

ZONING BOARD OF ADJUSTMENT

Wednesday, July 25, 2007
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman P. Harris; P. Oberhausen, L. Couture and J. Bennett.
Members Absent: N. Patten (E)
Alternates Present: E. Hawkins.
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m. and appointed E. Hawkins as a voting member for tonight's meeting.

Abutters' Hearing – L & J Dupont Lmt Partnership: Continued request for:

- A. Variance of Zoning Article 5 Table 1 to allow an on-site advertising billboard in an "RM" zone.
- B. Special Exception of Zoning Article 10A.3.c. to expand the size of a preexisting nonconforming sign closer (.30') to the property line than allowed (50') but not closer than the existing structure.

Property is located at 6 Scenic Drive in an "RM" Zone, Tax Lot 236/004, ZBA # 3607 & 3707.

At least three members have viewed the site. This is a continued public hearing.

Mr. Don Reed and Ms. Betty Seavy presented the application.

Mr. Don Reed explained that at last month's meeting they were before the Board to install an electronic sign on an existing sign structure. The combined sign is over 49 square feet and that makes the sign a billboard. The proposed sign would not increase the infringement on the setback because there is an existing sign and this one will be on top of that one. They are allowed 100 square feet of signage per lot and they are proposing only 58 square feet. The hardship is in the zoning restriction where the zoning allows for 100 square feet but only one sign and anything over 49 square feet is a billboard and billboards are not allowed in the "RM" zone. This prevents them from reasonable use of the land. Substantial justice will be done because it would allow the applicant to upgrade his sign without losing visibility and would provide adequate identification for the business. No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property because while the code allows for up to 100 square feet of signage, signs greater than 49 square feet are

billboards. It is unreasonable to allow a sign of 49 square feet, but prohibit a sign of 50 – 100 square feet when 100 square feet are allowed. The spirit of the ordinance is observed because it is a minimal request of 58.8 square feet when 100 square feet are allowed. The proposal will not diminish surrounding property values because it will update an existing sign and surrounding property values will not change. The zoning ordinance promotes business so substantial justice will be done by allowing them to advertise their product. The sign would allow them to change the message without the complication of changing letters. The existing sign is illuminated.

P. Oberhausen stated that the new model would have a digital temperature probe and clock and he wanted to know how often they will change. Mr. Reed stated that they usually change every 3-5 seconds. P. Oberhausen stated that signs around the area are around 20' off the ground and this one is only 82" and in direct eye level of traffic. He wanted to know if there would be any flashing lights. Mr. Reed stated that there would be no flashing lights or holographic images. The sign is similar to the ones used by DOT at construction sites. Those signs change every 3-5 seconds and are placed in the breakdown lanes. He explained that the closer the sign is to the road the safer they are because people are not turning their heads to read them. The only concern would be if they interfere with the line of sight. If the federal government uses and recommends them then there shouldn't be a problem. P. Oberhausen stated that he is concerned for safety. Mr. Reed stated that they will use text and symbols only. There will be no animation. Fitchburg Massachusetts has an ordinance and they have signs similar to this one that are very close and low to the ground.

J. Bennett wanted to know if there is any way that the sign could be downsized to meet the zoning regulations. Mr. Reed explained that this is the smallest sign they have and if it is smaller they couldn't get the entire message on it. He does not recommend rotating text signs because they are more distracting.

E Hawkins wanted to know what makes this a unique setting in the "RM" zone. Mr. Reed stated that it is a large property with a commercial use in the "RM" zone. If it were in the commercial zone then they wouldn't have to be before the Board. P. Harris wanted to know why they need relief from the setback if this is a large property. Mr. Reed stated that if it were further back they wouldn't be able to see it. There is an existing sign between columns and it would be better to keep the existing sign and have this one on top of it. P. Harris stated that the concern is for safety with the signs being close to the side of the road people may mistake it for a road safety sign and suddenly slow down. This is a dark area of the roadway and a blinking light may be mistaken for a warning light.

P. Harris stated that they are opening up the possibility of other similar signs being put up in the "RM" zone. Mr. Reed stated that the application unique. By moving the sign back you are forcing the viewers to look back further onto the site. This is not a blinking sign. The intent is to display a message without blinking lights. He recommends changing the message every 5 seconds. C. Daigle stated that she has reviewed other towns' requirements and Manchester and Nashua use the 5-second rule. Anything less than 5 seconds is considered a blinking sign.

E. Hawkins stated that the purpose of the sign is for selling. Has the applicant done a market

analysis to see what percentage of sales has been generated by drive bys? Mr. Reed stated they did a traffic study but does not know the percentage of sales generated from the existing sign Ms. Seavy stated that a lot of people have stopped by and stated that they didn't know they were there. When they saw the park they liked what they saw.

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

The Board discussed the variance. P. Oberhausen stated that the sign is allowed in the ordinance and they are just increasing the size. E. Hawkins stated that the variance is for a billboard in the "RM" zone and that is not allowed. P. Harris wanted to know if they are granted the billboard use would they be allowed to increase the size. C. Daigle stated that if the variance is granted they cannot increase the size further and they cannot have more than one. J. Bennett wanted to know if they allow the use would they be setting a precedent. P. Harris stated that each application acts on its own merits. He stated that the town supports its rural character and a lighted sign may go against that. E. Hawkins stated that granting a use variance weakens the ability to uphold further use restrictions in that zone. The ordinance stated explicitly that billboards are not allowed. An attorney may take this approval as an opening for others to be granted. It could have a cascading affect. He wanted to know what the special conditions of the property are that make it unique in its setting. This is an important part of this application. P. Harris stated that the electronic sign is allowed but the size makes it a billboard. E. Hawkins wanted to know what the characteristics are that make it unique from other properties in the "RM" zone. P. Harris stated that there are homes on both sides of the property. E. Hawkins stated that there are other commercial uses in that area such as the restaurant across the street. Is the commercial use enough to make it unique? C. Daigle stated that the restaurant is in the industrial zone. P. Harris stated they could put a lighted sign there but they have to reduce the size and set it back from the property line. The Planning Board in the past have had concerns from the public on billboards and that they can become an eye sore on Rte 106. There is reasonable use and there is an area to locate the sign. There is reasonable room for expansion. E. Hawkins stated that the existing sign gives the applicant reasonable use for advertising. P. Harris wanted to know how much room the park has for expansion. Ms. Seavy stated that they are just about all built out but they are upgrading the older units from single to doublewides. They have a nice park and they want to advertise it. Today's world is all about advertising to get your product out to public. P. Harris stated that it is a well built park that is well kept and has very strict rules on enforcement. The Board has to look at keeping Belmont's rural nature and protecting the rights of the abutters. If they allow one billboard in the "RM" zone will many more want them? L. Couture looked at the extensive abutters list and noted that not one of them came forward stating that it is contrary to the rural character. The existing sign as it stands is nice and it has a rural look. They are not asking for 300 square feet of signage but just for an additional 10' over what is allowed. It will be on top of what is already there. P. Harris wanted to know if the sign is adequate for their needs why does it have to be bigger. J. Bennett stated that they are asking for an additional 10 square feet without it they would need to have a rotating text sign. C. Daigle used the zoning map to show that most of the "RM" zone is in the village area with a 20-30 mile an hour speed limit. Rte 140 in the area of Pine Gardens is 45 MPH. Most of the "RM" zone along Rte 140 is taken up by Pine Gardens and is in close proximity to the industrial zone. E. Hawkins stated that other "RM" properties abut or are in close proximity to the "I" zone so that is not unique. P. Harris stated that

the park and its residential use and the pits with their commercial use have been there prior to zoning. E. Hawkins wanted to know if Belmont wants to make the "RM" zone along Rte 140 into an industrial zone and have the "RM" clustered around the village.

BOARD ACTION – L & J DUPONT LMT PARTNERSHIP:

- MOTION:** P. Oberhausen moved to grant a Variance of Zoning Article 5 Table 1 to allow an on-site advertising billboard in an "RM" zone as it meets the criteria.
1. The variance will not be contrary to the public interest.
 2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because:
 - A. The zoning restriction as applied to the applicant's property does interfere with the applicant's reasonable use of the property, considering the unique setting of the property in its environment; the property is surrounded by industrial uses large in nature.
 - B. A fair and substantial relationship does not exist between the general purposes of the zoning ordinance and the specific restriction on the property; and
 - C. The variance would not injure the public or private rights of others.
 3. The spirit of the ordinance is observed.
 4. Substantial justice will be done.
 5. The variance would not diminish the value of surrounding properties.
 6. Prohibit signs from floating or moving text, traveling light type, animation, flashing or blinking of sign except for illumination showing time and temperature.
 7. No images created by lights, holograms, liquid crystal or fiber optics.
 8. Message to change no more frequently than every five seconds.
 9. Illumination of light not to show into roadway.

The motion was seconded by L. Couture and carried. (4-1) E. Hawkins opposed.

E. Hawkins wants to clarify what the unique setting is that is prohibiting reasonable use of the property. P. Harris stated that the zoning restrictions in the area and the commercial use being surrounded by industrial base properties.

Mr. Reed stated that the facts for the Special Exception are the same as for the variance. It will be beneficial to the user and not detrimental to the community. It is an allowed use but because of the alteration they need a special exception.

P. Harris stated there is no need for sewer because it is a sign. There will be no nuisance involved. The existing sign has been there for years and it would be harder to read it was further back and then it would become a safety issue.

MOTION: P. Harris moved to grant Special Exception of Zoning Article 10A.3.c. to expand the size

of a preexisting nonconforming sign closer (.30') to the property line than allowed (50') but not closer than the existing structure as it meet the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use. Have been advertising in that location for years.
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 present.
5. No nuisance or hazard is involved. The conditions are in place to alleviate any nuisance.
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.

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

Abutters' Hearing – Cory Mustaph & Carol Martin for Winnisquam Beach Campground Unit Owners Association: Request for a Variance of Wetlands Article 4 to replace an RV and relocate an existing porch closer (4') to the wetlands than allowed (35'), but not closer than the preexisting unit. Property is located at 10 Park Place in an "RS" Zone, Tax Lot 117-015-000-043, ZBA # 3807

Mr. Bryan Bailey and Mr. & Mrs. Mustaph presented the application.

Mr. Bailey explained they are here to seek a variance to replace an RV on a small lot in Winnisquam Beach Campground. The campground was converted to condominiums in the late 90's. The RV Park was created in the 1960s and the park is intertwined with wetlands and was built prior to zoning. Whenever you upgrade anything in the park you end up before the Board because of the wetlands. The lots in this section are about the same size. The unit is the fourth or fifth from the end of the park near Ephram's Cove. Mr. Bailey used the plans to show the existing conditions that were approved in the 1998 conversion and the current proposal. The existing conditions show that there is an attached porch and it will be demolished. They are currently waiting for the demo permit to be approved.

E. Hawkins wanted to know if the porch that will be removed was there in 1998. Mr. Bailey stated that it was not. E. Hawkins wanted to know what the square footage of the original RV was. Mr. Bailey stated that the new unit is 384 square feet without the porch. The old one is smaller. They are replacing the RV and relocating the 8' x16' porch. The RV has been there since 1998 and is not completely on the lot, it is over the lot line. The unit extends over the limited common area and the bump out overhangs the wetlands. The proposal is to move the new unit away from the wetlands and onto the lot. The consequence is that it is closer to wetlands on the other side. There is no way to update the unit without infringing on the wetlands unless the unit is the same size.

P. Oberhausen stated that when he visited the site there was nothing there. The existing porch was not there. Mr. Mustapha stated that the porch is standing upright and the trailer is gone. P.

Oberhausen stated there was nothing on the site to measure. Mr. Bailey stated that he can recreate the setbacks from field records. Mr. Mustapha stated he moved it off the site Sunday and moved it to the neighbor's lot.

Mr. Bailey stated that the variance request is not contrary to the public interest because it will better utilize the site and will not impact the neighbors. The hardship is the variance is needed to enable the proposed use. The site and the site occupancy was prior to zoning. Without the variance, replacing the unit with anything is impossible and is necessary due to the wetlands. There are wetlands on the adjacent site and there is no area within the limited common area that could conform. The established use is allowed. The proposal is less nonconforming than the existing unit. The porch will be 10' from the wetlands and is less nonconforming than the existing unit. The proposal would allow for a newer safer unit. The dimension of the new unit and the porch is an improvement to the site. The concrete slab under the unit will be easily maintained and assure that the unit is in the right area. It has to be in the footprint that approved.

E. Hawkins thanked the applicant for a wonderful and complete application. He had questions about the 40% rule that makes this a variance instead of a special exception. C. Daigle explained that the original footprint is grandfathered but you calculate the entire area outside the grandfathered footprint and that takes in many different small areas around the unit and porch. There is a 46% increase in square footage. Mr. Bailey stated the RV is unique because it can be moved. P. Harris stated that it is similar to existing units in the park Mr. Bailey agreed and stated that the old unit is the only unit that hung out over the site line. The rest of units were fairly uniform. Most of the RVs are this size. It is typical of what the park has become. Most units along the beach are RVs.

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

**BOARD ACTION – CORY MUSTAPH & CAROL MARTIN FOR WINNISQUAM BEACH
CAMPGROUND UNIT OWNERS ASSOCIATION:**

- MOTION:** P. Oberhausen moved to grant a Variance of Wetlands Article 4 to replace an RV and relocate an existing porch closer (4') to the wetlands than allowed (35'), but not closer than the preexisting unit as it meets all the criteria.
1. The variance will not be contrary to the public interest.
 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;
 - 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.
 4. Substantial justice will be done.
 5. The variance would not diminish the value of surrounding properties.

6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain documents to be submitted.
8. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by J. Bennett and carried. (5-0)

Abutters' Hearing – Barry Evans for Winnisquam Beach Campground Unit Owners Association:

Request for:

- A. Special Exception of Wetlands Article 4 to permit existing concrete slab and construct a deck closer (30.8') to wetlands than permitted (35'), but not closer than existing structure. ZBA # 0607.
- B. Variance of Zoning Article 5 Table 2 to permit an existing concrete slab and to construct a deck closer (14') to the interior road than allowed (15'). ZBA # 0707.
- C. Variance of Zoning Article 5 Table 3 to permit an existing manufactured home closer (14.3') to the interior road than allowed (15'). ZBA # 0807

Property is located at 12 Donway Drive in an "RS" Zone, Tax Lot 117-015-000-020.

At least three members have viewed the site.

Mr. Barry Evans presented the application.

Mr. Evan explained that he wants to extend his deck by 12' x 10.1'

P. Harris stated that it is not closer than what is there now. He read the history of the lot. In 2004 there was a preexisting nonconforming MFG home located .2' into the wetlands. In 2004 they applied for and were granted a variance to replace the home and keep the 12' x 32.5 addition. The new home would be placed outside of and 1.9' from wetlands and meet the road setback. The new home was placed slightly outside of the approved footprint. Now it doesn't meet the road setback and needs a variance. The other setbacks are met. A concrete slab was installed without a permit and now they want to construct a deck on top of it.

L. Couture wanted to know when the concrete pad was installed without a permit. Mr. Evans stated it was when they installed the MFG home 2 years ago. They did it all at one time. P. Harris asked Mr. Evans if his request is similar to others in the Winnisquam Beach Campground. Mr. Evans stated it is. E. Hawkins stated that looking at the abutting properties this one is closer to the setbacks than others. P. Harris stated that the use is appropriate for the property and will not reduce property values because it is similar to others. No nuisance or hazard is involved because the property was built as a campground. It has expanded quite a bit and a lot of upgrades have been done. The units are labeled with 911 numbers and the roads have improved making this a better park. He wanted to know if the floodplain documents have been submitted. C. Daigle stated that they are not required until they get a building permit.

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

he closed the public hearing.

BOARD ACTION – BARRY EVANS FOR WINNISQUAM BEACH CAMPGROUND UNIT OWNERS ASSOCIATION:

MOTION: P. Harris moved to grant the Special Exception of Wetlands Article 4 to permit existing concrete slab and construct a deck closer (30.8') to wetlands than permitted (35'), but not closer than existing structure as it meets 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 required floodplain Protection documents to be submitted.
11. No structures or additions that do not meet setback, except for those approved herein are allowed.
12. Erosion and sediment controls utilized.

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

P. Harris reiterated the history of the lot. The proposal would not diminish the value of surrounding properties because it is built similar to others in the park. Substantial justice will be done because it is a safe proposal and is under a 1' difference than the requirement. E. Hawkins wanted to know if it was not preexisting would they approve the proposal because there is a conforming area to build. There is no compelling reason for the applicant not to pursue an alternative route if it did not exist. If the Board finds that because it exists then it is reasonable then others will come to the Board after they build what they want. L. Couture agreed with E. Hawkins. P. Oberhausen stated that it has been happening when people build something then come for approval after. E. Hawkins stated that there are four other criteria that have to be met. Is there a reasonable alternative to pursue? P. Harris stated he did not build outside what is in the park. It is similar to others. If he has to move it or chop some of it off then that would be a hardship. If it should go to court then the ruling would be to leave it in its current position. Owners are allowed to keep what they have. It would be different if it was a larger structure or he added a second story. E. Hawkins stated that the application states the reason the proposal meets the spirit of the ordinance is because the spirit restricts properties owners from building at the owner discretion. That is not what the spirit of the ordinance means.

MOTION: P. Harris moved to grant the Variance of Zoning Article 5 Table 2 to permit an existing concrete slab and to construct a deck closer (14') to the interior road than allowed (15') as

it meets the criteria.

- 1. The variance will not be contrary to the public interest. Similar to other units in the park.
- 2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because it is a small dimension relief:
 - 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. Similar to other existing units.
- 4. Substantial justice will be done. Allowing to remain in place without going to
- 5. The variance would not diminish the value of surrounding properties. Similar to others in the park.
- 6. All required floodplain documents to be submitted.
- 7. No structures or additions that do not meet setback, except for those approved herein are allowed.

court

The motion was seconded by P. Oberhausen and carried. (4-1) E. Hawkins opposed.

MOTION:

P. Harris moved to grant a Variance of Zoning Article 5 Table 3 to permit an existing manufactured home closer (14.3') to the interior road than allowed (15') as it meets the criteria

- 1. The variance will not be contrary to the public interest. Similar to other units in the park.
- 2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because it is a small dimension relief:
 - 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. Similar to other existing units.
- 4. Substantial justice will be done. Allowing to remain in place without going to
- 5. The variance would not diminish the value of surrounding properties. Similar to others in the park.
- 6. All required floodplain documents to be submitted.
- 7. No structures or additions that do not meet setback, except for those approved herein are allowed.

court

The motion was seconded by P. Oberhausen and carried. (4-1) E. Hawkins opposed

Abutters' Hearing – Steve Geoffroy for Mallard's Landing Association: Request for:

- A. Special Exception of Zoning Article 10.A.3.c. to replace a preexisting nonconforming seasonal dwelling, adding a second story (useable space). ZBA # 3907
- B. Variance of Zoning Article 5, Table 2 to relocate a shed closer (13') to the adjacent unrelated structure than allowed (20'). ZBA # 4007

Property is located at 66 Mallards Landing Road in an "RS" Zone, Tax Lot 110-002-000-603

At least three members have viewed the site.

Mr. Steve Geoffroy presented the application.

Mr. Geoffroy 66 Mallards Landing Road stated that he needs a special exception to add a second floor to his existing building. He has already received a Shoreland Protection Waiver to construct a two story unit maintaining the existing footprint. The structure will be replaced with the same footprint. The second floor is for bedrooms and a bathroom to accommodate his family. The first floor will have a handicap bedroom and bathroom for his mother. The Shoreland Waiver was granted after DES reviewed the plan and noted that they are similar to others in the area. Most other units have expanded by adding second floors. The Zoning Board has also granted other special exceptions and variances throughout the park. No nuisance or hazard is involved. They will be doing construction in the winter so as not to disturb the neighbors. The expansion will not be any closer to the neighbor than the existing unit. All building codes will be met. They are on community water and sewer. They will be adding insulation but the use will remain the same, a single-family seasonal dwelling.

E. Hawkins commended the applicant on a good job on the application. L. Couture wanted to know if there would be any new kitchen. Mr. Geoffroy stated there were be no additional kitchen it is just an expansion on what is there. It is more cost efficient to tear down and rebuild on a slab then to try to remodel. P. Harris noted that the proposal is similar to others in area.

Mr. Kevin Parziale, an abutter, stated that he supports the proposal and stated the Mr. Geoffroy will do a professional job. Mr. & Mrs. Quinn, an abutter, accepts the plan and use.

P Oberhausen stated that the new building has to use fire resistant material on the sides. Mr. Geoffroy stated that he would be using fire retardant material. He also stated that he will be removing some of the driveway and patio and replacing it with native plants. The water runoff and gutters runoff will be directed toward the crushed stone. He is also moving the shed to make it more conforming.

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

BOARD ACTION – STEVE GEOFFROY FOR MALLARD'S LANDING ASSOCIATION:

MOTION: E. Hawkins moved to grant Special Exception of Zoning Article 10.A.3.c. to replace a preexisting nonconforming seasonal dwelling, adding a second story (useable space) as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
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. Two abutters present supported proposal.
5. No nuisance or hazard is involved. No increase in traffic
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal. No addition of family unit.

8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. All required floodplain documents to be submitted.
11. No structures or additions that do not meet setback, except for those approved herein are allowed.
12. All conditions of NH DES Shoreland Waiver to be complied with.

The motion was seconded by J. Bennett and carried. (5-0)

The chairman opened the public hearing on the variance for the shed.

P. Harris wanted to know what was stored in the shed and if it would have a membrane floor for containment because of its close proximity to the water. Mr. Geoffroy agreed to have a membrane floor in the shed. The shed will be the same footprint but further away from the lake and abutters. If it is left where it is now it would be in the way of a window and they would have to go back to DES with a new plan. Substantial justice will be done because it will add value to the property, add to the tax base and meet or exceed building codes. It has met DES requirements and is similar to others in the area. The abutters agreed to this proposal too.

MOTION E. Hawkins moved to grant Variance of Zoning Article 5, Table 2 to relocate a shed closer (13') to the adjacent unrelated structure than allowed (20') as it meets the criteria.

1. The variance will not be contrary to the public interest. The applicant addressed all the criteria. The net benefit will lessen the nonconformity to wetlands and abutters.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
 - A. An area variance is not 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.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain documents to be submitted.
8. No structures or additions that do not meet setback, except for those approved herein are allowed.
9. Shed built in accordance to DES Shoreland Protection.

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

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of June 27, 2007. L Couture seconded. Carried (4-0-1) E. Hawkins abstained

NON-PUBLIC SESSION RSA 91-A:2I(c):

The Board went into non-public session at 9:04 PM to receive input from Counsel. Roll call was taken those present and voting to enter into nonpublic session were:

P. Oberhausen, P Harris, E Hawkins, Joann Bennett and L Couture. P. Harris did not participate in the discussion.

At 9:18 PM the Board came out of non-public session by roll call vote: P. Oberhausen, P Harris, E Hawkins, Joann Bennett and L Couture.

No action was taken while in nonpublic session and the Board reviewed Counsel's opinion on the John Rich request for rehearing.

Request for Rehearing – Jon Rich- Board's action on May 23, 2007, to deny:

1. Variance of Article 5 Table 2 of the Zoning Ordinance to allow a shed closer (14.8') to the property line than allowed (25');
2. Variance of Article 4 of the Wetlands Ordinance to allow a shed closer (5.9') to the wetlands than allowed (35').

Property located at 333 Province Rd in an "R" Zone, Tax Lot 212-067-003.

E. Hawkins wanted to know if the request for rehearing was submitted in a timely manner. C. Daigle explained that the law has changed and it is 30 days beginning the day after the decision is rendered.

MOTION: L. Couture moved that the application was filed in a timely manner within the 30 days following the Boards decision.

The motion was seconded by J. Bennett and carried. (4-0-1) P. Harris abstained.

The Board discussed whether or not their actions were either unlawful or unreasonable based on the evidence provided with the request documents.

P. Oberhausen stated he has read the packet provided and the Board did the proper thing by denying the variance. He stated that the appeal doesn't disclose that they ruled on the 12 acre parcel and a lot of the other rulings that were sited were an acre or half acre lot. That doesn't put them in same categories. He did the right thing denying the variance because the applicant put up a shed and built a horse shelter without permits. The applicant's current land use map shows he took $\frac{3}{4}$ acre out of current land use. If this goes to court they will be justified in their decision.

E. Hawkins stated that in section 5a the 1st and last paragraphs don't apply because they are for use variances. Simple clearing and grubbing is not a hardship. Article 5b has the estimate cost for removal as \$2,400. Financial impact is not what the Board has to consider. The Board's burden is to consider the impact to the wetlands. If you take the value of the property and divide it by the cost of removal it is less than $\frac{1}{2}\%$ of the property value. That cost is not unreasonable. It is his opinion that to relocate the shed is not an undo financial hardship. They have to consider the greater lose and if it out weighs the justice to the public. There is zero loss to the applicant and a greater benefit to the protection of wetlands due to the fact there is no secondary containment for chemicals. In section D half of the examples don't apply because they are special exceptions and most of the variances are not accessory structures but are attached structures that had physical restrictions. There is ample room for conformity here. The reference to the Shuten's variance was denied the same is Mr. Rich so that shows the Board did not act in any unjust manner. There is no loss to the applicant because he doesn't lose his shed. He can apply for a shed in a different location and still have one. E. Hawkins stated that they can't look at any application as to whether it is built or not. They have to weigh the loss to the applicant and the benefit to the public. In this case there is no loss to the applicant and the benefit to the public is protecting the wetlands.

J. Bennett stated that at first she thought it was hardship because the applicant would have to move it but that was because he already built it. She stated that the Board has to consider the degree of nonconformity whether it is minor or major. C. Daigle stated that it is hard to find the grey area when it becomes a matter of conformity. P. Harris stated that if zoning were black and white then there wouldn't be a need for a Zoning Board. E. Hawkins stated they are there to uphold the ordinance. It is their primary responsibility. J. Bennett stated that she is not sure if any of the cases sited were similar because she doesn't know the size of those lots. Also she doesn't know where the locations of the structures are because that information wasn't supplied. C. Daigle stated that you have to look at each application as unique.

MOTION: E. Hawkins moved not to grant the rehearing based on the facts of the case and the documentation did not show that the Board acted in an unjust or unlawful manner.

- a. This is not a Use Variance. The simple clearing and grubbing for a location is not a hardship to conform to the Ordinance.
- b. The estimate of \$2,400 to relocate the shed has only been asserted by the applicant. And even at \$2,400 that is a small investment in comparison to the current property value of \$431,000. It is the burden of the applicant to prove that there will be no impact to the wetland. No special consideration was given because this is an after-the-fact request. The same criteria were applied as if the structure was proposed and not existing.
- c. There is no loss to the petitioner by denying the variance. The shed can be kept in a conforming location. However, there is a benefit to the public in the denial which is protection to the wetlands. The applicant did not offer any secondary containment of any sorts for what was being stored in the shed.
- d. In examining the historic rulings of the Board submitted by the applicant at least half of them seem to be Special Exceptions which don't apply. Most of the variance cases were not for accessory structures, but for additions to primary structures. Other cases were dealing with specific places on specific properties with constraints. Not like this where it is an accessory structure with conforming locations available. In the specific case of Shuten the two approved were Special Exceptions. The one denied was a variance for a garage with 43' of setback. That evidence supports the Board's action to deny in this instance.

The motion was seconded by P. Oberhausen and carried. (4-0-1) P. Harris abstained.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by J. Bennett, it was voted unanimously to adjourn at 9:48p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy