MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, January 7, 2013 – 7:00 pm
1 Grove Street, Peterborough, New Hampshire

Board Present: Jim Stewart, Sharon Monahan, Alice Briggs, Bob Lambert, Loretta Laurenitis, and Peter Leishman.

Staff Present: Carol Ogilvie, Director and Laura Norton, Office of Community Development and Dario Carrara, Code Enforcement Officer.

Chair Stewart called the meeting to order at 7:10 p.m. "Good evening" he said adding "sorry we are late." He introduced himself and the Board members and appointed Alternate Robert Lambert to sit. Chair Stewart also noted that while the meeting was the regularly scheduled January ZBA meeting, "this is a public meeting, not a public hearing. We won't be hearing any information submitted by the public."

Chair Stewart noted "we have two issues" adding "the first is a letter submitted by ZBA Member Loretta Laurenitis that requests a reconsideration of the Decision in Case No. 1186 where a Variance and a Special Exception were granted on November 26, 2012. The second is a Motion for Rehearing submitted by Union Street residents through Attorney Mark Fernald." With a smile Chair Stewart added "and we have about eight sets of Minutes to go over, I hope everyone will stick around for that."

Beginning with Ms. Laurenitis' request, Chair Stewart said "after speaking with counsel I believe there is not sufficient information to grant reconsideration and I would vote that way." Ms. Monahan interjected "I have a question" and asked if Ms. Laurenitis' request was for both the Variance and the Special Exception. Ms. Laurenitis replied "I think they should be handled separately" adding "I voted against the Variance but my concern is more the Special Exception." Ms. Laurenitis concluded "at this point I have an issue about the process."

Attorney Hanna stood and addressed the Board. Chair Stewart began to request he sit down as he said "I have a right to make a procedural objection" adding "if I do not make it now I will not have the opportunity to raise it later." Attorney Hanna asked "may I proceed?" noting "I object that the Board has jurisdiction to hear this request." Attorney Hanna went on to note the request for a reconsideration of a decision is not a motion for a rehearing, it is a request by a Board member. Attorney Hanna also noted the statutory appeal period for the Board to reconsider its decision had expired. "I object to the fact the Board is considering this after the 30 days from November 26th."

Attorney Hanna mentioned the Town's own website (noting information for Zoning Boards from the Office of State Planning) that supported his claim. "This information is on *your* website" he said.

Chair Stewart replied “those are state recommendations. We have our own.” Chair Stewart then said “but I hear you, I will accept your testimony, but we have a recommendation from (Town) Counsel.”

Attorney Hanna replied “I only have one other question” and asked Ms. Laurenitis “did you prepare this request without consultation with anyone?” Ms. Laurenitis replied “yes.” Attorney Hanna replied “no one else? No one?” Ms. Laurenitis replied “no, I wrote it myself.”

Mr. Leishman suggested they let Ms. Laurenitis present her argument. “To make sure it is clear” he said. Chair Stewart disagreed but noted “if Loretta wants to talk, by all means.” Ms. Laurenitis noted that she felt she had made herself very clear in her letter “but I would be happy to answer any questions you might have” she said. Ms. Laurenitis reiterated she was concerned with the Special Exception noting “I voted for it and after the fact had various reasons to doubt it.”

With no other questions for Ms. Laurenitis Chair Stewart asked for a straw poll. Ms. Monahan interjected “for the record, I want it to be known that Loretta’s request for reconsideration was dated December 21, 2012 so it *is* within the 30 days of November 26, 2012.” Chair Stewart replied by asking her “what is your feeling on her request?” Ms. Monahan replied “it may be relevant but I actually do not feel there are sufficient grounds. No, I would not support going for a reconsideration of our decision on either (the Variance or Special Exception).”

Chair Stewart looked to Mr. Leishman and asked “Peter?” Mr. Leishman said that he had taken time to review the letter and the Minutes. He noted “we did have a discussion after the meeting that one abutter was cut short. “ He continued with “I see no harm in reconsideration.” He noted the abutter “deserved a second crack at the apple, especially if they felt they had been shot down (to speak).” He concluded “I doubt reconsideration would change our opinion but I support it.”

Chair Stewart looked to the end of the table and asked Mr. Lambert how he felt. Mr. Lambert replied he did not support reconsideration of the Decision. Chair Stewart noted “I make a motion we **deny** the request for reconsideration of the Decision in Case No. 1186, Scott-Farrar Home.” Mr. Lambert seconded the motion with Chair Stewart, Ms. Monahan and Mr. Lambert *for* and Ms. Laurenitis and Mr. Leishman *against*. Motion carried.

As Chair Stewart turned his attention to the next item on the agenda, (Motion for a Rehearing) Matt Waitkins stood and approached the table, putting an envelope down in front of the Chairman. “You might want to read this” he said to Chair Stewart.

Chair Stewart began to push the envelope back toward Mr. Waitkins saying “no, I’m sorry.” Mr. Waitkins again suggested the Chairman read the contents. “Is it a request of withdrawal?” asked Chair Stewart. Mr. Waitkins replied “well yes, it is.”

Chair Stewart looked to Ms. Ogilvie for guidance on how to proceed. “Do we accept this or do we still have to vote?” he asked. A brief discussion about the process and withdrawal of a motion followed. Mr. Waitkins advocated “if a motion is withdrawn, it is no longer a motion” adding “based on information from our attorney we have the right to withdraw the request at any point.”

