

**TOWN OF CHESTERFIELD, NH  
ZONING BOARD OF ADJUSTMENT**

**MEETING MINUTES  
FEBRUARY 13, 2018**

**Present:** Kristin McKeon, Lucky Evans, John Zannotti and Alternates Eric Barron, Joe Parisi and Joe Hanzalik. Also in attendance was Select board Representative Norman VanCor.

**Absent:** Lance Zinn

The Zoning Board of Adjustment met at the Chesterfield Town Offices on February 13, 2018. Chairman Kristin McKeon called the meeting to order at 7:30 p.m.

**Hearings:**

**1. Hearing:**

- **Cornelia Jenness for the Chesterfield Historical Society** requests a Variance from Article II Section 203.2 of the zoning ordinance to allow a museum. The property is located at 762 Route 63, Spofford, NH 03462 (Map 5A Lot A25) Residential District. (Hearing continued from the January 9, 2018 meeting.)

Voting on this application: McKeon, Evans, Zannotti and Alternates Barron and Parisi

Present: Cornelia Jenness

McKeon asked Jenness if she has information regarding the historical encroachment of the building or other information on the building. Jenness did not. McKeon noted that the documents submitted earlier show clearly that during 1958, 1974 and 1982 that the State kept taking more land from the property.

Parisi asked the scope of the variance of which the applicant is requesting. McKeon replied that the applicant is requesting to have a museum in a residential district as a use variance. It is not a dimensional or a setback variance. This is just for use to put a museum for the Chesterfield Historical Society to put a museum in that building. McKeon instructed the applicant that she would need to come back to the ZBA for further relief to discuss parking if it is determined that parking if it encroaches the setbacks. It was noted that the owner, Mr. Routsis, has signed a letter giving approval for the Historical Society to request the variance for this building.

Zannotti stated that it seems that the application has included all of the information that is required to support this application in moving forward. McKeon stated that it is in a residential district and the property caused be used as a home but would not be desirable because the property sits right on Rt. 9 and 63 and is an area where there have been many vehicle accidents.

*Evans made a motion to approve the Chesterfield Historical Society request to give the ability to use the building as a museum and other Historical Society activities to include the history of the building.*

Criteria for approval:

1. The variance is not contrary to the public interest. **Yes. To allow museum for Historical Society and are not contrary to the public interest and does not alter the character of the neighborhood or threaten public health, safety or welfare.**

2. The spirit of the ordinance is observed. **Yes. The nature of what they would like to do is not harmful to the general public.**
3. Substantial justice is done. **Yes. This would be a benefit to the neighborhood and to the town.**
4. The values of surrounding properties are not diminished. **Yes. The nature of the surrounding properties are commercial and residential. There should be no increase in traffic and there will not be any significant outdoor lighting and it can only improve the surrounding properties as being a landmark at this location.**
5. Literal enforcement of the ordinance would result in unnecessary hardship.  
Because of special conditions of the property that distinguish it from other properties in the area:

**The building is now in a residential area and certain uses normally allow certain uses and museum is not listed in the variance. That is the reason for this variance. The burden on the Historical Society could be great if they could not acquire this and would go against the ordinance of use.**

**The conditions of this property are that they are in a residential area and there is substantial traffic in this area. The use is a reasonable one.**

*Barron seconded the motion.*

Discussion: *Zannotti moved to add an amendment to the motion, as part of the conditions, that there would be no access from this property to Rt. 9.*

*Barron seconded the motion to the amendment.*

Vote called on the amendment: Evans – Yes; Barron – Yes; Zannotti – Yes; Parisi – Yes; McKeon – Yes. Motion to amendment passed unanimously.

Other discussion: Parisi noted that other Historical Society activities should not have been included in the original motion. The applicant's variance is only to allow the museum.

*Parisi moved to strike out "and other Historical Society activities". Motion seconded by Zannotti.*

Vote called on the amendment: Evans – Yes; Barron – Yes; Zannotti – Yes; Parisi – Yes; McKeon – Yes. Motion to amendment passed unanimously.

