

ZONING BOARD OF ADJUSTMENT

Wednesday, May 24, 2006
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten, P. Harris, P. Oberhausen and L. Couture.
Alternates Present: E. Hawkins and J. Bennett.
Staff: E. Murphy.

The chairman opened the meeting at 7p.m. All stood for the Pledge of Allegiance.

Abutters' Hearing – Marshall & Marguerite Ford: Continuation of a request for a Variance of Article 10.C of the Zoning Ordinance to construct a single family residence without the required frontage. Property is located on Jodi Drive in the “R” Zone, Tax Lot 226-020, ZBA # 0606.

Atty. Patrick Wood presented the application. Mr. Marshall Ford was also present.

Atty. Wood explained that at the last meeting it was voted to table the application to allow the applicant time to bring a resolution to the offers made during that public hearing regarding upgrading Jodi Drive to Class 5 status and /or to provide additional information. They held discussion with Mr. Allen Gilbert and Ms. Donna Cilley but no agreement was reached. Mr. Gilbert’s plans to develop his property will not be developed for some time. Mr. Gilbert does intend to come in with a subdivision plan. He understands that it will be necessary to bring Jodi Drive up to Class 5 standards before he receives subdivision approval. Ms. Cilley has the same understanding regarding the Class 5 standards but is not sure what those standards are. He spoke to the Town Administrator, Jeanne Beaudin, and the Town Planner, Candace Daigle, they both advised him that the selectmen would require the road to meet the standards set forth in the subdivision regulations in order to become a Class 5 road. Neither of them could recall any instance when the selectmen or the Town have taken a different position except for certain emergency lanes. Basically the subdivision standards for road designs would be the standards the town would require to bring Jodi Drive up to a Class 5 road.

Atty. Wood stated that he looked at State law dealing with Class 6 highways. RSA 231:21-a Uniform Provisions Governing Class 6 Highways. The statute states that all Class 6 highways shall be deemed subject to gates and bars even if there are no such structures in place. The statute also notes that while Class 6 highways are not subject to any municipal duties of care or maintenance the town has the same regulatory authority over such highways as is the case with Class 5 highways. It is still a town road and you have regulatory authority including the authority to review driveway permits. The regulatory authority may be exercised by the Planning Board but may be delegated to the road agent or the

selectmen as outlined in RSA 236:13. It talks about the delegation of the power concerning highways to the Planning Board who can delegate it to the highway agent or selectmen.

RSA 231:8 states a Class 6 highway may be altered by the selectmen upon receipt of a petition. The selectmen of a town may layout a new Class 4 highway and Class 5 or 6 highways or alter any such existing highway within the town for which there shall be occasion. In addition to the petition to the selectmen there may be a petition to the town itself and a reclassification voted on at Town Meeting. He stated that there is a petition for reclassification that says that the reclassification may be conditioned upon compliance with betterment assessments to bring the road to standards not higher or more stringent than those reflected in the best highway giving access to the Class 6 highway. There are similar requirements for reclassification by the petition to the selectmen. The selectmen or the town can require that the Class 6 road be brought up to certain specific standards.

RSA 231:28 is for Conditional Layout for Existing Private Rights-of-Way or Class 6 Highways. The section provides that a Class 6 highway if doesn't conform to construction standards and requirements that are currently in affect. The selectmen may conditionally layout with requirement for a betterment assessment. The landowners along a Class 6 road will be assessed a fair and a proportionate amount to take care of the improvements.

RSA 231:29 states that the amount for the cost of construction can be assessed to the abutters so long as it is reasonable and proportionate to the benefits accruing to the land served.

Atty. Wood explained that they don't know what the cost would be to bring Jodi Drive up to Class 5 standards because they haven't done an engineering study. The base is good but they don't know what it is. They have talked to engineers about the cost to pave it if the base is good. To reach Mr. Ford's proposed driveway which is 415' the cost of paving would be between \$10,000 and \$20,000. That would put the entire burden of bringing that paving to the driveway on Mr. Ford. It still wouldn't be up to Class 5 standards because there would be no cul de sac. The \$10,000 to \$20,000 doesn't include what it would cost for a cul de sac. It doesn't include any necessary drainage areas.

