



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, September 20, 2016 – 7:00 p.m. – Town Hall Conference Room

Members Present: Chair John Samonas, George Baryames, Liz Cummings, Steve Gerrato, Leonard Schwab

Staff: Jim Marchese – Building Inspector

Chair Samonas opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Chair explained the procedures of the Zoning Board of Adjustment, stating that a quorum was present and the meeting was being recorded.

1. Request for a Variance: 2 Tide Mill Road [Map U5, 23] – Commercial A

Owner/Applicant: Blue Bonnet Realty, LLC

The owner/applicant is seeking a Variance for a replacement shed previously encroaching on the abutter's property with a smaller 8' x 14' shed on the property line. Greenland Zoning Ordinance Article IV, Section 4.2, requires sheds with a floor area of less than 64 sq. ft. to have a 10' setback from the property line.

John Ahlgren, 2 Tide Mill Road, addressed the Board. Chair Samonas disclosed that he has used J. Ahlgren as an attorney in the past as well as Tim Phoenix, who was also present.

J. Ahlgren amended his Variance request for the shed to be 2' off the property line rather than on the property line. The required side setback is 20'; he was amending the Variance for an 18' side setback. The lot is 78' wide; the closest point of the house at the property line is 20.5'. The house was built in 1954, pre-zoning. It is a non-conforming lot due to its narrowness and barely meets the setback on the side at issue; a house could not be built on that lot today. The opposite side has an 8' corridor near the property line.

J. Ahlgren attended the meeting on August 18, and the Board requested he provide a better plan that included topo and septic location. He pointed out the septic location, noting that the rear of the property drops off sharply. The location of the leach field also prevents the shed from being moved to the back of the lot. The boundary has been staked; there are granite posts at the rear of the property. The property had been surveyed in 1981 and 1984; that information was used for the current plan.

The proposed shed will be slightly smaller. Photos of the old shed were given to the Board. Moving the shed 2' off the property will reduce a long-standing encroachment and non-conformity, and the ambiguous boundaries have been resolved. J. Ahlgren reviewed the criteria for the Board (copy on file).

J. Ahlgren has not considered putting power in the shed. The foundation will be crushed stone with pressure treated beams on concrete blocks. The shed will be accessed from both the street side and interior courtyard side. No water will be run to the shed.

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Chair Samonas opened the meeting to public comments. Chester Deorocki, 4 Tide Mill Road: Agreed with the property line and had no problem with the shed placement. He was in favor of the shed location, stating it would create privacy between the two lots; however, a shed could be built anywhere on the lot. It should be a consideration that all sheds don't need to be pre-fab.

There being no further public comments, Chair Samonas closed the public hearing and returned to the Board for discussion. L. Cummings stated that the rear setback on the plan needed to be changed to 20' rather than the 30' as marked. Chair Samonas added that if the Board approved his request for a Variance, a new plan should be submitted that showed the shed with a 2' setback from the property line. Chair Samonas explained that the Variance would stay with the land; L. Cummings added that the land generates the need for a Variance. At the last meeting there was discussion about adding a garage; J. Ahlgren responded that the property could have a garage, but the leach field would have to be relocated. S. Gerrato noted that the septic tank was located under the patio; there was a good possibility that the septic tank was cement block, which could cave in with age. He added that he doesn't like the shed close to the property line. Responding to a question from G. Baryiames about a smaller shed, J. Ahlgren explained that the previous shed, which was bigger than the proposed, was a dog compound and shed. He had reduced the size of the shed because of the slopes at the rear of the lot. He can't move the shed to the other side of the lot because there is only 8' and down slopes; in addition, there is a basement door under the house on that side. Chair Samonas noted that the slope falls steeply; the applicant has moved the shed off the property line and made it smaller. The shed is also a buffer. The applicant had made an effort to improve the situation, and the abutter stated he is in favor. Although the shed is big, it is not proportionately bigger.

