

**Town of Amherst  
Zoning Board of Adjustment  
Tuesday November 15, 2016**

ATTENDEES: D. Kirkwood- Chair, R. Rowe, C. Vars, R. Panasiti (Alt), J. Ramsay, S. Giarrusso (Alt)  
Staff: G. Leedy- Community Development Director

The chair called the meeting to order at 7:13pm, explained the ZBA process and introduced the board members and staff present.

Old Business:

**CASE #: PZ8007-101416 – Keith & Barbara Allen, 8 Milford Street, PIN #: 025-073000 – Request for approval to construct a dwelling on the lot notwithstanding that the front, rear and side setbacks required by the ordinance cannot be met and that the building will exceed the floor area ratio. Zoned Residential Rural.**

Attorney Tom Quinn was present to represent the owners Keith and Barbara Allen.

Attorney Quinn gave background on the property and stated it meets most requirements for building except for two: setbacks and floor area ratio.

This lot is part of the subdivision known as "L. Fuller's Lots" on Baboosic Pond, n/k/a Baboosic Lake. The subdivision plan was recorded in 1897 as Plan 229. The Premises are shown as Lot No. 20. The lot is basically 43.5' x 64'. The lot has been in existence since 1897 and has been deeded separately from the subdivision at least as far back as 1953, prior to the adoption of the Zoning Ordinance in 1963.

Accordingly, the lot is a Lot of Record as defined by the Ordinance (Article IX Definitions Section 9.1 "Lot of Record") Article IV, Section 4.2 provides that:

"Any lot of record, [in existence] prior to the effective date of the Section may be occupied by any use permitted in its zoning district, regardless of its size, provided it meets all applicable zoning setback, building, and water pollution control regulations for the Town. Such lots shall provide for access on a publicly or privately maintained road."

The property is located in the Residential I Rural Zone, which permits single-family dwellings and accessory buildings or structures. Test pits have been done, and the Applicants have been told it is feasible to obtain an approved septic design. The property has frontage on a Town maintained public road, namely Milford Street.

But there are two requirements contained in Article IV that the Applicant can't meet. The first is setbacks, and the second is floor area ratio. Section 4.3.D 1 & 2 provide for a 50 foot front setback and for 25 foot side and rear setbacks. Obviously, the Applicant can't meet these. And Section 4.3.D 4 limits the floor area of new dwellings and structures to 15% of the lot area.

**THE PROPOSAL**

As you can see from the submittals, the Applicants propose to construct a 28' x 40' residence with attached deck off the back of the house. The proposed location of the house is 16' from the road. The setback on the north sideline will range from 7' in the front to 8' in the rear. The setback on the south sideline will range from 9' in the front to 7' in the rear. The setback in the rear will range from 9' to 10'. A raised 8' x 16' deck will be 2' from the rear.

The first story of the residence will contain 1,120 square feet. The second story will include an area open to below, so it will contain only 648 square feet of floor space for a total of 1,768 square feet, or 64% floor area ratio.

49 **THE ISSUE**

50 As written, the front and rear setbacks create non-buildable space of 75' and the side setbacks create  
51 50' of non-buildable area. Consequently, under the Ordinance, there is no place to build anything on the  
52 lot -not even a flag pole. Obviously, no dwelling can be constructed that will comply with the setbacks.

53  
54 The second requirement that can't be met is that the new dwelling will have a floor area ratio greater  
55 than 15% as defined in Section 4.3.D.4. "Floor Area Ratio" is defined as the ratio of gross floor area to  
56 the total lot area. (Article 1, Definitions, Section 9.1 "Floor Area Ratio").

57 The lot is approximately 2,752 square feet, so the total floor area permitted under the Ordinance is  
58 about 413 square feet.

59  
60 In light of this, the Applicants have filed a variance seeking relief from both the setback requirements  
61 and the floor area limitations.

62  
63 He addressed the tests as follows:

64 1 & 2 The variance will not be contrary to the public interest and will be consistent with the spirit of  
65 the ordinance.

66 The requirement that the variance not be contrary to the public interest is related to the requirement  
67 that it be consistent with the spirit of the ordinance and the two have for years been treated together  
68 by the State Supreme Court. Because the provisions of a zoning ordinance represent a declaration of  
69 public interest, any variance would be contrary thereto to some degree. Consequently, the Supreme  
70 Court has instructed that to determine whether a requested variance is not contrary to the public  
71 interest and is consistent with the spirit of the ordinance, the ZBA must determine whether granting the  
72 variance would "unduly and to a marked degree conflict with the ordinance such that it violates the  
73 ordinance's basic zoning objectives". The Court has recognized two tests for determining whether  
74 granting a variance would violate an ordinance's basic zoning objectives. One is to determine whether  
75 the variance would "alter the essential character of the neighborhood". The other is to determine  
76 whether granting the variance would "threaten the public health, safety, or welfare".

77 Granting the variance would not "unduly and to a marked degree conflict with the  
78 ordinance such that it violates the ordinance's basic zoning objectives"

79 Article I, Section 1.1, specifically provides that the regulations contained in the Ordinance are "for the  
80 purpose of promoting the public health, safety and general welfare of the Town and "to implement the  
81 goals of the orderly development and growth of the Town as set forth in the Master Plan ..."

82 A basic component of the Zoning Ordinance is the division of the Town into several districts in order to  
83 group similar uses within common districts and to adopt standards for minimum lot size, frontage,  
84 setback, floor area ratios, and other so-called "yard requirements" within the various districts.

85  
86 Article IV creates the Residential / Rural Zone and establishes permitted uses and requirements. Section  
87 4.3 establishes a minimum lot size of 2 acres and minimum frontage of 200'. As previously stated the  
88 section requires a 50' front set back and 25' rear and side setbacks. The Floor Area Ratio is limited to  
89 15% of the lot area.

90  
91 The requirements of Section 4.3, are not unreasonable on their face. As applied to new subdivisions and  
92 to properties that, while nonconforming, are able to comply substantially with the requirements, the  
93 requirements make some sense. But they make much less sense when applied to an area such as the  
94 Baboosic Lake area which was largely developed more than half- century before the adoption of the  
95 Zoning Ordinance.

**Granting the variance will not alter the essential character of the neighborhood**

The simple fact is that most lots in the Baboosic Lake area do not comply with the current requirements of Section 4.3. As you can see from a review of the subdivision plan and the town Tax Maps for the area, the area contains scores of lots that are consistent with the size of this lot (basically 40' to 50' x 60' to 70'). Consequently very few of the lots in the area do or can meet the setback requirements.

