

**BOAD OF ADJUSTMENT**

**JANUARY 3, 2007**

**MEMORIAL BUILDING**

**7:00 P.M.**

*The following are to be considered draft minutes only until approved by the Board at their next meeting*

**Board members present:** Chairman B. Manning, Vice-Chairman Cynthia Hayes, John Graham, Mark O'Halloran, Andy D'Amico, Alternate Gene Hayes, and Selectman Robert Anderson.

**Abutter's present:** Ryan and Amanda Peterson, and Edward & Donna Abair.

B. called the meeting to order at 7:00 p.m.

The Roll was called.

**Minutes:** Cynthia moved to accept the December 6, 2006 minutes as written, seconded by Andy and unanimously approved.

**Literature and Correspondence:** B. stated that a letter had been received from the Conservation Commission regarding their concerns for a wetlands crossing application. The letter will be discussed after the public hearings.

**Gestay – Continuation of Variance Hearing:** At 7:05 p.m. the hearing for Allen Gestay for an Area Variance Request on Brook Road was opened. B. indicated that the first issue regarding the uncertainty of the property line has been addressed.

The Board had requested that Mr. Gestay address wetlands delineation concerns. B. read a letter dated 12/12/06 from Beaver Tracks Soils and Wetlands Scientist describing the wetlands area on Mr. Gestay's property. According to the letter, the wetland area was flagged. "I paced off 110 feet from your house to the nearest wetland flag. The wetland is classified as a Palustrine Forested Wetland (PFO1/4B)." Bruce Gilday, Soils Scientist, present for Mr. Matarazzo's hearing, explained this as a deciduous forest delineation, very common in glacial areas.

The Board reviewed the plan presented by Mr. Gestay. The addition is approximately 108' from the wetland, so does not fall within that setback requirement. The addition will be 20' wide not 24' feet as shown on the plan. Mr. Gestay mentioned that for peace of mind and safety he would like to change his request from 27' to maybe 22' in case a mistake in measuring had been made, he would not have additional problems. He is not looking to change anything other than to clarify that the house is only going to be 20 feet not 24 feet. B. felt the building would safely be greater than 26 feet from the property line. Mr. Gestay explained that his concern was just in case someone had made a mistake with the property line determination. B. stated if someone were to find a stake or

something not there now, the recourse would be to seek an equitable waiver. As currently shown, everything is correct based on the information that is known.

B. stated that there is not a wetlands issue. The property line has been clearly identified. The Board's concern is not with the size of the addition but with the distance from the property line.

The Board thanked Mr. Gestay for going through the steps to clarify the property line and identification of the wetlands.

B. asked if the Board had other questions or comments.

Cynthia stated Mr. Gestay owns a lot that is a conforming lot of 2.33 acres. When he built his house he chose to build it in the narrowest section. He does have a lot that he could have built his house on without further need for any variance. Cynthia had a general question as to whether the Board would grant variances for poor planning. Is there a point when you say he has a lot where he could have built like he wanted to but he chose to build where he did. Now it doesn't fit. If some comes in and wants to build a bigger house that doesn't fit where it sits now, would the board grant variances for those situations?

B. indicated that the Board is under no obligation to grant a variance. When Mr. Gestay's lot was created there probably was no zoning in town. Someone cannot be accused of poor planning when there was no zoning in town to take setbacks into consideration. Our setback requirements for side property lines are more restrictive than a number of towns in the area. Someone may not have anticipated that there were going to be 35' setbacks from side property lines. B. stated he doesn't feel that this can particularly be called poor planning. B. indicated that the houses in that subdivision seem to all be set in reasonable locations.

B. indicated that he felt that the variance should be granted and there should be some statement regarding the Board's concerns. He stated his concerns with the slopes and that the driveway should be run away from Mr. Baker's property as much as possible. The planned addition is giving Mr. Gestay the opportunity to make this into a year round residence rather than a weekend place. He does not feel that this would be changing the character of the neighborhood and would do justice to the applicant.

Mr. Gestay indicated that half of the addition would be for a bedroom and half would be for an addition to an existing living room. No new bathrooms will be created.

B. addressed concerns not to disrupt land on Mr. Baker's property. He felt the Applicant should be careful about any impact the driveway or building addition would have on Mr. Baker's property. John agreed with B's statement.