MOTION: L. Cummings moved to grant the Request for a Variance for 2 Tide Mill Road [Map U5, 23] to allow the placement of an 8' x 14' shed 2' from the property line, waiving the setback to be 18', in lieu of the 20' required by the Ordinance. The applicant must submit a revised plan, TF Moran File No. 47226.00, to show the 20' rear yard setback to agree with the notes on the right, and to show the proposed shed 2' off the property line. Second – G. Baryiames

DISCUSSION: The Building Inspector noted that the plan before the Board was not a boundary plan but a zoning relief plan. There was a stamp on the plan, but it was not certified. The State of New Hampshire requires the plan be certified, showing the exact intent of the plan. The certification is not a stamp, but is written.

L. Cummings stated that in reviewing the criteria for a Variance, the applicant has met the requirements. She added that there was a hardship with this type of property, and that's why the ZBA exists. A shed cannot be put 20' from the property line when the width of the lot is approximately 70'. C. Deorocki, 4 Tide Mill Road: although he was in favor of the shed, didn't understand why it couldn't be built at the rear of the property where it flattens out. Where was the hardship?

L. Cummings continued, stating the topography of the lot changes the placement of the shed. It was her feeling that it met the requirements for a Variance. L. Schwab agreed, countering that the back of the lot was not a good location for the shed. Moving the shed to another location on the lot would be more of a hardship.

AMENDED MOTION: L. Cummings moved to grant the Request for a Variance for 2 Tide Mill Road [Map U5, 23] to allow the placement of an 8' x 14' shed 2' from the property line, waiving the setback to be 18', in lieu of the 20' required by the Ordinance. The applicant must submit a revised plan, TF Moran File No. 47226.00, to show the 20' rear yard setback to agree with the notes on the right, and to show

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the proposed shed 2' off the property line. The plan must be certified. Second – G. Baryames; four in favor, one opposed (S. Gerrato). MOTION CARRIED

2. Request for a Variance: 1088 Portsmouth Avenue [Map R11, 31] – Residential

Owner/Applicant: James Coombs

The owner/applicant is seeking a Variance to permit landscaping use/hydro-seeding business, retail sales of landscaping materials, and the processing and storage of landscaping materials within the Residential Zone. Greenland Zoning Ordinance Article III, Section 3.6, does not allow retail sales within the Residential Zone.

Kevin Baum, attorney and representing James Coombs, addressed the Board. The property is also known as Greenside Up Landscaping, and is the residence of J. Coombs. Much of the property is in current use. The landscaping company has been in operation since 1999; he received a limited Variance from the ZBA in 1999 with restrictions (copy on file). Attorney Baum pointed out the 200' buffer zone along McIntosh Way from the north property line. The area marked "non-current use" is the business portion. The property is approximately 13 acres; just over 10 acres is in current use (either wooded or maintained for agricultural use). The non-current use area is 2.93 acres.

Chair Samonas clarified for members that the Variance granted in 1999 allowed a landscaping use within a residential zone. Current use cannot be a commercial use. J. Coombs has worked with the Board of Selectmen and the Town Engineer on the area designated as current use. Chair Samonas explained to those present that the land in current use (over 10 acres) is taxed at a lower rate, and is different than the current (existing) use of the land.

Attorney Baum read the 1999 Variance into the record. Over the past 17 years, the business has changed and expanded. It still remains landscaping, but doesn't meet all of the conditions in the 1999 Variance. Attorney Baum told the Board that the area was used for landscaping, office, and sale of landscaping materials (including grass seed, mulch, sod, loam, compost, aggregate and decorative stone). There is also a hydro-seeding business which is done off the property, but the truck is maintained on the property. Limited processing of materials is done on the site. It is in line with the previous Variance, but conceded it does exceed what was included.

In May 2016, J. Coombs received a notice from the Building Inspector that he was not in compliance with several conditions: the types of materials being sold exceeded those allowed in the 1999 Variance, the hydro-seeding business was not permitted, the weekend hours of operation weren't consistent with the Variance, and processing of materials was not permitted on site. Attorney Baum has spoken with the Building Inspector and the Town Attorney. It was suggested that J. Coombs seek a Variance for the existing use and to clarify that some of the activities were outside of what was previously granted. Some activities may be agricultural, which is permitted in the residential zone. Attorney Baum clarified that they were not looking for an expansion of the existing use, but seeking to become compliant and get approval for the current operation. L. Schwab noted that the materials processing aspect of the business has not been operational for 17 years. That use includes screeners, bulldozers, and conveyors, is an industrial use that was not there 17 years ago.

Attorney Baum explained the current use issue that was resolved with the Board of Selectmen. The time frame that was agreed upon has been met. As mentioned previously, the Board of Selectmen and Town Engineer have signed off on the plan.

Attorney Baum reviewed the Variance criteria (copy on file). They acknowledged that there have been changes over the past 17 years. They requested relief from Section 3.6, H5 - Landscape Services to

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permit landscaping use and a hydro-seeding business in the Residential Zone; Section 3.6, I2 – Retail Sales to permit the sale of landscaping materials within the Residential Zone; and Section 3.6, N1 and N9 – Light Industry/Bulk Storage and Distribution to permit the processing and storage of landscaping materials within the Residential Zone. Attorney Baum was unsure if relief was needed for all sections. They were seeking to keep the current sales and storage of materials, processing of compost, etc.

Chair Samonas clarified that landscaping meant the storage of stone, bulk mulch, etc. Hydro-seeding was spraying seed on the grass. Retail Sales: someone purchased mulch or other landscaping material on site. Light Industry/Bulk Storage and Distribution: Attorney Baum explained this was included to be sure his client could store and sell landscape materials. Chair Samonas stated that processing and storage of landscaping materials could mean bringing in bulk trees, chipping them and selling the chips. Attorney Baum insisted that was not the applicant's intention. Members of the Board had strong concerns about the Variance request for bulk storage and distribution. The business had grown over the years, and shouldn't have. Some members felt they were trying to add provisions that may allow the business to grow even more, and the Town may not be able to stop that growth. Again, Attorney Baum stated that was not the intent and apologized for any confusion. He explained that the goal, and request, was to ask for permission for approval for the existing use as of today. He stated that the Board could modify the request.

Attorney Baum continued his review of the criteria. L. Schwab asked if inspections were done on materials brought to the site in bulk. J. Coombs responded that the materials are "green" with no chemicals added. Soils are tested once or twice a year. He strictly regulates and checks every load of compost that arrives on site. Attorney Baum continued his review. They were not asking for a new use; they were asking the Board to recognize that the conditions have changed and to grant the new Variances with conditions that are more in line with the use of the property.

Chair Samonas opened the meeting to public comment. Ken McGillvary, 8 McIntosh Way: is a direct abutter and was at the meeting in 1999 when the first Variance was granted; the landscaping and hydro-seeding businesses were operational at that time. J. Coombs added that DOT gave him a driveway permit off Portsmouth Avenue. Processing is still done, but it's not 7 days a week and it's been moved. K. McGillvary stated that J. Coombs has replanted trees as a buffer; they are okay with his business; he always lets the neighbors know what is happening on the property. Debra Beck, 1039 Portsmouth Avenue: concerned about the Town's definition of agriculture. There is processing and screening happening on the property. She doesn't have a problem, but it is an industrial use. She suggested the Board be hesitant about what was added to the Variance.

There being no further comments, Chair Samonas closed the public hearing and returned to the Board for discussion. S. Gerrato suggested Attorney Baum remove the word "Industry" from the Variance request. Although he was positive about what the applicant was proposing, industry is scary. S. Gerrato told members that the Planning Board would be looking at rezoning Rt. 33 to Commercial as part of the Master Plan update. Stu Gerome, Planning Board Chairman, clarified that there has been discussion at the Planning Board about rezoning. Evaluating that zone for commercial use does not combine with industrial uses. The use on that property is an industrial use. Processing and trucking of any type of material is industrial.

Traffic in and out of the property was discussed. The worst case scenario was 10 to 15 tractor trailers per week. A traffic study was not done; DOT granted a driveway permit off Portsmouth Avenue. J. Coombs assured the Board that he is not trying to grow his business. After a very lengthy discussion about the industrial use of the property and processing of materials, the Board was asked to consider granting a Variance with conditions.

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MOTION: S. Gerrato moved to grant a Variance for Section 3.6, H5 - Landscape Services, Section 3.6, I2 – Retail Sales and Section 3.6, N1 and N9 – Light Industry/Bulk Storage and Distribution to 1088 Portsmouth Avenue [Map R11,31], with the condition that processing is done three days per week. Second – L. Cummings

DISCUSSION: The Board continued to discuss the issue of processing materials on the property.

AMENDED MOTION: L. Cummings moved to grant a Variance for Section 3.6, H5 - Landscape Services, Section 3.6, I2 – Retail Sales, and Section 3.6, N1 and N9 – Light Industry/Bulk Storage and Distribution to 1088 Portsmouth Avenue [Map R11, 31], with the condition that all landscaping activities, retail sales and processing, is done within the area designated as “Non-Current Use” (2.93 acres). Processing of materials shall only be done three days per week, weekdays only. Second – S. Gerrato

L. Cummings stated the applicant met all criteria of the Variance requirements as submitted by Attorney Baum. Although all Board members may not support the requests, the requirements have been met.

MOTION: L. Cummings moved to grant a Variance for Section 3.6, H5 - Landscape Services, Section 3.6, I2 – Retail Sales, and Section 3.6, N1 and N9 – Light Industry/Bulk Storage and Distribution to 1088 Portsmouth Avenue [Map R11, 31], with the condition that all landscaping activities, retail sales and processing, is done within the area designated as “Non-Current Use” (2.93 acres). Processing of materials shall only be done three days per week, weekdays only. Second – S. Gerrato; three in favor, two opposed (L. Schwab, G. Baryames). MOTION CARRIED

3. Requests for Variances: 125 Ocean Road [Map R21, 51] – Commercial C
Owner: Harbor Links Estates, LLC
Applicant: Bluebird Greenland, LLC
The owner and applicant are requesting the following Variances from the Greenland Zoning Ordinance:

- a. Article III – Establishments of Districts and Uses, Section 3.5 – Use Regulations, Section 3.6 – Table of Uses – M. Wholesale Trade, Warehousing and Distribution, Item 2. Warehousing is not allowed in that district. The existing use is non-conforming; expansion of a non-conforming use is not allowed per Article 7.10.
- b. Article VI – Signs; Section 6.3 – General Provisions, Subsection 6.3.7(B). A freestanding sign (pylon) of 147 sq. ft. and two wall signs of 65 sq. ft. each, a total of 277 sq. ft., is requested. The Ordinance allows 48 sq. ft., per side, in that district for a single business on a lot.

Chair Samonas clarified that expansion of a non-conforming use is not allowed in any zone.

Tim Phoenix, attorney and representing Bluebird Greenland, LLC, addressed the Board. Also present were Bill Goodison, Bluebird Greenland, and Brian Pratt, CLD Engineers. Attorney Phoenix corrected ownership of the property: as of Monday, September 19, 2016, Bluebird Greenland was the owner/applicant. The deed will be emailed to the Board Secretary for the file.

Bluebird Greenland is seeking to put a self-storage facility on the property. The lot is 378,205 sq. ft., or approximately 8.7 acres. There is 369.1’ of frontage; currently on the lot is a 38,500 sq. ft. warehouse style building. It has been used for commercial and industrial warehousing as well as truck maintenance (there is an oil separator on the property that won’t be used). The property was in the Industrial Zone until 2010, when it was rezoned Commercial; warehousing was allowed in the Industrial Zone. By a zoning change it became a non-conforming use.

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Bluebird Greenland intends to add a second story as well additions to the stand alone building. With the exception of the offices, they are intended for personal homeowner self-storage. Hours of operation will be Monday through Friday, 6 a.m. to 8 p.m.; Saturday 6 a.m. to 6 p.m.; and Sunday 6 a.m. to 4 p.m. A key pad will be used for entry to the building; the key pad will be timed to get in and out. The primary use will be for homeowners to store vehicles and a small trailer. There will be no outdoor storage of any type.

Attorney Phoenix continued that the lot meets minimum lot size requirements. A Variance is needed for the use because of warehousing; the Ordinance doesn't define "self-storage". The Building Inspector felt warehousing was the closest use to self-storage.