As I've alluded to already, the Baboosic Lake area is a unique area of the Town. In terms of the age of the development, a large number of small lots and the resulting density, there may not be another area in Town like it. Perhaps the Village is close, but even that is doubtful. And on Milford Street, few, if any, of the lots would meet the current setbacks and Floor Area Ratios.

For example,

**5 Milford Street**

- The Lot is 42' W x 60' D.
- The house is 28' W x 26' D
- That leaves 16' for setback of about 8' for each sideline.
- The house is less than 10' from the road in the front.
- The rear setback may just be met.

**6 Milford Street**

- The Lot is 40' W x 60' D.
- The house is basically 26'W x 24'D.
- There is only 14' to be divided between two sidelines at 7' on each or less on one side and more on the other.

**10 Milford Street**

- The Lot is 50' W x 64' D.
- The house is 21' W x 42' D.
- That means there is a total of 14.5 feet on each sideline. But the tax map, the GIS map and the ZBA exhibit all show that the buildings are nearly on the boundary line between 10 & 12 Milford Street.

I could go on, but if you examine the GIS map and the tax maps, you can see that many, many properties in this area do not comply with the setbacks even remotely.

Similarly, none of these properties meet the Floor Area Ratio.

**5 Milford Street**

- The Lot is basically 42' W x 60' D for a total of 2,520 square feet of lot area.
- The living area is 1,092 square feet.
- So the Floor Area Ratio is 43% (.43)

**6 Milford Street**

- The Lot is 40' W x 60' D for a total of 2,400 square feet of lot area.
- The living area is 1,016 square feet.
- So the Floor Area Ratio is 42% (.42).

**10 Milford Street**

- The Lot is 50' W x 64' D for a total of 2,560 square feet of lot area.
- The living area is 861 square feet.
- So the Floor Area Ratio is 34% (.34).

It simply is not the case that the Applicants' proposal will alter the essential character of the neighborhood.

**Nor will granting a variance threaten the public health, safety or welfare.**

A state and town approved septic system will be required to build the house. A well meeting applicable water quality standard will be required.

A two bedroom house will not have a significant or adverse effect on traffic in the area.

It will not generate emissions, noise or odors inappropriate for a residential neighborhood.

**3. Granting the variance would do substantial justice.**

Any loss to the Applicant caused by the strict application of the ordinance that is not outweighed by a gain to the public is an injustice. Denying the variance will render the property unbuildable and of little use to the Applicants and will greatly diminish its value. But the harm to the Applicants is not outweighed by a benefit to the general public.

The proposed use is completely consistent with the neighborhood as developed. The lot is the same size as the other lots in the neighborhood and the proposed setbacks and the Floor Area Ratios are consistent with others in the neighborhood. There just is not a significant benefit to the public in preventing the construction of a small, two bedroom home on the property.

**4. Granting the variance will not cause a diminution in value of other properties.**

The Applicant's proposed use is consistent with the development of the neighborhood, the residence will be built in accord with applicable codes to the greatest extent possible.

The proposed residence is attractive and will not detract from the appearance of the neighborhood nor add significantly to the traffic in the neighborhood.

**5. Literal Enforcement of the Provisions of the Ordinance would result in unnecessary hardship.**

**A. There are special conditions of the property that distinguish it from other properties in the area.**

As stated earlier, the property is in the Residential I Rural Zone. This Zone requires 2 acre lots. But the property is a nonconforming lot created in 1898. There are undoubtedly many lots in the Zone that do not meet this standard but yet would still meet the setbacks and floor area ratio requirements. But the Applicant's lot is not among them. Due to the size of the property, it is not possible to meet the standards. In order for the Applicants to build a residence on the property, variances are necessary, not just convenient.

**(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.**

A primary purpose of the Ordinance is to group similar uses and properties in a common zone and to promote the orderly development of the individual zones and the Town in accord with the regulations. If you were starting with a blank page, these regulations work, but in an area such as Baboosic Lake where the development has largely begun, there's only so much that can be done in applying ex post facto regulations to preexisting lots. Not only is it not possible to promote the orderly development of that area in accordance with these regulations because the development is already current, but it's not even necessary. The general purpose of the Ordinance is to create areas that share common attributes. We already have that here. The Baboosic lake area already shares common attributes, it just unfortunately doesn't match up with the zone. Granting the variance will simply allow the reasonable use of the property in a manner that is consistent with the development of the area.

**(ii) The proposed use is a reasonable one.**

As described above, the proposed use is a reasonable one.

**B. Even if the Board should decide that the criteria set forth in (A.) above have not been established, an unnecessary hardship still exists because, owing to the special conditions of the property that distinguish it from the properties in the area, this property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

The special conditions of the property have been discussed above. And as stated previously, due to the size of the lot, which is completely consistent with the size of other lots in the neighborhood, a strict application of the setback requirements would prevent the construction of any dwelling or structure on the property. And, assuming the setback requirements are reduced, strict application of the floor area ratio would reduce the size of any dwelling constructed on the property to an unreasonable size. There are no permitted uses in the Rural / Residential Zone that make any sense for the property (5 are residential; 2 are farm., agricultural, nursery or road side stands for sale of farm products, 1 is non-commercial sports and recreational uses). So, if the Applicants do not receive the variance, they are left with no reasonable use of the property.

For all of these reasons, the Application for Variance should be granted.

Questions from the board:

C. Vars asked where parking would be located and also where the septic will be. The most recent plan shows two parking spaces. He showed them to Charlie on the plans.

The lot is not currently on town septic. Inquiries confirmed there is no more room in the leach field. The owner has to build his own.

R. Panasiti asked where the town process is regarding the next phase of town septic. G. Leedy stated he wasn't sure, except that it hasn't been budgeted.

R. Rowe asked about a dotted line on the plans. It is a gravel area currently used by the neighborhood for parking. Bob also asked if they were sure where the boundary lines and setbacks are. Based on note number five on the plan, it doesn't seem clear. Attorney Quinn said they are as sure as they can be, but the property has not been officially surveyed.

Regarding the footprint, Bob asked if there is any flexibility in the size of the building. The proposed home appears to be larger than others in the neighborhood. Attorney Quinn said it's not the largest, but it is proposed larger than the homes that are only one story. Further, the applicant is willing to lose two feet on either side, if that is the board's consensus. The board discussed the measurements of the proposed plan on the site.

S. Giarrusso asked when the neighboring home was built and Attorney Quinn explained there isn't much information on record at the town building about that.

Public comment

Linda Farrar- 10 Milford St

She asked where the well will go. It is supposed to be 75' away from septic systems. Attorney Quinn said there are standard provisions from DES for receiving waivers from the 75'. That process would be followed. She also asked where #5 Milford St is expected to park their vehicles. Attorney Quinn said they are expected to park at #5 Milford St. She said there is no room there and those residents have four vehicles, a bob house, flatbed trailer, snow mobile and ATV. #5 and #8 lots were together because #5

residents parked at #8 and she thinks they should park those vehicles at #8. Currently they are parking at #9.

Attorney Quinn stated that assuming the variance is granted, there will be a house at #8 Milford St and the occupants of #5 will have to make other arrangements for their extra vehicles. These properties are separate lots.

Stacy and Steve McMahan- 9 Milford St

They own three lots in that neighborhood. #5 is utilizing #9's driveway along with the lot at #8. They described the terrible parking situation in the neighborhood. The street is narrow and you have to pull over to let someone go by. Tenants of #5 Milford St. encroach and trespass by parking on the property at #9 as well as the site the applicant is asking to build on. Those are his tenants and they will have no parking if the house goes up.

John Farrar- 10 Milford St

Previously, lot #8 and lot #5 were a package deal with lot # 8 being the parking area for lot #5. If people park on the street, emergency vehicles can't get through.

Carol Docos- 6 Milford St

She wondered how close the proposed house will be to hers next door and commented there is not much space and parking is very tight.

**CASE #: PZ8032-102016 – Rehearing Arboleda Realty, LLC (dba LaBelle Winery), 340 NH Route 101, PIN #: 008-052-000 Rehearing of the decision approved by the Zoning Board of Adjustment on August 30, 2016 & September 30, 2016 for a variance from Article IV, Section 4.4,B to allow the following uses that are not permitted in the Zone: a distillery with tasting room/small function, event center, office building, and an inn with a spa and restaurant.**

The Chair stated that since the rehearing was requested by the abutters, he gave the person who submitted the application the opportunity to present their case.

Nicolaas Groeneveld-Meijer, is representing abutter Richard Fredette and 14 other members of the Holly Hill, Greenbriar Ln and Winterberry Dr neighborhood who would all be directly affected by the proposed project with regard to noise, health and safety, traffic, water concerns and property values. He did not read his application, but instead wanted to incorporate it into the record by reference and highlighted some points.

There are two overarching concerns:

- The spirit of the northern transitional zone zoning ordinance
- No evidence of specific legitimate hardship was presented

The property is located in the northern transitional zone. The purpose of this, according to the ordinance, is to establish and affirm an area in town in which lower density development is desirable and to recognize the unique natural character of a portion of town which forms a natural entry to the northern rural zone. Residents he represents contend the applicant is attempting to establish a commercial venture of a size and scope not contemplated nor permitted under the zoning ordinance.

It appears the ZBA approved the proposed development because it might be a better alternative than an imagined future development or perceived to be in the best interest of the town. Neither are valid considerations for the granting of a variance by the ZBA. The ZBA has the power to grant a variance if the petitioner demonstrates all five elements laid out in RSA 674:33. If any one element is not present, a variance cannot be issued.

1. Unnecessary hardship must be demonstrated. Special conditions of the property distinguish it from other properties in the area such as there's no fair relationship between the public purpose of the ordinance and the specific application of the property and the proposed use is reasonable.

Either that or a reason why the property can't be used in conformance with the ordinance owing to special conditions.

The abutters maintain neither standard for hardship was met. This land is a rural tract of 45 acres ideal for what was envisioned for the permitted uses listed in the ordinance. In previous deliberations, considerations discussed included possible alternative applications, hardship on the town and the best interest of the town. These considerations do not represent a hardship under the statute. With regard to hardship on the applicant, there was testimony that the property might be too hilly to be buildable. A hardship due to terrain does not get a 24 room hotel, a 150 seat restaurant and bar, 224 car parking, a distillery, spa, an office and a retail store. It might get relief with regards to specific zoning provisions, but not a whole commercial complex.

2. We assume the voters knew what they wanted when the zoning was changed to the northern transitional zone as expressed in the preamble to the ordinance. If that has changed, it's for the town residents to change the zoning ordinance to allow a commercial complex such as being proposed.

3. Though parts of the property are hilly, there has been no evidence that this characteristic distinguishes the property from the rest of the northern transitional zone. The topography of the northern transitional zone is hilly. The piece of land we are discussing shares characteristics common to the rest of the zone. If the physical characteristics of the zone do not lend itself to what was envisioned by town residents who created the zone, then the answer is to change the ordinance to allow commercial development-not to grant a variance allowing a specific commercial project under the guise of a hardship. This may set a dangerous precedent for possible future commercial applicants.

With regard for other criteria for granting a variance, under the RSA, a proposal also must not be contrary to public interest and must observe the spirit of the ordinance. Cases have held the zoning ordinance is a declaration of public interest. Granting the variance in this case would violate the ordinance's basic zoning objective. It would alter the essential character of the neighborhood and threaten the public health, safety and welfare. The applicant seeks a variance for a commercial development which includes: 24 room hotel, 150 seat restaurant and bar, 224 car parking (which is double what they have across the street), a distillery, spa, an office and a retail store. Such a proposal is not within the zoning ordinance declaration of public interest or the Town's master plan. The complex is inconsistent with the locale. It is to be situated in the same area where the town purchased Bragdon Farm land for conservation purposes. To now insert a commercial complex next door is counter to the sentiment for this area as expressed by that purchase.

Substantial justice will not be served by granting the variance. The test asks if any loss to the individual applicant outweighed by a substantial gain to the general public in not granting the variance. The answer here has to be yes. We have a 24 room hotel, 150 seat restaurant and bar, 224 car parking, a distillery, spa, an office and a retail store all in an area that is rural in character. Granting the variance will forever alter the character and quality of life in this area of town. Granting the variance would impact the residents with regard to loud event music, traffic hazards on Rte. 101, water supply concerns

and decreased property values. The applicant should not be permitted to push through via a variance a project beyond the parameters of the zoning ordinance.

There has not been any legitimate showing of hardship by the applicant. The proposal is not in the public interest, nor in the spirit of the ordinance and any loss to the applicant would be outweighed by the substantial gain to the general public.

#### Board questions

R. Rowe said one element of the test is the uniqueness of the property. He asked the attorney if he had gone to the property and walked it. He replied that he hadn't, but has seen the topography maps. R. Rowe further asked the attorney if the intensity of the traffic and other elements would be different for this project than other allowed uses including those with special exception such as: funeral homes, private schools, hospitals, sawmills, churches and professional offices. He replied, yes, he does. This is a commercial complex in a residential area.

#### Public comment

Bruce Derienze- 29 Holly Hill Dr

He commented that he hasn't walked the land- it is private property- but there are areas away from the hill that aren't bad and should be able to be buildable for residential homes. Especially within that back 25 acres.

Kazem Haji-Aghajani- 34 Holly Hill Dr

Good Evening,

My name is Kazem Haji-Aghajani. I live near the LaBelle Proposed Expansion Plan and will be directly affected by this development.

