BRISTOL
ZONING BOARD OF ADJUSTMENT
June 3, 2014

APPROVED as amended & clarified:
7/1/14__jrl_____

AGENDA: 14SE01 CONTINUED SPECIAL EXCEPTION: MICHAEL & NANCY SAUCIER, 24 Arrowhead Point Road, #102-033

14VAR03 VARIANCE: CAROLYN PARKER/CUMBERLAND FARMS, 25 Pleasant St., #114-178

14RVAR01 VARIANCE REHEARING: ZAREMBA PROGRAM DEVELOPMENT LLC/DOLLAR GENERAL, 215 Lake St., #112-001

ATTENDING: Alan DeStefano (Chairman), Richard LaFlamme (Vice Chair), Lorraine Bohmiller, Larry Denton, Ashley Dolloff

ABSENT: -----

OTHER: Michael Capone (Town Administrator), Clay Dingman & Steve Favorite (Planning Board), Sandra Heaney (Conservation Commission & HDC), public

The meeting opened at 6:01 pm. with a full Board.

MINUTES OF MAY 6, 2014:
R. LaFlamme made a motion, second by L. Bohmiller, to approve the minutes as read. The motion carried.

CONT. SPECIAL EXCEPTION: MICHAEL & NANCY SAUCIER
The Board looked over the additional information that had been submitted by Mr. Saucier.

R. LaFlamme made a MOTION, second by L. Denton, to ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED.

Mr. Saucier stated that he has a failed foundation and, in the process of replacing it, they would like to bring the basement to grade level which will raise the whole building 3 ½ feet.

SAUCIER SPECIAL EXCEPTION continued:
Mr. Saucier then went through his application answers:
1. The proposed use is only allowed by Special Exception per Article IV, Section 4.12,C,3.a of the Zoning Ordinance.

2. Site is an appropriate location and of adequate size for the use: No change to the footprint of the structure and no increase in impermeable lot surface due to removal of concrete pad, steps, and some decking.

3. The use will not adversely affect the character of the area: No change.

4. No nuisance or serious hazard to vehicles or pedestrians: No change to vehicular or pedestrian traffic patterns.

5. The use will not place excessive or undue burden on Town services or facilities: No change in service use and no new infrastructure required.

6. No significant effect resulting from such use upon public health, safety, and general welfare of the neighborhood: No change to neighborhood conditions.

Mr. Denton asked clarification that this is to change 1 ½' below grade and bring it up 3 ½'. Mr. Saucier agreed and added that they plan to improve drainage and to raise the ceiling height of the basement. Mr. Denton mentioned that in #2, you have stated that it will be less impermeable. Mr. Saucier said that it will with the removal of the concrete pad, steps and some decking. He added that he plans on a 10' x 16' addition but there will be no change to the primary footprint. Mr. DeStefano asked about the stairs and they are to be removed. He then asked if the addition is within the setback and was told that it is. Ms. Bohmiller asked if the addition will be without a foundation. Mr. Saucier said no, that there will be a change with the addition. Ms. Bohmiller asked if the deck is over the setback and Mr. Saucier explained that the setback infringement will stay as it is now. Mr. DeStefano asked what is in the back of the building and Mr. Saucier answered that there is a retaining wall.

Mr. DeStefano asked for comments from the public. Clay Dingman, Bristol resident, asked if any abutters called or sent in written statements and was told that they did not. Mr. Saucier added that he had spoken with his abutters and everyone was okay with it. With no further comments from the public, Mr. DeStefano closed public input.

Mr. DeStefano stated that the Special Exception is to raise the roof a total of 3 ½". He asked if the Board would like to look at each criterion or to discuss as a whole.

SAUCIER SPECIAL EXCEPTION continued:
L. Denton made a MOTION, second by R. LaFlamme, to DISCUSS AS A WHOLE. The motion CARRIED. Mr. Denton felt that it is a small amount to add to the height and would be reasonable to be able to walk in the basement. Ms. Dolloff mentioned that #2 of the criteria is wrong as there is a change in the footprint though no more than is there now.

R. LaFlamme made a MOTION, second by L. Bohmiller, to GRANT THE SPECIAL EXCEPTION FOR MICHAEL & NANCY SAUCIER. The motion CARRIED and the Notice of Decision was signed.

VARIANCE: CAROLYN PARKER/CUMBERLAND FARMS
A letter was received from Ms. Parker asking to be continued to July 1st.

L. Denton made a MOTION, second by R. LaFlamme, to CONTINUE THE VARIANCE FOR CAROLYN PARKER/CUMBERLAND FARMS TO JULY 1, 2014 AT 6:00P.M. The motion CARRIED.

VARIANCE: ZAREMBA PROGRAM DEVELOPMENT LLC: Atty. Richard Y. Uchida of Hinkley Allen, Erin Lambert of Nobis Engineering, Scott Holman of Zaremba Group
The secretary read the application, the abutters notified, and where the hearing was advertised. She stated that she had received no phone calls nor written correspondence concerning this hearing.

L. Denton made a MOTION, second by L. Bohmiller, to ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED.

Mr. DeStefano explained that this is a rehearing for Dollar General/Zaremba for the reduction of parking spaces. Atty. Uchida asked that the previous hearing be incorporated into this hearing.

R. LaFlamme made a MOTION, second by A. Dolloff, to INCORPORATE THE PREVIOUS HEARING INTO THIS HEARING. The motion CARRIED.

Attorney Uchida stated that they are asking for 34 spaces in place of the required 55. It was previously felt that the ZBA was okay with all but one criterion, denying on values to neighboring properties. They retained William J. McLean, III, a certified general appraiser from Gilford, NH for the requested analysis.

ZAREMBA/DOLLAR GENERAL REHEARING continued:
Atty. Uchida continued by saying that this case refers to Tax map and lot #112-001. They wish to subdivide this property and sell 2.28 acres to Dollar General. Atty. Uchida went on to say that Dollar General typically draws a lower amount of traffic than other facilities. The trend is to try not to build lots of pavement, especially on this lot that is next6 to the river. This is a Commercial zone and they look for uses that will fit on a site like this.

Atty. Uchida then addressed the criteria:
Spirit of the Ordinance: They feel that this is adequate parking for their use.
Public Interest: Less parking and pavement is less objective to the Ordinance.
Substantial Justice: It is a benefit as a great development of the property.
Diminution of Values: There is no detriment by reduction of parking spaces.
Hardship: The limited nature of the lot.

This is a reasonable use of the lot; deducting parking that is not needed. It is a great site for re-development. Mr. McLean's report shows that nothing would create devalues of neighboring properties. The neighborhood is in transition and is compatible with other Dollar General stores. There is no evidence that traffic will drop values. In fact, on page 30 of the report, it points out that it is a positive influence on values where other Dollar General and Family Dollar stores exist. The reduction of spaces is reasonable.

Mr. Denton asked if Mr. McLean's analysis is a general type report. Mr. DeStefano answered that it is not general but is based on this case. However, he sees no statistical proof that shows values. Mr. Denton agreed, stating that there is some local reference and some opinion. He then asked how the existing stores were chosen. Sited are Meredith, Ossipee, and Walpole. Atty. Uchida stated that, in the interest of time (30 days) Mr. McLean sited what he is most familiar with for data. These communities are similar and have not driven down values. In commercial areas, the value increases. Mr. DeStefano felt that it does affect values when you look at the whole town. He feels that if this were on enough land, it would be okay. He then mentioned a facility on Tenney Mountain Highway is not relative to Bristol's situation, for example. Atty. Uchida agreed but added that he feels that Meredith is comparable.

At this time, Mr. DeStefano opened the hearing for public comment. Clay Dingman, Summer St., asked if he could ask some objective questions (neither for nor against). He was allowed to and asked what the hash mark lines are on the plan. Ms. Lambert answered that they represent the 50' wetlands setback. Mr. Dingman then asked what is more impervious, a roof or pavement. He was told that they are the same. He then asked which is more pervious and was told that the roof is. Mr. Dingman then asked if the ZBA

ZAREMBA/DOLLAR GENERAL REHEARING continued:
Can request an impartial report. Mr. DeStefano stated that they can but the burden of proof remains with the applicant. Mr. Dingman stated that the Elderly Housing on Lake Street had to consider a smaller structure when they came to us and they complied. Sandra Heaney, Summer St., stated that she is neither for nor against but added that the Elderly Housing did not have room for a big structure and decreased the size of the building to fit the site. Mr. Dingman asked what the option of the applicant would be if the Variance is denied. Mr. DeStefano stated that it was denied once. This is the rehearing and then it could be taken to court if denied again.

Andy O'Hara, Lake St., stated that he is against the project. He asked if the lot has been divided yet and was told that it has not. Mr. O'Hara then asked for an independent survey to be done to his property (across the street from this project) before this is continued any further. He feels that it does not belong here on this site, especially where it does not meet Shore land regulations. Mr. O'Hara also questioned the Planning Board and their approval, per their minutes, of putting snow into the river.

J. P. Morrison, Pemigewasset Shores, asked who would decide the independent person. Also, does the applicant have to pay for this? He feels that if nothing is a problem this time, will that stop another person from asking for another study? Mr. DeStefano stated that this is part of being a democracy. Mr. Morrison stated that he is in favor of the project. He feels that it will add to our town. Robin Fitzgerald, Prospect St., stated that this size requires so many spaces and should be followed. Atty. Uchida stated that they would like this size as they do not need that many spaces for the business. Impacts to the area are things like traffic, lighting, etc. Planning Board issues.

Mr. Schneider, present owner of the lot, stated that he has developed in Dover and Portsmouth and they get it done with no problem. He believes that this is not over-use. Atty. Uchida feels that precedence was set with Family Dollar; there was no problem with property diminution when they got their variance for fewer spaces. The use is right. Board members stated that this is a different district with a different neighborhood.

Atty. Uchida added that, if an independent survey is asked for, it has to cover the district by law. If we don't get enough parking necessary it would cut off our nose to spite our face. He stated that we could expand the scope and data used for Mr. McLain. Mr. Denton stated that the scope was to have what was in the report. Atty. Uchida said that the study should be this exit, this drive, etc. and then the data related to it. Mr. McLain's is a general report. It has the data that was available within the 30 days allowed. Mr. Denton asked if he has data for this information, which is a lot of opinion. Atty. Uchida answered that if properties in the area haven't sold, there is not much market data to be had. Mr. DeStefano agreed that they could get rents but it is difficult to get sales.

ZAREMBA/DOLLAR GENERAL REHEARING continued:
With no further public comments, Mr. DeStefano closed the public portion of the hearing.

Mr. DeStefano asked the Board how they feel about the request for an independent survey. Mr. Denton felt that we should require it. He questioned if one request is enough. However, he pointed out that Mr. O'Hara is an abutter. He feels that we should ask this of Zaremba but accept it as a last request for a survey to be done. Mr. DeStefano mentioned that it is the abutter's concern and he is not sure that we have enough data with this first survey. He feels that it would be prudent of the ZBA to request the second opinion. He would like it to be more in depth.

Mr. Capone, Town Administrator, stated that the ZBA is allowed to seek out someone for this. He added that they should clearly define what information they are looking for. It was determined that the ZBA will discuss this at the end of tonight's meeting.

L. Denton made a MOTION, second by A. Dolloff, to CONTINUE THIS REHEARING TO JULY 1, 2014, 6:00 P.M. AND TO GET AN INDEPENDENT APPRAISER TO DO A NEIGHBORHOOD SURVEY.

Mr. LaFlamme stated that he feels that we may step into hot water if this is not needed. He questioned someone coming in to our next meeting and also requesting another survey. Ms. Bohmiller stated that the problem would be more if we require more than 34 spaces. She has no problem with new information but would like to see this be the final survey. Ms. Dolloff and Mr. Denton also want this to be the final request. Mr. LaFlamme stated that he can go along with it if it is to be final.

R. LaFlamme made an AMENDMENT TO THE MOTION, second by L. Bohmiller, to ADD THAT THIS IS TO BE THE FINAL REQUEST. The amendment with the motion was CARRIED.

Mr. O'Hara stated that he doesn't know what his property will be worth after the project as compared to what it is worth now. Atty. Uchida stated that, by case law, they must look at the Zoning district and usually go to other towns for examples as well. Mr. DeStefano agreed and added that they would correlate that versus our properties here. Atty. Uchida cautioned the Board to get the scope that they feel is necessary to make a decision.

COMMUNICATIONS:
Invite to LRPC Annual Meeting and to Midstate Health Open House

CRITERIA FOR SURVEY REQUEST:
Mr. DeStefano stated that we need statistical information relative to sales, property, and rentals. Mr. Denton mentioned that what we have now is more opinion. He would like to see figures. Mr. DeStefano added that a typical report covers the last 9 to 12 months, sometimes they have to go further back. We also want to see specific properties abutting this property/ the Village Commercial district.

Mr. DeStefano asked Mr. O'Hara if he had any specifics and Mr. O'Hara mentioned the traffic problem as he has trouble getting out of his driveway now never-mind a new business driveway across the street. Mr. DeStefano told him that this is a Planning Board issue that can be brought up when Zaremba comes before them. Our concern can only be with the parking issue.

Mr. DeStefano and Mr. Capone will discuss how to set this up and will include the applicant as to payment. Atty. Uchida reminded them that the focus is on whether or not the reduction of spaces causes diminution of value to abutting properties caused by the Variance. Mr. Denton mentioned that, if the project is not there, does it diminish the values. Mr. DeStefano asked to defer this to legal counsel.

NEXT MEETING: Our next meeting will be held July 1st at 6:00 p.m. On the agenda is the continued variance for Cumberland Farms/Carolyn Parker, continued rehearing for Zaremba/Dollar General, and any applications received by June 6 at noon.

With no other business, R. LaFlamme made a motion, second by L. Bohmiller, to adjourn at 7:45 p.m.

Respectfully submitted,
Jan Laferriere,
Recording Secretary