both buildings – two (2) units in the Phase I building and four (4) units in the Phase II building for a total of six (6) new units in the lower level of Phase I and Phase II combined. Applicant agreed.

Motion to Approve Facts as Presented in Paragraph 5a as revised.

Motion: Jon Ham **Seconded:** James Martin

All in Favor: (3-0) *Beaudin abstained from the vote.*

Chair Beaudin read part B of the fifth criterion of the Application's "Facts Supporting the Request:"

b. Owing to special conditions of the property that distinguish it from other properties in:

The requested variance is necessary to enable a reasonable use of the lower level space which only exists by virtue of the special, environmentally compromised, condition of the property which is unique from other properties in the area that did not comprise the former paper mill. The lower level is otherwise unnecessary and it would be applicant's preference to build on a slab at grade, but the environmental remediation of the site required removal of a large volume of material and the resulting void embodied by the lower level.

The Applicant removed the following part of the third sentence in the original application and reworked the sentence. The Board determined that because the Applicant had met the criteria for Part A, they did not need to address Part B.

Chair Beaudin stated that based on the votes received Ducharme has been granted his variance.

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

- VII. PUBLIC PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Zoning Board of Adjustment will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

VIII. ADJOURNMENT

Motion to adjourn at 6:30 PM:


Motion: Paul Beaudin Second: James Martin

All in Favor: (5-0)

Respectfully submitted,

Wendy Tanner, Planning and Zoning
Recorder

Approved: 8/31/2016



Jonathan Ham, Chairman