Before I talk about why I am opposing a variance be given to LaBelle, I have a few comments about the previous hearings and the way some of you members of ZBA have conducted yourselves. You are elected officials sworn to protect the best interests of our town with regards to laws and rules that govern zoning. But in the last hearings you conducted yourselves as agents of LaBelle, instead.

There were so many instances of impropriety that one must wonder what makes an elected official so blatantly disregard fairness and conduct himself in overt support of one side.

We are tax paying members of this community and have invested significant capital to preserve the nature of our town by supporting the purchase of conservation lands, not just in the Northern Transitional zone, but all over town. We will not forget your conduct and will do our best to replace you in the next election with representative that would regard their oath of office as a sacred covenant between themselves and our town citizens.

Now to my points why I oppose this variance. In previous hearing I have raised before you several legitimate concerns in opposition to the variance but you, the ZBA members, chose to disregard them all. So, I will focus on just one point tonight.

My careful reading of the rules governing variance in the NTZ, suggests that neither LaBelle nor the Lot-52 property owners have proven the hardship rule. This property is no different than any other in the NTZ with regards to its suitability for residential development as permitted by the law. I know of one person who has shown serious interest in buying the property for building a summer home on it for his family. Even the LaBelle plan envisions private residential development on the property. So, where is the hardship?

You must reverse your decision and revoke the variance given to LaBelle. Thank you.



376 Stephen Taylor- 20 Eaton Rd  
 377 He asked if the traffic, water and noise reports were done by experts. Yes. He also asked if the public  
 378 comments are recorded in the minutes. Yes.

379 Helmut Tatar- 16 Greenbriar Ln  
 380 He commented that the F&M appraisal compared this project to other projects that were done over 20  
 381 years ago and in towns nothing like Amherst. Amherst is a bedroom community that pays high taxes in  
 382 order to protect the zoning.

383  
 384 Rick Boyd- 2 North End of Lake and 8 Main St  
 385 He thanked Amy and Cesar for putting this together. It fits with the master plan for Amherst. He has  
 386 been to strategic planning meetings and the overwhelming spirit of the master plan is the inclusive  
 387 nature of Amherst. People want local places to gather and meet and for visitors to stay.

388  
 389 Joe Tate- 16 Winterberry Dr  
 390 The property would be better used as a residential area. The ZBA should reflect the interest of the  
 391 citizens. He hopes the project is turned down.

392  
 393 Bob Grunbeck- 6 Fair Oaks Dr  
 394 Ideally if the property was left vacant it would be best, but he doesn't think that will happen. LaBelle is a  
 395 great asset to the town.

396  
 397 Paula Domanski- 3 Greenbriar Ln  
 398 People have moved into town with specific zoning laws in place and expectations that they will remain  
 399 the same. The impact from the proposed use is out of sync with that area. This is a high intensity  
 400 proposal. This decision needs careful consideration.

401  
 402 Nancy Kierstead-trustee for the owners of the property in question  
 403 Regarding houses going on that lot: she is a real estate agent and that land has been for sale for eight  
 404 years. Some interested parties wanted to put houses on it, but the project was too difficult due to the  
 405 topography. The land on top of the property is great for residential, but it needs a road put in that  
 406 curves and that will cost a lot. There are also density issues. The property has been challenging to sell.  
 407 Builders just haven't come forward.

408  
 409 Bob Dean- 23 Lyndeborough  
 410 It's beautiful up in that area. LaBelle has done a great job, but he doesn't agree with the expansion. He  
 411 asked the board to abide by what the citizens voted for rather than grant the variance and also not to  
 412 make a quick decision.

413  
 414 Kyle Aspinwall- 18 Holly Hill Dr  
 415 The scope of the project is too large and extensive at this time and at that location. Also, it is  
 416 disingenuous of the board to say there may be a sawmill there. That is ridiculous and a scare tactic as  
 417 there hasn't been a sawmill in the area for 30 years.  
 418 A height variance was granted due to aesthetics because otherwise they said they will go with a flat  
 419 roof. But if a variance is granted, they are not going to build a building that is not attractive, so the  
 420 threat of needing the height variance does not wash. During the deliberative session, the board  
 421 basically executed verbal gymnastics to justify granting the variance. He questions the board's integrity  
 422 and impartialness because of it.

423  
424  
425  
426 Greg Szot- 15 Greenbriar Ln  
427 The water usage for the hotel was not discussed- only the distillery was discussed. He has a 6% grade at  
428 his house which is difficult in the winter, but not impossible. It should be a town decision to change  
429 zoning. The market just hasn't been great for selling that piece of land at this time.  
430  
431 Cole Fach- 1 Woodland Dr  
432 He is involved with building hotels and has analyzed water usage. The average hotel uses 100-150  
433 gallons of water per day per room. The inn will have light water usage.  
434  
435 Attorney Groeneveld-Meijer added some closing remarks. With regard to property valuation, he  
436 mentioned a case with Harborside with regard to hardship and other issues. Towards the end of that  
437 case it states the ZBA was entitled to rely on its own knowledge, experience and observations.  
438 He read from the Amherst master plan regarding a unique, rural and small-town character as well as  
439 addressing the goals of preserving historical and cultural resources.  
440  
441 Morgan Hollis, Attorney, came forward for his presentation and commented that he was perplexed by  
442 the proceedings and how the meeting has progressed. The board granted a rehearing which by law  
443 means a brand-new hearing- the old hearing is thrown out. Therefore, he came tonight prepared to  
444 present the applicant's case to the ZBA.  
445  
446 Attorney Hollis began with the rebuttal first. It was mentioned that the applicant is seeking a use not  
447 permitted. That is correct. That's what variances are: uses which are not permitted under the ordinance.  
448 Uses that are permitted under the ordinance can't be done on the site- which we will prove. Once relief  
449 is granted due to hardship, there is no restriction on how much relief you are granted. The restriction is:  
450 Is the proposed use a reasonable use? The board will decide this and that's when the size and scope and  
451 intensity will come into play.  
452 The zoning ordinance states what the zone is and what's permitted in the zone. If what is permitted  
453 becomes too restricted, it's confiscatory. Confiscatory Zoning can result in a taking. The purpose of the  
454 Zoning Board is to provide a relief valve.  
455 The opponents made general statements about the master plan. It is a guide and tool from which the  
456 zoning ordinance is adopted. We need to focus on this site, the ordinance and the five points of law.  
457 None of the permitted uses (sawmill, farm, single family home or farm stand) are going to be on this site  
458 because of the uniqueness of this site. We will demonstrate why the property is unique and why the  
459 proposal is reasonable, not contrary to public interest, is in keeping with the spirit of the ordinance and  
460 doesn't affect the values.  
461 This is a 45-acre tract of land and you must consider what is around it: developed land and preserved  
462 land. Attorney Hollis represents the owners: the Bragdon Family Trust. Also with him tonight are Amy  
463 LaBelle and Cesar Arboleda-representing the applicant, Ken Clinton from Meridian- project engineer,  
464 Rolf Biggers the project architect, Tim Stone of StoneHill Environmental and Rob Woodland of  
465 Woodland Design Group as consultants.  
466 Because of the issues that have come up while this case has been pending, he hired a group of  
467 consultants to make a report to him to address comments that have been made. These consultants  
468 include Tim Stone to research water issues and potential impact, Rob Woodland to research traffic  
469 impact, John Frank to research impact to value, Rob Palermo to research noise impact and George