*McKeon moved to add in the criteria that it meets the criterial because the amount of land and it has constantly been eroded by the State of New Hampshire, taking property from Rt. 9 & 63. It also is a very historical property and is well preserved. If it is not allowed to be used in this way, it almost prohibitive for a single person to live in it as a single home and maintain it. It is doing substantial justice for the town to keep a landmark in addition to allowing them to have a museum. It gives substantial justice for the entire town and it is in keeping with the Town's Master Plan.*

*Barron seconded the motion.*

Vote called on the amendment: Evans – No; Barron – Yes; Zannotti – No; Parisi – No; and McKeon – Yes. Motion did not pass.

*Parisi made a motion that the variance is limited to use. Barron seconded the motion.*

Vote called: Parisi – Yes; Barron – Yes; Zannotti – No; Evans – Yes; McKeon – No  
Motion made to the variance approved by majority vote.

*McKeon moved to add that the applicant is asking for a variance from Article II Section 203.2 of the zoning ordinance to allow a museum. Motion was seconded by Parisi.*

Vote called on the amendment: Evans – Yes; Barron – Yes; Zannotti – Yes; Parisi – Yes; McKeon – Yes. Motion to amendment passed unanimously.

Vote called on the motion: Evans – Yes; Barron – Yes; Zannotti – Yes; Parisi – Abstain; McKeon – Yes. Motion passed by majority vote.

## 2. Review : February 6, 2018 Meeting Minutes

The ZBA will review the February 6 meeting minutes at the March 13 meeting.

## 3. Other Business

**Xpress Natural Gas** – Discussion for the limited purpose of deciding, as a matter of fact, whether or not any pre-existing use was continuous or abandoned.

(Continued from meeting of January 9, 2018)

Present: Michael Bentley, Attorney for Xpress Natural Gas and Cheryl Fletcher, Property Owners of 19 Mill Road, West Chesterfield, NH

McKeon opened the meeting for public comments and requested that anyone wishing to speak to announce their name. She stated there there is not going to be any outburst and yelling or those individuals will be asked to leave.

The members of the board that will be sitting on this discussion will be Lucky (Lucius) Evans, John Zannotti, Eric Barron, Joe Parisi and Kristin McKeon.

Bentley stated that Joe Parisi did not serve as a board member at the January 9 meeting and requested that he be disqualified to sit on the discussion. Bentley stated that Parisi was not sitting on the ZBA and while he sat in the audience at that meeting, he questioned whether there was a site plan approval that Bentley objected to. McKeon noted that Parisi has asked for information and gave a statement as to what he thought would happen after this and he did not register an opinion as to whether he opposed or was for or against and he only stated as to what he thought would happen if it went further than this. McKeon noted that the ZBA has stated that it was outside of the scope. McKeon stated that she will not order that anyone to recuse themselves but the person sitting can recuse themselves. If he feels that he doesn't have any conflict of interest and he can make a judgement without any prejudice, then he does not have to give up his seat. Attorney John Ratigan noted that if the Board wanted to register an opinion, they can take or vote or they don't have to. It would be up to the member as to whether he recuse himself. It was noted that Mr. Parisi was not a member of the Board at the last meeting but has since been made a member. McKeon stated that the Joe Hanzalik and Joe Parisi were at the last meeting and have since been sworn in as alternates. Both Parisi and Hanzalik were sitting in the meeting as citizens at the January 9 meeting. McKeon felt that Parisi knows whether he's objective or not and can look at the fact and make a decision. Barron noted that the issues here are no speculative and are very specific. Joe Hanzalik stated that he was in the audience during the last meeting.

Bentley noted that the Board had asked at the last meeting as to whether the applicant could get any information that they could get from Garelick Farms as to when they stopped using the property. Bentley provided a series of email chains. He has an email from Gregory Palulis, Senior Accountant of Garelick Farms and stated that he attached a copy of the March 26 check request with the lease agreement of occupying the space. Bentley stated that they moved Garelick Farms (GF) from our property to Cheshire Oil in 2016 and they gave us a copy of the lease agreement with Cheshire Oil and Bentley asked that that be introduced for the record.

Bentley noted that he has an email from Ellen Serino, Logistics Manager of GF to us dated March 8, 2016 referring to their termination of utilities. This is consistent in that GF was making use of the property through the middle of March through 2016. Bentley noted that the Board was given a picture out of Steve Bracket's report, as part of the record. Bentley presented a color photograph. Jim Phippard, who was involved with the G&S Precision site plan application that was going on in 2015 of which he (Phippard) took and emailed to Bentley in 2015. Bentley stated that on the last page was a black and white of the same picture and that picture is part of the dredge and fill application that G&S Precision submitted to the State of New Hampshire. He noted that the plan is in the Planning Board records for the Town of Chesterfield as part of their site plan application. Bentley stated that the color photo was taken on March of 2015. Bentley presented copies of Lyle Hoag's plowing bills for GF (billed to Dean Foods) with the last invoice dated April 9, 2015 listing snow plow storm on March 4, 2015. Bentley noted that he has an affidavit from Bill and Cheryl Fletcher affirming that GF made use of the property through the middle of March through 2016 and that the Fletchers used in between March 2016 and December 2016 when they leased it to Xpress Natural Gas (XNG). They used it for a month and the Fletchers have used it ever since as a trucking terminal.

Joe Parisi stated that he doesn't have a unique insight on this case and doesn't see why the other alternate isn't seated for this matter. This is for the benefit as to whether there is any question as to Parisi being bias to this case and this will clear any cloud for the proceedings. He stated that he is not recusing himself and would give the chair the option to offer the seat to another ZBA alternate. McKeon noted that she will seat Joe Hanzalik as a voting member to this case.

Nancy Eddy requested that her letter be entered into the meeting minutes of the January 13, 2018 Zoning Board meeting. In reference to my letter of January 9, I would like to add the following information regarding my observations on the site on Mill Road of the proposed transfer station. I spoke with both of the daughters who drove on the site that I was teaching them to drive. The younger remembered no trucks being present on the site for approximately six weeks from the end of June through July of 2016 when she practiced driving and especially parking parallel to the railroad type curb on the property. She was certain that she would have noted the milk trailers since they were parked there for many years as she was a child and she had wondered how they had moved because they had no cabs attached. My older daughter believes that they may have been a single truck on site in 2015 but she too recalls in the lot largely being empty in 2015. I would like to state that I have driven by the Mill Road site on my way to Keene four to six times a week and have seen the exactly the same trucks parked on site. I noticed no exchange of vehicles or trucks entering or leaving the property. In my observation, the site is being used as a parking lot and not as a terminal nor has it been acted as a truck terminal for something like two years. I would request that the Zoning Board clarify several definitions because of the legality of the application seems in part to determine these definitions. First, what is the town's definition of a terminal? Is it at any point for a transport system and if so, how many trucks at a maximum did the Garelick application suggest would occupy the site? Were limits placed on these numbers in the original application? I can't believe the town would grant an application where numbers were not considered and that these numbers must enter into the definition of use. Second, what is the definition of use? The volume of trucks proposed by Xpress Gas seems at no way comparable to anything that I have witnessed on the site for many years. I can't remember ever seeing more than two milk trailers there and that was several years ago. Finally, how does the nature of the material shift to the definition of use? Two milk truck trailers and 40 trucks containing hazardous

materials are certainly not comparable. I further request that any photographs or material relevant to the Mill Road site be secured by the Chesterfield Conservation Committee. It has been observed before that this property is on the edge of a brook and is vulnerable wetlands. The CCC recently completed a draft of a report identifying wetlands and placing a premium on the maintenance and Conservation noting that they are one of the town's most important resources. It would be appropriate to hear what they have to say and to bring to the discussion of this site. In closing my family and I are strongly opposed to the proposed Xpress Gas truck transfer on the Mill Road site. Respectfully Nancy Eddy

Nathan Antaya of 86 Cross Road, W, Chesterfield lives about a quarter mile from the Mill Road site. He drives by the site frequently, typically multiple times a day. He also run on the roads throughout the year about four times a week and past the site a couple of times during each run. When Garelick Farms was using the site there was truck activity on a regular basis and I'm not sure when that ended. After Garelick Farms vacated the site, in early 2016, I didn't observe any activity at the site. As I passed the site after Garelick vacated the site, I often wondered what the next use of this site may be. I don't recall any activity at the site from when Garelick Farms vacated the site to sometime in the summer of 2017 in and remained there, seemingly abandoned for many months. In fact the trailers are still there today in the same spots. I remember thinking that they may be abandoned and I considered contacting the town to find out what the duration of time is that a vehicle can remain on a property before it is considered abandoned.

