



TOWN OF LITCHFIELD

LITCHFIELD ZONING BOARD OF ADJUSTMENT

Litchfield, New Hampshire

August 8, 2012

DRAFT

Regular meetings are held at the Town Hall at 7:00pm on the 2nd Wednesday of each month.

ZBA Members in Attendance (indent if absent):

Richard Riley, Chairman

Laura Gandia, Vice Chairman

Albert Guilbeault

John Regan

Eric Cushing, Clerk

John Devereaux (alternate)

Thomas Cooney (alternate)

Greg Lepine (alternate)

Also present:

Richard Husband and Joan McKibben, members of the Conservation Commission

I. CALL TO ORDER AND ROLL CALL

Richard Riley called the meeting to order at 7:15pm. Meeting was properly posted and published in the Hudson-Litchfield News. Rich Riley took attendance.

II. PUBLIC HEARING

The Notice of Public Hearing for the following case was posted and published in the Hudson-Litchfield News. The abutters were notified by certified letter.

Richard Riley read aloud the case, as recorded below.

Case Number #2012-01

Name of Applicant: Theroux Development, LLC

Owner of Property Concerned: Theroux Development, LLC

Location of Property: 522 Charles Bancroft Highway, Map 22, LOT 11

Appeal Requested: The Applicant is seeking variances from two Litchfield zoning ordinances and requesting two special exceptions;

1. A variance from LZO §1254 to permit gasoline sales in the Aquifer Protection District;
2. A variance from the frontage requirements of LZO §802 and §803 to permit a convenience store with gasoline sales;
3. A special exception under LZO §803 to permit gasoline sales in the Northern Commercial District; and
4. A special exception under LZO §803 to permit drive through service in the Northern Commercial District.

Present is Atty Andy Prolman, representing the Applicant, Theroux Development, LLC, c/o Rene Theroux of 12 Colby Road, Bancroft Hwy. Also present are Silvane Theroux, Real Theroux, Tobin

Farwell of Farwell Engineering Services LLC, James H. Vernon, hydrologist from Nobis Engineering Inc. and Denis M. Boisvert, P.E.

Laura Gandia read aloud the Denial Letter from Kevin Lynch, Code Enforcement Officer (Exhibit 1). A building permit to construct a retail building with a drive-through and a gas station has been denied and variances are needed for §1254.00, §802 and §803 of the Litchfield Zoning Regulation.

1. The storage and dispensing of gasoline is prohibited use, see §1254.00, Aquifer Protection District being a zoning overlay district.
2. The frontage is less than 500ft, see §802.02. Minimum frontage in §803.00 Special Exception. There are 3 different frontage requirements: §803.00a.4 states you need a total of 500ft of frontage on Route 3-A and 200ft on other approved town roads for a gasoline station. §803.00c.2 states there needs to be 200ft of frontage on a town road, and further, the plan as proposed, needs two special exceptions granted to 1) §803.00a Gasoline Sales, 2) §803.00c Drive-Through Service. As a general note, the Northern Commercial District allows the sale of gasoline by special exception, see §801.00 which references §803.03 which is §803.00a in today's zoning regulation - there is a numbering mistake only.

Atty Andy Prolman addressed the Board and requested that the four applications be acted on independently. He explained that all four applications are independently needed. For example, if the aquifer protection variance is denied, that would knock out our gasoline sales, but they would still be interested in proposing a convenience store without the gasoline sales. So, the other variances and special exceptions still come into play. He also suggested that it didn't all have to be decided tonight. If the board felt the need to continue another night, do a site walk, get more information, that would be fine with them. He then presented an overview of the plan stating that he would first walk through the ordinances, then ask Tobin to go over the site plan, then ask Denis to speak to the gasoline delivery system, and then address the applications.

There was a discussion amongst the board regarding what process they should follow for the four applications. The board agreed to have Atty Prolman present everything then it would be opened up for public input. Then, close public input and the board would deliberate. Then, we go through the decision process.

