

**ZONING BOARD OF ADJUSTMENT
MEMORIAL BUILDING 7:00 P.M.**

NOVEMBER 3, 2009

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

Present: Cynthia Hayes, Chairperson, Bill Sullivan, Kathy Richardson, Barbara Dunlap, Gene Hayes and John Chiarella (Selectman representative). Not present: Kevin Waite.

Others Present: Attorney Greg Michael, Tom Carr, Mark Brunelle, John Trachy and Sara Ellis.

Chairperson Cynthia Hayes called the meeting to order at 7:00 p.m.

Appointment: Chair Hayes introduced Deborah McGlew and called for the Board to appoint Ms. McGlew as Recording Secretary. Nomination made by Cynthia, seconded by Gene and all in favor.

Minutes: Kathy made the motion to accept the minutes of October 20, 2009, seconded by Barbara, all in favor.

Literature & Correspondence: Cynthia distributed copies of How to Make Your Town Farm Friendly information on an upcoming event sponsored by Ausbon Sargent.

Zoning Regulations – Planning Board and Upper Valley Planning Commission’s draft of Minor Rewording and Supporting Definitions dated 10/8/09, was distributed.

Copies of The Board of Adjustment in New Hampshire – Handbook for Local Officials dated October 2009 were distributed.

Cynthia inquired if any board members had the opportunity to attend the recent Planning / Zoning conference at Loon Mountain – none attended.

Brunelle, Mark – Special Exception Hearing (map/lot 30-306-48)

At 7:10 p.m. Chairperson Hayes opened the public hearing on request for a Special Exception to the terms of Article IV. Section 4.10. Applicant proposes to install a driveway, culverts, and do associated grading to access the buildable area on the property; in a Wetlands Conservation Overlay District. Property located on Main Street (NH Route 114).

Cynthia referred to Zoning Regulations, Page 9, 4.16 B. “Road, driveway and utility right of way or easement crossings only if there is no feasible alternative location and subject to approval of wetland permits by the Wetlands Bureau of the NH Department of Environmental Services, if required”.

Attorney Greg Michael spoke on of Mr. Brunelle. Attorney Michael referred to a drawing of the property pointing out the proposed location of the driveway and

culverts. Atty. Michael pointed out that a State of NH Driveway Permit is in place (permit #6862) and a State DES Wetlands and Non-Site Specific Permit (2005-00316) to allow the filling required for the proposed driveway. Atty. Michael provided copies of the permits for the record. The use is permitted, residential single family use, the issue relates to the lot configuration in the wetlands. The state is very stingy in its permitting process and it wants what you want, the minimal impact to allow the use of the property.

Tom Carr, Wetland & Soil Scientist from Meridian Land Services, pointed out the house, highway, two interim streams associated with the wetlands including 3,376 wetland impact. Total buffer impact is 12,300 sq. ft. the 100' buffer was reviewed and approved by the Conservation Commission, it was sent to the state and the state approved it. Since that time the new ordinance of a 100' buffer has been enacted. Mr. Brunelle started under his valid permit and was stopped - we are here tonight for a special exception. One note, the original septic system design had the leach field within the 100' buffer. After consideration of the new ordinance the septic setback was moved, which requires a septic plan be resubmitted for approval to the State. Mr. Carr pointed out the water, septic and utilities on the plat. The utility is out of the buffer but not all the fill.

Chair Hayes asked if there were any abutters present that had any questions or comments. None came forward. She asked if the board had any questions. Gene asked why not access lower on the property. Mr. Carr responded that the plan was drawn to minimize the impact, taking the narrowest and most efficient location for the driveway. All the grading needs to be 20' from the lot line per DES regulations.

Bill asked how much grading was required. Tom demonstrated on the map, stating that it will be fairly balanced, relatively flat @8% at its steepest point coming in then graded to relatively flat - an easy sloping driveway.

Cynthia asked if the lot was cleared. Mr. Brunelle responded that the driveway, septic and house lot has been cut. The remaining trees left standing.

Attorney Michael read the "Facts Supporting This Request" as submitted with the application [attached]. On item A) proposed use Attorney Michael noted the house is built to the rear of the lot in a buildable area that does not require further variance or relief from this board. The use is allowed. The Special Exception is needed to support that use for the driveway. The second criteria (B) proposed use non-injurious, noxious or offensive. The leach field that was in the buffer was moved, there is nothing about this that is injurious or offensive. We are taking the proper steps to come here, we have been to the Conservation Commission and we are going back for a re-approval for the septic from the State. The third factor (C) the proposed use will not be contrary to public health safety or welfare.... We are trying to do this accepted use in the best possible way with the appropriate permitting and meeting all other zoning standards. The fourth (D) the location and size of the proposed use, the nature and intensity of the operations involved... in harmony with the orderly development... In this zoning district the minimum lot size is 1.5 acre, this is 2.5 acres, proposing a 3 bedroom house, legal frontage on 114, the radius is satisfactory, safe and permitted by the State of NH. We

believe it is in harmony using a lot of this size for a single family residential use. (E) The last criteria, the operations in connection with the proposed use... relates back to the first criteria the same as stated in criteria (A). This criteria applies to something other than what is proposed here.

Attorney Michael summed up by stating nothing about this is objectionable, it meets the criteria, and the purpose of the ordinance is to provide relief in cases like this. We propose minimal impact as mandated - one of the criteria is to get DES permit which is in place. We believe the criteria are satisfied. We believe that Meridian Land Services plan carefully lays out what the dynamic is here. We ask that the Board approve this request.

Cynthia asked if anyone was present that would like to ask questions of the board or wished to speak. John Trachy asked if the impact was in excess of 10% of the lot size Tom Carr stated he did not have this calculation in front of him. John asked if a concrete pipe was proposed stating given the size would an open box culvert be preferred. Tom Carr explained Meridian uses Hydro-Cad which calculates and suggests a culvert, using water shed area, soil types, the calculations are based on a 50 year storm event. Open box may be preferable under current viewpoint, the approved permit is four years old. John asked, given the channeling, what will slow the velocity of the water. Tom responded rip rap, an angular stone used on both sides, further explaining how it slows the water. Cynthia asked if the permit were submitted to the state today, does Tom think the DES would have a problem with an open box culvert. Tom responded he does not believe so. Tom stated he was in contact with Kim Tuttle at the DES and the concrete culvert proposed is acceptable. Tom further stated that Fish and Game prefer concrete. John expressed his concern that wildlife traverse on natural material. Tom stated yes, this driveway and culvert is a change in the traverse, as are all our home sites and driveways. Tom explained the culvert slope is about a quarter inch per foot. Further explaining the preference of concrete over smooth bore. Tom responded to John's questioning the ability of critter crossing, stating the 3/1 slope on side is typical - This is right on 114 - We all live in houses that displaces wildlife. John distributed a page of information relative to culverts.

Cynthia asked about the width of the culvert. Tom responded it is about 4 ½ feet, the stream is 3 ½ feet. There are two crossings, one with 2 pipes and one with one. Putting in the larger culvert raises the bed of the driveway which increases the impact to the wetlands.

Cynthia asked if the neighbors know where the radius of the well is? Tom responded the current rule with wells, enacted in 1989, if you drill your well in a spot where the radius goes off your property, you sign a well release form and record it with the registry of deeds. An acknowledge statement from the land owner that they have no protected radius off their property. That is why on this plan you will see the well radius ends at the property line - he has no protected well radius out there on anyone else's' property.

Cynthia asked where the septic system intrudes on the buffer, does that now require a variance. Tom responded that they interpret the ordinance as a special exception being

allowed for the driveway and utilities – sewer, water and electricity are utilities. This is a utility associated with the house required to make the house functional. Although the utility is not in the buffer, we have moved it out of the buffer, if you look at it in consideration of the building setbacks with the wetland buffer, we have done as much as we can to keep as much impact out of the buffer as possible. Cynthia made the board aware that the infringement on the buffer would require a variance if not following Tom's line of reasoning that it is in fact a utility to be included in the Special Exception.

Cynthia asked how the buffer would be protected in the future. Tom agreed buffer ordinances are difficult to enforce uniformly. Tom added that wetlands are not as obvious as people may perceive. Cynthia suggested it could be recorded on the plan for future owners. Attorney Michael suggested a reasonable condition to record a survey plan, so if anyone runs a title, it would be a matter of record and further it could and should be on file here with the Town of Springfield. Tom pointed out that his experience is that the Registry of Deeds doesn't want anything to do with driveway plans and such. Cynthia concurred with Tom's experience with regard to the Registry of Deeds' regulations. Attorney Michael suggested a simple descriptive covenant be recorded to protect future property owners.

Cynthia asked if these plans cover protections during construction. Tom pointed out the silt fence that will be dug in with a "j" pattern.

Cynthia asked if there were any further comments or speakers. John Trachy restated his position on the preferred use of a box culvert. Cynthia asked Tom or Mr. Brunell what it would entail to change to a box culvert. Tom pointed out that the impact would not be enough to reasonably expect the owner to make the changes at this point, given he has a permit. John Chiarella suggested that changing to a box culvert could be pretty disruptive at this point and there are certain detrimental affects, they are not without their problems. Cynthia asked Tom if he had an idea what the cost of changes would be. Tom responded that he wouldn't dare to guess, further explaining that the proposed culvert will do the job well.

Cynthia closed the public hearing and explained the Board would now enter into deliberations.

Cynthia asked if the Board wanted to suggest conditions. Bill stated that the idea of a covenant is worthwhile in addition to the plan being on file at the Town office. Bill further stated that he is reluctant to impose what is not required and permitted by the State of NH. After brief discussion the board concurred that a covenant on filed with the Registry of Deeds and a plan on file at the Town Office as conditions of approval.

Cynthia asked the Board for a vote to grant the Special Exception with the condition that a plan be on file here at the Town of Springfield office, reinforced concrete culverts to be 6" below base stream and a descriptive covenant explaining the nature of the buffer be placed on file with the Registry of Deeds. Motion seconded by Bill and unanimously approved.

The Board voted unanimously to adjourn at 8:30 p.m.

Respectfully Submitted,

Deborah McGlew
Recording Secretary