B. Pratt, CLD Engineers, told the Board that the plan being reviewed was a conceptual design; a full design is in process. Two additions to the main building are being planned. The existing building footprint is 38,500 sq. ft.; there is a partial second story (7,000 sq. ft.). The height of the existing building is approximately 22'; a full second story is planned. Two building additions will be connected to the main building; one will be 15,400 sq. ft. Reviewing the frontage on Ocean Road, Chair Samonas noted it was being doubled. The additions are allowed under current zoning; they aren't within the setbacks and don't create too much permeable area over the lot. The second footprint is approximately 14,000 sq. ft.; a separate traditional storage unit is being added at the rear of the property. That unit will not be climate-controlled and will have garage doors on either side. It will be 45.6' from the side lot line and the required 20' at the rear.

The current building will be converted to self-storage and internally accessed. There will be faux windows in the building, with the exception of the office which will have real windows. There will be 850 climate-controlled storage units and two elevators. There are 48 parking spaces, but parking demand on site will be minimal. An office of 900 sq. ft. is planned for one floor with possible corporate offices on the second floor. There is no impact on the wetlands.

The existing driveway is 25' wide. Limiting turns is not planned. Traffic generation is low; they have a trip generation letter. The facility will have little impact on the traffic light at the intersection of Ocean Road and Rt. 33.

Fire service within the existing building is sufficient (8" water line that provides enough pressure for a sprinkler system); it will be a wet sprinkler system. There is no sewer, but there is a septic system which will be replaced (usage is less than 300 gallons per day). There is a natural gas service to the site; existing electrical doesn't need to be upgraded. The previous owner reserved an easement to the billboard on the property facing I-95. B. Pratt noted the access to the billboard on the plan. Stormwater management will be done on site; an Alteration of Terrain permit will be required. The existing detention pond on site will be used for stormwater management. They will be going to the Planning Board in October as well as the Conservation Commission. L. Cummings noted they are not disturbing the wetlands or buffer. B. Pratt added they don't intend to go into the buffer; however, if the buffer is 75', there may be minimal encroachment for stormwater. Buildings and pavement will be outside the buffer.

L. Schwab voiced his concern over the location of the septic system/leach field; a brief discussion followed. L. Cummings reminded the Board that was not their purview. The applicant was asked to put the system in an acceptable location. Test pits will be done prior to going to the Planning Board and will be coordinated with the Building Inspector and Town Engineer.

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Signage was reviewed and discussed. A pylon is proposed on Ocean Road, on-building signage is proposed on the Ocean Road and I-95 sides on either side of the tower, and the existing monument sign on the I-95 side will be refaced. Pylon: The top of the sign will be Lexan and internally lit. The bottom portion is not illuminated and will be aluminum; was not considered part of the square footage. The base is 48 sq. ft.; the middle section is 72 sq. ft.; and the sign itself is 75 sq. ft. The sign will not be visible from I-95. Free-standing sign facing I-95: 4'x30'x6.5'; the proposal is to reface the existing sign. It's LED lit; they will repower and relight. The sign will be moved 20' closer to I-95 from its current location (36' from the right-of-way). There is a view easement for the billboard; nothing can be placed in that easement. Flush-mounted signs on the building: are approximately 21'x5.5' on each side of the tower. All sign lights will be LED on timers and not on all night.

There will be a gate towards the back of the building; there is fencing along the abutting property. The main building will be locked after closing hours. The remote building will be traditional storage with individual locks on the units. Hours of operation will be the same as the main building. There are indoor/outdoor cameras.

Attorney Phoenix read the Variance requirements (copy on file). Chair Samonas opened the meeting to public comments. Stu Gerome, 25 Vardon Lane: Asked about the sign Variances. Responses: the pylon on Ocean Road is 75 sq. ft. per side (total of 150 sq. ft. where 96 sq. ft. is allowed); the two flush mounted signs are 65 sq. ft. each (1/4 sq. ft. per linear foot of the building – 167.5 sq. ft. allowed; they are requesting 196 sq. ft.). The free-standing sign facing I-95 was not included because it's an existing sign. S. Gerome was concerned about the size of the building signs. Was that size necessary? Attorney Phoenix stated it would be unreasonable to not allow those signs because it's the Bluebird logo that would be visible. It was their feeling it would be more tasteful and attractive to have the sign on a large wall. S. Gerome responded there was no intention to disallow, but to keep it conforming.

The Building Inspector noted that Section 6.4.2B addressed the definition of frontage on a right-of-way. B. Pratt added that the Ordinance indicates that major highways are considered a right-of-way. Chair Samonas disagreed that the frontage on I-95 allowed another free-standing sign.

There being no further comments, Chair Samonas closed the public hearing. The following was clarified: (1) Pylon on Ocean Road: 75 sq. ft. per side was requested where 48 sq. ft. per side was allowed; (2) building signs: 196 sq. ft. is requested where 167.5 sq. ft. is allowed; and (3) no request for the free-standing sign because there is a prior existing sign.

S. Gerrato asked the applicant if he would like to withdraw the sign requests without prejudice. He was fine with the building signs, but had concerns about the others. The base of the pylon was not included in the overall sign and it was too big; the sign on I-95 should be included in the size allowance. Most members were in agreement with S. Gerrato. L. Cummings stated that the proposed use may fit into the Commercial C Zone without a Variance according to the definition of that zone in the Ordinance. The use would be one of the best for that area: it generates tax revenue for the Town with little impact on resources. There is no definition for "self-storage" and the Zoning Board had to use its best judgement.

MOTION: G. Baryames moved to grant the Variance requested for 125 Ocean Road [Map R21, 51] for self-storage units within the Commercial C Zone. Second – L. Schwab; all in favor. MOTION CARRIED

Attorney Phoenix referred to Article 14.1 of the Zoning Ordinance regarding the free-standing sign facing I-95. He felt it would have to meet the size requirement, but the sign itself should be able to remain. Chair Samonas responded that the Board felt it was too much signage in their request. There was further discussion regarding that issue. Attorney Phoenix suggested they would withdraw without

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prejudice the Variance requests for signs with the exception of the building signs. Discussing the pylon, the Board stated that 96 sq. ft. is allowed. Attorney Phoenix stated that they would withdraw the request for the pylon and free-standing sign on I-95; they requested to continue those to the meeting on Tuesday, October 18, 2016. The wall signs will be considered in the overall signage.

MOTION: L. Cummings moved to grant the Variance request for two wall signs for 125 Ocean Road [Map R21, 51]; 196 sq. ft. has been requested where 167.5 sq. ft. is allowed. Second – G. Baryames; four in favor, one opposed. MOTION CARRIED

MOTION: L. Cummings moved to postpone, without prejudice, the decision on the remaining signage requests for Ocean Road and I-95 until the meeting on Tuesday, October 18, 2016, at the applicant's request; there will be no requirement for re-noticing. Second – L. Schwab; all in favor. MOTION CARRIED

4. 179 Post Road Variance Compliance

Chair Samonas read the letter to Ben Pecora, 179 Post Road into the record (copy on file). There has been no response from B. Pecora. A second letter will be sent by registered mail, noting that his approval is in jeopardy.

5. Approval of Minutes: Tuesday, August 16, 2016

MOTION: S. Gerrato moved to approve the minutes of Tuesday, August 16, 2016. Second – L. Schwab; all in favor. MOTION CARRIED

6. Code Enforcement Officer: Responsibility for Application Completeness

The Building Inspector requested clarification on what his role was in reviewing a Zoning Board application once it's received in our office. Chair Samonas stated that requirements had been established. A plan with proper boundaries, not hand drawn, must be submitted. Plans must be to scale, stamped and certified. L. Cummings added the rule of thumb should be "if I was a ZBA member, what would I want to see". Wetlands have been a problem in the past. Chair Samonas suggested the Building Inspector ask area towns what they use for a ZBA checklist and requirements for applications.

7. Other Business

There was no other business to discuss.

8. Adjournment

MOTION: L. Cummings moved to adjourn at 10:44 p.m. Second – S. Gerrato; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, October 18, 2016 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: