



BELMONT LAND USE OFFICE

ZONING BOARD OF ADJUSTMENT

Wednesday, July 23, 2008
Belmont Corner Meeting House
Belmont, NH 03220

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

The Chairman opened the meeting at 7pm. Before proceeding the Chairman apprised the Members of the Code Enforcement action against his business. He stated that he is working directly with the Code Enforcement Officer toward compliance and certification of his grandfathered status. He asked for direction from the Board as to whether he should continue to serve as Chairman in the interim.

MOTION: P. Oberhausen moved that the chairman continue as chair of the meeting. The motion was seconded by L. Couture and carried unanimously. (4-0-1 P. Harris abstained)

ABUTTERS HEARING – Rick & Kristie Jewell: Request for:

- A. Variance of Article 5 Table 2 of the Zoning Ordinance to permit a shed closer (11.2') to the side property line than allowed (12.5'). ZBA # 1808 and
 - B. Variance of Article 5 Table 2 of the Zoning Ordinance to permit a shed closer (23.9') to the front property line than allowed (50'). ZBA #1908
- Property is located at 53 Woodland Drive in an "RS" Zone, Tax Lot 116-030.

No one was present for this application.

BOARD ACTION – Rick & Kristie Jewell:

- A. Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to permit a shed closer (11.2') to the side property line than allowed (12.5')
- B. Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to permit a shed closer (23.9') to the front property line than allowed (50').

MOTION: On a motion by P. Oberhausen, seconded by N. Patten it was voted unanimously to Table both hearings until the August 27, 2008, meeting at 7pm. as no one was in attendance to present the application. (4-0-1 P. Harris abstained)

ABUTTERS' HEARING – David Nagle for Mallards Landing: Request for a Special Exception of Article 11.A.3.c of the Zoning Ordinance to reconstruct a seasonal dwelling, adding a second story (useable space) within a preexisting nonconforming footprint (water, road, rear and unrelated structure setbacks). Property is located at 86 Mallards Landing Road in an “RS” Zone, Tax Lot 110-002-000-623, ZBA # 2008.

At least three members have viewed the property. Mr. Nagle was present for this application. He explained his proposal was to add useable space by demolishing the building, pouring a slab and reconstructing the building, in the same footprint, but adding a second floor. The building is old, the floors tip in one direction.

P. Oberhausen referred to the NH DES permit with conditions. He expressed his displeasure with the density of the units in Mallard's Landing which he has expressed before. An emergency or fire may find a difficult situation because two vehicles cannot pass on the road. There are also exterior heating fuel tanks between the closely placed units. He indicated his fear that there will be a major disaster with the units hemmed in by the water, each other and the railroad tracks. The close setbacks are allowed, but he feels given the other characteristics of the development it is not a safe situation. N. Patten asked for a clarification on whether the unit would be torn down, a slab added and then rebuilt in the same footprint. M. Ford noted the owner was limited as he could only go up.

Mr. Nagel noted it will be reconstructed to code making the dwelling much safer. It will be built by Mr. Walter Juscak. P. Oberhausen noted the building has to meet fire code related to the reduced setback. L. Couture asked about timing. Mr. Nagel noted it will be built in October. E. Murphy confirmed that, unlike the building plans submitted, no overhang was part of this application or the notice to abutters or is allowed under a special exception to add useable space.

The Board reviewed the house plan. The plans showed a 20” overhang. Mr. Nagle said his architect told him it was allowed because it's part of the roof. E. Murphy noted it is not allowed under the special exception, but would require a variance. The “functional eave overhang” permitted in the Ordinance does not allow the entire second story to be extended beyond the first floor dimensions.

Mr. Bob Thibault, an abutter, wanted it understood that the footprint was 14' wide all the way up and that the second floor, itself, would not be 16' wide. He noted the blueprints showed an overhang. The members referred again to the plans. The second floor cannot be wider than the first under a special exception. P. Oberhausen confirmed that whatever's on the ground has to be built upright with the same eave distance.

Mr. Thibault is also concerned about the gas tank and accessory structure between his unit and Nagle's. Mr. Nagle noted the existing plastic shed is going to be replaced as it was damaged. E. Murphy noted a building permit will be necessary to replace the shed.

P. Oberhausen asked about the tree on the beach side of the house. Mr. Nagle stated the tree will not be impacted. P. Harris asked about bathrooms. Mr. Nagle noted a second will be added. The unit is on municipal sewer.

There being no further questions or comments the chairman closed the public hearing.

The chairman noted that the fuel tanks and accessory structure were discussed.

BOARD ACTION – David Nagle for Mallards Landing: Request for a Special Exception of Article 11.A.3.c of the Zoning Ordinance to reconstruct a seasonal dwelling, adding a second story (useable space) within a preexisting nonconforming footprint (water, road, rear and unrelated structure setbacks).

MOTION: N. Patten moved that the application be granted on the following basis:

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. The Board resolved both the fuel and overhang concerns.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal as they are on the municipal system.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

And with the following conditions:

9. All property bounds/existing footprint certified during construction as required.
10. All conditions of the NH DES Shoreland Waiver to be adhered to during construction and occupancy of the site and all construction to comply with current codes.
11. No structures or additions that do not meet setback, except for those approved herein are allowed.
12. No fuel source or additional accessory structures shall be placed between unrelated structures.

E. Murphy noted the Ordinance does not permit fuel sources in the 20' setback. Mr. Nagle noted he can't relocate it because of parking issues and Mallard's would have to approve it. P. Oberhausen noted the Board could not resolve the issue as to where it was going to be moved, but could only counsel Mr. Nagle as to what the Ordinance allowed. Mr. Nagle agreed and said he could always just switch to electric.

L. Couture asked if the shed was truly grandfathered as it is not on the assessment card. Mr. Nagle noted it was installed in 1992. E. Murphy noted staff will check assessment and building permit files to confirm whether it is grandfathered. M. Ford said Mr. Nagle could also check with the Fire Department on burying the LP tank.

The motion was seconded by M. Ford and carried unanimously. (3-0-2 P. Harris & P. Oberhausen abstaining)

ABUTTERS' HEARING – Amanda & Stephen Andrus: Request for a Variance of Article 5 Table 1 of the Zoning Ordinance to construct a single family dwelling in the Industrial zone. Property is located on Gebo Way Tax Lot 236-007, ZBA # 2108.

Mr. & Mrs. Andrus were present for this application. They want to build a single family home on the only remaining vacant lot in the development. All of the other lots were developed with residential uses prior to the area being zoned Industrial when zoning was adopted. The lot does abut the gravel pit and it accesses by Gebo Way.

P. Oberhausen noted that the Town does not maintain the road and probably never will be. Mr. Andrus agreed that it was a private way. The chairman referred to the staff comment from R. Ball noting this was the last vacant lot in the development.

There were no abutters present. The chairman noted that in many instances this would be a tough decision; allowing a use not permitted in a zone. However, in this instance there was a precedent set in 1977 by the almost full buildout of the development in a residential manner. He noted the preexisting condition worked with the proposal. P. Oberhausen noted that it could not be a manufactured housing unit which Mr. Andrus acknowledged noting it might be modular or it would be stick-built.

There being no further questions or comments the chairman closed the public hearing.

BOARD ACTION – Amanda & Stephen Andrus: Request for a Variance of Article 5 Table 1 of the Zoning Ordinance to construct a single family dwelling in the Industrial zone.

MOTION: L. Couture moved that the application be granted on the following basis:

1. A Variance will not decrease surrounding property values, because it's a vacant lot and they're going to be put in a single family dwelling similar to the ones in the area.
2. A Variance is not contrary to the public interest; because there are no abutters here to complain and they are mostly family in there and want to keep it that way.
3. Denial would result in unnecessary hardship to the owner because they're buying the land and they want to be there with family.
 - 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,

because it is located in a development entirely developed with residential single family homes.

And

- B. a fair and substantial relationship does not exist between the general purposes of the zoning ordinance and the specific restriction on the property, because of the 1977 residential development of the land and the 1986 industrial zoning.

And

- C. the variance would not injure the public or private rights of others, because there are other houses in the same development.

4. A Variance will result in substantial justice being done because it will contribute to the development of that area.
5. A Variance will observe the spirit and intent of the ordinance, because it's the spirit and intent that it will be their home and there are other homes in the area like that.

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

ABUTTERS' HEARING – Charles & Marilyn Fowler: Request for:

- A. Special Exception of Article 4 of the Wetland Ordinance and Article 11.A.3.d of the Zoning Ordinance to construct a single family residence closer (36.59') to the highwater mark than allowed (50') but not closer than the existing structure. ZBA # 2208; and
- B. Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family dwelling closer (28.65') to the constructed public way than allowed (50'). ZBA # 2308
- Property is located at 81 Tucker Shore Road in an "RS" Zone, Tax Lot 107-009.

At least three board members have visited the site. The chairman reviewed the history of the recent site applications as noted on the staff report.

Mr. Fowler and Attorney Regina Nadeau were present for this application. Ms. Nadeau explained the property only has 100'± depth but is restricted by a 50' setback requirement from both the road and water. The existing building is grandfathered. They wanted to expand it and started by meeting with DES before the April 1st deadline for the enactment of the new Shoreland Protection Rules. However, they chose to first design a replacement dwelling to completely honor the 50' (State and Town) water setback standard. In that version, the house ended up 5-6' off the roadway.

Mr. Nadeau continued by explaining that when it became clear during the public hearing for that proposal that the Board was not satisfied with the close proximity to the road, the applicant thought they could turn the building and be 16' off the roadway so they withdrew that proposal. But when the surveyor drew it up, the distance was actually only 9' off the roadway. They reapplied for that design, but the Board stated that although they were receptive to relocation, it was still too close and they suggested a design that resulted in more balance between the setback encroachments to the road and the water.

Ms. Nadeau explained that at that point they went back to the State of NH and proposed this current plan to push the building footprint from 22' to approximately 37' back from the lake. But that resulted in increasing the road setback encroachment to 28'. The Public Works Department has acknowledged that they support a 28' setback to the garage as being adequate for road maintenance purposes.

Ms. Nadeau stated that just this evening she also received a staff comment from R. Ball that asks that they show the shortest distance between the structure and the road. She noted that her comments concurrently discuss both the special exception for the Shoreland setback and the variance for the roadside setback.

Ms. Nadeau noted DES certainly put them through the wringer on this one. They have a drainage design for the property, a revegetation plan, a plan to treat roof runoff and a permeable pavers plan. The neighboring houses are somewhat in a line with their original plan, being close to the water. In this plan which pulls the building further back they will actually reduce the overcrowding along the waterfront and perhaps even open up some views. It's the only alternative that's been left to them between the Board and the State.

P. Oberhausen noted they did a nice job and L. Couture agreed. P. Oberhausen noted that the NH DES permit has not been signed or recorded. Ms. Nadeau explained they do not want to encumber the lot with those conditions until they receive the Town's approval to proceed. But it must and will be signed and recorded before they proceed. She suggested the Board make it a condition of any approval that the document be signed and recorded. L. Couture asked about the difference between the 2,270sf vs. 2,880sf noted on the DES and Town applications. Mr. Fowler noted it was a difference in not/including all impervious/pervious coverage.

P. Harris referred to R. Ball's note. Ms. Nadeau noted that the requested dimension will be added to the final plan. P. Harris noted he was looking for some kind of balance and he thinks they've done a great job on the application.

Mr. Alan Doyon was present in support of the Fowler's plans. He feels they've done a good job.

Lori Fitzgerald asked about the house height as they are across the street and worried about their view. Ms. Nadeau noted the house will be one-story, but will be increased in height by 4.5' to 22' in total height. It's one floor, but the pitch of the roof is changing.

Mr. Dan O'Toole asked about the side setback. He suggested that it be centered a little bit more to alleviate the view problem that the Thompson's have from across the street and to move a little more away from his property.

Ms. Nadeau noted that under the State review there is a complicated grid system review related to vegetation. They had to agree not to remove trees on that side of the house and to also plant some additional trees. They needed to save everything they could.

There being no further questions or comments the chairman closed the public hearing.

P. Oberhausen agrees with the special exception but not the variance at this time because the actual closest dimension to the traveled way has not been noticed (and is not actually known). The variance if granted in conformance with the notice will not be correct. Ms. Nadeau noted that it's not going to be any closer than 26' and she argued that all the affected parties are present and everyone was noticed.

C. Daigle explained that in response to an earlier discussion of the Board in relation to a different application, she contacted Counsel regarding the leeway the Board has to adjust a plan without requiring renote. She had reported back to the Board that based on the individual situation the Board can make reasonable accommodations for minor adjustments. In this instance the setback is to the traveled way, not a private property line and most if not all abutters are present. It would be the decision of the Board if they felt restricting the setback variance to 26' would be reasonable.

Mr. Fowler explained that they've moved the house and made it narrower. P. Oberhausen noted that the variance has to be for the specific dimension. Ms. Nadeau noted there has been good faith and notice here. They've made several changes on this plan. As she's experienced in prior public hearings, she's being handed staff comments as she enters the hearing instead of receiving them ahead of time so they could respond adequately. It's such a minor difference. The abutters are here. The plan has been on file. It is not a change in the plan, just adding a dimension. P. Oberhausen likes the plan, but this is just a technicality, and the variance has to be correct. The applicant noted they can certainly live with the 26' if the Board wants to restrict it to that number.

BOARD ACTION – Charles & Marilynn Fowler: Request for a Special Exception of Article 4 of the Wetland Ordinance and Article 11.A.3.d of the Zoning Ordinance to construct a single family residence closer (36.59') to the highwater mark than allowed (50') but not closer than the existing structure.

MOTION: P. Oberhausen moved that the application be granted on the following basis:

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. Abutters have supported the new design.
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.

And with the following conditions:

9. All property bounds/existing footprint certified during construction as required.

10. All required NH DES conditions of Shoreland Waiver to be complied with during construction and occupancy and the document be signed and recorded prior to proceeding on this approval.
11. No structures or additions that do not meet setback, except for those approved herein are allowed.

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

BOARD ACTION – Charles & Marilynn Fowler: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family dwelling closer (28.65') to the constructed public way than allowed (50').

P. Oberhausen suggested the setback be restricted as a condition of the approval.

MOTION: P. Oberhausen moved that the application be granted on the following basis:

1. A Variance will not decrease surrounding property values, and in fact should increase the area value and brighten up the site.
 2. A Variance is not contrary to the public interest.
 3. Denial would result in unnecessary hardship to the owner because the owner has taken all steps to redesign the building to make it appropriate for the use
 - A. the variance is needed to enable the applicant to construct the development as designed due to special conditions of the property
 - B. and the benefit sought by the applicant cannot be achieved by some other reasonably feasible method because they redesigned the plan to meet all concerns.
 4. A Variance will result in substantial justice being done
 5. A Variance will observe the spirit and intent of the ordinance
- And with the following conditions:
6. All property bounds/existing footprint certified during construction as required.
 7. All required NH DES conditions of Shoreland Waiver to be complied with during construction and occupancy.
 8. No structures or additions that do not meet setback, except for those approved herein are allowed.
 9. The variance is amended to permit a minimum 26.00' setback to the traveled way for the single family dwelling to be constructed and that the actual proposed dimension be added to the print.

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

ABUTTERS' HEARING – Peter & Nancy DeVivo: Request for:

- A. An Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to permit a residential shed closer (45.7') to the front property line than allowed (50'). ZBA # 2708; and
- B. An Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to permit a residential lean-to closer (38.7') to the front property line than allowed (50'). ZBA # 2408
Property is located at 188 Horne Road, in an "R" Zone, Tax Lot 209-019.

Mr. DeVivo, Mr. Ron Johnson and Ms. Georgie Johnson were present for this application. Ms. Johnson referred to the information submitted on the written application including:

- o the intention to continue to use the property as is
- o no increase the number of vehicles
- o Mr. DeVivo was informed of the encroachments only through the survey
- o Mr. DeVivo contacted the building official and was told to measure the front setback as 60' from the road
- o Mr. Boisvert did a drive-by inspection and approved the building
- o It was an honest mistake on the part of the applicant and he never realized the mistake
- o It would be costly and expensive to correct the mistake
- o No one would have known if he hadn't been going through the special exception
- o It's not a nuisance because it's 39' from the road and is blocked by a natural treeline
- o The road is already existing
- o It would be unjust to require it to be corrected as it was an honest mistake and would be very costly.

P. Oberhausen asked about the salt storage. Ms. Johnson said they'd put a portable shed roof over the salt storage if acceptable. Mr. Johnson noted that it can't be outside, but can be covered under the Aquifer Ordinance. It is on concrete. It will be addressed through site plan with the planning board. The chairman noted they are currently discussing the setback waivers. Mr. Johnson agreed the salt storage will have to meet setbacks if they cover it.

M. Ford asked when the building was built. Ms. Johnson noted it was built in 2003. She offered that very often people don't understand where to measure setback from.

E. Murphy noted that the pole-barn was inspected on 12/22/03 and Mr. DeVivo was informed that setbacks could not be verified until the snow melted. But apparently that did not happen.

C. Daigle noted that measuring setbacks can be confusing to people, but that's why it's defined on the application form signed by the applicant and added to the building permit issued. P. Harris asked if the buildings were on a foundation. Mr. DeVivo stated, no, that it was a pole barn. C. Daigle noted some of the arguments being made might be more appropriate as a variance. Mr. Johnson noted they felt they met the standards for an equitable waiver.

Mr. Armand Morin, an abutter, stated he does not have a problem with anything that is there.

Mr. Johnson went over the arguments presented on the application one more time. It's far back from the road and was an honest mistake.

Ms. Johnson suggested it be approved, with the condition that if it had to be rebuilt it be conformance. Mr. Johnson reiterated it was an honest mistake. M. Ford noted no one was there for the discussions between Mr. DeVivo and Mr. Boisvert. E. Murphy noted a list of inspections is given with the building permit and obviously were not followed. Mr. DeVivo had to call for the inspections. M. Ford stated that the Town has a lax process for follow-up. E. Murphy explained that process has recently been changed and there is significant follow up including calling on permits now. M. Ford agreed in this case the applicant's responsibility was clear on the application and the permit.

P. Harris thought equitable waiver requirements #1 and #3 were met. There's a good distance and a lot of screening. On #4, this is a pole barn, not a dwelling or more permanent type building. But he believes #2 is tough. He does feel it might have been a good faith error. Mr. Johnson agreed it was not an error on the Town Official's part, but just a mis-measurement on Mr. DeVivo's part. P. Harris noted it is still 40' from the property line. But he does have a concern about precedence. He noted the applicant did have plenty of room to meet the setbacks so there would have been no purpose in knowingly creating the encroachment.

There being no further comment or question the chairman closed the public hearing.

BOARD ACTION – Peter & Nancy DeVivo:

- A. Request for An Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to permit a residential shed closer (45.7') to the front property line than allowed (50').
- B. Request for An Equitable Waiver of Article 5 Table 2 of the Zoning Ordinance to permit a residential lean-to closer (38.7') to the front property line than allowed (50').

MOTION: P. Harris moved that the burden of proof is on the property owner and that the applications be granted on the following basis:

1. Violation was not discovered by owner/agent or town official until structure was substantially complete and much time had passed.
2. Violation was not outcome of ignorance of law, failure to inquire, obfuscation, misrepresentation or bad faith by owner/agent, but was caused by good faith error by owner. The owner felt what he did was right and for that reason was caused by good faith error.
3. Violation does not constitute nuisance, diminish value of other property, nor interfere/affect any present or permissible future uses of any such property; as stated by nearest abutter. There is sufficient distance to the road ROW for further road expansions and dense vegetation screens the buildings from the road.
4. Due to degree of construction/investment made in ignorance of violation, cost of correction outweighs public benefit to be gained so as to be inequitable to require correction. The type of building does not impact community services in the same manner as would a dwelling or other building of more consequence.

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

ABUTTERS' HEARING - Peter & Nancy DeVivo: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow a contractor's yard in the rural zone. Property is located at 188 Horne Road, in an "R" Zone, Tax Lot 209-019. ZBA # 2508

Mr. DeVivo, Mr. Ron Johnson and Ms. Georgie Johnson were present for the application. Ms. Johnson noted this application will also require a site plan approval. This is Mr. DeVivo's residential property and has his landscaping equipment stored there. He has done so since 2002. He also proposes to burn brush once or twice a year on the property. Employees park there. He owns 5 vehicles 2 trailers and 2 tractors. The site cannot be viewed from off-site. Only trucks are parked outside. Employee vehicles are parked in place of company vehicles during day.

Ms. Johnson stated it is an appropriate location because it's been there since 2002, the Town is assessing Mr. DeVivo for all buildings and he was never told he couldn't store his business equipment on the property. This way he can watch over his equipment and employees on site. The use will not reduce abutting property values because it is heavily screened and Mr. DeVivo is considerate of his neighbors. No nuisance is being created because he's considerate of neighbors. Normal operational hours are 7-5 (but usually 8-4:30). The employees leave in the morning and return at night. During the winter they do go out during the night with the plow trucks. A neighbor complained about the backup alarms so all of the trucks have been outfitted with switches so they can be turned off while on the property. Mr. DeVivo does no maintenance of equipment on site. The rear shed has been moved to be conforming. Employees use the residential facilities as necessary.

In referring to staff comments Ms. Johnson noted they have addressed night-time plowing noise with the alarm switches. She noted the number of people involved in the business is a maximum of six. Facilities are in the house and will be reviewed by the Planning Board; but the employees are off-site all day. There is a gas can on the trailer that goes with the equipment to the job site. There is no other fuel storage on site.

Mr. Ron Johnson referred to the site plan. They show a third driveway to the brush storage area. That driveway will be eliminated as only two driveways are permitted. They will cover or remove the salt. Mr. DeVivo has scheduled an aquifer inspection. M&B Tractor services the equipment off-site. Trucks are also serviced off-site. Mr. DeVivo will apply for permits to relocate shed and for deck and pool.

M. Ford inquired about the paved aprons. Mr. Johnson noted it is a condition of the driveway permit process. M. Ford noted the driveway to the commercial buildings seems seldom used and asked why it needed an apron. C. Daigle noted the applicant has identified it as the commercial driveway, it can be used under this approval and the purpose of the paved apron is to protect the Belmont taxpayers from the cost of repairing damage to the edge of their paved roads caused by driveway access.

P. Oberhausen asked about outside storage of materials such as mulch. Mr. DeVivo stated that although he currently does have a pile of stone on site, he does not want outside storage except in the identified bins. He said the salt/sanded-salt storage would be a maximum of 10 yards.

P. Oberhausen asked how long employees are on site before they leave for the day. Mr. DeVivo stated they arrive at 7:30 and leave by 8. P. Oberhausen asked about sanitary facilities. Mr. DeVivo stated they can use the house. P. Oberhausen noted that on-site facilities for the business may be required. P. Harris asked again about the paved aprons. Mr. DeVivo noted he will install paved aprons for the two driveways that he'll be keeping.

P. Harris noted the letter from Mr. Chase supporting Mr. DeVivo's proposal. P. Oberhausen asked about the wetland concern. Mr. Johnson noted they have not done a wetlands delineation of the site. He referred to a septic design showing the brush pile driveway cutting across a wetlands area. Mr. Johnson noted that area will be reclaimed, the driveway eliminated, the proposed brush pile area closed and not used.

P. Harris asked about outside storage areas. Mr. DeVivo will not have outside storage. Mr. Johnson noted this would all be reviewed by the Planning Board. P. Oberhausen asked about the residential driveway permit in 2008. Mr. Johnson noted that was the one being eliminated. Mr. Johnson reminded the Board that Mr. Morin's comments in support (see previous applications) also apply to this application.

M. Ford asked about the staff condition for protection of the underground LP tank. Mr. DeVivo agreed it would be wise to put a boulder or some other type of protection in. P. Harris asked if it was sewer or septic. Mr. Johnson noted it was septic. P. Oberhausen asked about on-site facilities. He feels the Town requires that. C. Daigle noted the Planning Board would certainly look at that under the Site Plan review. Mr. Johnson noted the employees are only on site about 5% of the day.

There being no further comment or question, the chairman closed the public hearing.

BOARD ACTION – Peter & Nancy DeVivo: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow a contractor's yard in the rural zone.

MOTION: P. Oberhausen moved that the application be granted on the following basis:

1. The use is allowed in the district
2. The specific site is appropriate for the use. It's setback from the road and well buffered with vegetation.
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. We have abutters with no objection with the exception of one who had a complaint about noise and that has been taken care of by switches for the backup alarms.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.

And with the following conditions:

8. Obtain all outstanding driveway, building, commercial burning and wetlands permits. Pave all permitted driveway aprons.
9. Successfully complete required aquifer inspection and repeat annually as required.
10. Cure fill encroachments/revegetate on adjacent lots.
11. No salt or salted sand storage unless covered.
12. Install bollards around underground propane installation.
13. Requires Site Plan approval.
14. All materials shall be stored inside bins and shed areas.
15. Vehicles will be serviced off site.

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

OTHER BUSINESS:

1. **Minutes:**
MOTION: On a motion by P. Oberhausen, seconded by N. Patten it was voted unanimously to accept the minutes of June 25, 2008 as written. (4-0-1 P. Harris abstained)
2. **Budget:**
The Board reviewed the draft budget submitted. Payroll has been included at the current rate. Any increase is a function of the Town and is unknown at this time. No change in operating request. No capital request. A one-third reduction in anticipated revenue due to a decrease in applications (primarily Planning Board).
3. **Cormier – 107/124:**
C. Daigle updated the members on the approval given to Cormier last month to keep an existing deck. There had been significant discussion on what standard had to be met by the construction related to supports. Cormier has since learned their title insurance company will pay for the entire deck to be demolished and constructed brand new.
4. **Adjournment:**
MOTION: On a motion by P. Oberhausen seconded by M. Ford it was voted unanimously to adjourn at 9:27 pm. (4-0-1)

Respectfully submitted,

Candace L. Daigle, Town Planner