Mr. Baker had previously indicated to the Board that he didn't have a concern with the proposed addition. His concern was with the location of the property line and if anything were going to change on his property.

Mark asked Mr. Gestay to make sure that run-off from the roof line follows the natural drainage area which should be maintained on Mr. Gestay's property so as not to disturb Mr. Baker's property. Mark stated that he is leaning toward granting the variance but feels the drainage issues should be addressed in the approval.

B. asked Cynthia to review the Area Variance checklist.

1. *The proposed use would not diminish surrounding property values because:* The request is in keeping with the character of the neighborhood. The location of the house would not negatively impact the surrounding property values. There is nothing in the proposal that would reduce property values.
2. *Granting the variance would not be contrary to the public interest:* Unknown property lines have been identified and concerns regarding wetlands have been addressed and the wetlands have been delineated.
3. *Denial of the variance would result in unnecessary hardship to the owner because:* The unusual characteristics of the property limit other possible feasible options for the property.
4. *Granting the variance would do substantial justice because:* The property characteristics limit what the applicant can do on the property. The home is changing from seasonal to year-round use.
5. *The use is not contrary to the spirit of the ordinance because:* The proposal is not impacting the rural character of the neighborhood. There is not going to be a lot clearing required on the property, which would impact neighboring properties. The abutter does not object to the addition. The abutter has addressed concerns regarding soils being disturbed on his property.

The Board discussed with Mr. Gestay the minimum setback he would require. The Board needs to approve a number that is measurable and enforceable.

Cynthia indicated that the map indicates 26.5'. She felt it was important to have paperwork to support the request. B. indicated the addition is not going to be 24 feet as shown on the plan, so according to the measurements on the plan, there is variable room to work with between the addition and the property line as shown.

Mark agreed that variance distance should be as referenced on the plan.

John moved to grant an area variance to put an addition on Mr. Gestay's house. Said addition shall be no less than 26.5' from the property line. Mark O'Halloran seconded the motion. The Board indicated the approval should state that care should be taken when filling for the driveway and the building, and drainage should be properly directed for minimal impact on the abutter's property. All Board members unanimously approved the motion.

B. thanked Mr. Gestay for working with the Board and addressing their concerns.

**Annual Report:** Cynthia and B. discussed the Zoning Board's Annual Report. B. will draft a report and submit it to Cynthia for editing.

**Correspondence:** B. read the letter from John Trachy, Conservation Commission Chairman. The Conservation Commission received an expedited wetlands application for a lot that was approved for subdivision by the Planning Board this summer. The application requests a wetlands crossing for a driveway on a forested wetland. The wetland may be in excess of 10,000 square feet. The Conservation Commission felt that there might be a more feasible alternative and asked that this be addressed. They declined to approve the application for the wetlands crossing. The Commission is also concerned that the subdivision may have created a lot that cannot be built on under existing wetlands ordinances.

B. indicated the Conservation letter was reviewed at a recent Planning Board meeting. The Planning Board felt the owner should be asked to come before the ZBA for a Special Exception for the wetlands crossing. There is an issue with a new lot requiring a Special Exception. The proposed wetland crossing may not be in the most feasible area for minimal impact. Mark indicated that a lot line adjustment may eliminate a severe crossing of the wetland. There is also the possibility of having a joint driveway, which would provide minimal impact of one less curb cut off Route 114.

The Board discussed the issues. Cynthia stated the Planning Board has indicated that they may not have looked at this closely enough at the time of subdivision. The Planning Board did review other possible alternatives to the wetlands crossing. Andy stated he thinks the Planning Board should address correcting this situation with the owner. Board members agreed the Planning Board should ask the owner to discuss possible solutions with them. If an alternative is not feasible, then the owner may be required to come seek a Special Exception.

Board members agreed to have B. contact the Planning Board Chairman, Kevin Lee addressing the Zoning Board concerns.

**Zoning Ordinance Corrections:** B. addressed changes the Board presented to the Planning Board for the Zoning Ordinance. The wording for motion for rehearing and

appeals were corrected to correspond with state statutes. The Planning Board concurred with the changes presented by the ZBA.

