

**Board of Adjustment
Canterbury, NH
Minutes of Hearing
8 January 2014**

Case No. 2013-5 (B) Special Exception

Present were: Chairman Joe Halla, Web Stout, Jim Wieck Board members. Christopher Evans and Lisa Carlson, Alternates.

Chairman Halla stated Special Exception B is an application from Mourning Dove Holdings, LLC to allow the owner to construct a new convenience store and laundromat to be attached to a new permitted office space. The store will not sell gasoline or diesel, but will have a propane filling station. He gave a detailed explanation as to the conduct of this hearing and the one that follows it.

Tim Bernier provided to the Board letters of authorization from the Schmids for himself and Jayne Cohen to act on their behalf as they are out of state. There were some issues with the three separate exceptions. The first special exception was on the large parcel, the residential zone portion of the parcel. Because it was residentially zoned that special exception was specific to the residential zone. Chairman Halla corrected Mr. Bernier that it is rural. Duly noted and corrected. What they are discussing now is actually on the same parcel of land, but the zone district boundary (which he pointed out on the map provided) separates the commercial, rural and resource reserve natural zones. Because this property happens to fall in the commercial zone, it's a different section of the ordinance and requires a different special exception. He wanted to provide some background about why the different special exception applications. He proceeded to review the plan pointing the access to the proposed campground on the map. It is the only access to the project that is proposed right off Route 106. They are proposing to build a convenience store with some laundry facilities in the back and also have some office space which will be the primary office for the campground down on Route 106. This give those present some idea of the location, size and scope. They are proposing and will probably do a boundary line agreement between Lot 8 and 8-1 communicating with the abutters to meet setbacks.

Mr. Bernier advised he printed out his response and outline and how they meet the criteria that is required. The narrative is as originally presented. He read it allowed (see attachment in file). On his page two, 5.3C Tables of Uses, this is permitted as a special exception. As such they are required to meet the criteria of 8.2 which is the special exception ordinance. Mr. Bernier read the narrative of how they meet the criteria in its entirety (see attachment in file). Chairman Halla asked what the size of the store, laundromat, office building would be. Mr. Bernier replied they are anticipating 3600 square feet. Christopher asked if they anticipate any outdoor storage. They do not, other than the propane which is required to be set off at a certain distance from the building and in a specific enclosure. Web asked about a lot line adjustment. Is the property owned by a different abutter? No, it is still Mourning Dove Holdings, LLC. Chairman Halla asked if there any other questions from Board members. There being none he asked if anyone wished to speak in favor. There being no one, he asked if anyone wished to speak in opposition.

Jed Callen presented himself as being an attorney from BCM Environmental & Land Law and presented to the Board a written submission. Chairman Halla reminded Attorney Callen that the Board is hearing testimony about the convenience

store, laundromat and office building only. Attorney Callen concurred. He stated is will register opposition on behalf of his 30 clients who are abutters and their neighbors to the convenience store and laundromat without offering further argument about that now. He has significant argument about the other two special exceptions, although you have already passed over one of them. He believes several legal errors were made in that process and they will be seeking rehearing on that. He said he will save your time and comments on his opposition to the special exception in the NR district. But he didn't want to let this pass off without indicating to the Board in all fairness that he believes that procedural errors are being made tonight. Chairman Halla responded he has a right to appeal. He asked if he is stating he is representing these 30 clients and he is opposed to....Attorney Callen, opposed to this but....Chairman Halla opposed to the convenience store is what the Board is talking about. Attorney Callen responded without further comment because it is so subsidiary and dependent upon the other two special exceptions. He will reserve his argument and comment tonight for when the Board gets to the third special exception.

Sharon Beauchesne who lives on Harmony Lane in Canterbury spoke saying she thought it was going to be a store and gas station, but learned tonight it is just going to be a store. They have on a stretch of 8.2 miles of Route 106 5 convenience stores. It's not like they need another one. The laundromat, there is already 3 in a 12.2 mile stretch also on Route 106.

Jade Wood asked if the Board would ask them if they expect campers to cross Route 106 on foot. Chairman Halla said the Board is talking about the convenience store. She replied that she is. Chairman Halla said are you asking are they going to go to the convenience store and walk across Route 106. Ms. Wood asked how the campers are going to access it. Chairman Halla responded, from the campground, on foot in the campground, which is behind the convenience store. Ms. Wood responded she was sorry she was not at the first meeting we weren't notified that was going to be happening. Chairman Halla restated the campground is behind the convenience store so the people at the campground would either drive or walk down, but they wouldn't cross Route 106. Ms. Wood concurred, so no foot traffic then. No.

Brian Harvey living at 1675 Route 106 North asked the applicant how many parking spaces there are going to be at this facility. Chairman Halla asked if he is speaking against, he is. Mr. Bernier replied at least 22 parking spaces. Mr. Harvey asked if the applicant has talked to the state yet about doing a traffic study. Chairman Halla advised those are the issues that the Planning Board would impose upon them at site plan review. Mr. Harvey said he understands that, but what he is getting at is public safety. Just north of their proposed entrance is two guard rails on either side of Route 106. He has spoken with a traffic engineer who is suggesting that at peak times 81 vehicle trips into this 300 site campground and that wouldn't include the public using the facilities. He is suggesting the state, DOT would probably require turning lanes. Obviously, they would have to get a berm cut. This Board should consider public safety. Chairman Halla responded the issues he is presently are site plan review issues. Mr. Harvey said he had one other question about the initial vote the Board took. He is from Loudon, was unaware of this procedure. He is aware the Board asked the town officials to put in. So based on the fact that he is from Loudon doesn't matter? Chairman Halla responded no, he is not an abutter. It was in the Concord Monitor, proper notice was given. He just feels the way the Board handled that, doesn't want to listen to anybody that's out here apparently. Chairman Halla responded the Board listened to everybody for three hours at the first hearing. Mr. Harvey stated it's like the Board's mind is already made up.

Richard Caesar, 37 Harmony Lane in Canterbury asked if alcohol will be sold at this convenience store. Mr. Bernier responded, beer and wine. His concern is particularly on race weeks when alcohol is being sold. Their community is a family community so his concern is abutting Rocky Pond you have a facility that is selling alcohol. That is disconcerting to people already in that area. Chairman Halla asked why. Mr. Caesar said it has to do with safety, it has to do with rally racing. Chairman Halla asked if he is saying that everybody on Rocky Pond doesn't drink alcohol. Mr. Caesar responded, no, he is saying during race week things become quite active there as you well know. Christopher stated this property does not abut Rocky Pond. Chairman Halla concurred. The convenience store property does not abut Rocky Pond. Mr. Caesar said he understood that, but it's fairly close to Rocky Pond and his concern is that you are going to have a lot of racing fans who will be consuming quantities of alcohol near their community. That's a concern he thinks for all of the residents in the area for particularly race week. His assumption is that over the next couple of years the race weeks will increase in frequency. So they will see a lot more racing done at the NH Speedway. They don't know but that seems to be the trend. He thinks they are all concerned about what's happening with the future. Everything seems to be changing in that area based on development.

Aaron Roy, Canterbury believes the presenters stated other campgrounds could, would, maybe use this convenience store. Chairman Halla responded what he got from it was this convenience store is open to the public whether they came from the campground or somebody driving by or somebody at Rocky Pond that wanted to run over there, it's open to anybody, he would assume, that would make sense. Mr. Roy said he may be wrong, but he was under the impression the presenter was implying, suggesting other campgrounds, other campers would use this convenience store. Is that what was said by the presenter? Would you ask the presenter please? Chairman Halla responded, sure, he did mention that other campgrounds might use this....Mr. Bernier said they had mentioned that they hoped that they do along with everybody else. Mr. Roy thanked him. What may be confusing Miss Wood was there is a campground, Rocky Road directly across the street from this entrance and people would probably walk across Route 106, rather than drive across Route 106. Chairman Halla concurred. So, Mr. Roy stated there would be probably foot usage from across the neighboring campground, but not from this campground. Chairman Halla concurred.

Jennifer Winsack stated she was not present at the first meeting and drove 8 hours to be here tonight. They are at 29 Harmony Lane with her husband, her daughter and her family. She was not able to come in on the first special exception and since she wasn't here for the first meeting and quite a few other people weren't as well, could you have him show us what we are talking about here. Where is that? We don't even know based on Route 106 where that is, so she is wondering if he could just take a moment, if you could just instruct him to just show us...Chairman Halla asked if she is speaking against the convenience.....she replied, I am, because she wants to know where the dumpsters for the convenience store are going to be located, what time of day they are going to be emptying the dumpsters and if she is going to have hear wild animals and crows listening to them getting in and out of the dumpsters from the convenience store because she has lived next to a place like that and she wants to know. Would you ask him? Chairman Halla said he thinks it's a little bit unreasonable at this point to ask when the dumpster would be picked up. Ms. Winsack responded, not if you sleep there, not if you live there, it's not unreasonable. Chairman Halla said he thought it was. Ms. Winsack replied to Chairman Halla you don't even know where Rocky Pond is, you've never even been there and you represent us. Ms. Winsack continued, I want to know, I want to know. No. I pay you to sit here. I pay taxes too. Chairman Halla responded, you don't pay me anything. This is a voluntary

Board. Ms. Winsack responded, who pays for this building? Chairman Halla please, calm down. Ms. Winsack, no. You can speak nice and kind to him, but when it's our turn to talk you're condescending like you were to my daughter. Chairman Halla stated, I was not condescending. Ms. Winsack: You were.....was he or was he not? You owe my daughter an apology. Chairman Halla stated, if I was condescending, I apologize, I'm sorry if you took it that way. Ms. Winsack continued that she for everyone on this Board from her real estate agent, I bought this house a year ago, my first summer here, my investment, my retirement and now this is what I have to deal with? And right here in your special exemptions it says that oh my property value won't be affected, there it is, and it's professional. And I would like to know if you can have this man show us what he's talking about. Where is this campground going to be related to my property because I don't even know? Please? Chairman Halla said, if she had been at the first hearing.....Ms. Winsack responded, I live in Buffalo, New York and no one ever told me. Chairman Halla asked, are you an abutter? Ms. Winsack: I live right next to Eero Javi and I live on the water where the kayaks are going to be paddling by ruining my shoreline. Chairman Halla: Are you an abutter? Ms. Winsack: Ya, I'm an abutter because I don't know, I don't know. Did you notify all the abutters the first time? Chairman Halla: Yes, yes. Ms. Winsack: no. Chairman Halla: Yes. Ms. Winsack: No. Christopher, Chairman can we at least put up the aerial map? Chairman Halla, oh sure, can you put up the aerial map? Ms. Winsack: We want to know what you're talking about. Chairman Halla: You should have come to the first hearing. Ms. Winsack: You should have let me know. I live in Buffalo, I drove 8 hours, sir to be here for this. Chairman Halla: You're not an abutter. Ms. Winsack: I'm on the water. I paid for that waterfront, I'm an abutter. We are all abutters.

Tim Bernier spoke directing attention to the aerial map saying this is Rocky Pond here, where you see the little pink patch that is the proposed convenience store/laundromat/office space building will be located. Ms. Winsack asked where are the hiking trails. Mr. Bernier said this is the special exception about the convenience store. Ms. Winsack stated, and I am opposed to that. And I just want to know about what time of day I'm going to be expecting to hear the crows, all the dumpsters dumping at 5 AM, who's going to take care of all that? Christopher said he was just going to suggest, can we at least note that Ms. Winsack has concerns about the dumping? Chairman Halla agreed; it's part of the record. Ms. Winsack said she appreciated that, thank you and sir your name is? (Christopher Evans). Thank you. Chairman Halla advised and you can go to site plan review when they go to site plan review. Ms. Winsack: I'll be glad to drive 8 hours back and another \$300 bucks in gas. Thank you.

Chairman Halla asked if anyone else wished to speak in opposition. Elizabeth Boles, 52 Harmony Lane asked if it is going to be open 24/7 and what the lighting will be. Chairman Halla asked if they have proposed hours of operation. Mr. Bernier said it will be market driven. He highly doubts it will be open 24 hours a day. Given its location, it's pretty isolated there. Jayne Cohen spoke saying the primary use is that it be a campground store. Ms. Boles asked if at any of their other stores have they been open 24/7. Ms. Cohen, no, not 24/7. At none of any of the other campground stores have any of them been open 24/7. Chairman Halla and are you going to have typical outdoor lighting for parking spaces in the store. Mr. Bernier, just enough to provide safety.

Rocco Bagone III, owner of Rocky Road Campground across the street spoke saying he wished to restate his whole campground is in Loudon. The campground itself is not in Canterbury. He is opposed to the convenience store. He thought by chance they would have another chance to speak about the whole special exception for the thing, but you said at the last meeting it is closed to the public. He wanted to start off by thanking the Board for doing what Zoning Boards and Planning

Boards and Selectmen are supposed to help applicants guide them through the process which he has never been able to do before in his life except when he comes to Canterbury. However, he finds it really hard to believe with so much opposition, where is your loyalty to the townspeople? There was room applause and Mr. Bagone asked for silence saying this isn't a big celebration because he said something. This is very serious because it's very true. He cannot commend the Board enough for doing the right thing helping and guiding the applicant through the process. First of all in his opinion he doesn't see where the campground, the convenience store or any of it is within the Canterbury basic living style. The campground is approved, there's no backing out of that. May I just ask one question, was there any....you made a statement that really caught me funny, you said that property you were speaking of at the time doesn't touch the pond. Well, all three properties are owned by the same person, so you might as well call the whole property one property. Chairman Halla responded, the one thing you have to remember is the Board has to hear them separately because they are in three separate zones. In a normal situation this would be one hearing for all of them. Mr. Bagone concurred. Chairman Halla stated further this special exception is in the commercial zone. Mr. Bagone asked if there were any limitations on the pond for the campground permit. Chairman Halla advised the Board has not gotten to that one yet. That's the third one. It's the property that abuts the pond in the resource reserve natural zone. Mr. Bagone said again he is concerned about the hours of operation and the public safety. It should be a great thing to have a store there with potentially 12 to 15 hundred people having access to that camp store. However, that many people is more than half of the town residents. Canterbury has only 22, 23 hundred people in town. He just doesn't think it's the way Canterbury, you have the store here in the center of town, one at exit 18 and that's it. He doesn't think it's within the style of Canterbury suburban living. He is also in opposition. He thanked the Board for its time. Chairman Halla asked if anyone else wished to speak in opposition or was there anyone else who had not spoken before he went to someone speaking for a second time.

Aaron Roy, Canterbury spoke saying there was a question on the floor about what the hours were going to be. He asked if was correct in saying they were not sure what the hours would be. Ms. Boles came up and said would they be 24/7. Chairman Halla said he said they will not be open 24/7. Mr. Roy restated, so he said they won't be open continually, but they don't know when they would be open. Do they have any ideas as to when the hours would be. Chairman Halla said he is going to ask that himself. Mr. Bernier said in fairness to everybody they will say 5 AM to 11 PM, seven days a week. 5 AM is how a convenience store works with the coffee crowd.

Chairman Halla asked if anyone else wished to speak in opposition. No one spoke. The Board returned to the applicant for the final time to make any statements. Mr. Bernier said there are only two things they thought they should mention. The safety issue of the driveway. They will do whatever the traffic counts count with the Planning Board to insure that the intersection is safe. DOT will require that they provide counts and if those counts dictate right hand turn lanes or left hand turn lanes and that's what they need, then that's what will be done and they will take care of that with the Planning Board process. And the hours of operation, in fairness to everyone here to set something about the times. Christopher said he was just going to say the Board can assume the parking would meet the requirements of the zoning ordinance and the Planning Board. Mr. Bernier concurred absolutely. Web said where you are coming off Route 106, that's on the south side of the brook. Correct. Web asked is there an access or a gate there now? Yes. That was for.....Mr. Bernier advised that for the same location that was previously approved for the manufactured housing. So, it's the same exact spot. Web, so there's kind of a driveway permit already. It's a logging operations. He does not know if they have a....any change of use.....Web

asked for clarification that the state did issue a permit of some kind. Mr. Bernier said there was a permit for the other facility, for the sixty-six units development. They would need to get a new one; any change of use. Chairman Halla asked if there were any other questions from Board members. Chairman Halla asked if they have any idea how big the laundromat is going to be. Mr. Bernier advised that have not gotten into the design yet. They will have slope issues that they are going to have to address. The square footages.....they're not going to double. He said it will be around 1600 square feet for the laundromat.

Chairman Halla asked for the final time if anyone wished to speak in favor. No one spoke. He asked for the final time if anyone else wished to speak in opposition.

Robert Richardson in Gilmanton on Snowshoe Hill Road. He has a couple of quick questions. He mentioned the hours of operation were going to be 5 to 11. It was his understanding the campground had proposed a quiet time. Could you ask him what the quiet time was. Chairman Halla asked what the hours of quiet time were proposed to be. Jayne Cohen responded 11 PM to 8 AM. So, would those two times coincide, the store operation and the quiet time in the campground? If now the store is open, people are going to be coming and going, slamming car doors and that kind of thing. Chairman Halla restated the convenience store would open at 5 in the morning. Mr. Richardson said it doesn't count as far as quiet time in the campground. No. He moved on to paving the parking area. It's going to be paved. Chairman Halla advised that would come with the Planning Board and site plan review. Mr. Richardson said and as far as run off....all of that will come with site plan review. All of that has to be done.

Donald Blajda, 44 Harmony Lane North in Canterbury and also in Gilmanton. Mr. Blajda said he understands the reasoning behind separate zones for the special exceptions. He is not sure you can stop noise at zone lines. So, he thinks it's unreasonable to think that you can say quiet time for the campground which is right next to the community store and be 11 to 8. But that doesn't apply to the commercial zone that's right next to the campground, that's servicing the campground. Chairman Halla said you are talking about the morning hours because the 11 PM is the same for both. That's correct. If it's opening at 5 AM (he camps at Cape Cod), he can't believe that somebody at the campground is going to want to listen as they are proposing to really to what is not going to be a convenience store just for the campground. It's pretty evident they are going to market themselves as a store for the general public especially if they are concerned about selling coffee to people that are going to work in Concord or going to Laconia. So, he thinks the noise level that is going to be provided by in this area by this campground is going to be more significant than the Big Apple that's down the street or Rymes place that's down the street. Chairman Halla asked why that would be. Mr. Blajda responded because there are no residences or residential areas next to those convenience stores. Now you are going to be bringing people in at 5 o'clock in the morning to people nearby in their camper. Chairman Halla asked if they could tell him roughly how far the convenience store would be from the nearest abutter. Mr. Bernier advised across the highway 300 feet. The highway is going to make more noise than the convenience store. Chairman Halla asked how far on the campground side. 1,000 feet at least. Chairman Halla asked if that helps at all. Mr. Blajda said it's not so much a question, as a statement that he doesn't see a facility that's supposed to be servicing the campground going ahead having quiet hours that are different than.....a facility that's quite potentially being designed to attract people outside of the campground. He goes to Bear Brook State Park, the store is not open the times that quiet hours are in effect. That's a pretty typical thing. You don't want the traffic, you don't want the

noise or the disturbance in the campground. It doesn't seem creating this facility that's not geared just toward just servicing the campground.

Jed Callen of BCM Environmental & Land Law stated he is representing 30 people whose names he has already handed in (see attachment in file). I don't like that what he is about to say is going to be contentious and not probably well received, but the law indicates that when an applicant, abutter or neighbor and there is not distinction between abutters and neighbors other than abutters are entitled to certified mail, but neighbors or others potentially adversely affected by the proposal have equal right to be heard and standing to be heard and to appeal. The law says that at the very earliest moment that they become aware that a member of the Board should be disqualified for pre-judgment or bias they must raise it to the Board. And so although he was not going to speak about the store and laundromat as a very minor issue compared to the recreational zone and the campground, at this point on behalf of my 30 abutters ask that the Chair recuse and disqualify himself from consideration of this and subsequent special exception on the basis of pre-judgment and bias. The specific evidences of that that I've just heard with respect to the laundromat and the store are many. First of all, the Chair seems to have taken the role not of unbiased, recipient of input, that is comment from neighbors and the applicant which would then be waived at the appropriate time and voted on, but rather advocate for the applicant and defender of the applicant and the specific examples include the behavior with respect to this young lady whose name he has forgotten and her Mother. Specifically, also just now rejecting questions that were asked by Jennifer and not....Chairman Halla: If I could interrupt for a minute, the questions we were dealing with now were with the convenience store, not the campground, alright? Notification was given for the first hearing, abutters were notified by certified mail, and it was in the Concord Monitor, that's our responsibility. Ms. Winsack stated from the floor it wasn't on your website. Chairman Halla asked her to refrain, continuing that is what the Board of Adjustment is required to do. I'm sure you understand that if you are in this business. It is not by what you've just proposed to me and I will certainly ask the rest of the Board members if they want me to step down for anything. If I were to follow your line of thinking, then this hearing could go on forever because there might be somebody else who couldn't come tonight who has an objection. No, that's what you are saying. You're saying there are people here that weren't here at the first hearing. Chairman Halla stated he did not want to get into a debate about any of the particulars about this and invited Attorney Callen to continue. Attorney Callen: Other examples were answering for the applicant as opposed to simply letting the applicant speak. In the case of Mr. Blajda who just spoke, he asked a question, it was a question; he was cross-examined by you as to why he asked that question. And then "you ended" the applicants answer. I don't need to dispute it with you because the record will be clear in court. So on behalf of my clients, I ask that you disqualify yourself or as you seem to know the uh, uh procedure ask the rest of your Board whether they feel that you need to. As a last point I'll point out that at least one member of the Board, Mr. Evans seems to understand the role a little better and a couple of times essentially intervened on behalf of the public who have been asking questions and asked "...." and in fact answered to the applicant. It's a process I've witnessed hundreds and hundreds of times and he thinks that on behalf of his clients he asks that you disqualify yourself.

Chairman Halla asked for a reading from the Board. Christopher: Personally, I have not seen any evidence that's clear to him that you've been acting on behalf of the applicant. No one on the Board called for Chairman Halla to step down. Chairman Halla advised to the hearing that he is not going to step down.

Liane Crawford, Harmony Lane: From what I'm hearing it seems there were lot vagueness and a lot of questions that weren't clearly answered by the developer. And, uh based on that it would seem, I would be very surprised you felt you had enough information to vote on this second point tonight. I just feel that you don't have enough information, based on the questions that were asked and the answers received. There is questions like the size of the place, the hours, a lot of traffic, a lot of things, when I come out of Harmony Lane I feel like my life is at risk with 60 MPH cars coming by all the time so I feel like there are a lot of unanswered questions from the developers. Chairman Halla: I would like to have you tell me what they are so I can ask them. Ms. Crawford: Well, first there was.....I feel like there was a little hostility there when you answer me. Does anybody else feel that? But I just feel that....it's just a personal feeling. Chairman Halla: Alright then I won't ask you what they are and they won't get answered, that's fine. Ms. Crawford: There it is again. Ok, so first of all the hours. The hours were not clear. But it seems to me that if I were in a campground and I got up at midnight and I needed milk for a baby, then I would like to know that I could get that right there any time. So, I don't feel any commitment on the part of the developer that there will be some limitations. I don't get that feeling. So, I don't think you can either based on what I hear. Christopher: It's my understanding to the testimony of the applicant that they are only going to be open during the hours of 5 AM to 11 PM 7 days a week. I think they were clear. Ms. Crawford: I sense a certain doubt that might change depending on the need going forward and you know as the place gets developed. Christopher: I understand, but this Board must rely on the testimony that it's given. It is a matter of record that that is what they are intending. And it is that testimony from which the Board approve or not based on that testimony. Ms. Crawford: You know where I'm coming from. Christopher concurred. Ms. Crawford: So maybe the other thing might be the size, there's no clear answer what the size will be, no clear answer. Chairman Halla: Of the store? Ms. Crawford: Of the store and the laundromat. Chairman Halla: He did give a clear answer on to the total square footage. He did not give a clear answer.... Ms. Crawford: He said it was about 3600 square feet. Chairman Halla concurred. Christopher: Many of these issues will have to be addressed during the site plan review, the building process. They kind of go beyond our purview. They did set a limit, a range. They are going to be in this range, it is a matter of testimony. But again, those are details that will specifically be addressed at the Planning Board site plan review and subsequent building inspections. Chairman Halla: And his testimony being part of the record, if he wants to change what he's presented to tonight, he's going to have to come back. In other words, if he says we're closing at 11 o'clock and he wants to stay open until 2 in the morning, he's going to have to come back because that is part of what we're basing our vote on, is the evidence presented. And if he presents it to be whatever he did, 8 to 11 or 5 to 11 and he decides to change that, he has to come back. Ms. Crawford: So, if I may, we're still talking about the convenience store and the laundromat, but I'd like to, if you will allow me to speak to it in the context of the development because it is part of a very large development. To me, I'm not an attorney, I'm not hugely factual, but I'm going to tell you that it feels like a huge little city sort of being planted on the north end of your town, our town. And a small city with how many people potentially living there in the summer from May to October, how many is that, would that be? Christopher: Potentially 1200. Ms. Crawford: That's a lot of people potentially doubling the size of the Town of Canterbury. Chairman Halla: I'm not being contentious, it would be raising it by 50%. Ms. Crawford: OK, see I told you I'm not the math person, I don't know the numbers. I'm just telling you what I think and I think that the fair assessment of the impact of the whole project and since we're talking about number two, I have to stay within that context, that it's huge, it will have a huge impact for decades to come. And I think this is the thing that I would like you to consider when you take this vote. I think it's not right for this city, certainly not right for all of us. As you know, we don't think it is. I think it's a mistake and I'll be back for number three. Thank you very much.

Jim Wieck: Looking at the Table of Principal Uses, a retail establishment is allowed in the ordinance. The only thing that I see on this really is the laundromat as being something that calls for a special exception. Christopher: C on page 29, that requires for the laundromat. Jim: that's what I'm saying that's the only thing that falls in the Table. The retail establishment is allowed in the commercial zone. Chairman Halla: I looked at it as under the Tables of Uses, convenience store with gas pumps and no repair facilities and if you need a special exception in the commercial zone and it is a convenience store primarily, he just happens to not have gas. Christopher: Well, they are offering propane gas, so that's why I thought.... Chairman Halla: I think we are alright there. Jim: Use the word with I felt it would have to have gas and therefore it would fall under on page 26 retail establishments which would be not requiring outdoor storage of goods, including but not limited to groceries, pharmaceuticals, general merchandise, furniture, apparel and specialty goods, tobacco, newspapers.....that is allowed in the commercial zone. Chairman Halla: I was on the same page as Chris, I saw the word convenience store and it just happened to be a convenience store without gas. Chairman Halla: I think it is appropriate to hear it that way, the convenience store and the laundromat both, it's intertwined. The office space is allowed by right. Jim: I wanted to narrow this as much as we could to make it clear.

David Boles, 61 Harmony Lane South, an abutter: I just have a question: On the 3600 rough square feet that was presented, at one he said, it's a guess, it won't double, but it might be whatever.....so is he obligated if he goes beyond 3600 square feet to come back, is that what you said? Chairman Halla: Yes, if that is what he is representing to us, that's it's going to be 3600 square feet that's what it has to be. Mr. Boles: so if those three things together are more than 3600 he has to come back. I'd just like to say one other thing. This is a huge project. To have closed testimony on the campground on one meeting when they all the time to prepare what they want to present, we have to come here, listen, process that, we have no point to go home, think, plan, come back and testify. You didn't give us an opportunity to digest what they did and come back to another meeting and have something to say. You closed it after they had all the time that they needed to prepare their documents, do what they wanted, they knew what they were going to say when they came here, none of us even knew what was being proposed till we saw it at the first meeting. I was out of the country, I didn't see it, then we got no opportunity to prepare what we want to say, prepare our experts, we have an appraiser to rebut what she said about property values, but now you are saying that's irrelevant because the testimony said it wasn't go to affect.....it gives an appearance of impropriety. I'm not accusing you guys of anything, but it looks funny when you do something like that.

Chairman Halla: I think that if you look at the rules that govern zoning boards and how hearings are conducted and how notices are given, that we've done it the way that it's supposed to be done.

Mr. Boles: You may have done it legally, you may have done it properly, it does not look good.

Elizabeth Boles: I would like to add to that, Elizabeth Boles, in that as an abutter getting that letter I had no idea the magnitude of what this was going to be until the first meeting. I feel extremely responsible, I cried my eyes out for a week after this because I felt the responsibility of all these other people that are affected by this project and this campground that now because I didn't find out everybody in the area that maybe did not get a chance to see the Concord Monitor that this is what was going to be happening, I feel this huge responsibility. I know that there are comments like well why didn't they call me, how come I didn't know. I don't know half the people that live in Gilmanton. I don't know their phone number

across the pond from me, I had no idea. It's shaken me and it's upset me, I feel terrible and I'd like to apologize to all the people and as one of the few abutters it was now my responsibility to inform everybody that lives in the area that wasn't an abutter to that property that is so upset about this now. I had to say because I can't sleep at night thinking about it, I feel horrible and I don't necessarily think that it was done in the way that I wish it could have been.

Lisa Carlson: I am the clerk of the Zoning Board, my name is Lisa Carlson. I think I'd to try to explain to everybody here in a factual way the process if it helps you at all in any way. We are required as the Zoning Board in the Town of Canterbury to notify abutters about any concern that has a variance application or a special exception. I understand that this is your heart, I understand that these are your homes and where you live and it's difficult. But, as the Clerk of the Zoning Board I can't get into the heart of things, I can only get into the factual part of it. We have consulted with our town attorney, we have talked to people to ask for advice, we have our consultants just to protect the interests of the Town of Canterbury and you as citizens, you're taxpayers, you live here. We always say in Canterbury we have no problems, only solutions, well I know everybody is in a high speed wobble tonight, I don't take issue with that. But you need to understand that this is the process. We have no other recourse but to act the way we do. We aren't the Planning Board, we can't make decisions that the Planning Board makes. We can only make the decisions that are tasked to the Zoning Board, which is what we are trying to do. Chairman Halla has over 30 years of experience as the Chairman of this Zoning Board in this town. And if you've lived here for period of time, he has conducted all kinds of hearing about all kinds of issues and probably knows more about zoning law in this area than anybody. And you really have to trust him that he is acting in your best interest. No one is taking....(I'll be with you in a minute) no one is acting favorably toward anyone. But, we are tasked with addressing the issues in an application and that's what we're doing. We are tasked to hear what you have to say. Your recourse to the decisions that the Board makes are appeals. We have no other way of behaving and acting. It is not because we're issuing favoritism or want this to go one way or the other. We are acting by the rules that are our zoning ordinances that have already been decided by your Planning Board. Your recourse is to go to your Planning Board and ask for ordinances to be changed. We can't do that. If that helps at all, I hope it gets the meeting moving along and we're just dealing with the facts tonight. I'm sorry this is so difficult for all of you but we are not trying to make this more difficult for anybody, I assure you. Sir, did you have something you wanted to ask me?

(Person unnamed in left back of room near door)Is there a rule against, you guys saw the meeting last time, you see all the people that are here tonight, people that drove six hours, (Ms. Winsack corrected eight) eight hours, why did you not open the hearing to let people speak? Obviously, these people...I mean is it against the rules for you to open the meeting to the rest of the people.....Chairman Halla: Yes. Lisa Carlson: It is as of now because....Was it against the rules as of when we first started the meeting and we only heard from the officials from the Town of Loudon, nobody else. Is there a rule that we couldn't listen to other people? Lisa Carlson: The testimony was closed in the first hearing because there was no one else who chose to speak that was present. Chairman Halla: Let me try to clarify this. We go by certain rules and we conduct the hearings in certain manners. At the end of the first hearing we closed the testimony. Everyone here had more than ample opportunity to speak for or against on multiple occasions. The one thing I think everybody's forgetting and if you want to say that I am prejudiced, you go right ahead. The applicant is also entitled to some rights. He is a landowner, he owns 265 acres. There is a degree of fairness to everybody which includes him. And when you have the hearing and you've accepted testimony and the abutters have been notified, at the end of that hearing you close the testimony. If we let everyone speak

about whatever they want to speak, we'll be coming back a third time, we may get people from Oshkosh that are going to come to speak. At some point, we end the testimony, we reach a decision. There's an appeal process. The gentleman asking the question: I know, here on my jacket, HB Holmes, I go to these meetings all the time, usually I'm standing over there (indicating where the applicant is) where he is. But there has got to be some fairness. Chairman Halla: There is fairness. The gentleman: Why, to me that meeting the last time should have been left open. Mary McKenna from Gilmanton: I could swear to God you said we could all have our say again at this meeting. Chairman Halla: No. Ms. McKenna: Well, I wish she would look up the record and find it. Chris Lane: I have the minutes. I was just looking, I own a piece of property on Harmony Lane and on Route 106. Towards the end of minutes.... Chairman Halla: We are not discussing the minutes, we at the convenience store issue. Mr. Lane: In the minutes you had said, Chairman Halla stated the Board has heard all the testimony for the special exception. That was the campground. He made a motion to table voting on this special exception, that the Board reconvene in two weeks Wednesday, 18 December 2013, the Board will hear the two other exceptions, hear those and come to a vote upon all three. Chairman Halla: That is what we did, we voted on the first one and we stopped testimony. We were going to vote on the first one, which we did, we were going to hear testimony on the convenience store and the resource reserve natural and that's what we're trying to do. Chairman Halla: I want to get back to anyone else who wants to speak in opposition for the final time.

Rocco Bagone III, Rocky Road Campground, also an abutter and Canterbury tax payer: Everybody keeps talking about public safety and the additional traffic for the convenience store which is going to be open to the public. At some point or the applicant knows, the state police will have to be involved. Canterbury because it's under 3,000 residents is only a part-time police force. The primary police force for the Town of Canterbury is the state police. That's just another something to think about as far as public safety, any entrance and at the laundromat and the convenience store. The potential people could be 1200 and that's what they're proposing right here and now. Along with that, they're saying so many square footage, certain hours. And you say if they deviate from that they're going to have to come back. Now, suppose they propose longer, bigger, better everything to the Planning Board and it gets accepted. Chairman Halla: I don't think they're going to. The Planning Board would say that is not a matter of record from this meeting. Mr. Bagone: OK, just literally, I understand. The convenience store and laundromat, Canterbury is pro recycling. At one point in the previous meeting they said they were just going to haul off the trash off site. Well, if they are going to haul it off, then whoever they're hauling it to is going to have to do the recycling. They're just going to throw it in a dump? We don't recycle that part of town anymore, you know what I'm trying to say? Chairman Halla: Nobody is forced to recycle. Mr. Bagone: I understand that. I love the fact that Canterbury is pro-recycling. Aren't they at some point obligated to bring the trash to the dump? They're going to pay to have it hauled off to wherever? Christopher: All of us as citizens can make the decision with whom we....Mr. Bagone: But this is a commercial venture, so they're going to have a lot of trash. Christopher: But that's still a private issue. Mr. Bagone concurred. The property values, the applicant had a study done....Chairman Halla: That was about the campground, not about this. Mr. Bagone: It's about the whole project if it's going to be detrimental to anybody's property. Is that available or is that something I'd have to come by the town hall? Chairman Halla: You can come by the town hall for that. Mr. Bagone: There has been a lot of smoke and mirrors and vagueness, it's not part of this Board's responsibility, he understands and they're entering different phases and they're not sure of what's going to be in the first one, they're going to have a water park, they're going to have pavilions, but a lot of that is the Planning Board issue, correct? OK. The impact on the town, just because of number of potential people on the property which really hasn't been spelled out, 1200 is kind of....you know, for 300 sites, that's 4 people per site. I can't see that being even feasible on a NASCAR weekend. You're

going to have 6 or 8 people per site. Chairman Halla concurred. Mr. Bagone: I'm just letting you know. There is a lot of impact to the town. Just the amount of people that could potentially be there all summer long, 24/7 living there, you're going to have to hire another police officer and get another cruiser. Chairman Halla: That's entirely possible. Mr. Bagone: OK, I just want the Board to be aware of that also. Thank you very much for your time.

Gary Hermsdorf: 52 Snowshoe Hill Road or 52 North Harmony Lane: A question on the presentation that's going on right now: When would I have been able to see or be aware of this prior to coming here? Chairman Halla: You wouldn't have. Mr. Hermsdorf: Then that speaks very well to Mr. Boles because he walked into a meeting last time blind and you gave us no time for preparing. That's very wrong, very wrong. Yes, it is. It's legal, very wrong, but still legal. Chairman Halla: You can have exception with the zoning ordinance, you can have exception with the state regulations on zoning boards, you can have problems with our by-laws and I respect that. But the Board functions in certain ways for certain reasons and that's what we do. Mr. Hermsdorf: If I had called you right after the last meeting and said I'd love to speak on that, I was unable to attend, would you have allowed that? Chairman Halla: No, if you were an abutter you were notified and you could have spoken at the hearing. Mr. Hermsdorf: I have a question on the building that's going up. I'd like to know where the office is to hold the 10 or 20 rangers that are going to be there. Mr. Bernier: They are not rangers, excuse me, they are employees. They are not to be called rangers. Mr. Hermsdorf: Has that been changed? Mr. Bernier: Yes. Chairman Halla: Could you address this? The people patrolling the park are going to be employees of the park whether you call them rangers or whatever. Correct? They are not NH Police Rangers, they are employees. Jayne Cohen: We refer to them as rangers out patrolling the park. Chairman Halla: It's just a term you use? Jayne: Yes, like Disney World uses Cast Member. It's a term. Chairman Halla: Could you answer for me the building which you have said is 3600 square feet, so that would leave...the laundromat is approximately 1600 square feet, that leaves 2,000 square. Mr. Bernier: I did not include the office in that number. The office is 900 square feet. Chairman Halla: We need to know the entire dynamics of the building including the office. Mr. Bernier: The office is 900 square feet, I know that. 1600 for the laundromat; 2000 for the store. As far as the other issues, as far as the specifics for the store, it's going to down to every light fixture that's on the outside of the building. We understand if any of these numbers change we'll have to return.

Peggy Barile, Canterbury: You were very clear when you directed us all in the procedure of how the Board works. So, when you called the question and end the discussion will you be voting tonight? Chairman Halla: We already did. Ms. Barile: On the convenience store. Chairman Halla: Oh no, not yet. Ms. Barile: Will you be voting on the convenience store? Chairman Halla concurred. Ms. Barile: So then if you would, walk me through the part afterwards. Would you be writing up a decision after the vote? Chairman Halla: Yes. Ms. Barile: And then who gets notified of the decision, the abutters only or do abutters get notified of the decision? Chairman Halla: It's a matter of public record, it's posted. Lisa Carlson: We send out a copy of the written notices to legal abutters. Minutes of the Hearing will be available after the Board votes to approve them. Ms. Barile: You mentioned an appeal period. Now, who could appeal it? Just the abutters? When would the appeal period start if someone wanted to appeal? Chairman Halla: I don't think I explained that at the very start. There is a thirty day appeal period after which an aggrieved party can appeal any decision made by this Board. Ms. Barile: So you all heard that, right? Chairman Halla: What you have to do is ask for a rehearing. That has to be done if you have any intention of going to court. So, the process is we have whatever it is tonight. We vote on it, you're dissatisfied with that, you have to ask for a rehearing based on whatever evidence that you might present...saying I think you were wrong making this decision

because of x, y, and z. The Board then has to act on that. If we deny the rehearing, then you next is Superior Court. But you have to apply back to this Board before you go to court. Ms. Barile: So if you deny the rehearing, would those abutters again get that official denial? Chairman Halla: It would be the individual who appealed would get the written decision. Ms. Barile concurred.

Kelly Short: I just wanted to say, Joe that I thought I heard you say there is a thirty day appeal period after which they have to appeal. Chairman Halla: No, no. Ms. Short: Thirty days during which they have to appeal.... Chairman Halla: They must appeal within thirty days. If he wasn't clear about that, it must be done within thirty days.

Liane Crawford: So I am curious as to under what circumstances would the Board approve an appeal, since you feel you are all feeling I feel quite strongly about in favor of this project. What would make you vote to approve an appeal?

Chairman Halla: We are getting way off base here. Ms. Crawford: Not really because this is an important piece of what we're doing here. Chairman Halla: Compelling new evidence that wasn't available to you at the time. Ms. Crawford: New evidence. Chairman Halla: Yes. Legal errors..... Ms. Crawford: Excuse me...can I just back up on that. When you say available to me, since I'm not technically an abutter, but I'm on the lake, then that wasn't available to me. And you said an appeal could come from anyone who was..... Chairman Halla: An aggrieved individual. Ms. Crawford: That would be me. OK. Chairman Halla: You have to have evidence that was not available to you at the time of the hearing. Ms. Crawford: OK, that's easy. Yes. No, I know it absolutely was not available to me, that's clear. I'm asking you....what would constitute your approving.... Chairman Halla: I can't do that. I wouldn't know until we see it and vote on it. Ms. Crawford: So you just said one thing was that I need to prove that I as an aggrieved individual did not have the information in time to be.... Chairman Halla: Legally, did not legally have the information. Ms. Crawford: What makes it legal? Chairman Halla: If you're not an abutter. Ms. Crawford: But you just said that anyone could be involved in an appeal. I'm confused. It is either an abutter.... Chairman Halla: Either one. My read on that and I don't want to get into all of these various situations. You need to talk to someone who is a lawyer, perhaps. Ms. Crawford: Do you have information on how the appeal process takes place? Chairman Halla: The appeal process takes place much the same as this. You write an appeal.... Ms. Crawford: Is this documented in your zoning board record? Lisa Carlson: We have a statement that is issued. Ms. Crawford: Could you supply that to us please? Is it on your website? I would really like to have a copy of that. Because honestly, you probably can expect something like that though. It's important for us to know how to go about doing it. Chairman Halla: the other thing would be a stark legal issue, like a legal abutter was not notified. That's grounds for an appeal. That's grounds for a rehearing. Ms. Crawford: I don't know if there is anyone here in that situation?

Chairman Halla reminded the room the Board is listening to those in opposition to the convenience store. Brian Harvey read, "Abutter means any person whose property is located in New Hampshire and adjoins and is directly across the street or stream from the land under consideration. I am in Loudon; I am directly across Rocky Pond from this property. Chairman Halla: Now wait a minute, directly across from the pond... Mr. Harvey: I'm on the pond in Loudon, on Route 106. Chairman Halla: That doesn't make you an abutter. Lisa Carlson: That makes you an abutter of the pond, not the property. Mr. Harvey: Abutter means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream, now it doesn't say pond, but I'm thinking stream is water from the land under consideration. Chairman Halla: Directly across. You abut the pond, but you don't abut their property, so you're not an abutter.

Web Stout: I might be able to help you in that. In the pond....I know it's not Lake Winnepesaukee, but let's say something happened at the Weirs, let's just say. Way over in Moultonborough do you think they are notifying somebody directly across? Mr. Harvey: Right, right, so it's probably arguable isn't it? Noise travels as you know over water. I can hit a golf ball from my property to that property. I think I'm close enough to be an abutter, but we'll have to get an attorney. Chairman Halla; we're getting off into who is an abutter and who is not.... Mr. Harvey: Ok, we'll drop that. Can I ask you if the Town of Canterbury has a noise ordinance? Chairman Halla: No, not that I know of, no. Mr. Harvey: So 11 o'clock at night people are hanging around the convenience store. Chairman Halla: It's going to close at 11 o'clock. Mr. Harvey: ...till 11 o'clock, so a quarter of eleven there's potentially there could be some noise. We can't talk about the campground, but I get up at 5 o'clock in the morning to go to work. 11 o'clock is quiet time means I get six hours sleep. No problem for you. I appreciate your consideration.

Kathy McLellan: Believe it or not this is about the convenience store. I don't think anybody has mentioned the impact that this convenience store and the entranceway to the whole campground is going to have on the residents of Harmony Lane, north and south, coming in and out of Harmony Lane. How far is the distance between that entrance and Harmony Lane South? Mr. Bernier advised at least 1,000 feet, it is a long way. Ms. McLellan: It is a long way. So you wouldn't anticipate any difficulty for the people coming and going for the people on Harmony Lane with the traffic coming and going out of that store or the campground. Chairman Halla: I wouldn't anticipate that it would be a huge problem, no. Ms. McLellan: A huge problem, but it could definitely traffic. Chairman Halla: Again, the traffic issues will be dealt with with the Planning Board, site plan review, where the driveway is, where the placement is. Ms. McLellan: And how it affects egress, OK. Thank you.

Chairman Halla asked if anyone else wished to speak in opposition. No one came forward and the testimony was closed at 8:45 PM. Chairman Halla: Discussion here. Christopher: I'll jump in here. I do not see a problem with the use, convenience store and laundromat. I think it's within the acceptable uses for a special exception. Quite honestly, it seems like it would be a benefit, more of a benefit to the campground endeavor and to the public at large. I just don't see a major problem. Jim: I'm not convinced we need to discuss anything other than the laundromat based on the Table of Uses. A retail establishment is allowed and it would be a retail establishment. Chairman Halla: But further defined as a convenience store. Chris: But we can't change his application, can we? No. Chairman Halla: He applied for a convenience store... Jim: What we really need to think about from a practical standpoint....by the case it does look like we could go through the conditions and they generally meet the conditions. Web: I feel the same. I mean I'll probably get crucified but I think these folks on Route 106, they've kind of been blessed. But I think Route 106 is designed to handle traffic. These turning lanes and this and that that would come down the road, but it's been the main corridor. And I can understand it's 55 MPH you never see 55, you don't 35 on the road, you see 45, 50. We gotta go with what's the speed. I do not see a problem.

Chairman Halla called for a motion. Jim Wieck made a motion for the Board to **Approve** 2013-5 (B) going through the general conditions as follows:

1. Granting the permit would be in the public interest. It is a use that is allowable with a special exception within the commercial zone.
2. The proposed use would not adversely affect the property values in the district. Speaking specifically to the convenience store/laundromat which is a significant distance from residences and given the lack of any

3. information that specifically talks about diminution of property values associated with a convenience store it does not seem it would affect the property values.
4. The specific site is an appropriate location for the proposed use. It's serviced by a state road, but not a significant size, there is a lot of traffic going through there that might want to stop at a convenience store.
5. The proposed use would not adversely affect the health and safety of the residents and others in the area and would not be detrimental to the use or development of adjacent or neighboring properties. It's largely surrounded by the proposed campground property as it is and is abutting Route 106.
6. The proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odors, heat, glare or unsightliness. It would be an additional convenience store along that roadway in an area that really doesn't have too much in the way of development.
7. The granting of the permit would be in the spirit of the ordinance. Going back to it being allowed in the Table of Uses with a special exception in the commercial zone.
8. The proposed use would not constitute a hazard because of traffic, hazardous materials, or other conditions. The propane storage would have to conform to state requirements. The traffic again as has been discussed, Route 106 is a large road. There should be the ability to pull off and that would be handled by a state permit.

Web Stout seconded the motion. There was no further discussion. The Board voted to unanimously **Approve** the application. Chairman Halla explained the thirty-day appeal process.

Respectfully submitted,

Lisa Carlson, Clerk
Board of Adjustment