Chair Stewart asked "do you mind if I ask Mr. Hanna?" Mr. Waitkins replied "Mind? Yes I would, we have a letter from our attorney." A suggestion to vote to accept the withdrawal followed. A motion was made/seconded (Stewart/Leishman) to accept the withdrawal of the Motion for Rehearing in Case 1186, Scott-Farrar Home with all in favor.

Minutes:

A motion was made/seconded (Stewart/Lambert) to approve the Minutes of October 1, 2012 with minor typographical errors with all in favor.

A motion was made/seconded (Stewart/Briggs) to approve the Minutes of October 5, 2012 as written with all in favor.

A motion was made/seconded (Stewart/Briggs) to approve the Minutes of November 8, 2012 as written with minor typographical errors with all in favor. (This meeting was originally scheduled for November 5, 2012). Please let the record show that Ms. Monahan was in attendance for this meeting at 7:00 p.m.

A motion was made/seconded (Stewart/Leishman) to approve the Minutes of October 22, 2012 with minor typographical errors with all in favor.

A motion was made/seconded (Stewart/Laurenitis) to approve the Minutes of November 10, 2012 with minor typographical errors with all in favor.

A motion was made/seconded (Stewart/Laurenitis) to approve the Minutes of November 14, 2012 with minor typographical errors with all in favor.

A motion was made/seconded (Stewart/Lambert) to approve the Minutes of November 26, 2012 with minor typographical errors with all in favor. It was noted a line was added to the Minutes of November 26, 2012 (Page 7, Paragraph 3) where it was stated "Ms. Laurenitis noted her approval to go along with the request." As every other member was polled and responded. A motion was made/seconded Stewart/Laurenitis) to approve the addition with all in favor.

Chair Stewart asked if there were any other comments with Ms. Monahan noting she did recall Ms. Laurenitis saying something about "hoping the Planning Board would consider the density issue when they met the following month" when she voted in favor of the Special Exception on November 26th.

Mr. Leishman had several comments about the Notice of Decision. He cited the fourth paragraph of the Decision and read "In granting the Special Exception, the Board finds the applicant has met or exceeded all of the Special Exception Criteria of the zoning ordinance, as presented by Attorney Hanna in the application dated October 4, 2012 and by subsequent materials provided to the Board during the Public Hearing process."

Mr. Leishman was concerned with the words *met or exceeded*. "They did a fairly good job" he said, but to say "exceeded. That is a judgment call." He also pointed the last portion of the

Decision "(4) The applicant has more than met the requirement to consult with neighbors and to provide compensation to lessen negative impacts." Mr. Leishman said "I do believe the applicant consulted with all or at least most of the abutters and neighborhoods but to say *more* than met the requirement doesn't sit well with me." He noted the Decision was written out after the meeting by the Director of Community Development. "Carol quoted the Board" replied Chair Stewart. Ms. Laurenitis agreed with Mr. Leishman and asked "has it been signed yet?" Chair Stewart replied "yes, it has." Ms. Laurenitis questioned if any changes could be made at this point "since it is signed." Ms. Laurenitis added "that is why we write the decision together, so we can see it and review it on the (white) board."

Mr. Lambert interjected "excuse me Mr. Chairman, if you refer to page 7 of the (November 26, 2012) Minutes, it should answer some questions. Mr. Lambert was referring to statements made by the Chairman ("I truly believe they have bent over backwards") with regards to the applicant's mitigation to abutters and neighbors and Mr. Leishman ("I am sure Carol will incorporate what we want in the decision with or without the specific language").

Mr. Leishman responded by noting "this is the first time we have seen it and have not had a chance to comment on it." Chair Stewart immediately replied "it was e-mailed to us." Ms. Monahan relied "maybe to you as Chairman, we (the members) have not seen it." Not totally convinced Chair Stewart noted he would follow up on the e-mail.

Ms. Laurenitis reiterated "we cannot change it now." Ms. Monahan said "I recommend that if we ever do a joint meeting again we should approve our own decisions." Mr. Lieshman added "yes, and see it before it goes out." Chair Stewart replied "frankly if I were approached about a joint meeting in the future I would say no" adding "there was too much information and trying to decide *what* was for *who* was difficult." Ms. Monahan agreed adding "it was hard to focus on our own criteria."

Other Business:
Ms. Monahan noted she would like clarification to make sure the Rules of Procedure were clear as well regarding the appointment of an Alternate. Chair Stewart replied "we will post that as an agenda item and discuss it at our next meeting."

Ms. Laurenitis added that she would like to see clarification in the Rules of Procedure for reconsideration of decisions. "I was not clear about what to do, so I did what I thought was best and wrote the letter." She went on to say she felt the Board shouldn't feel rushed into making a decision. "We need to take time and absorb the information" she said. Chair Stewart interjected "we should not be talking about this case anymore." Ms. Laurenitis replied "OK, in any case." Chair Stewart suggested Ms. Laurenitis "bring it up when we talk about the Rules."

The meeting adjourned at 7:50 p.m.

Respectfully submitted,
Laura Norton
Administrative Assistant
Approved 3-4-13