Tonight's discussion is what is the burden that reasonably can be imposed on Mr. & Mrs. Ford to obtain a variance. Atty. Wood doesn't think imposing that type of a burden just on Mr. & Mrs. Ford is fair and reasonable in light of the fact that there is a process in place for betterment assessment to be made by the town to bring the road up to a Class 5 standard if there is a petition to do so.

Under RSA 674:41 building permits may be granted on Class 6 roads provided they are in safe condition for emergency vehicles to get to. Also providing the owner getting the permit signs and records an acknowledgement that they are not holding the town liable if emergency vehicles cannot get there. They understand that it is their responsibility to keep the road maintained for emergency access.

Atty. Wood stated there is a process in place that allows for betterment assessments if there is a petition to bring the road up to Class 5 which means that all the owners would pay their fair and proportionate share. Requiring Mr. & Mrs. Ford to pay that amount of money for one building permit

where there are a number of houses farther down the road would be unfair and unreasonable. There is a statute in place that allows this to be done provided certain conditions are met. One being that there is no liability on the town part either for maintenance or emergency access. The second is that he has an obligation to keep the road up to certain minimum condition for emergency vehicle to get through.

P. Harris stated that a lot of information has been provided that satisfies the hardship requirement.

P. Oberhausen wanted to know if Mr. Ford owns lot 226-001. Atty. Wood stated that he does. P. Oberhausen stated that a ROW could come off the Rte 107 and access that property. You can have 20'-25' of frontage to get to the lot without coming off a Class 6 road. He stated that during the recent rains he went to Jodi Drive and it is better than a Class 5 road. The people maintaining it have done a wonderful job. He reiterated that you can get to lot 226-020 with a ROW off Rte 107 since Mr. Ford owns it already there would be no problem. Atty. Wood stated that they looked at that possibility and the problem is where they would put the 20' of land. They couldn't put it next to Jodi Drive because they have to use the 20' as access to the lot. That would mean there would be a driveway and a Class 6 road next to each other which the State would not permit. Visibility from that site is not very good. Putting it up the hill means that wetland area and slopes would have to be crossed. P. Oberhausen stated that he did not see any wetlands in that area. The wetland area is in the center of the lot. Atty. Wood stated that the issues are the slope and the lot has to have its own access and according to Ms. Daigle having one driveway servicing two lots requires a variance. P. Oberhausen stated that a ROW can come off the front lot and go into the other lot. Atty. Wood stated that he didn't think a ROW is sufficient access. He thought that access had to be part of the lot and has to be 20' wide and be used for the access. They did look at the ROW and they feel that it is physically impractical putting two driveways at the top of the hill which causes a visibility issue. He stated that the State has certain criteria for sight distance. The speed limit is 35MHP requiring around 350' of sight visibility. P. Oberhausen stated that there is no where on that road that you get that visibility. Atty. Wood stated that you have to meet those criteria to get a driveway permit.

Ms. Cilley stated that the first lot could access Jodi Drive because it has 20' on Class 5 road. J. Olmstead stated that the 20' on Rte 107 would have to be used for the driveway. Ms. Cilley stated that it has that possibility because when you enter onto Jodi Drive on the corner there is sufficient area. E. Hawkins stated that frontage equals access under the amendment to the Zoning Ordinance. Atty. Wood stated that they looked at it and it is not reasonable as compared to the access over Jodi Drive. You have to look at what is reasonable for the landowner not at every alternative possibility.

L. Couture stated that if Mr. Ford accesses the driveway from Rte 107 through lot 226-021 that would be less money then having to pave the road. Atty. Wood stated that it may be less expensive to build a driveway but first you would have to get subdivision approval and divide the lot. The next question is would they be able to get a driveway for both the lots in that particular location on Rte 107. J. Bennett wanted to know if they could have a shared driveway. Atty. Wood stated that he was told they would need a variance for that.

P. Oberhausen stated that when they build on lot 226-021 they will need another variance to get off Jodi Drive. Atty. Wood stated that is correct if Jodi Drive isn't brought up to Class 5 standards at that time. Lot 226-021 is a different property and has to stand on its own. P. Oberhausen stated that they have to look at it. It is a big piece of property entering on a Class 6 road. He feels they can enter on Rte 107.