470 Bower to research odor impact. Their reports were submitted in the original application and have been  
471 put together in a binder for tonight. They were all submitted in advance and available to the public.  
472 One booklet contains the reports. The other booklet contains the plans which will be presented on the  
473 screen.

474 The land we are discussing is 45 acres and it's the last piece of land that was the Bragdon Farm. It is  
475 surrounded by land purchased to avoid development or gifted to avoid development or developed  
476 already. Old Manchester Rd which preceded Rte. 101, runs along the front of the property. That is  
477 different than any other property in the area. There is an old borrow pit which was used by the state  
478 during the construction of Rte. 101. There are substantial wetlands which will be highlighted on the  
479 plans. The wetlands are on the front portion and flattest part of the parcel. There are other wetlands in  
480 the back of the property and wetlands that need to be crossed to get to the back of the property. There  
481 is a steep hill which makes access difficult. There is some developable land in the back, but it has access  
482 issues and also abuts residents. That area would be cleared of trees if developed for houses. There is a  
483 barn and old homestead property which will have to be remodeled or demolished.

484

485 Ken Clinton will explain his experience with this property prior to this applicant becoming interested.  
486 He asks every client prior to requesting a variance these questions: Why do you need a variance? Why  
487 can't the property be used as zoned? Outside of the topography issues you will see, Ken will tell you this  
488 is not the first go around for this property. Many people have looked at this land over the past eight  
489 years and could not make their projects work. He asked Ken to look into what the property might look  
490 like if some of the permitted uses were put in. Ken will address that. This information goes to whether  
491 the proposed use is reasonable. It also goes to the spirit and intent of the northern transitional zone and  
492 whether the proposed project is in keeping with the purposes of the zone and whether the use is  
493 reasonable.

494 Rolf Biggers will address the footprint and building style of the project.

495 Nancy Kierstead will address hardship, spirit of the ordinance and substantial justice.

496 Rob Woodland will summarize his traffic report.

497 Tim stone will address his report on the water issues and impacts.

498

499 Attorney Hollis addressed the noise, odor and valuation reports that were submitted since those experts  
500 were not here to report on their own. He read results from the reports and none were averse to the  
501 proposed project. He read from the noise report: "based on the site visit and review of the site  
502 development plans, the estimated noise impact associated with the proposed distillery, function room,  
503 offices and inn do not appear to have any adverse noise impacts to the immediate community."

504

505 He read the odor report summary:  
506 "The uses and operations of the proposed inn, distillery, function hall and offices do not exhibit  
507 significant odor producing potential. The small scale of the operation, the nature of the fermentation  
508 and distillation processes, housing of operations inside of a building and control of potential releases all  
509 serve to minimize the generation and impact of odors. The two most significant sources of odors for  
510 large distilleries, detention ponds for waste water and storage of solid waste, are not uses that are being  
511 designed or requested by LaBelle Winery.

512 The distance from the proposed distillery and inn to area receptors further mitigates any potential  
513 impact on surrounding properties. Dispersion calculations show that even the typical releases from such  
514 a development will have no off-site impact.

It is important to note that the proposed operations that have a potential to produce odors are similar to the existing winery. There have been no odor complaints made to LaBelle, nor the presence of any offensive odors that have created an adverse impact on functions or events hosted at the winery."

Attorney Hollis addressed the valuation letter from F&M Appraisal. The appraiser looked at the site, the surrounding uses and their types and values. He identified three other properties where there are commercial uses surrounded by residential properties. He read from page two of the letter:

"For each of these comparable properties, the value of nearby residences that sold over the past few years are compared to the overall value increase/decrease for the entire community for detached single family homes. This comparison would show whether the presence of this larger use would have a detriment to value for the nearby residences. The comparable properties are located on parcel sizes ranging from 10-46 acres and bracket the subject size of 45 acres. "

His conclusion is there would be no diminution of value to any abutting properties due to the development of the proposed mixed-use development. He discovered that property values next to these similar commercial facilities increased equally to other properties in those towns.

He also addressed the traffic report in case that representative couldn't make it to the meeting listing the percentage of traffic increase projected.

Attorney Hollis read into the record the stipulations that were agreed to by the applicant. (See tab 10 of the report booklet)

"The 25+ acres located northerly of the proposed development area (11 acres) which are shown on the plan titled "Zoning Board of Adjustment Exhibit Preliminary Site Plan Prepared for LaBelle Winery, Land of The Richard N. Bragdon Family Trust Tax Map 8, Lot 52, 340 N.H. Route 101, Amherst NH scale 1"= 50' dated November 8, 2016, prepared by Meridian Land Services, Inc. and identified thereon as "25 acres more or less" shall be restricted against future development other than recreation trails approved by the Amherst Conservation Commission and may only be used as open space for a PRD development on the adjacent portion of the land identified on the plan as "10 acres"."

Other stipulations that were agreed to are found on tab 4 page 6 of the report booklet. These are five stipulations to minimize water impact. These were not read into the record this night.

R. Rowe clarified at the previous meeting, the 25 acres for conservation were offered by the applicant- they were not requested by the board.

R. Panasiti asked if that piece of the property could be donated to the land trust. Attorney Hollis said the ownership has flexibility. There are several legal ways to do it. That may be fleshed out in the planning board process.

Ken Clinton of Meridian Land Services made his presentation.

His company provides land surveying, environmental science (wetlands and soil mapping and septic design) and civil engineering. They design and permit residential and commercial developments as well as schools, churches and shopping plazas.

He and his staff have walked the property and know it well. He has been involved with this property since 2009 with several interested parties, builders and developers- some of which looked quickly and walked away and some took an intense look at the property before deciding against it.

Along with showing slides, he described the parcel of land and the abutting properties. It is a unique property: a large and undeveloped (only one single family home and barn and outbuilding) parcel. He gave some history of the Bragdon farm land (originally 183 acres) and how it was broken up. The family

conserved portions of the land (125 acres) and left two portions for future development. The portion to the south has become LaBelle Winery and the northern portion is the parcel in discussion which has been on the market for eight years to no avail. The family pre-conserved the land which is different than what usually happens these days. Now, land gets conserved as part of a package deal with a development.

He discussed the terrain of the property. The front 11 acres has been directly surveyed, but the information on the back-acreage has been compiled from other sources. There is a borrow pit which is not often seen. This came about through the construction of Rte. 101. What they left behind were extremely steep slopes along the edge of the road. Some of that area has regenerated into wetlands. For a 45 acre parcel it is unique in that it fronts Rte. 101, it was farm use which is no longer supported by today's economy, the topography is very steep- in fact it is 1-to-1: 1' of rise per 1' of run at the back of the borrow pit.

He has had many conversations with Amy and Cesar about what they would like to do with the property. That has led to a plan with various buildings and uses that is dense in the front, but overall creates open areas in the back.

He described the proposed plan for buildings and their uses on the site. After looking at the whole property they concluded there is buildable area in the front, trouble area in the middle with the slopes and wetlands and more useful and suitable land in the back. The overall project is not dense when looking at the totality of the land. It also puts the buildings in the part of the parcel that is most suitable. Rte. 101 is a DOT controlled road. Any curb cuts needed must be approved by NHDOT District 5 engineer. There were several curb cuts that were left from a previous project from the 1950s. They discussed with DOT to find the best access to the proposed site and it was determined directly across from the current LaBelle facility is the best location. DOT also suggested a second access point. There were two options: one was close to the main access and the other uses the existing driveway to the west and that is the point they are proposing.

They also met with the NHDES Wetlands Bureau. The access DOT suggested goes right through the borrow pit so they spoke to DES about that and they are ok with impacting this low-function wetland. These are preliminary plans, but this is a well thought out design which can handle storm water, septic, waterlines and all infrastructure that will be needed to support the project.

He addressed impacts to abutters. The edge of the 11 acres to the closest abutter to the west is over 700 feet. The Holly Hill access to Rte. 101 is over 1600 feet to the west. From the back of the 11 acres straight back to the back of the property line is 1560 feet.

Based on all the potential projects he has been involved in with this property, no interested parties were ever interested in putting residential uses along Rte. 101. One plan had six residential units in the back with separate access from Winterberry and two large parcels for commercial use in the front. He showed this and several other examples with different versions of residential in the back and commercial in the front. In all this time, Meridian never created a strictly residential plan for the parcel. He created one that kept access on from Rte. 101. He could fit eight lots, but there's only three allowed curb cuts by DOT which would create shared driveways. Also, the current home and barn would be torn down.

Permitted uses that are currently allowed by the ordinance were then looked at. He pulled real-life examples from in town or adjacent to town and plopped a picture of their site into the map view of the parcel in discussion in the correct size and scale to show what the impacts would look like at this location. A PRD is an allowed use that is residential. It is a dense project -usually 2-3 bedroom condos. These uses are specified as permitted in the ordinance and are comparative examples. Examples were

shown of The Fells, ball fields, church/ school, hospital/ Convenient MD, office complex, sawmill. Multiple commercial uses could be on the property along the front- potentially three separate options from above could line up along Rte. 101.

He does believe it's a unique property due to slope, wetlands, size, frontage on Rte. 101 and abutting commercial properties. Maybe it's not unique if there was only one of these factors, but in totality this creates a unique property. This is a very reasonable use being proposed by comparison to some of the other uses that are permitted that are unreasonable.

Rolf Biggers of BMA architects made his presentation. He specializes in historic architecture and hospitality design.

He explained how we got here and why this is what we want and need in Amherst. This parcel is the gateway to Amherst on Rte. 101. Some rural character of the quaint winding road of Old Manchester road went away with the construction of Rte. 101. At this location, you can see some of it, but much of it is grown over and stone walls are deteriorating. That's what they're trying to get back. They are breaking the development apart to what you would find in a traditional New England setting. They don't want to have maximized development on a site that is very dense. (Copper Door/ Weathervane/ new medical building)

They want something fitting with the architectural character of the town and create something that is an asset to town. The topography is difficult. There used to be a ski hill here. They want to break it up so it's not one large building. It will have a village character. They will preserve Old Manchester Rd. and the stone walls and old trees. Buildings and parking areas will be behind that preserved area to maintain the rural quality. There will be separate buildings and different elevations. This will be what the master plan calls for. He was involved with those discussions and there was a lot of talk about gathering areas and social areas and wanting to get away from large subdivisions with driving to and from and have a mixed-use component that makes the area livable without having to drive far for a gathering. This is what people are looking for today-walkable living and socializing areas. How do we get that without getting too commercial- looking? This can happen because of this owner and this site.

He showed some slides of the proposed architecture. There will be a collage of buildings in simple forms with different traditional materials and textures like Mack Hill and Walnut Hill. The barn will remain, but be remodeled. The larger event center building will be behind and running away from the road to mitigate the size/ scale view from the road. The farmhouse will become the corporate offices of LaBelle. The inn will be built to look like it's been there 150 years like some buildings in the village. The site will maintain a reflection of a New England community.

The inn will have 24 rooms. It would never work as a stand-alone hotel. It's not big enough. It all works together: the food/drink/ retail/ event center/ inn can be successful together, but could never work separately on their own. He showed as well as many slides of the proposed site design plan floor plans.

Rob Woodland from Woodland Design Group addressed the traffic report submitted.

They will take direction from the DOT whether they should create right or left turn lanes and pockets on Rte. 101. The main issue is the availability of sight distance. The location exceeds the sight distance requirements. It is a safe location for the entrance to the site. Traffic can be accommodated.

J. Ramsay asked what the required sight distance is. 425 ft. stopping distance is required. There is over 800 ft. from one direction and over 1300 ft. from the other direction available. This well exceeds the standard.

D. Kirkwood asked how much flexibility there is since it was calculated for 50mph, but people don't always drive at that speed. They exceed the requirements by so much that there isn't an issue.

Tim Stone of StoneHill Environmental addressed the board regarding water impacts. He has submitted three documents to the board over the last several months: a water budget of water coming in and going out in that area and those potential impacts; a response to water usage concerns from the August 16<sup>th</sup> meeting and a response to concerns of the ZBA from August 30<sup>th</sup> regarding water in the area and use at the distillery.

He looks at the geology, slopes, wetlands and drainage on the property. Some slopes are up to 17%. There are no mapped aquifers. He described the formula used to determine the water coming in. He described the proposed water usage. He summarized the well information for the area. LaBelle currently records their daily water usage and that allows predictions to be accurate for the proposed project. He addressed the water usage for the proposed project. The impact of water from this development equates to 4-8 residential homes. It's not likely there will be any impact to abutting wells.

Nancy Kierstead addressed the board.

My name is Nancy Kierstead and I am the representative of the trust which owns the property which is the subject of this application for a variance.

I want to give the Board some background. As you may know and as explained by Meridian Land Services just a few minutes ago, this tract of land is the last parcel of the family farm. My grandfather came down from Maine in 1910 and bought it from the Paquette family. The farmhouse is adjacent to the current sledding hill parking area. My grandfather married the girl next door and additional lands were added. The property was farmed and this particular property which is the subject of this evening's hearing was the house I grew up in during the 60's, 70's and 80's. We lived in the house and we used the barn for storage of hay and bedding. Livestock and horses were kept on the property.

My grandfather stopped farming the property some years ago and decided to sell.

Eventually part was sold to the Town preserving the sledding hill and part was gifted to the Town for conservation land on the other side of the road and the rest ended up as my father's share.

My father ended up with two parcels of land, one of which LaBelle Winery is now located upon and this parcel, the subject of this application.

The LaBelle Winery parcel and this parcel were placed on the market for sale approximately eight years ago. The LaBelle parcel was a difficult parcel due to its topography and limited access and smaller size, but fortunately, Amy and Cesar came along with a vision and with the perfect use and the winery, in my opinion, protects the open nature of the land like nothing else could.

Meanwhile, my homestead was on the market for the last eight years as well. I knew it was a difficult parcel, that is it is zoned for housing and not much else, and the property itself is not exactly the place to live for housing in Amherst. However, it is forty-four acres in Amherst. There is plenty of land in the back. Unfortunately, I have come to learn that because of the steep slopes, wetlands crossings, restrictions on development in the front part of the parcel and other unique elements of this particular lot, putting houses in the back of the lot where they should be is going to be a challenge and would result in some major changes in the landscaping which might impact the direct abutters. Regardless, I certainly did not expect the challenge to be eight years long.

702  
703 We have had interested prospective buyers looking at it for residential and commercial uses, including a  
704 wide variety of uses. You may recall that some years back an application by a veterinarian for an animal  
705 clinic and professional offices was presented and approved here, but due to objections of the  
706 neighborhood, the buyer changed their mind. Each time we have heard the same thing from every  
707 prospective buyer: The cost to use the front part is expensive and limited and no one wants to live  
708 directly abutting 101 in a house and the cost to get to the back, going up the hill, is expensive and will  
709 require lots of earthwork and tree removal due to the steep slopes and wetlands located back there,  
710 and to justify any such work on either the front or the back, a dense project is required. This means lots  
711 of development. Each time a prospective buyer comes along, the zoning restrictions essentially result in  
712 very low, if any, offers to purchase the property.

713  
714 This was supposed to be the property that returned money to the family for all the years of farming. This  
715 anticipated investment has not come to fruition. The purposes of the zoning restrictions are admirable  
716 from the Town's perspective. It is nice to state that you want the entrance to the Town to be rural and  
717 scenic, but our family gave our fair share. In fact, it is likely because of this gift that the master plan was  
718 able to state this as a goal of the community. The gift and the sale of conservation property has  
719 essentially defined the zoning ordinance.

720 Now, the purposes of the zoning ordinance are resulting in a near complete devaluation to the point of  
721 telling us that we have a forty-four acre piece of land that could probably be used for one house and this  
722 is not fair or reasonable.

723  
724 This particular property is different than any other property in the area. I know it better than most. The  
725 sledding hill is what you see - prime development land which could have had lots of houses, but thanks  
726 to my family was preserved. The farmland next door, which could have been developed much more  
727 easily than this parcel and is a very large piece of land, is preserved. The parcel across the road - LaBelle  
728 Winery - which could have had a number of houses, but now has a vineyard and open space, a vegetable  
729 garden and a beautiful winery structure. The kennel down the road which includes a residence and a  
730 very active and successful commercial business, and the residential development up behind us known as  
731 Holly Hill. This property is unique from those parcels and it is now more clear than ever in my mind after  
732 eight years of listening to developers tell me their tale of woe, that it is unique and deserves relief from  
733 the zoning restrictions.

734  
735 This property has the Old Manchester Road, old stone walls, an old gravel borrow pit with a now related  
736 wetland, the steepest slopes of all the parcels surrounding it and the most wetlands which tend to split  
737 the parcel up into chunks of developable back lands, but which require crossings. The best developable  
738 area of the parcel is at the top, which if developed, would make it highly visible and exposed, and after  
739 putting in the necessary infrastructure for such housing development, requires essentially denuding the  
740 site and scouring the earth, hardly scenic and rural, although permitted.

741  
742 We clearly need relief from the restrictions of the ordinance or it ends up creating another conservation  
743 land, only we don't get paid. This is not fair.

744  
745 Well, along come Amy and Cesar, once again. They have come up with an idea which they believe will let  
746 them pay what we need, creating a fair return on my parent's investment, clustering uses in an area  
747 where there is already an existing home and barn and in an area where the impact will be least to all of  
748 the surrounding properties. They have come up with an idea which they believe preserves the spirit and



intent of the northern transitional zone, keeping out standard big box professional offices or a strip of "plain jane" development, and having the ability to preserve landscaping so that as the public enters Amherst the vision will be attractive. It is not up to our family to like or dislike the use and so we don't offer any opinion. It is up to you to decide whether this use is reasonable and doesn't cause harm to the Town. We can only ask you to consider it as the relief that we need to allow the use of our property without there being a restriction essentially prohibiting any reasonable use.

I am happy to answer any questions and while I am speaking as a representative of my family, my family is in full support. I have been asked to read to you an email and I will do that now. [email was read]

Also, I have been asked by my family to tell you that if we don't get relief we need to do something to be able to pay taxes and deal with the existing dilapidated structures. I am reluctant to say this because it puts my family in a difficult position. As you know, we have selectively logged the property in the past and we need to consider more extensive logging. This is not meant as any type of a threat, it is simply us finally coming to the Board to tell you the truth and asking for your consideration and help.

Thank you.

Attorney Hollis now addressed the five tests starting with hardship to first prove the property is unique and that the proposed use is reasonable. They have to demonstrate the unique features of this property for which it should receive relief. Then they have to connect the unique features to the imposition of the enforcement and demonstrate that those unique features of the site make literal enforcement unjust—that there is not a fair and substantial relationship to the purpose of the ordinance when applied to this site.

Nancy's testimony stated best why the property is unique. Ken's statements explained that there have been many lookers, but no takers and that is evidence that the property can't be developed for what's permitted.

He showed the existing conditions plan slide. The unusual aspects to the site are: the wetlands (3 areas)

1. in the borrow pit area which is the point of access.

2. behind the existing house. That is a logical place to enter the site, but it's hard to get there dealing with wetlands and slope.

3. across the back cutting the parcel off from the best area to put the houses.

The slope is also an issue that has been discussed. Some of the hill is a 17% grade. A lot of money would have to be spent to move and grade the earth to get houses into the back area and no one has wanted to do that. The topography is different than Holly Hill. It is much steeper.

Do the unique features of the site make literal enforcement of the permitted uses unjust? The uses that are permitted include a single-family home, but the cost of road and earthwork needed make it not feasible. Farming is just not going to happen. A roadside farm stand is not economical. Home occupation is the same as a single-family home. A PRD might be doable, but no one has wanted to yet. It would require earthwork as well. Sporting facilities are not the type of use you want to see there with the traffic and the property would have to be cleared.

He looked at the general purposes of the specific provision because the board has to decide if there is a fair and substantial relationship. Is it a reasonable use? If we can show hardship and why we can't put the permitted uses in there you have to decide what should go there and it ought to be a reasonable use. He read from the general-purpose provisions in section 4.4 (summarized by recorder below)

1. lower density is desirable

796 2. unique natural character of that part of town  
797 3. ensure future development compatible with the area  
798 It's not going to stay vacant unless someone buys it for that purpose. What can be done? Uses that try  
799 to accommodate those goals. This proposed use accommodates those goals. All of the testimony we've  
800 heard tonight shows this is a reasonable and feasible use. Because of that, we've cleared the hardship  
801 argument.  
802  
803 Test: Not contrary to public interest and in keeping with the spirit of ordinance. The court says to be  
804 contrary to public interest and inconsistent with the spirit of the ordinance, the use must violate the  
805 basic zoning objectives. Will this proposed use alter the character of the neighborhood and pose a  
806 threat to the health, safety and welfare of the public? What is the current character? It was a farm. It  
807 has a parking lot for the sledding hill. There is a commercial use across the street that the board sought  
808 fit to provide a variance for. There are vineyards and open space, kennels which is commercial use and  
809 a pretty intense use and not rural- it's commercial. The back is rural with Holly Hill 1600 feet away. The  
810 proposed plan has rural in the back with some commercial in the front which fits the neighborhood.  
811 All of the reports that were researched and presented by the consultants prove there are no threats to  
812 health, safety or welfare. There's no credible evidence to threaten health, safety or welfare by  
813 opponents to the project.  
814 This proposal with the stipulated conditions of preserving the back 25 acres and requiring the water  
815 consumption to follow the five points recommended by StoneHill Environmental does not violate the  
816 basic zoning objectives of the ordinance.  
817  
818 Test: Substantial justice  
819 Any loss to the individual that is not outweighed by the gain to general public is an injustice. If the  
820 variance is denied, what is the gain to the general public? There will be a potential land taking or a  
821 wholesale land excavation to the front of the property to give access to the back, suitable land or have a  
822 commercial use such as Convenient MD in the front. Is there gain to the public by denying this? He  
823 would argue there is a loss to the public by denying it. At the end of the day, something will go there on  
824 that site. The harm to the owner is clear by Nancy's testimony. Denial will cause substantial harm to the  
825 owner. They are then stuck with a property no one wants due to the limited use and cost to alter it.  
826 Substantial justice will be done if you grant the variance.  
827  
828 Test: No adverse impact to adjacent property values  
829 According to the professional's report, there will be no impact on values. With the stipulations given, the  
830 development will be too far away to impact the residential neighborhood. The homes that are there  
831 now will have conservation behind them which may, in fact, give them an increase of value. All of the  
832 reports submitted confirmed there will be no impacts, which means the values won't be impacted  
833 either.  
834  
835 He submitted the plan booklet as exhibit "A" and the reports booklet as exhibit "B"  
836  
837 Questions from the board  
838 C. Vars clarified that the 11 acre section on the map is in 2' topography and rest of property on the plan  
839 is in 5' topography. Ken Clinton said the 11 acres were precisely surveyed by Meridian and information  
840 was gathered from other sources for the back areas. C. Vars was pointing out that if the rest of the  
841 acreage was also in 2' topography, the dramatic slopes would show up much clearer.  
842

843 Public comment  
844 Bruce Derienze-29 Holly Hill Dr.  
845 He was concerned that the traffic study did not include the impact of traffic coming in and out of the  
846 event center when events were starting and ending. Rob Woodland replied that they made estimations  
847 of what effect event traffic would have on peak traffic hours. If relief is granted, this will be researched  
848 further. Mr. Derienze was also concerned that the noise study was not done when the winery was  
849 having an event or live music and also that the readings were only taken at the winery rather than  
850 surrounding areas.  
851  
852 Christine Aspinwall- 18 Holly Hill Dr.  
853 She was concerned that though the ZBA doesn't set precedence, the winery and kennel were used as  
854 examples to describe the area, but they both exist in that location due to exceptions granted by the ZBA.  
855  
856 Kyle Aspinwall- 18 Holly Hill Dr.  
857 He asked if the borrow pit constituted hardship on the property because it is a man-made hardship that  
858 was created by the owner who was probably paid for the gravel that came out of there. He asked that  
859 the ZBA not to use the borrow pit as a point of hardship on the property.  
860  
861 D. Kirkwood stated the public hearing was now closed.  
862  
863 **CASE #: PZ8033-102016 – Rehearing Migrela Realty Trust II (Owner); 153, 155 & 169 Hollis Street, PIN**  
864 **#s: 001-008-002; 001-008-000, 002-007-000 – Rehearing of the decision approved by the Zoning Board**  
865 **of Adjustment regarding the determination of elderly housing per Article V, Section 4.16 & 4.20 of the**  
866 **Zoning Ordinance.**  
867  
868 **J. Ramsay moved to table the case to the next regular ZBA meeting. C. Vars seconded. All in Favor**  
869  
870 D. Kirkwood stated deliberations will not occur tonight. It is too late to make these difficult decisions. D.  
871 Kirkwood suggested meeting on November 29 or December 6 to deliberate. The board discussed their  
872 schedules.  
873 R. Rowe preferred to go forward with the deliberations tonight. The board discussed.  
874  
875 The board discussed November 22<sup>nd</sup> for a deliberative meeting.  
876 **C. Vars moved to table the deliberations for the cases heard tonight to November 22, 2016 at 7pm.**  
877 **J. Ramsay seconded. All in favor**  
878  
879 Other Business:  
880 Minutes: October 18, 2016  
881 Deferred  
882  
883 **C. Vars moved to adjourn at 11:17pm, J. Ramsay seconded. All in favor**  
884  
885 Respectfully submitted,  
886 Jessica Marchant