Atty Andy Prolman presented an artist rendering of the proposed Litchfield Country Store. It is a convenience store with gasoline sales out front, a diesel dispenser off to the side, a couple access points on Charles Bancroft Highway, with a drive-through service towards the rear of the building. The Theroux's property is a 15 acre parcel and the proposal is to sub-divide off approximately 3 acres to the front for the gas station convenient store and for the dispenser bays out front. We're proposing a future town right-of-way. This is intended to access the back of the property sometime in the future. The area is in the Northern Commercial District. He presented to the board a Zoning District Map 1 (Exhibit 2), a large Lot Map, Lot 20, 21, 22 (Exhibit 3) and Google Map (Exhibit 4). He wanted to point out that Litchfield has a mixed use of property in the northern commercial zone; mix of small business, commercial, church, residential. He stated that he is proposing what he believes is the first commercial development to come into Litchfield in a long time. In his opinion, the town is in desperate need of some commercial development. He presented to the board three letters of support; a letter from the Fire Chief (Exhibit 8), a letter from Rev Ray Labrie of St. Francis Church (Exhibit 7) and a letter from Michael Bergeron who is a resident of Litchfield and is a Business Dev Manager for State of NH, Dept of Resources & Economic Dev (Exhibit 6). He read aloud a portion of the letter from the Fire Chief, 4th paragraph, to point out that he felt the Fire Chief was impressed with the fact that the Theroux's plan to meet or exceed the requirements for containment and monitoring of the fuel system. Atty Prolman stated that they are aware that they're proposing a gas station on an aquifer and that it is not allowed by the APD, but he repeated that they intend to meet or exceed all possible state of NH designs and their requirements. The

Theroux's intent is not to undermine the APD, but to exceed all requirements with respect to gas station designs. He pointed out that the site plan that he was presenting is a preliminary plan. They want to start off by requesting permission from the board for the use of the property and if it is approved, then it goes into full engineering mode. The store could be moved, turned or shifted somewhat. The frontage request that they are making will not change, but other things could. He pointed out that they do not have a storm water design on this plan yet, nor septic design. He just wanted to caution the board. He said the board may have some concerns about the traffic coming and going to this site. They have not done a traffic study, but intend to do so if they go to the planning board. He suspects the traffic study will result in a lane widening with a center turning lane. He says the good news is that the town's right-of-way width on the Charles Bancroft Highway is sufficient enough so that this can be done.

Albert Guilbeault asked if the Merrimack River abuts this property. Atty Prolman said no. He said the conservation property wraps around the property to the back and the church is also behind them so they're not on the Merrimack River.

Atty Prolman introduced Tobin Farwell from Farwell Engineering Services. Tobin Farwell did the existing conditions plan for the site. He stated that he will be doing the drainage analysis and the traffic and the layout of the traffic movement for the site. He did a boundary survey for this 15 acre parcel, he delineated all the wetlands that are on site and started to talk with the DOT because Charles Bancroft is a DOT highway. He also looked at extending the existing water to this site. This parcel goes back and ends where the railroad tracks used to be as shown on the tax map. Pointing to the site map he stated that they are proposing a 50ft right-of-way and it's per the regulations that require that they have 500ft on the highway and 200ft of a town approved road. So, that is the intent of putting a road in there. As part of his design, they will do good engineering practices for the fuel storage areas which would be positive drainage away from the fueling islands.

Rich Riley asked what he meant when he said a 50ft right-of-way and then 200ft road. Tobin Farwell explained that it was 50ft wide and you're required to have 200ft of frontage. You need to have 500ft on the highway and 200ft of the town approved road. Rich Riley asked if the 200ft that he's referring to is the length of the new road. Tobin said yes. He said they're trying to meet the regulations as best they can by providing this access road. Otherwise, they probably wouldn't need it, except maybe for future use.

John Regan asked if the plan was for cars to enter from Charles Bancroft Highway and then exit through the access road. Tobin Farwell said that was one of the plans but it's still to be determined. He said they started the discussion with the DOT and more discussions will follow.

Atty Andy Prolman wanted to review the ordinances. The first variance they're requesting falls under the APD ordinance (§1250.00). They're specifically looking at §1254.00b, Prohibited Uses, Subsurface storage of regulated substances, including gasoline, and the subsurface transmission. The second variance they're requesting falls under the Northern Commercial District ordinance (§800.00). They're specifically looking at §802.02, requires 500ft of frontage on 3A and one access point per 500ft. They're seeking a variance from that section because the lot has only 455ft of frontage. In §803.00 Special Exceptions, §803.00a.4 and §803.00c.2 are their special exception requests; gasoline sales and drive-through service. Atty Prolman feels that because §803.00a.4 and §803.00c.2 are so similar in respect to frontage, he would like to apply to the board for one frontage variance even though it is two sections of the ordinance. The last two requests for relief are the special exception for Gasoline Sales in the Northern Commercial District (§803.00a) and the other is special exception for Drive-Through Service in the Northern Commercial District (§803.00c). Atty Prolman said this is an outline of why Tobin Farwell mentioned the 200ft and the right-of-way.

Rich Riley asked again if the 200ft is the actual road – the length of the road. Atty Andy Prolman said yes. The future right-of-way is intended to be a town road to access the rear. But we're showing it today with the plan.

Rich Riley stated that in order to meet the actual letter of the requirement that would have to be an approved road. Atty Prolman agreed, but he says that is where the variance comes in. He says they're showing it as the future right-of-way, but for their purposes for today, they're intending this just to be a drive way. But, they're dedicating it for a future town road.

Rich Riley asked Atty Prolman if he was saying that they're not actually going to be meeting the requirement of a 200ft road. Atty Prolman agreed, but then answered "yes and no". He said they are showing this for a future town road, but they are not intending to build it yet. He said it was very confusing.

Laura Gandia asked if they're seeking a variance for the 200ft town road. Atty Prolman said they're seeking a variance for the frontage requirement for it. Rich Riley asked if he was asking for a frontage requirement variance, not a relief from the 200ft road. Atty Prolman said no. He said it's a generic frontage variance for the 500ft and the 200ft but they're anticipating to meet that standard with the future right-of-way. But for today, their variance request is from that 200ft section. To clarify, Laura Gandia asked if he's asking the board to say "No. You don't need to have 200ft frontage on the road", but you will have it. Atty Prolman said "yes" at some time in the future. To clarify, Atty Prolman provided some background information. He explained that they initially proposed a build-out of a road, a hammer-head type road, with full town specs and ultimately for the town to take over and they were told "No. Don't do that". They were told the town of Litchfield doesn't want to take this over just yet. They don't want a road to nowhere. They were told that they were better off showing that one day it would become a town road, but just do a drive-way at this time. So, what we're doing is we're crossing the variance for that frontage requirement but, we're addressing that by laying out the future access. Rich Riley asked if there are really two requirements; the 500ft – you don't meet that, and the 200ft – you don't meet that. Atty Prolman stated that they need a variance from the special exception requirement. For the gasoline sales and drive-through, one of the criteria is the 200ft that I need the variance from. Laura Gandia stated that he's requesting a special exception, but then a variance from that special exception. Atty Prolman agreed. He said he realizes that they're asking a lot but he feels that the way the ordinances were written makes it very confusing. Laura Gandia asked if the drive-way in lieu of the 200ft approved frontage would be maintained by the Applicant, not the town at this time. Atty Prolman replied "yes". Laura Gandia asked how long the drive-way is from Charles Bancroft Highway. Tobin Farwell replied that it is roughly 150ft. Rich Riley stated that since there would be diesel pumps, they must be anticipating commercial traffic going in and out. Atty Prolman replied "yes".

Atty Prolman introduced Denis M. Boisvert, P.E., to speak about the gas system. He stated that the plan would be to install three 10,000 gallon fuel tanks; unleaded regular, premium and diesel. He presented copies of his PE Report to the board (Exhibit 5). He read aloud the report. He explained that the tanks would be a double-walled system with an added liner (Exhibit 18) to envelop each tank. He proposed a monitoring well. There would be a double-walled piping system. There would be several monitoring devices. If there was a spill, a sensor would be triggered which would set off an alarm. Albert Guilbeault asked how often would you get an alarm? Denis Boisvert replied "Just when it leaks. Hopefully never, but I don't know". Albert Guilbeault said "What I mean is...you've seen it, but it's not an everyday occurrence..." His reply was that he designs them; he does not operate them so he's not there to hear the alarm go off.

Laura Gandia asked Denis Boisvert what he's proposing that exceeds the standards by DES. He said that would be the liner (Exhibit 18) under the tank, pressure testing the 4 inch duct pipe to add a 3rd layer of protection to the delivery piping and the PLBs along the tank pads (refer to exhibit 5). Eric Crushing asked if there are procedures for shutdown and repair if an alarm goes off. In the case of a pipe leak, the line leak detector is a mechanical system that is part of the pump system and it monitors pressure in the line. If it loses pressure, it shuts the pump down. If there is a small spill, it will detect as low as 3 gallons an hour – which is not a big leak. An alarm would go off as well and you can't pump any more. In the case of a tank leak, if you have a tank within a tank and if the inner tank should fail, it would fill the small space between the tanks. So, it's not emergency response. The system remains on. The alarm goes off and you call maintenance to remove the fuel from the small space. They will inspect to determine what the problem is.

Laura Gandia asked questions about the monitoring wells. He explained that their primary purpose is to draw groundwater. It's also to see if anything is leaking. If it's only groundwater or rain water, you could pump it out. You don't want a lot of water because it will try to make your tank float up like a submarine if it's empty. In an aquifer, the groundwater is very deep so flooding is usually not an issue. He said that this tank will be designed as though we are in a flood zone because we could fill that right to the ground surface if it is not monitored and he needs to look at it to make sure it stays put no matter what.

Atty Andy Prolman further explained that the dispensers are designed to shut off. For example, if someone drove into a dispenser, they are designed to stop any flow of material and shut down (called dry break). Regarding procedures if an alarm goes off - the operator prepares and presents an operational plan and it is approved by the local fire department. The operational plan lays out what happens if an alarm goes off. Some communities require the operational plan to have the alarm tie into the fire department.

Atty Prolman discussed the first Application that they submitted for a variance (Exhibit 19); see Section 2, Request for Variance, the five facts supporting their request. He presented to the board Map 1: Stratified Drift Aquifers (Exhibit 9). He pointed out where the APD is in town. He read aloud the definition in §1252.00. He pointed out on Exhibit 9 that nearly the entire town is in the APD. He feels the variance is not contrary to the public interest for two reasons: 1) allows a commercial use in the Northern Commercial District - further explaining that they're providing a service and 2) today's technology and engineering of gasoline delivery systems provides multiple and redundant safeguards for the environment – further explaining that they're addressing the environmental concerns of the APD. He feels confident that the systems they're intending to put in place will not be contrary to the public interest. He addressed Albert Guilbeault's previous question regarding spills. He said he can't deny that spills happen across the country but you don't hear about them that often in newspapers or in the news and he believes it's because of the types of systems like what was described here today. He says none of them will sit there and guarantee that there will never be a spill...things happen. But, with this system in place they don't believe that would be contrary to the public and contrary to the purpose and intent of the APD which is similar to the spirit and intent is being observed because our technology and engineering today and the redundant safety systems in place can provide the gasoline sales and address the APD purposes and the spirit of the ordinance. Substantial justice is done because they're allowing a commercial use in a commercial district. They're bringing commercial development to the town. They believe with their systems in place, supervised by engineer and DES and the town, that they don't have a conflict with the APD. So, they believe substantial justice is being done. He reiterated that they intend to meet or exceed all state requirements. He stated that regarding the 7-11 gas station, we haven't heard of any issues or problems. This investment the Theroux's are proposing is approximately \$1.5M worth of

investment into the town. He stated that they believe that this will improve the area and bring in added benefit to the town, and potentially other commercial development. They don't believe it would adversely affect any of the surrounding properties. They don't believe it would diminish anyone's value with this project especially given the value that they're putting in. Regarding the hardship of the APD ordinance, he referred to Exhibit 3 and 4 to make the argument that this is one of the few lots in the town that can accommodate this proposed use. The special conditions of this property that makes it unique is that there are only 1 or 2 other properties in the entire northern commercial district that could handle this commercial use. The relationship test and the proposed use is a reasonable one. He suggested that the proposed use is a reasonable one, the gas station and the convenient store in the commercial district are allowed by special exception, except for the APD under the special exception §803.00. Gas stations are allowed if you meet those criteria so it would be an allowed use of the special exception but with the safety systems in place, he doesn't see that there is a fair and substantial relationship to prohibit gasoline stations with all the engineering and all the safety systems and technology of today.

Atty Prolman asked if the board wanted him to move on to the next application or stay focused on this one. Rich Riley stated that based on the need to treat each application separately he thinks it would be best to focus on this application until a decision can be made. Rick Riley consulted with the board and they agreed. Rick Riley explained to everyone that the board would ask questions of the folks who presented the application and then once all their questions were answered the board would request public input. Rich Riley referred to Map 1 Stratified Drift Aquifers (Exhibit 9) and asked Atty Prolman if he could point out where the property is located on this map and asked about the color code system. He showed the board where it was located on the map and then introduced James H. Vernon, the hydrologist from Nobis Engineering Inc. to come forward to talk about aquifers. He described what aquifers are. He said the map shows us that almost the entire town of Litchfield has stratified drift. The reason for the color coding on the map is that some of the aquifers are more transmissive than other parts. The darker blues can transport more water more quickly through those sand and gravels than the grays can. The transmissivity numbers are measures of how quickly how much water can move through the aquifer. For example, if you were to drill a well in the blue area, you would be able to get more water.

Rich Riley asked if the wetland areas of the property were marked on the site map that Farwell Engineering developed. He asked why there's a gap between the proposed road and the edge of the property. Is that because they need a buffer for wetland? Tobin Farwell of Farwell Engineering pointed out the wetland areas and stated that the Wetlands Conservation No Disturbance is within 75ft, building set-back 75ft. Rich Riley asked him if there are more wetlands all around the edge of the property. Tobin said yes. Riley asked if he had identified any vernal pools on the property. He said there were no vernal pools. Laura Gandia asked how a wetland in the aquifer district is different from a wetland that is not in the aquifer district. James Vernon (hydrologist) said some wetlands can be isolated from aquifers. Wetlands typically have muck at the bottom of them, or organic clays. So, it depends on the soil. But, often times wetlands are hydrologically isolated from the gravel. But to say whether a particular wetland is isolated or if it is hydrologically connected, you would have to do a site specific study.

Rich Riley then opened public input pertaining to the first Application. Richard Husband, a member of the Litchfield Conservation Committee (LCC) read aloud the letter from the LLC addressed to the ZBA dated 7/2/12 (Exhibit 12). Letter includes 5 attachments. This letter represents the LLC's written finding as to their interest in the application under LZO §1261.00. By vote of 4-2, with one abstention, the LCC objects to the requested LZO §1254.00 variance. He pointed out that this property is in the middle of a high yield aquifer. Rich Riley asked if there was a spill, would the spill

be more rapidly dispersed in an area like this. Richard Husband referred to footnote 5 and read a statement about a study that was done in 2003. The study determined that gasoline stations or tanks contaminate the area around them. It finds its way into the water supply. There is no “fool proof” safe system that can be put in place today. No one can guarantee that there won’t be leaks. Additionally, he stated that the extras that the Applicant is willing to do to meet or exceed the State requirements doesn’t mean much. Every gas station that is put in the state of NH has to meet all state requirements. The other minor tweaks that they might do to go beyond state requirements are probably going to be minimum state requirements in the near future anyway. This technology hopefully will continue to improve and at that point it’s no longer something above and beyond. He says he’s not sure what the application reads, but he believes the Applicant just stated that he will meet or exceed and there’s nothing specific that’s going to hold him to it years down the road if maybe something fails and he doesn’t want to replace it. He doesn’t know if they will be held by the approval of this application to go back in and put something in that is going to exceed or not. So the extras won’t really protect us more than the State says they have to protect us. But that doesn’t get to the unique nature of putting it over an aquifer - they would still have to have these things if they were being put over a trash dump. The problem here is that we’re dealing with aquifer. He stated that we know from the nuclear disaster in Japan, the engineers probably told the Japanese government that there was no possible way that system was ever going to fail. Then, a tsunami comes and northern Japan is in toxic waste. We do have the potential for tornadoes and ice storms. We do have acts of nature that could have ferocious acts on gas stations. Milford had a gas station leak in 2010 when their new state-of-the-art system had a discharge alarm that failed to go off and 1,500 gallons went into the river. He pointed out that as noted in the LZO’s variance provision (§1108.00) a variance is not permissible unless, along with the additional dictates of §1108.00, the Applicant shows that all five criteria of RSA 674.33, I (b) are met.

1) The variance will not be contrary to the public interest.

LLC’s comment: How is it *not* contrary to the public interest to allow the construction of a potential contamination source over clearly LZO-protected, ever-shrinking public drinking water absent a compelling need *not* present here? The public convenience of a gas station is hardly a “compelling need”, especially as the “inconvenience” is in only having to drive a few minutes to any number of other stations.

2) The spirit of the ordinance is observed

LLC’s comment: The “spirit” of the ordinance is not observed, i.e., the APD provisions, to allow the siting of a potential contamination source over waters protected by the express “Intent and Purpose” of the ordinance? See LZO §1250.01

3) Substantial justice is done

LLC’s comment: How would “substantial justice” be done by granting the variance in light of everything presented.

4) The values of surrounding properties are not diminished

LLC’s comment: No evidence was presented to the LCC by the Applicant that the presence of a gas station on the property would not diminish surrounding property values.

5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

LLC’s comment: How would the denial of the variance create an “unnecessary hardship” as defined by the statute? There are no “special conditions” of the property distinguishing it from other properties in the area, there is a “fair and substantial relationship” between the public purposes of the APD zoning provisions and their specific application to the property and, given the risk of contamination to a high-yield aquifer, the siting of a gas station over the property is not a “reasonable use”.

LLC’s final comments: They acknowledge that gasoline and gas stations are important to our society – but not more important than water. Gas stations must be located somewhere, with

inherent risk – but not over this town’s aquifers. Litchfield should stick to the letter and spirit of the ordinances this town wisely enacted ahead of others years ago and stick to common sense: oil and water do not mix.

Richard Husband said there is nothing unique about this station that separates it from any other gas station that would come before the board and ask for a variance. If you allow this you’re basically ripping up the APDs. You’re setting bad precedence for maybe 2, 3 or 4 stations that might come in sometime later and you’ll have no reason to tell them that they shouldn’t have theirs just like the Applicant today.

Rich Riley asked Laura Gandia to read aloud letters that were received. Exhibit 6 is a letter dated 8/1/12 from Michael Bergeron (resident of Litchfield) and Business Dev Manager, State of NH, Dept of Resources & Economic Dev. Exhibit 7 is a letter dated 7/11/12 from Rev Ray Labrie (abutter) and Pastor of St. Francis of Assisi Parish. Exhibit 8 is an email dated 7/9/12 from Frank Fraitzl, Chief of Dept of Litchfield Fire Rescue, to Kevin Lynch. Exhibit 13 is a letter from Joseph Kang to Chairman Riley. Exhibit 14 is a letter from Matthew Roberge to Whom it May Concern.

Rich Riley asked if there was any other public input. Atty Andy Sullivan came forward. Atty Sullivan identified himself as an attorney representing the Kang family who operate the Purity convenient store located on Charles Bancroft Highway. He presented to the board a petition with approximately 300 signatures (Exhibit 15) titled “Petition in support of denying gas station variance over town aquifer”. He pointed out that there is a prohibition against underground gasoline storage tanks. No one can say that this system is “fool proof”. If we look at the APD ordinance, the purpose of the ordinance is to preserve, maintain and protect from contamination....not from *some* contamination...not from a little bit of contamination. He believes the ordinance is an absolute prohibition – no gas stations are allowed at all. Logically there may be some contamination if a gas station was allowed. Consequently, by allowing a gas station, the ordinance would not be fulfilled. Its purpose and spirit would not be fulfilled because it would not allow protection from contamination from a high-yield aquifer. Regarding special exception and variances – it doesn’t seem right to have a variance to allow a waiver of a special exception. They are two distinct things under the statutes. He believes a variance is allowed by the board in order to waive an ordinance. But special exception is different. He believes the board’s job on a special exception is to see if the special exception criteria are met...not to waive them, unlike a variance. He doesn’t believe that the board has the authority to allow a variance that then allows a waiver of a special exception. So, if the special exception requires 500ft on Charles Bancroft Highway and 200ft on another road, those are criteria. The board’s only job is to see if those criteria are met... today...not in the future, and you can not waive those by a variance. Regarding the criteria, he believes it is clear that allowing UST’s (underground storage tank) would be contrary to public interest and more specifically in relation to the APD purpose. It’s an absolute prohibition. Regarding hardship – there would not be an unnecessary hardship. There are various other types of uses for this property, just not a gas station. So looking at the ordinance there is not unnecessary hardship from a variance perspective. From a special exception perspective for a gas station (see §803.00) frontage shall be at least 500ft....it’s a criteria....you can’t deviate from that 500ft. You just have to determine whether it was there or not. They say they have 495ft but they really don’t because if that is going to be road you’re taking up either 50-60ft so now you’re down to 395ft, now even though you have 200ft for town road but now you have a 20% reduction on the 500ft. If that road is never built, you don’t have the 200ft. The criteria is not what will be in the future...it’s what’s here today.....and what’s here today is that you don’t have either criteria for the special exception. He applauded the LCC for their presentation. There’s a reason for the overlay...they just don’t want gas stations. There’s nothing here that would lead you to reasonably conclude that a variance or special exception should be, or

even could be allowed.

Rich Riley asked if there was any other public input. Larry Sott, (employee at St. Francis) says he learned a lot tonight. He says he learned that Litchfield should have floated away based on the size of the aquifer that we appear to be sitting on. And we should probably never have installed a single septic system, propane tank, and gasoline station. But we have found reasonable ways to do all of those things, through meeting the standards that have been agreed to by the various governments using technology that we believe is the best available to protect the groundwater. He still supports doing this.

Rich Riley asked if there was any more input. Atty Prolman said he didn't hear any comments that surprised him. He and his Applicant find it odd that someone would submit a petition with some signatures from people that don't even live in Litchfield. Speaking to Atty Sullivan's comments that the aquifer protection prohibition is an absolute...not allowed. Atty Prolman says they know that but that is why they're here. If it was allowed, they would have gone right to the Planning Board. The whole purpose of the board sitting here and their application is for a relief from the zoning ordinance. He wanted to point out that the entire town is filled with all kinds of hazardous waste. He says he has a propane tank and he lives on a pond. He says Continental Paving recently put in more tanks. He believes that the Applicant's property is a unique lot in this entire district and it sets it apart from all the other lots. He says there is a unique feature in the ordinance that they considered in §1255.00, Conditional Uses, that would allow an above ground storage tank (AST). But he says there are problems with AST also, so they thought the proposal of the UST was better. As to the LCC's comment on pg. 5 of their letter (Exhibit 12) it stated "There are many other places gas stations may be located". He says that is not true. He says the entire town is aquifers, so there are no other places in town for gas stations. He feels LCC doesn't play fair because he says they had the Theroux's before them at two meetings in April and May of 2011, and in the meeting minutes they made no decisions (see Exhibit 16). The position that came out in the letter dated 7/2/12 that was read aloud today (Exhibit 12), was not addressed in either of the meeting minutes. Then, apparently the LCC took this matter up sometime later and made the decision, but he says they didn't give him or the Applicant notice of that decision. He says they weren't given the opportunity to address the LLC's concerns and to be heard. He believes they made their decision in June, but he says he didn't know about it. He showed a list of the meetings that are posted on the LCC's webpage (Exhibit 17). There were no other meetings where the Theroux's case was discussed so he's questioning when and where the June decision happened. Was there a meeting? Was it posted? Why didn't they notify him and the Applicant about the meeting by email or phone call? Atty Prolman asked Denis Boisvert if he had any comments. Denis Boisvert made a comment about MtBE. He says it's bad stuff, and that's why gasoline no longer has MtBE in it. So, that is no longer an issue in regards to USTs.

Denis Boisvert stated that regarding spills, above ground tanks are required by the EPA to have a Spill Prevention Control and Countermeasure Plan (SPCC). That is not required for USTs. But, he stated that they could work up a variant of that plan if the board wanted. So, for example, if a customer drops a nozzle and has a spill, we could address the clean-up procedures in the plan. A comment on ASTs – as mentioned by Atty Prolman, ASTs are allowed. He made the suggestion to the Applicant, but they preferred USTs. If we still wanted the third layer of protection, it would be a little more complicated with ASTs. They are more exposed to natural disasters. This is a commercial zone; the large tanks would make it look industrial. From an aesthetic and a planning aspect, that might not be what you want to do. Albert Guilbeault asked what the containment would be for an AST. Denis replied that ASTs come in a double-walled format. Those that don't, usually have a sort of dike system. He wasn't sure how large the containment would need to be. It may need to contain

100%. There are maintenance issues with third containments like water, leaves and debris. It will need to be drained at times. The discussion about piping came up. Would the underground piping still be allowed if USTs are not allowed? John Regan asked what kind of periodic testing is generally performed around the groundwater in the area, testing of the aquifer. He replied none. But he said the monitoring wells are already testing at the tanks, so the need for testing further away from the tanks would not be needed. But, if those are areas of concern, monitoring wells can be added at a low cost and it could be added to the spill prevention procedures. Atty Andy Sullivan asked what happens if there is a complete power outage? Would all the sensors still work? Denis answered no, but neither would the pumps work.

Rich Riley asked if there was any additional public input. Renee Theroux (the Applicant) said he and his family have been in Litchfield since 1981 and plan on staying here. This gas station is more of a long term investment in Litchfield. He would like to see the town grow more and he feels this would be a nice start. They don't plan on building anything other than a very quality facility.

Rich Riley asked the Applicant how much buildable acres he would have left after excluding the 3 acres for the proposed station and excluding wetlands. Renee Theroux replied that it would leave them with 8 acres of buildable land. Rich Riley asked if the only access to the remaining 8 acres would be from the road. Renee replied yes. Rich asked if once they build the road on 3A there's no frontage to the rest of the property. They replied that is what the road would provide frontage for. The frontage requirement would be met if they subdivided it with providing a right-of-way.

Rich Riley closed public input. He asked the board if they had enough information to decide tonight or if they want to take more time to review the documentation. Laura Gandia said she was ready to decide it tonight but her second concern was Atty Prolman's concern about the way the LCC handled the matter and wants to ask him if he wanted to go back to the LCC to have another conversation with them. Rick Riley presented the question and Atty Prolman said he didn't appreciate the way the LCC handled it but he doesn't need to meet with them again. Rick Riley polled the board again and all were prepared to begin deliberations.

John Regan motioned to close public input and begin deliberations. Laura Gandia seconded the motion. Motion carried 5-0-0. The Board entered the deliberation session based on testimony provided. After deliberation, John Regan made a motion to deny 2012-01, the Applicant's request for a variance from LZO §1254 to permit gasoline sales in the Aquifer Protection District. Laura Gandia seconded the motion. The motion carried 5-0-0.

Notice of Decision was prepared by the Board and will be mailed out. Copy on file.

III. ADJOURNMENT

Atty Prolman made a request to postpone the hearing for the remaining 3 applications until the next meeting on 9/12/12.

John Regan motioned to postpone hearing for the remaining 3 applications until 9/12/2012 at 7PM. Laura Gandia seconded the motion. Motion carried 5-0-0. John Regan motioned to adjourn the meeting, Laura Gandia seconded. Motion carried 5-0-0. Meeting adjourned at 10:35pm.

Respectfully submitted,

Gisele Mercier

Exhibits

- 1 Denial Letter from Kevin Lynch, Code Enforcement Officer
- 2 Zoning Districts Map 1, dated March 2012
- 3 Large Lot Map
- 4 Google Map, dated 7/11/12
- 5 UST Report from Denis M. Boisvert, P.E.
- 6 Letter from Michael Bergeron, Business Dev Mgr of State of NH, dated 8/1/12
- 7 Letter from Rev. Ray Labrie of St. Francis Church, dated 7/11/12
- 8 Letter (email) from Fire Chief, Frank Fraitzl, dated 7/9/12
- 9 Map 1: Stratified Drift Aquifers, dated March 2010
- 10 Email from R. Meloney, dated 8/8/12
- 11 Notice of Lease, dated 12/21/10
- 12 Letter from the Litchfield Conservation Commission (with 5 attachments), letter dated 7/2/12
- 13 Letter from Joseph Kang, **dated ?**
- 14 Letter from Matthew Roberge, **dated ?**
- 15 Petition in support of denying gas station variance over town aquifer (with signatures)
- 16 Litchfield Conservation Commission Meeting Minutes, dated 4/7/11 & 5/5/11
- 17 Litchfield Conservation Commission posting of Minutes (web page)
- 18 Sample of a tank liner from Denis M. Boisvert, P.E.
- 19 Theroux Development LLC, (first Application) Application for Variance from LZO §1254 to permit gasoline sales in the APD