Ms. Donna Cilley explained that Mr. Allen Gilbert and Mark Lewandoski cannot be here tonight but their position stays the same as last month. This does pose a financial hardship to them and there are other options. Ms. Cilley presented the Board with photos of the site. She stated that at the last meeting she thought P. Harris directed them to go to the Board of Selectmen to find out what it would take to upgrade the road. She went to the Town Administrator and she was told that they need to petition the Board of Selectmen to lay out a Class 5 road. She asked her what it would consist of because of what they went through with Mr. Marshall creating problems about the maintenance and upkeep of the road. She referred to the issues discussed in the April 26th meeting. She stated that the subdivision regulations state that pavement and engineering are required. She was told a lot of that would be exempt because of the work that her and her husband did to get their permit. The town has already engineered a part of the road and was suppose to take it over as a gravel road. E. Hawkins wanted to know if Ms Cilley lives on Jodi Drive. Ms. Cilley stated that she does in the last house. She stated that she is responsible for maintenance and upkeep with Mr. Gilbert. Mr. Hawkins stated that her access point to her residence is off Jodi Drive. He stated that they have an application tonight that is for a variance to build a residence on Jodi Drive that doesn't have access on a Class 5 road. None of the discussion tonight has anything to do with feasibility of upgrading Jodi Drive to a Class a 5 road. The application is for a variance to get access to this property off a Class 6 road. Ms. Cilley stated the Board opened this conversation at the last meeting and tried to mediate that issue and sent them away to try to resolve that. E. Hawkins reiterated the fact that it bears no significance on this case. Ms. Cilley stated that she agrees and hoped that the Board would have denied the application base on the fact that they have to look at financial hardship not just on the applicant but on the abutters. There are alternatives he can access off of Rte 107. He will have to do some reconfiguration of the two lots. She stated that there are means to access the lot. The lot is for financial gain which possesses a financial hardship on abutters. E. Hawkins wanted to know why it is Ms. Cilley's sole responsible for the upkeep and maintenance of the road. Ms. Cilley stated because Mr. Gilbert shared it with them and Mr. Ford has never shared it. He only creates problems. She stated that Mr. Ford owns two lots and now he wants to develop one of them for financial gain which will create more financial hardship on them. He has means and should spend the money to reconfigure his lots and exit onto Rte 107. E. Hawkins stated what Ms. Cilley is saying is granting the variance would decrease the value of her property. He stated that of the five criteria the Board has to look at for approval diminuzation in property value is the criteria Ms. Cilley is referring to. Ms. Cilley stated it would to all of the abutters. There are other alternatives for the applicant to take advantage of so that it doesn't access Jodi Drive. When the Planning Board required the 20' of frontage it was to slow down growth so that people would start taking responsibility for the road. She stated there is an incline on Jodi Drive so that no matter where Mr. Ford enters he is going to spin his tires. He will do it until one of them gets out and plows it. Mr. Ford has a home so this is additional property that he wants to develop and they don't want to spend anymore money on the road. The Public Works Director told her and her when they wanted to build their house that he wanted a wetland area upgraded. They are looking for a short cut. They have access to Rte 107. E. Hawkins stated that her argument is that it will diminish property values and the

benefit sought by the applicant can be achieved by some other method. P. Oberhausen wanted to know who does the snowplowing on the road. Ms. Cilley stated that her husband and her and Mr. Gilbert.

E. Hawkins wanted to know if there is anyone besides Ms. Cilley whose home accesses off Jodi Drive. The Board stated that there are two others. E. Hawkins stated that there are three other residential structures that don't have frontage on a Class 5 road that have their access on a Class 6 highway which is Jodi Drive.

Atty. Wood stated that if the variance is granted the obligation is upon Mr. & Mrs. Ford to assist in maintaining the road. The waiver of municipal liability requires it. It has been done for other people on Class 6 roads. The owners agree at their expense as the owners of the property to prepare and maintain Jodi Drive in a good and passable condition. That is his legal obligation. Ms. Cilley stated that she spoke with the Town Administrator and she was told that it is not enforceable and the town does not and will not enforce it. The only reason it is filed with the Belknap County Registry Deed is if there was an emergency and they need to get to any residence they can back bill them.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

P. Harris stated that they have to keep focus on the purpose and the need of restriction and why it is there and why it needs to be considered. The Board is to provide a safe environment. The spirit of the ordinance is providing another home within ½ mile road with three houses on it. He doesn't know how they would distinguish between the first house being built and last one. The applicant has a history shown through the years of trying to work within the law concerning the use of the property. His proposal is in the future constructing a smaller more accessible house. There is a shortage of housing in the town and the chance for someone to use their property in a manner for a single family residence in the area. The Planning Board recently addressed access equals frontage. The basis for that is for safety and access of the property. It is for emergency access to the property. Jodi Drive meets those criteria. The owners have a choice to go forward and upgrade the road or leave it as is. He could not follow through with more subdivisions on that road without further design review. This lot was subdivided in the past and he feels that there has been a good faith effort to try to meet all the requirements to try to build on that property. The arguments from the abutters seem to be more of a personal issue. He has been down the road and the sight distance from the site is adequate. The applicant would be responsible for any driveway to the lot.

E. Hawkins agreed with P. Harris and stated that if there were no other structures or residences on Jodi Drive then it would be different and a boundary line adjustment to get onto Rte 107 would come into play. N. Patten stated what if Mr. Ford didn't own the adjoining lot. P. Harris stated that a lot of information has been brought forth and they have to evaluate everything.

BOARD ACTION – MARSHALL & MARGUERITE FORD:

MOTION: P. Harris moved to grant a Variance of Article 10.C of the Zoning Ordinance to construct a

single family residence without the required frontage as it meets all the criteria.

1. The variance will not be contrary to the public interest. Sight distances will be maintained on the road. Access for emergency vehicles will be available.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; Applicant has been long term owner of the property. He has made attempts with the Town since 1982 when the lot was created trying to stay within the guidelines of the town. The hardship has been brought forward by the change in laws since the time the applicant has been working to determine the use of this property.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed. The use is similar in nature to other houses on the road. It is a single family residence. A fourth house in a half mile road of that nature would not create a hardship.
4. Substantial justice will be done. The applicant owned the land for long time and investment has been made over a long period of time.
5. The variance would not diminish the value of surrounding properties. No need for clear cutting or changing the environment. The size of house will stay within the values that already exist.
6. A permit from the Board of Selectmen and a Waiver of Municipal Liability are required prior to the issuance of a building permit.
7. Protection for year round vehicle access to the property.

The motion was seconded by N. Patten and carried. (3-2-0) L. Couture and P. Oberhausen opposed. P. Oberhausen stated that he opposed the variance because access to the property can be obtained through a Class 5 road.

Abutters' Hearing –Winnisquam Beach Campground Association for Elizabeth & Lester Ludlam:

Request for:

- A Variance of Article 4 of the Wetlands Ordinance to replace a manufactured unit closer on the south side (1.8') to the wetlands than allowed (35').
- A Variance of Article 4 of the Wetlands Ordinance Replace a manufactured unit closer on the north side (28.8') to the wetlands than allowed (35').

Property is located at 14 Donway Drive in an "RS" Zone, Tax Lot 177-015-000-021, ZBA # 0706 & 0806.

Mr. & Mrs. Lester Ludlam presented the application.

Mrs. Ludlam explained that currently they have a 12' x 42' mobile home built in 1970 that needs to be replaced. She has looked into manufactured homes and couldn't find a manufactured unit that size. She explained that her daughter is a CNA and her two children and she takes care of Mr. Ludlam who

had a stroke. That is why they need a three bedroom unit. They have looked at various sizes and have been told that the smallest mobile home for a three bedroom is 14' x 64'. They require three bedrooms due to the hardship of having to care for her husband. They are requesting a 68' because that is what is they found in this area.

P. Oberhausen stated that he has seen the home and it does need to be replaced because it is old. Mrs. Ludlam stated that they have been spending their summers in Belmont since 1972 and would like to continue to do that. P. Oberhausen stated that he sees the hardship with more people in the house but this is a summer resort. He wanted to know if they couldn't find a smaller manufactured unit. They are increasing the length by 34'. Mrs. Ludlam stated that because it is old and the requirements have changed they don't make 12' wide units anymore. The shortest 3 bedroom she can find is 64'. She looked last year and again this year and that is what she has been told. They could have one customized but it would cost a lot of money. The hardship would be more money for a smaller unit. She understands it is a summer home but in order for them to use it they need a three bedroom. P. Oberhausen stated that a lot of homes in there have been changed and they are getting bigger and bigger and soon it will be like a city. Mrs. Ludlam stated that her neighbor put in a 68' unit last year. P. Oberhausen stated that it creates a fire hazard when the units get closer together. Mrs. Ludlam stated that her lot is one of the biggest lots.