McKeon read a letter submitted to the ZBA dated February 9, 2018 by Albert and Karen Rydant of 122 Farr Road, W. Chesterfield.

We respectfully request that you accept and publically read this memo into the record of the February 13, 2018 ZBA meeting re: the request for a Special Exception to the potential use of the 19 Mill Road property (owned by Mr. & Mrs. Fletcher) by Xpress Natural Gas. We are unable to attend the ZB meeting as we will be in Vancouver, BC, Canada at the memorial of an immediate family member. We will address two issues below.

1. Over a period of some two years, indeed perhaps even longer, we have witnessed no, or at best very minimal use of the property in question as a trucking depot/terminal. During 2016 we observed no active use. Overall we have witnessed no substantive activity at the site since the departure of Garelick milk trucks. While one box truck, a bulldozer and several trailers are parked there, they are just that – parked there.

Attached is a photograph of the site from December 2017. Unfortunately it is not date/time stamped (who knew it would be required from a legal perspective as these proceedings evolved). The lack of tracks in the snow clearly indicates its non-use. After the photo was taken the white box truck was moved beside the two trailers at the old loading dock. Other than that nothing seems to have been moved or used since.

Admittedly some vehicles have entered/exited the site in recent times. On one occasion I (Al) noticed several Asplundh vehicles marshalling there at the end of the day and on several occasions tractor-trailers parked there late at night as I return home from various rescue calls (I am a volunteer EMT in town). But on every occasion none of these vehicles were there the next day, thus indicating they are indeed transient and not part of any "active and continuing" use of the site as a trucking terminal. Thus, we are submitting our testimony to non-active use of the site as a trucking depot/terminal for at least one year and perhaps even longer, as noted above.

2. The second issue relates to the behavior of Mr. Fletcher at the January 9, 2018 meeting. We believe his aggressive, threatening and belligerent behavior is totally unacceptable and should be the foundation of eviction from the proceedings. While opinions may differ we must all strive to work cooperatively. We trust the ZBA will endeavor in future meetings to enforce this necessary civility and carry out what we believe is its remit, that is to protect the citizens, property and environment for the residents of Chesterfield, NH.

During his outbursts Mr. Fletcher claimed the “you are causing us financial hardship. . .”. Imagine the more profound hardship that would befall proximate residents should a serious accident occur on site or on Rt. 9. The lack of mitigation planning for the site’s proposed use only exacerbates such resident concerns. One need only recall the propane truck fire on Rt. 9 near Tire Warehouse in December 2017 to realize the very real possibility of such potentially catastrophic events.

In conclusion we would like to register our opposition to the Special Exception requested by the property owners.

Lisa Martin, 103 Cross Road, W. Chesterfield, NH read her letter to the Board and submitted a hardcopy as follows:

I would like to put on record that I have not seen any truck activity at 19 Mill Road since Garelick Farms left. I drive by each weekday to and from work. It is my walking route on weekends and evenings during the spring, summer and fall.

I further want to voice my concern of allowing XNG to use this property for the storage of hazardous materials that could jeopardize my walking route and my home that is in close proximity. I don’t believe this company would bring anything positive to our community and would respectfully request that you deny XNG’s request for a special exception.

Lisa Prince asked when was the ordinance was created that required the 12-month period before the property was considered abandoned and was that created in the dawn of time or was that created within the last few years. McKeon noted that she doesn’t know the exact date but it has been quite a while.

Mark Higgins of Cross Road

Higgins lives in the neighborhood and stated that he passes by the property three or four times a week. He stated that he has not seen any activity outside of sporadic trailers here and there for over a year and he has never seen a person on the property. The property has only been used as a parking lot. Higgins stated that he has lived on Cross Road for four years.

Zinnatti noted that one request was made by the Board was for any records from Garelick Farms of their truck activities into the Mill Road property. Bentley replied that that was one of the questions asked in the chain of emails. Cheryl Fletcher noted that everything was forwarded to their legal department. Bentley replied that it is not in our control and it was one of the reasons that his client has asked for a continuance.

Denise Higgins of 85 Cross Road

Higgins stated that she has noticed that tractor trailers that are standing on legs without a truck cab for quite a long time and they are rusted.

*Evans made a motion to close the public portion. Barron seconded the motion which passed unanimously.*

Discussion: Barron stated that a trucking terminal definition is not the same as a parking lot. A trucking terminal is also different than a truck yard. A truck yard is where you park. A trucking terminal would require some goods being brought in and taken out and a truck yard is just stationery and a truck terminal is more than just parking. McKeon noted that Stubb Thomas had commented that was why a permit was required for the extra building to not only load and unload the trucks but to do the paperwork, phone calls and that kind of stuff.

*Zannotti moved that the Board define a trucking and freight terminal as a use to mean a property with a trucking and freight building, where the building is used for trucking or freight processing for storage purposes. The definition shall not include the use of property for truck or tractor trailer parking for trailer exchanges, drop offs, or delivery unrelated to the use of the building. Evans seconded the motion.*

Discussion: McKeon noted that trucks and/or trailers could be parked at a truck or freight terminal but that wouldn't be part of the definition. Hanzalik noted that a truck and trailer could be parked but is being parked to utilize the transfer of the business materials. McKeon stated that the parked unit is having product being moved.

*Barron move to amend the last sentence of the motion to read:  
The use of property for truck or tractor trailer parking of trailer exchanges, drop offs, or delivery unrelated to the use of the building is insufficient to satisfy this definition. Hanzalik seconded the amendment.*

Vote called on the amendment: Barron – Yes; Evans – Yes; Hanzalik – Yes; Zannotti – Yes; McKeon – Yes

Motion passed unanimously.

Vote called on the motion: Barron – Yes; Evans – Yes; Hanzalik – Yes; Zannotti – Yes; McKeon – Yes

Motion passed unanimously.

Evans stated that we were provided photographs without dates of the property. The Board also received written and verbal presentation from people regarding the activity level on this property. McKeon noted that a Google Earth photo of 2014 showing one Garelick Farms trailer with no truck and another one backed up against the building but there was a lot of weeds all around it. Evans noted that the Board has received a State soil test map in 2014. Xpress Natural Gas also noted that the property had not been used for two years at the time when they applied for the Special Exception. It was noted that no photos were presented of any people in photos showing any transfers either by hand or in a booklet and no one in the office doing billing or other paper work for the transfers of goods. No materials were provided to the ZBA of dates and times when trucks were coming and going and transferring of product from Dean Foods, as was requested of the applicant. There are electric and plowing bills and a building permit for the loading dock. The applicant did provide copies of leases and a deed. The owners have stated that they stored their own trucks and trailers on the site. Without having any dated photos prior to January 2017, the ZBA is relying on verbal testimony for use. There have been two public ZBA meetings requesting more information from the applicant. McKeon noted that we have public testimony

stating that individuals have not seen any activity showing trucks going in or out or being loaded or activity in the trailers. Testimony was given by Steve Dumont whereby Garelick Farms would provide product for the corn roast event and when the activity slowed down, the corn roast volunteers had to meet the GF trucks at the Rt. 91 exit. The applicant provided a copy of a snow plowing invoice dated April 9, 2015 for snow removal service provided on March 4, 2015 with a handwritten note stating “This is the last invoice for Garelick Farms” and it suggests that no activity happened after that date. It did not indicate what happened before that date. It was noted that the Board has not received any information stating that this property was a trucking terminal during the last 12 months prior the applicant’s request for a Special Exception.

McKeon noted that it is the ZBA’s responsibility to determine whether or not any pre-existing use, as defined by the ZBA, was continuous or abandoned for one year or more.

McKeon asked the Board if any evidence presented showing that there was continuous use, as the ZBA defines it as a freight or truck terminal. The photo was not dated in a 2015 report with a Garelick Farms parked truck but did not show any activity. It was determined that you can have a lease but that does not make it an active trucking terminal. Lisa Prince’s letter indicated that she viewed the night cameras set up at 5 Mill Road where she could see night time activity on the applicant’s lot and couldn’t tell who it was. She stated that she could only see headlights and they were gone by morning. The Board has written and verbal submissions from people who live nearby indicating that there has been discontinued use on that property for some period of time, some of which include dates given. Mr. Fletcher would have provided the ZBA with invoices from snowplowing after the service provided on March 4, 2015 (by Pat Rawson) and Fletcher did not provide any further snowplowing documentation. A resident provided written and verbal statements of her giving driving instructions during the spring of 2015 and there had been no vehicles or activity on that lot. The Board felt that the XNG applicant stating that there had been no activity at the site for the prior two years of his application was very important. It was noted that the leases don’t constitute use.

*McKeon moved that the Board finds that the trucking and freight terminal has been abandoned or otherwise discontinued from at least early 2015 through the present for such a use necessarily involves not simply parking trucks there but requires the use of truck and freight terminal building that is on site, as defined earlier. The weight of the evidence before the Board, including the January 18, 2017 statement filed by Xpress that the property has been vacant and unused for two years, Nancy Eddy’s latest letter dated February 13 stating that the lot was empty when she was teaching her daughter how to drive during the spring of 2015 and plowing records submitted by the Fletchers showing a note from Rawson Construction saying “Last invoice for Garelick Farms”, invoice dated April 9, 2015 and the last plowing was March 4, 2015 and lack of any documentation of the buildings used for trucking and freight terminal usage, that no such use of the building and site for such trucking and freight terminal uses has occurred since early to mid 2015 until the application of January 2017.*

*Barron seconded the motion.*

Discussion: It was determined that there is no documentation as evidence that the property was used as a trucking terminal but there is documentation stating that things have ceased sometime early to mid spring of 2015 and it was not being used at the time when the applicant came forward in January of 2017.

Vote called on the motion: Barron – Yes; Evans – Yes; Hanzalik – Yes; Zannotti – Yes; McKeon – Yes  
 Motion passed unanimously.

- **Chesterfield Board of Selectmen** request an appeal hearing of the Planning Board decision on December 18, 2017 on the application of Mark Lanoue, 1763 Route 9, Map 10A, Lot 5A in Chesterfield, NH. This parcel is located in the Office/Retail/Service district of the Town of Chesterfield.

Chairman McKeon stated that at 10:30 p.m. the hearing will be continued to the next scheduled meeting on March 13, 2018.

Voting on this appeal is Eric Barron, Lucky Evans, Joe Hanzalik, John Zannotti and Kristin McKeon. Joe Parisi has recused himself from sitting on this hearing.

Present: Mark Lanoue, owner of 1763 Route 9, Chesterfield, NH; James Phippard, Brickstone owner and consultant for Mark Lanoue

Also present: Norman VanCor, representing member of the Chesterfield Board of Selectmen and James Corliss, Chairman of the Chesterfield Planning Board

Phippard requested that Chairman McKeon recuse herself since she is married to one of the signatures on the appeal. She took the request under consideration and stated that she will be impartial and she has nothing to do with what the Board of Selectmen chooses to do. Zannotti stated that this is a small community with a small volunteer basis and if applicants are going to come in and start picking who they want is wrong. He supports having McKeon remain sitting on this appeal. McKeon noted that she and Evans are the only ZBA members that had anything to do with the variances so to recuse herself would put the ZBA at a real disadvantage if they have no history.

VanCor stated that this application process with the Planning Board has gone on for months and the delays and continuations were not the fault of the Planning Board or the Board of Selectmen. There have been changes of engineers and information and other applicant related issues that have caused the delays. The Board of Selectmen (BOS) has asked the ZBA to remand the application back to the Planning Board for rehearing, not because of the outcome of the decision but because the Planning Board conditionally approved the application using incomplete information – very preliminary site plan, inadequate listing of conditions and plan notes and errors in following the Land Development Regulations.

VanCor noted that Exhibit 3 shows the site as it is now. He stated that the Planning Board (PB) approved the plan that shows two handicap parking spaces within the front setback. It was noted that labeling them as handicap was proper as they were already there. There is no identifying parking spaces at the site for handicap or otherwise and no other spaces marked as handicap parking. The PB does not have the authority to allow parking spaces in front setback. It doesn't matter what the ZBA did or didn't do, the PB cannot decide to accept them, which is the authority of the ZBA. These parking spaces can be moved so that they can be included in front of Manny's and the PB did not have the authority to accept them in the front setback. VanCor noted that there are 22 spaces on the side and it is not allowed to have more than 20 spaces without a separation of a 10 ft. landscape barrier, as noted on page 15 of the zoning ordinances and the PB did allow it against the town's zoning ordinance. The PB placed a condition on the approved site

plan that calls for adding a fence to prevent a vehicle from driving on the leach field. The exact location of the leach field has yet to be determined. The fence can't possibly protect the leach field, which was brought up but the PB still accepted it.

VanCor stated that the PB accepted 42 parking spaces for display (Mr. Corliss stated 44), 20 spaces for employees, 10 spaces for customers and 20 of the display spaces where the cars would be that were for sale. McKeon stated that the parking spaces were not supposed to be viewable from the road and that was one of the conditions of the ZBA to keep it as close to the spirit of the ordinance as possible. Evans stated that Lanoue had told the ZBA that there would be no cars on display and the sale of cars would be internet sales only.

VanCor reported that one condition of the PB acceptance of the plantings was for perennials would be added to the front of the building per sketch. At the time of the decision, the perennials in front of Manny's is a flower bed but there was no sketch and nothing on the plan which defines what they said that they were going to do. Many of the approvals that the PB has given to Lanoue is taking away the authority that the ZBA should be approving. There were also 16 arborvitae and 4 crabapple trees were approved to be near the road. All of the sections in the land regulations were not addressed. The PB is required to consider natural features. The arborvitae on the plan is not the arborvitae that Mr. Corliss refers to in his rebuttal. On the plan is a green emerald. VanCor presented a before and after photo of the site. VanCor stated that the State forester did not recommend arborvitae that are not cedar, which is a short-lived tree with a lifespan of 20-30 years and are very susceptible of salt and disease. The Land Use Regulations asks that land owners are keeping in character of the surrounding area. VanCor had asked for more discussion on the landscaping and it was not.

The abutters on the opposite side of Rt. 9 provided quite a bit of testimony and requests and questions of what type of vegetation is going to be put in place. When looking at screening and natural plantings, a decision should be made for a long term solution everyone could be proud of.

Should the ZBA should choose to have a rehearing need not be a month-long affair. VanCor stated that the PB needs to reconsider certain items that they have neglected, particularly with the parking and screening and there are other things that were not do as well. The applicant should have a complete plan. The afternoon of the meeting the applicant came before the Board and announced that he has a verbal agreement to buy a 50-ft strip from the abutter and this should satisfy everything that you want, including the fill and the setback. There were a lot of promises and a lot of conditions that were not documented. It would give the applicant time to have a solid plan and it would be an opportunity for the PB to document everything that they need to do, with proper notations and have all sketches put on the plan. It would also provide the applicant with a clear and concise plan moving forward. The PB is required to look at the Land Use Regulations and apply them to the site plans. In many of these cases, that wasn't done.

McKeon stated that the variance was given with the acknowledgement the he follow this plan. She held up a plan that the applicant had agreed to during the ZBA application. VanCor replied that he couldn't explain why there were many changes made and another engineer was brought in and the PB looked at an entirely different site plan. McKeon stated that this is one example of two boards not communicating. She felt that the new ZBA members should have the opportunity to be able to ready the history on the site application and they are at a total disadvantage. VanCor's concerns are the things that were done that need to be corrected by bringing back to

the PB. Barron asked what the process is to resolve the issues. McKeon stated that the ZBA is a quasi judicial board and that is why it was brought back to us. VanCor stated that the PB could have done a better job and they allowed things that they are not authorized to allow and they didn't look at the regulations and apply them to a site plan, right or wrong, that they should have. He added, which plan for what, that's something that Mr. Corliss may be able to answer. McKeon stated that if the BOS had not appealed this decision, the ZBA would have had no way of knowing that the variance that was granted was not what was presented to the PB and that's a problem. She asked how does the ZBA address the plan when this is not the plan that was given for the variance. It was all agreed that this was going to be internet sales and nothing was going to be seen from the road.

James Corliss, Chairman of the PB stated that the PB applied a variance to a site plan that was proposed and was modified by Mr. Lanoue over many months. McKeon stated that Mr. Lanoue agreed to this plan (she held up the drawing approved by the ZBA). Corliss stated that this is very complex and the PB needs to digest what the ZBA approval was, what the PB process was and what other events weighed into it.

Corliss stated that we are in a condition for approval that requires the condition that the PB has made, which includes the plantings that were just discussed. There is arborvitae and the conditional approval of the ZBA says screening in the form of arborvitae or similar plantings seem to be proper. The fence on the septic was not in the BOS appeal. Corliss felt that it was a single pipe septic system, which a fence would protect and there is discussion on the number of spaces on the site. He added that the appeal in the ZBA minutes of the original variance that was granted just allowed inside service and outside storage of cars and it was appealed for rehearing. It then allowed 65 cars on the lot for the internet sales business in addition to customer staff and parking. He noted that the PB limited the parking to less than 65 cars because of site conditions and simply can't put them there. While it is not in order, there is a PB rebuttal to the BOS appeal. He stated that none of this is a quick read and he hopes that the ZBA can consider it between now and our next meeting. He noted that given the history of the project overall, it's worth the time to consider all the arguments of why things were done, should have been done or were not done. McKeon suggested that the two boards have a combined meeting and communication is so important. Corliss noted that the ZBA put on limits because it decided to allow outside storage and merchandise in an O/R/S zone, where it is not permitted. He noted that the PB is required to follow the ZBA conditions. Evans stated that Lanoue agreed to sell 90% of the cars on line. Corliss stated that the PB testimony is a complete rebuttal and is in a different narrative. Corliss stated that the PB did see the ZBA plan.

James Phippard, Brickstone Land Use owner and consultant on behalf of Mark Lanoue Phippard stated that he became involved in this project last October (2017). Brickstone did continue to work with Ron Bell, where Bell was and still is the engineer for this project. Phippard noted that the ZBA plan and the newer plan have some differences. Because of conditions that come up, i.e., concerns of an abutter then the boards rightly put on conditions of approval and that condition may not already be on the plan. Therefore, the plan needs to be changed or work with the plan to meet that condition. He noted that in the conditions of approval by the ZBA and Phippard revised the plan to reflect all of those conditions. The plan that the ZBA reviewed is not the plan that complies with the PB regulations. All of the drainage details and the landscaping plans come into play. The ZBA didn't have any of those plans and the ZBA

doesn't require all of those details. Phippard stated that he listed all of the ZBA conditions of approval on the site plan.

Corliss asked if the ZBA was considering other issues besides the BOS conditions for appeal. McKeon noted that the ZBA will get legal opinion on how to move forward with the appeal and get guidance for other issues of concern, if any.

This hearing will be continued to the ZBA meeting of March 13, 2018. No further notices will be sent for this continuance.

**Seminar Topics** – Training for ZBA and Planning Board members  
ZBA Session - Tuesday, February 27 and Planning Board Session – Thursday, March 1  
Both sessions will be held at 7:00 p.m. in the Town Office meeting room.

**Next Meeting Scheduled – March 13, 2018**

### **Adjourn**

With no further business to be heard, the meeting was adjourned at 10:40 p.m.

The next meeting will be held in the Town Offices on March 13, 2018 at 7:30 p.m.

Respectfully submitted,  
Patricia Grace  
Secretary

Approved

\_\_\_\_\_  
Kristin McKeon, Chairman  
Zoning Board of Adjustment

\_\_\_\_\_  
Date