**Matarazzo – Continued Special Exception Hearing:** B. Manning, Andy D’Amico, and Mark O’Halloran stepped down. Vice Chairman Cynthia Hayes stepped in. Gene Hayes was asked to step in. Cynthia, John and Gene were the voting members for this hearing.

Present: George Matarazzo, Bruce Gilday Soils Scientist, and Peter Blakeman Engineer.  
Abutter’s Present: Donna and Edward Abair, and Ryan and Amanda Peterson.

Cynthia reopened the public hearing for road and driveway crossings of wetlands in a wetlands conservation overlay area. Cynthia thanked Mr. Matarazzo and his representatives for taking the time to do the site visit with various board members and town employees. At the site visit the proposed road off Four Corners Road was walked as well as a portion of the road off Town Farm Road.

Cynthia indicated in her review of the Zoning Ordinance, in the case of a Special Exception, the Zoning Board should keep the Planning Board informed of the steps that the ZBA is taking. At the site visit there were two areas of wetlands that were found and identified and are not on the maps.

Cynthia read a letter that she drafted to the Planning Board regarding the Board’s concerns. The ZBA is requesting a letter from the Planning Board ...“affirming that you and he have agreed that, in accordance with the subdivision regulations, there are no other feasible alternative locations for entering the subdivision. Please be specific as to reasons regarding Hazzard Road.” Since two wetland areas were found at the site visit, the letter also requests the ZBA be notified when all wetlands have been identified, so the ZBA can be aware of how many wetlands crossings they are dealing with.

Peter Blakeman, in response to Cynthia’s proposed letter, stated that all the wetlands areas have been located and are flagged. Approximate locations are shown on the map presented. The surveyor has yet to complete the survey.

There are six areas where they are asking for wetlands crossing, five road crossings and one driveway crossing. Peter reviewed the areas on the maps where the road and driveway crossings are located.

Peter explained the common septic area for the cluster houses will be in an area behind the homes in an area of much better soil from what was originally presented. The cluster configuration proposed requires a single common system, which will be a pumped system. This also locates the septic further above the wetlands.

Bruce Gilday, Soils Scientist responded to the letter to the Planning Board regarding alternatives to the proposed wetlands crossings. Bruce indicated that George and Peter

have worked tremendously to reduce the number of lots and road that would impact the wetlands. They are keeping it away from impacted areas and are crossing areas where the wetlands are narrowest. There is no practical purpose to locating the entrance on Hazzard Road. The alternative of coming off the area of 4A has a greater impact to the wetlands. Some corners of wetlands are being nipped, but the crossings are at the narrowest points possible.

George reviewed his early discussion with the Planning Board regarding Hazzard Road as an access. Hazzard Road is greater than 3,000 feet long before it gets to the site, much greater than the required 1500 feet before you have a turn around. The Planning Board has told him they do not want to see him use that road for access. There would be a large impact to the homes along the beginning of Hazzard Road. George indicated he has presented a lot of ideas to the Board. Due to the characteristics of the property, the topography, and the crossings of the wetlands, the impact of access to the site has been taken into consideration. There does not appear to be another feasible way into this site.

Cynthia stated the criteria for the ZBA to grant a Special Exception is based on there being no other feasible alternative. She is looking for the Planning Board to give the ZBA a more definitive answer in print, before a final decision is made.

George indicated that Bruce has looked at watersheds, runoff, and impact of drainage. Maps have been drawn indicating the watershed feeding the area. They have looked at a possible aquifer, and Bruce has done some study on that.

Cynthia stated that they have addressed some of the issues previously brought up with the aquifer and watershed. The next step is to have the information in writing from the Planning Board so they know there is no other feasible way of accessing the property and that the Board is certain there are to be 1 driveway and 5 road crossings.

Cynthia indicated that she will talk to Kevin Lee, Planning Board Chairman, advising him the ZBA cannot make a decision until they know that this is the most feasible alternative. Gene Hayes made a motion for the ZBA to send the applicant back to the Planning Board to be sure that all the bases regarding other alternative means of access is has been covered. The motion was seconded by John and approved by the 3 board members.

Peter presented and discussed a drainage plan for the overall drainage of the property. The final drainage analysis will be looking at all 7 sub areas as far as evaluating where the water flows. The State will be looking at these areas as well for storm water treatment and erosion control plans. He indicated they did go off the property to see the origination of the drainage.

Bruce Gilday presented information regarding the aquifer for the Board's review.

After discussion the Board unanimously agreed to continue the Special Exception Hearing for February 7, 2007 at 7:15 p.m.

Ed Abair asked for clarification regarding the common land around the cluster development. George explained that it would remain as common land, and could not be further subdivided. It might become conserved land but it could never be developed. The areas around the cluster homes site also cannot be further developed.

The hearing was adjourned. Recused board members stepped back in.

**Tim and Jennifer Lee:** At 8:15 B. opened the discussion regarding the request by Tim and Jennifer Lee for a Special Exception. Present: Tim and Tom Lee. Tim explained that he bought 30 acres 4 years ago from his father. His father had requested that 5 acres be given to his brother Tom. Two years ago he subdivided 5 acres with 750 feet of frontage to sell. Before he finalized the plan he questioned the Planning Board whether he would be able to further subdivide the property because there would only be 260' of frontage remaining on his lot. He was told then that he could do this as long as he had 50' ROW off the State Road for both lots. About a year or so ago he was told the same thing.

Since then something has changed. He went before the Planning Board about 1-2 months ago and was told now he doesn't have enough road frontage to subdivide. Tom has a house on the property, which he has owned for about 10 years. Tim wishes to subdivide 5 acres for his brother and sell his own home and the remaining land. The Planning Board indicated that he needs an additional 140' of frontage to subdivide. The property is located off a Class VI road, and the Planning Board said he could create the additional frontage by upgrading the Class VI road to town specifications. He cannot afford to upgrade the Class VI road.

Tom indicated he also looked into refinancing his house, and he is unable to get a loan since his brother has a home also located on the property.

The Planning Board told them they could not subdivide and asked that they go to the Selectmen about a waiver. He spoke to the Selectmen and they indicated that he should go to the ZBA.

Bob Anderson stated that the Selectmen would be willing to give him a waiver, but they thought the applicant needed to go before the ZBA for approval first.

Tim indicated that he never would have subdivided with the amount of frontage that he created for the lot he sold if he knew that he would not be able to further subdivide.

B. explained that there is a conflict between ordinances. The Zoning Ordinance allows a 50' row but the Subdivision Regulations do not. The more stringent ordinance applies.

In the past the Planning Board was applying the Zoning Regulations to situations such as these, which had not been an issue until a proposal was presented where the Ordinance was being abused. When the Planning Board asked for interpretation of the regulations, they were told that the Subdivision Regulations apply.

B. indicated that according to the Zoning Ordinance this can be done, so the ZBA does not have a problem with what they are considering. The Zoning Board does not grant waivers or create lots. B explained that the Board would not be holding the Special Exception Hearing that was scheduled. In good faith the applicant was told to go to the ZBA because that is what was felt was needed. The Board agreed that the applicants should be refunded their application fees. Bob Anderson indicated that he felt the Selectmen would approve a refund.

The Board indicated the Selectmen could vote to grant a waiver, but a condition of approval could stipulate that the property not be further subdivided. The Board suggested the applicants go back before the Planning Board to review their situation. The Planning Board does have the option to waive some of their requirements if the proposal meets sound planning. B. informed the applicants, however, that the Planning Board has no obligation to grant subdivision approval. Tim indicated the he would want some assurance before he goes through with subdivision expenses. B. indicated he would send information regarding the Zoning Board's feelings in this situation to Planning Board Chairman, Kevin Lee.

**Miscellaneous Business:** B. suggested that the Board would start looking at information they would like posted on the web site at the February 7 meeting.

B. stated that Mr. Baker had called him to express an interest in becoming an alternate on the ZBA. He preferred to wait until the issue with his neighbor was resolved. B. had also thought about getting in touch with some of the people from Hogg Hill who had been present during recent hearings. Cynthia suggested that people should be asked to attend and watch the process to see if they are interested.

The Board encouraged B. to contact Mr. Baker and others who might be interested.

John Graham commended B. in his handling of the difficult situations the Board has been faced with recently. B. thanked the Board for their cooperation in these matters.

The Board unanimously agreed to adjourn at 8:45 p.m.

Respectfully Submitted,

Janet Roberts,  
Administrative Assistant