Mrs. Ludlam stated that the issue is the wetlands. If they adjust the unit would that change things? E. Hawkins stated that the existing structure is nonconforming to the wetlands on the southern side but is conforming to the wetlands on the northern side. They are increasing the nonconforming on the southern side they are creating an additional nonconformity to the northern wetlands. He stated that they could rearrange the footprint by rotating it a little bit counter clockwise to avoid the establishment of the new nonconformity to the northern wetlands. There could be better placement of the unit.

P. Harris stated that there have been many improvements at WBCG over the past few years. They have gone to different types of ownership. Mrs. Ludlam stated that there has been many new 68' trailers put in there so there is a precedent.

P. Harris stated that he sympathize with the Ludlams needs and what needs to be built there. The problem is not that the unit is too big but the lot is too small. The lot is 75' x 100' and the unit is 14' x 68'. The conditions the Board needs to consider are if it was granted would there be justice to the abutters as well as abutting owners. They have to consider the impact to the town and not keep enlarging situations like this. One major concern is from summer time use to full residence impact. When talking year round you are talking about adding students to the schools and taxing police and fire services. Public interest also has to do with how large you grow with the area. There are guidelines on properties for safety. The side setbacks are for fire access between building so fire equipment can access the units. The water setbacks are to lessen the impact on the water such as chemicals and environmental hazards. The wetland allows for 35' and they are down to 1' which is an issue. The Planning Board went through the process to combine lots and readjust lots and build safety into the area and they still met the minimum requirements to allow owners to still live there. It was discussed at meetings how crowded it was in there for the amount of land. The hardship is with the owner and not the land.

P. Oberhausen stated that the existing home is more of a fire hazard than the new one. P. Harris stated that the proposal is not the only thing that can be put there. They can put another unit there but it just can't be a three bedroom. They will have to settle for what they have now. The reason for the difference in size is because they are adding two bedrooms. Mrs. Ludlum stated that it is a two bedroom now.

E. Hawkins stated that the existing structure is already nonconforming to the southern wetlands. The new proposed structure is also nonconforming to the southern wetlands and it only increases the nonconformity 8'. The applicant could achieve their objective by changing the footprint a little. They could tuck it closer to the southern wetlands where they already have an established nonconformance. They could move it 35' away from the northern wetlands and not need a variance for that wetlands. They would only be asking for one variance instead of two. They could probably rotate the unit and still keep the 10' to the southern wetlands and not need any variance. P. Harris stated that usually the Board works with the applicant to bring it into compliance. Part of the proposal should not be to leave the nonconformance alone. They should balance the use of the property.

N. Patten suggested that they shorten the units. Mrs. Ludlum stated that they need three bedrooms for her daughter and two children because her daughter takes care of her husband. P. Harris explained that unfortunately the Board cannot look at personal or financial hardship when looking at variances. Ms. Ludlum stated that she doesn't understand what a hardship is. E. Hawkins explained that a hardship is a characteristic of the land. It has to be tied to the physical layout of the land itself. P. Harris stated if they had a lot that had ledge on it and wetlands and slopes that didn't allow you to put anything in the middle of it then it would be hardship. Ms Ludlum stated that based on the wetlands if they do not grant the variances they cannot put a mobile home there and have a summer home because her daughter and her family would not have enough room to live for the summer. The campground is for summer homes. The only option she has is to remove the old one and not replace it because they need the space for the current situation they are in. The wetlands are what causing the hardship and she is surprised that they say that she can put something in without needing a variance.

P. Harris stated that they are grandfathered to be on that site in the dimensional area it is in. Mrs. Ludlum wanted to know if they sell the property would the grandfathering go with it. E. Hawkins stated that the grandfathering goes with the property in the existing footprint. Mrs. Ludlum stated that she has been in the campground since 1972 and there are wetlands all around and many units have been upgraded. P. Harris stated that you have to buy a lot that fits your family you cannot buy a small lot and try to fit a big unit on it just because your family expanded. Mrs. Ludlum stated that last year the Board approved a 68' unit for the Evans which is next to them. There are others down the street in the same situation and she thinks a precedent has been set. They cannot reduce the size of the unit.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – WINNISQUAM BEACH CAMPGROUND ASSOCIATION FOR

ELIZABETH & LESTER LUDLAM:

MOTION: P. Harris moved to deny a Variance of Article 4 of the Wetlands Ordinance to replace a manufactured unit closer on the south side (1.8') to the wetlands than allowed (35') for the following reasons:

The hardship requirement has not been met.

There is adequate room for the use of the property.

The use of the property has been ongoing.

The need for expansion is a personal hardship and not in the lay of the land.

The motion was seconded by P. Oberhausen (5-0)

MOTION: P. Harris moved to approve a Variance of Article 4 of the Wetlands Ordinance Replace a manufactured unit closer on the north side (28.8') to the wetlands than allowed (35') as it meets all the criteria.

1. The variance will not be contrary to the public interest. Applicant is asking for little relief from the wetland. Many units have to circumvent the wetlands in that area.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because of the wetlands on both sides of the property. Adjustment to that will bring relief. It is an improvement.
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed. Dimensional request is reasonable.
4. Substantial justice will be done by allowing them the ability to lessen the impact to the southern setback closer to the wetlands.
5. The variance would not diminish the value of surrounding properties similar to properties in area.
6. All property bounds/existing footprint certified during construction as required.
7. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by P. Oberhausen (5-0)

Abutters' Hearing – Frank & Gemma Bartolotta: Request for a Special Exception of Article 10.A.3.c of the Zoning Ordinance to replace an pre-existing nonconforming structure adding useable space (2nd floor). Property is located at 10 Island Drive in a “RS” Zone, Tax Lot 111-011, ZBA 1006.

At least three members have viewed the site.

Mr. & Mrs. Bartolotta presented the application.

Mr. Bartolotta explained that they have been coming to this area since 1979 and in 1998 they bought the camp which was in bad shape. It is not built to code. They want to bring it up to code and retire here. They have received DES approval for building within 50' of the high water mark which is recorded on their deed. They want to build a house on the same footprint. It will upgrade the neighborhood because there is a lot of building going on in the area. There are other two story homes in the neighborhood. They will not be blocking anyone's view. It will enhance the value of surrounding properties.

P. Harris wanted to know if they are within the height limits. Mr. Bartolotta stated that they will stay within those restrictions. L. Couture stated that they are replacing what is there and just going up.

J. Olmstead wanted to know about the concrete pads and deck. Mr. Bartolotta stated that he got a permit to redo the patio on the side of the house but he hasn't applied for the pads. He will have to come back for that. The stairs in the back of the house will go in the same position as the current stairs are. He will have a 4' x 4' landing for the stairs on the side. If he does redo the existing pads he will have to come back. J. Olmstead stated that the concrete pads already exist.

L. Couture wanted to know if they are going to remove the trees. Mr. Bartolotta stated that he doesn't think so. There is one tree that comes over the house that may have to be trimmed. Mrs. Bartolotta stated that there is one on the side of the patio that is rotted and they will replace that one.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – FRANK & JEMMA BARTOLOTTA:

MOTION: P. Oberhausen moved to grant a Special Exception of Article 10.A.3.c of the Zoning Ordinance to replace an pre-existing nonconforming structure adding useable space (2nd floor) as it meets all the criteria.

1. The use is allowed in the district.
2. The Ordinance specifically allows the use when a Special Exception is granted.
3. The specific site is appropriate for the use.
4. No factual evidence is found that property values in the district will be reduced.
5. There is no valid objection from abutters based on fact.
6. No nuisance or hazard is involved.
7. Adequate and appropriate facilities will be provided.
8. There is adequate sewage disposal.
9. Structures must otherwise meet all dimensional requirements of the Ordinance.
10. All property bounds/existing footprint certified during construction as required.
11. No additional stairs, steps, landings, decks or patios have been requested as part of

this proposal.

12. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (5-0)

Abutters' Hearing – Lori Fitzgerald: Request for:

- A Variance of Article 5 Table 2 of the Zoning Ordinance to construct a covered porch closer (38.5') to the front property line than allowed (50').
- A Special Exception of Article 10.A.3.c of the Zoning Ordinance to construct a deck closer to the wetlands (23.7') than allowed (35') but not closer than the existing footprint.
- A Special Exception of Article 10.A.3.c of the Zoning Ordinance Reconstruct a single family residence creating useable space (basement) in a preexisting nonconforming footprint.

Property is located at 80 Tucker Shore Road in an "RS" Zone, Tax Lot 107-034, ZBA # 1306,1406 &1506.

At least three members have viewed the site.

Ms. Lori Fitzgerald presented the application.

Ms. Fitzgerald addressed G. Boisvert's comments that the pins have to be certified stating that the bank takes care of that with a plot plan. E. Murphy stated that it is a plot plan they need to have the pins certified by a surveyor. Ms. Fitzgerald addressed R. Ball's comments regarding the application being confusing by stating that she got the application in within two weeks and she was not aware that she needed a special exception until she received a call from staff.

Ms. Fitzgerald stated that she plans to replace the mobile home that was there with 28' x 68' modular ranch. They are increasing living space by going up and that is why they need a special exception. There are a couple of decks. E. Hawkins stated that it is in the center of the land further away from the wetlands than the stairs currently there. Ms. Fitzgerald stated the deck in the front is a farmer porch and would be at the same setback as the steps were. They are trying to save the slab that is there from the previous unit. They will be putting in 4' frost walls still using the same footprint. J. Olmstead stated that the entire basement will be above ground.

P. Harris wanted to know if anyone has tested the soils to see if it will support the new structure. Mr. Fitzgerald stated that a test pit was done and the excavator stated that the stone would be adequate for a foundation.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

E. Hawkins stated that it is a good application. The ordinance allows for 4' x 4' landing.

BOARD ACTION – LORI FITZGERALD:

- MOTION:** P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a covered porch closer (38.5') to the front property line than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest. It is a residential use in a residential area.
 2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property due to the wetlands there is no other location to locate the residence.
 - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. It will be placed in a preexisting footprint.
 3. The spirit of the ordinance is observed. It is a residential use and similar in nature to other in the area.
 4. Substantial justice will be done. It will address safety concerns in existing structure.
 5. The variance would not diminish the value of surrounding properties. It is a preexisting nonconforming structure and similar in nature to others in the area.
 6. All property bounds/existing footprint certified during construction as required.
 7. No structures or additions that do not meet setback, except for those approved herein are allowed.
 8. Two separate tracts shall be merged prior to the issuance of permit to reconstruct.

The motion was seconded by L. Couture and carried. (5-0)

- MOTION:** P. Harris moved to grant a Special Exception of Article 10.A.3.c of the Zoning Ordinance to construct a deck closer to the wetlands (23.7') than allowed (35') but not closer than the existing footprint as it meets all the criteria.
1. The use is allowed in the district
 2. The specific site is appropriate for the use.
 3. No factual evidence is found that property values in the district will be reduced.
 4. There is no valid objection from abutters based on fact. No abutters were present.
 5. No nuisance or hazard is involved. The structure will be improved and updated.
 6. Adequate and appropriate facilities will be provided.
 7. There is adequate sewage disposal.
 8. Structures must otherwise meet all dimensional requirements of the Ordinance.
 9. All property bounds/existing footprint certified during construction as required.
 10. No structures or additions that do not meet setback, except for those approved herein

are allowed.

- 11. Two separate tracts shall be merged prior to the issuance of permit to construct.

The motion was seconded by P. Oberhausen and carried. (5-0)

MOTION: P. Harris moved to grant a Special Exception of Article 10.A.3.c of the Zoning Ordinance to reconstruct a single family residence creating useable space (basement) in a preexisting nonconforming footprint as it meets all the criteria.

- 1. The use is allowed in the district
- 2. The specific site is appropriate for the use.
- 3. No factual evidence is found that property values in the district will be reduced.
- 4. There is no valid objection from abutters based on fact.
- 5. No nuisance or hazard is involved.
- 6. Adequate and appropriate facilities will be provided.
- 7. There is adequate sewage disposal.
- 8. Structures must otherwise meet all dimensional requirements of the Ordinance.
- 9. All property bounds/existing footprint certified during construction as required.
- 10. No structures or additions that do not meet setback, except for those approved herein are allowed.
- 11. Two separate tracts shall be merged prior to the issuance of permit to reconstruct.

The motion was seconded by N. Patten and carried. (5-0)

OTHER BUSINESS:

A. BOARD'S ACTION - MINUTES:

L. Couture made a motion to approve the minutes of April 26, 2006. P. Oberhausen seconded. Carried (5-0)

ADJOURNMENT:

MOTION: On a motion by P. Harris, seconded by P. Oberhausen, it was voted unanimously to adjourn at 9:00 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy