

ZONING BOARD OF ADJUSTMENT

Wednesday, April 27, 2005
Belmont Corner Meeting House
Belmont, N.H.03220

Present: Chairman J. Olmstead; Members N. Patten, P. Harris, B. Paquette; Alternate E. Hawkins.
Absent: Member B. Arey; Alternate P. Oberhausen.
Staff: C. Daigle.

The chairman opened the meeting at 7pm. He noted that there are only 4 members in attendance. Each applicant will have the opportunity to proceed with 4 (it taking 3 affirmative votes to pass any motion) or to postpone the public hearing until the next regular meeting. Having a short board will not be a reason, itself, to grant a rehearing. He asked that everyone addressing the Board give their name the first time they speak.

Abutters' Hearing – Ronald & Elaina Shuten: Continuation of a request for a Variance of Article 5 Table 2 of the Zoning Ordinance to allow a garage closer (43.2') to the front property line than allowed (50'). Property is located at 663 Union Road in an "RS" Zone, Tax Lot 222-045, ZBA # 1005.

The applicant has submitted a written request to table the hearing until the May 25, 2005, meeting.

BOARD'S ACTION – Ronald & Elaina Shuten:

MOTION: On a motion by J. Olmstead, seconded by N. Patten, it was voted unanimously to table the public hearing until 7pm on May 25, 2005, at the request of the applicant. (3-0-1 P. Harris abstained)

Abutters' Hearing – David Guyer, Sr.: On property located at 65 Jefferson Road in an "RS" Zone, Tax Lot 116-010, ZBA # 0505 & 6104. From the Zoning Ordinance - requests for:

- Variance of Article 14- Lot to allow two detached single-family homes on one lot;
- Variance of Article 5 Table 2 to allow two dwelling units without the minimum required acreage.

Mr. Guyer and Attorney William Philpot, Jr. were present for this meeting. The chairman explained that only 2 of the 4 members who sat on the original application were present. The applicant has the choice to have his hearing postponed until the next regular meeting where the Board would attempt to have the original 4 members present or to have 2 new members sit on the application. E. Hawkins arrived. Mr. Philpot asked that the hearing be postponed.

BOARD' ACTION – David Guyer, Sr.

MOTION: On a motion by B. Paquette, seconded by N. Patten, it was voted unanimously to table the public hearing until 7pm on May 25, 2005. (4-0)

The chairman appointed E. Hawkins as a voting member for the remainder of the evening.

Abutters' Hearing – Phillip Harker: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow an outdoor recreation facility in the industrial zone. Property is located on Depot Street, Tax Lot 234-004, ZBA # 1405.

Mr. Harker was present for this application. He explained the property is the first lot on the Northfield Town line. The lot is approximately 168ac in size. Mr. Harker displayed the map shown to the Planning Board at the conceptual discussion. The lot is zoned industrial but has environmental restrictions. There are significant wetlands with only approximately 43acres having been delineated as upland. Mr. Harker has owned the property since 2001 and has made some attempts to develop the lot without much success because of the environmental concerns.

Mr. Harker explained his proposal for the upland area. It is summarized as outdoor recreation, which requires a special exception. It would be motorized outdoor recreation for 2 and 4 wheel OHRVs, ATVs motorcycles and snowmobiles. The business is essentially organized events, mostly on weekends. It will occur 75-80 percent on weekends. That would be important to the abutters for traffic flow and other characteristics of the use. There is a dense forest surrounding the development area.

Mr. Harker noted he made the mistake of pushing some stumps into the wetlands. That problem has been addressed with the NH DES and as of December 31st, the DES deadline, has been corrected.

Because the lot is so well treed, the activity will not be visible from Rte 140 or from most of the surrounding abutters. The closest abutter, another industrial lot, is on the eastern border. He also offered his promise that the activity would stay 1,000' from the nearest residential building. This is a unique lot on the edge of town. No real development will occur on the north or west side of the lot. The lot is not suitable for industrial development. Mr. Harker stated he felt he has few options. He has done a fair amount of research on the proposed use including visiting a similar site in Winchester and speaking to Town officials there. That site has a positive economic effect with minimal negative impacts. He feels his proposal would have a comparable result in this area. He has made considerable concessions to abutters and the environment in his development plans. The remaining 120 acres will remain untouched.

Mr. Harker referred to the questions on the staff report. J. Olmstead asked if the trails will be available for emergency OHRV access. Mr. Harker stated they will be available to an ambulance and to the Fire Department's emergency OHRV. He will contract to have an ambulance on site during the events. For non-events, there will be access roads available. Currently the site is gated because of trash dumping, but he can reach some arrangement with the Fire Department for access. J. Olmstead asked about the hours proposed to be 7am to 7pm or dusk. Mr. Harker stated he would modify the hours if necessary.

The chairman opened the public hearing. Victor Virgin was present as the owner of the abutting industrial lot. He stated that he has a concern about a negative impact to the value of his property. He has several hundred thousand dollars invested. It's not an advantage to have an overnight OHRV campsite next door. He is also concerned about the environmental impact to his project. The activity and inconvenience would hinder the value of his property. J. Olmstead noted the Conservation Commission also voiced their concern about the impact to the wetlands and wildlife.

P. Harris asked how people would be kept out of the wetland areas. It's clear that many OHRV riders want wet areas to enhance their riding experience. Mr. Harker said he would plant hundreds of trees on the property to deaden noise and eliminate visual impact. Now the wetlands are protected in the cleared area by a large berm from

the stumps. In the future he will use BMPs as defined in the trail management book. They include hay bales, silt fence and vegetative buffers. There are optional ways to approach that question. When he crosses a wetland he'll use BMPs. The 3 crossings were defined in the trail notification to DES. One crossing has a culvert; the other two haven't been crossed yet.

P. Harris asked about the trail layout. Will the trails be set back from the wetlands? Mr. Harker stated he has plenty of room to adhere to any current or future setback to wetlands. J. Olmstead reminded everyone of the Town's initiative to protect the aquifer. Mr. Harker stated he would adhere to anything that's put into the regulations. Mr. Harker feels the primary risk to water quality seems to be a structure in contrast to a trail. The land is essentially flat with little to no elevation changes with a sandy soil. This will mitigate any erosion problem because there is nowhere for water to flow.

P. Harris noted his background in racing and expressed his concern that vehicles using the trails and racing during the summer months will result in issues with fueling, accidents causing spills, broken radiators, etc. He feels there is a high risk to the environment in the proposed use. Mr. Harker said he visited another track and looked at the DES requirements for that track. The site allows parking and use of vehicles. Some of the ways they handle the fuel concern is that no oil changes are allowed and only approved 5-gallon gas can are allowed. Mr. Harker stated it appears that Winchester is satisfied that this works for them. That track is also in a sensitive area and DES is satisfied with that.

P. Harris noted his questions are trying to determine whether any hazard or nuisance is involved in the proposed use. They also have to consider any valid objections from abutters. Mr. Harker asked if the Board wants to see an actual trail layout. P. Harris noted that would be important. He stated that when watching TV events it seems going through the mud is the biggest draw.

J. Olmstead noted that the land is over the aquifer and there seems there would be very little control, especially with so much of the lot being wetlands. There is a significant concern about water quality. Mr. Harker stated his plan is highly biased towards conservation. There are a long list of other uses for this land that would be much more risky.

Mr. John Sanborn stated he is an abutter and asked about the notice mailing date. C. Daigle informed him the requirement is 5 days prior to the meeting. Mr. Harker showed Mr. Sanborn the site plan for wetland/uplands. No trails are shown on the map.

E. Hawkins asked about the weekend events. Mr. Harker noted they are races. He noted the trails will move around every year. Mr. Hawkins noted the uplands must be raised above the wetlands, which would result in some grade change. Mr. Harker acknowledged that was the case and said he had previously meant it just wasn't a mountain. The uplands are about 2-3 feet above the wetlands.

E. Hawkins noted this particular wetland is crucial to Belmont and the whole Winnepesaukee River basin. Mr. Harker noted the whole area is very sensitive. E. Hawkins noted an outdoor use that did not include motorized vehicles would be a better choice. He asked what specific BMPs will be used? Mr. Harker said he'll use BMPs when he goes to NH DES.

J. Olmstead noted this review is only for phase 1. Mr. Harker said he needs the income from phase 1 to afford phase 2. J. Olmstead asked how the lot would be restricted after hours. Mr. Harker said the gate would be locked. There may also be another gate at a wetland crossing that would access the actual track. The only other access would be from trails on the residential side. The activity is already happening, it's just a question of getting bigger and making it commercial. B. Paquette asked if there will be overnight camping. Mr. Harker noted there

will be no camping and no alcohol. Area camping, restaurants and motels would benefit from the proposal.

E. Hawkins asked just how many people the use could draw. Mr. Harker said it could be thousands. E. Hawkins asked about the trail network. Mr. Harker explained that racing will occur in a concentrated area, a motocross track with people lined up around the fence. Another type of track might be a couple miles long and then they'll use those wetlands crossings. Both activities are feasible. E. Hawkins confirmed that Mr. Harker was saying that an event could attract thousands of people. Mr. Harker agreed that they certainly can. He has met with NH DOT a couple of times, but does not have a driveway permit. E. Hawkins noted that's a lot of environmental impact. He asked if noise studies are done at other facilities. Mr. Harker stated that the State mandates decibel levels; currently it is 100 at the border for OHRV. He expects to come nowhere near that due to the tree cover. The tree cover will be the key. In addition the timing of weekends will be the key. Occurring on a weekend will deaden the noise. At the other track they have cut the trees and there are complaints from abutters about the noise.

J. Olmstead asked about sanitary facilities in Phase 1. Mr. Harker noted that on day 1 it would be portable toilets. Looking at the track in Winchester they did that for several years and the Town and DES accepted it. C. Daigle noted that using portable facilities would require the approval of the Health Officer and the Planning Board. It is not something that the Planning Board has approved very often in the past. N. Patten noted that the community already has to deal with race-related traffic from the Loudon track. Mr. Harker noted he would commit to avoid having events on those weekends that Loudon has the big races.

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

BOARD'S ACTION – Phillip Harker:

P. Harris noted it is a large proposal on a large piece of land. There may not be enough information to determine if the proposal meets all of the criteria. One abutter spoke in objection. Delaying taking action would allow both the applicant and the abutter to provide more information. He feels Mr. Harker hasn't really handled the issue of whether the proposal creates a nuisance or hazard or disclosed how he'll deal with the real numbers he's anticipating or the full impact because of the size. He suggested that perhaps because of the number of vehicles the proposed use may not be appropriate.

MOTION: P. Harris moved to table the public hearing for more information, to allow the Board to make an informed decision and to allow the applicant to address the criteria to meet some of the questions. Specific information should include: trail layout, where things will happen on the lot, how is the site appropriate for the proposed use, will the proposed use affect surrounding property values, maximum number of people the lot can support, information on sanitary facilities, specific information on how water quality/the aquifer will be protected, how fueling accidents/contaminants will be avoided/responded to, all issues relating to motor vehicles, gasoline, oil, anti-freeze and participants.

P. Harris explained the step he's trying to avoid is denying the application. This will give the applicant an opportunity to provide information in support of his proposal. Such a proposal could have a huge impact on the community and the area. It was relatively few years ago that Bryar had a small roadside track that now is NHIS. More work is necessary to prove it will work.

Mr. Harker agreed it would be an iterative process. He'll submit additional information and see what remaining concerns the Board may have.

The motion was seconded by B. Paquette and carried with E. Hawkins in opposition (4-1)

Abutters' Hearing – John & Christine Cambray: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single-family residence closer to the front property line (35') than allowed (50'). Property is located on Gardners Grove Road in an "RS" Zone, Tax Lot 119-021, ZBA # 1505.

Mr. Cambray and Mr. Martin Wilson of Burd Engineering were present for this application. Mr. Cambray said they would get a sewer permit if approved. The building is 50' from the high water mark. Mr. Wilson explained the contour line on the map represents the high water mark of the lake based on topography. C. Daigle stated the State establishes an elevation for Silver and Winnisquam Lakes. Mr. Cambray said the basement will be above the 100-year flood elevation.

E. Hawkins asked about the Larson setback being different from the lake elevation and reviewed the available conforming building envelope for the site. P. Harris asked about the proposed structure square footage. Mr. Cambray explained the foundation is 28'x36' and 14'x26' with a 2-car 26'x26' garage. Mr. Cambray stated he spoke to his abutters. J. Olmstead asked how they would protect the lake during construction. Mr. Cambray stated they will be using silt fencing. There will be adequate protection. They will also be leaving as many trees as possible.

The chairman opened the public hearing. No abutters present. There being no further comment or question the chairman closed the public hearing.

BOARD'S ACTION – John & Christine Cambray:

MOTION: P. Harris moved that the application be granted for the following reasons:

1. The variance will not be contrary to the public interest. This is a residential use in residential area.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because:
 - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The proposed structure fits in with the houses in the area. The lot has both a large setback from the water and the road to meet. A 10' relaxation to the road shouldn't interfere with the road use and the applicant has kept the full distance to the water.
 - 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. This will allow them the same use as others in the area.
5. The variance would not diminish the value of surrounding properties. It will be an improvement to that lot and the neighborhood.
6. Additional conditions:
 - a. All property bounds/existing footprint certified during construction as required.
 - b. All required floodplain/Shoreland Protection documents to be submitted.
 - c. No structures or additions that do not meet setback, except for those approved herein are allowed.

E. Hawkins asked if the Board felt that the conforming building envelope allows reasonable use. This is new construction. The proposed building footprint is 2,300 sq ft. A smaller footprint might be able to fit within the

envelope. P. Harris stated he felt it would be unjust to try to make such a small adjustment and perhaps then ask for more than one variance. It's more important to preserve the lake water quality. The road setback will be similar to the surrounding area.

The motion was seconded by B. Paquette and carried with E. Hawkins in opposition. (4-1)

Abutters' Hearing – H. Brian & Patricia Friberg for Mallard's Landing Association: For property located at 99 Mallards Landing Road, in a "RS" Zone, Tax Lot 110-002-000-610, ZBA # 1605, 1705, 1805, 1905 & 2005. Requests for:

- Special Exception of Article 10.A.3.c. of the Zoning Ordinance to add useable space within a preexisting nonconforming footprint (2nd story).
- Variances of Article 5 Table 2 of the Zoning Ordinance to replace an existing Manufactured Unit:
 - closer (10.56') to the northwest property line than allowed (12.5');
 - closer (.97') from the southeast property line than allowed (12.5') but not closer than the existing building;
- Variances of Article 5 Table 2 of the Zoning Ordinance to replace an existing shed:
 - closer (35') to the road ROW than allowed (50');
 - closer (2') to the southeast property line than allowed (12.5').

Mr. & Mrs. Friberg were present for the meeting. Mr. Friberg noted they purchased the site 6 ½ years ago. They are at the end of Mallard's Landing Road and have neighbors both within and on the other side of the Mallards property line. The unit had not been used for a few years prior to their purchase. They have done a lot to upgrade the site and also keep the waterfront cleaned up. Since their purchase they found that most of their unit is on the Railroad property. They've arranged the proposed site to get off the railroad property and keep within other setbacks as closely as possible. There are no problems with utilities, electrical, sewerage or parking. They do have letters from 2 abutters within the Association, which approve. They submitted copies of letters from Barrett and Mastrullo.

Mrs. Friberg said there is a deck on the front of the current mobile home. They'll be using that footprint as part of their relocation. The last 6 or 8 units on the road are all stick-built. This is the only mobile home in that area. This will enhance the values in the area both within and outside of Mallard's Landing. The elevation of the first floor will be 4-6" above ground level. They can't go over 17' in total height because of Mallard's rules. They will also use silt-fence to protect the lake during construction. They will have the surveyor certify the building site. The unit will be 2-story.

E. Hawkins asked if they can eliminate the shed and not go through the extra variances. Mrs. Friberg noted they need the shed for raking and mowing implements because there is so much grass and so many trees in the area. It's a large area to maintain because they are last on the road. They also need a place for gasoline for the lawnmower. They did consider attaching the shed to the house, but felt it would not be as safe. At least 3 board members have seen the sight.

The chairman opened the public hearing. Mr. Normandin from Mohawk Way was present. He said he has no interest since learning the unit is on the other side of Mallard's from his property. There being no further question or comment the chairman closed the public hearing.

BOARD'S ACTION - H. Brian & Patricia Friberg for Mallard's Landing Association:

E. Hawkins noted the staff comments and feels the Mallard's units that are located within the Railroad ROW are unique properties and special efforts need to be made to move them back onto the Mallard's property. The

Board has supported similar proposals to cure this problem. He supports the overall aspects of this proposal. N. Patten thinks it's a great improvement and will help eliminate the boundary line problem.

On the application for Special Exception of Article 10.A.3.c. of the Zoning Ordinance to add useable space within a preexisting nonconforming footprint (2nd story):

MOTION: E. Hawkins moved that the application be granted for the following reasons:

1. The Ordinance specifically allows the use when a Special Exception is granted.
2.
 - a. The specific site is appropriate for the use.
 - b. No factual evidence is found that property values in the district will be reduced.
 - c. There is no valid objection from abutters based on fact.
 - d. No nuisance or hazard is involved.
 - e. Adequate and appropriate facilities will be provided.
 - f. There is adequate sewage disposal.
 - g. Structures must otherwise meet all dimensional requirements of the Ordinance.
3. Additional conditions:
 - a. All property bounds/existing footprint certified during construction as required.
 - b. All required floodplain/Shoreland Protection documents to be submitted.
 - c. 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 unanimously (5-0)

On the application for a Variance of Article 5 Table 2 of the Zoning Ordinance to replace an existing Manufactured Unit closer (10.56') to the northwest property line than allowed (12.5'):

MOTION: E. Hawkins moved that the application be granted for the following reasons:

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. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property being the proximity of and encroachment on the railroad 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. Additional conditions:
 - a. All property bounds/existing footprint certified during construction as required.
 - b. All required floodplain/Shoreland Protection documents to be submitted.
 - c. 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 unanimously (5-0)

On the application for Variances of Article 5 Table 2 of the Zoning Ordinance to replace an existing Manufactured

Unit closer (.97') from the southeast property line than allowed (12.5') but not closer than the existing building:

MOTION: E. Hawkins moved that the application be granted for the following reasons:

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. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property being the proximity of and encroachment on the railroad 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. Additional conditions:
 - a. All property bounds/existing footprint certified during construction as required.
 - b. All required floodplain/Shoreland Protection documents to be submitted.
 - c. 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 unanimously (5-0)

On the application for a Variance of Article 5 Table 2 of the Zoning Ordinance to replace an existing shed closer (35') to the road ROW than allowed (50'):

MOTION: N. Patten moved that the application be granted for the following reasons:

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. 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. Additional conditions:
 - a. All property bounds/existing footprint certified during construction as required.
 - b. All required floodplain/Shoreland Protection documents to be submitted.
 - c. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by B. Paquette and carried unanimously (5-0)

On the application for a Variance of Article 5 Table 2 of the Zoning Ordinance to replace an existing shed closer (2') to the southeast property line than allowed (12.5'):

MOTION: N. Patten moved that the application be granted for the following reasons:

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. 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. Additional conditions:
 - a. All property bounds/existing footprint certified during construction as required.
 - b. All required floodplain/Shoreland Protection documents to be submitted.
 - c. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by B. Paquette and carried unanimously (5-0)

Abutters' Hearing – Michael Townsend: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow an in-law apartment in a “RS” zone. Property is located at 577 Union Road, Tax Lot 222-027, ZBA #2105.

Mr. Townsend was present for the application. He stated the apartment has been there since it was built in 1989 and he has been paying taxes on it since 1990. When they went for refinancing, it was brought up that it was not legal. They have had a new septic system designed as required. E. Hawkins asked if some recent testing was done on the system. Mr. Townsend stated that was correct. He has a lot of people staying over bike week and they have never had a problem. E. Hawkins asked if the apartment has been used since 1988. Mr. Townsend noted his son and then his daughter stayed in the apartment and now it's someone who looks after the house when he is away, a friend. At least 3 members have viewed the site. Mr. Townsend understands that the occupant will have to be an immediate relative under this approval. His brother built the house and Mr. Townsend never asked for the apartment. He didn't get the permits, his brother did. He agrees there should have been a permit for the apartment.

The chairman opened the public hearing. Mr. & Mrs. Mitchell, abutters, were present. Their concerns are whether this is being done to enhance the sale of the property. They asked if somebody else purchases the house, is the in-law apartment still an in-law apartment? C. Daigle explained the use goes with the property and that a restrictive covenant has to be signed and recorded in the Registry of Deeds to give proper notice to prospective buyers, lending facilities, etc. There being no further comment or question the chairman closed the public hearing.

BOARD'S ACTION – Michael Townsend:

P. Harris asked about the septic approval. C. Daigle noted the appropriate approval is on file.

MOTION: E. Hawkins moved that the application be granted for the following reasons:

1. The Ordinance specifically allows the use when a Special Exception is granted.
2.
 - a. The specific site is appropriate for the use. Residences are allowed in that zone.
 - b. No factual evidence is found that property values in the district will be reduced.

- c. There is no valid objection from abutters based on fact.
 - d. No nuisance or hazard is involved.
 - e. Adequate and appropriate facilities will be provided.
 - f. There is adequate sewage disposal.
 - g. Structures must otherwise meet all dimensional requirements of the Ordinance.
3. Additional conditions:
- a. The Town shall provide and Owner shall sign/record restrictive covenant as an in-law apartment.

The motion was seconded by B. Paquette and carried unanimously (5-0)

Abutters' Hearing – Neil McSheffrey for Lakes Region MLC LLC: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to replace a manufactured unit closer (25') to the front property line than allow (50') but not closer than the existing building. Property is located at 24 Mountain View Terrace, in an "RM" Zone, Tax Lot 121-073, ZBA # 2305.

Mr. McSheffrey was present for the application and stated he bought the property last fall. There was a singlewide manufactured house on the lot. It was an eyesore. They got a permit for a singlewide replacement in anticipation of the aquifer ordinance passing. Since it did not pass, they are now applying for a doublewide to replace it. They feel the proposal will be beneficial to the area and increase the tax base and raise the existing values in the subdivision. Several others in the area have gone to doublewide units. C. Daigle also noted upgrades in the area allow units to meet today's code and be safer for the occupants.

The chairman opened the public hearing. No abutters were present. There being no further comment or question the chairman closed the public hearing.

BOARD'S ACTION – Neil McSheffrey for Lakes Region MLC LLC:

E. Hawkins noted there is no increase in nonconformance. The only reason it is a variance is the slight increase above the 40% allowed by a special exception. P. Harris agreed they made the best utilization of the house on the property. The upgrades and the safety aspects are well worth the variance.

MOTION: E. Hawkins moved that the application be granted for the following reasons:

- 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. 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. Additional conditions:
 - a. All property bounds/existing footprint certified during construction as required.
 - b. No structures or additions that do not meet setback, except for those approved herein are allowed.

E. Hawkins noted the important point is that there is no increase in the level of nonconformity.

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

Abutters' Hearing – Marie Hartshorne: Request for a Variance of Article 4 of the Wetlands Ordinance to allow a deck closer (38.9') to the highwater mark than allowed (50'). Property is located at 10 Sumac Lane in an "RS" Zone, Tax Lot 119-036, ZBA # 2405.

Mr. Martin Wilson of Burd Engineering was present for the application. The owner was cited for a violation and contacted an engineer to take care of delineating the site. The owner needs the access from the building and to the lake. It's a nice deck. Mr. Wilson wanted to correct two statements on the application that he made before he had all the facts. The preexisting deck was not deteriorated, but was fine. It was also not a case of a failing stair. The owner simply wanted a deck. In this case both the existing house and the deck encroach. There was a small preexisting deck which he submitted photos of. He also submitted letters from abutters Foot and Marosa with no objections. It allows the property owner the best use of the land. C. Daigle noted the previous 4x4 deck was exempt and did not create a grandfathered footprint.

The chairman opened the public hearing. No abutters present. There being no further question or comment the chairman closed the public hearing.

BOARD'S ACTION – Marie Hartshorne:

E. Hawkins noted that the fact that the deck is existing should have no impact on this review. There is ample room on the side of the house for a deck to be constructed. P. Harris said the existing location of the deck is a common sense place for a deck and they kept it within the side setbacks.

MOTION: B. Paquette moved that the application be granted for the following reasons:

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. 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. Additional conditions:
 - a. 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 with E. Hawkins in opposition (4-1)

OTHER BUSINESS:

1. **BOARD'S ACTION - MINUTES:**

MOTION: On a motion by J. Olmstead, seconded by B. Paquette, it was voted unanimously to approve

the minutes of March 21, 2005, as written. (3-0-2 P. Harris & E. Hawkins abstained)

MOTION: On a motion by J. Olmstead, seconded by B. Paquette, it was voted unanimously to approve the minutes of March 23, 2005, as written. (4-0-1 P. Harris abstained)

The members talked about the difficulty of reviewing a packet containing so many applications in less than a week. They also reviewed the need to not only state the standards in making a motion but to add the reason the standard is met.

2. **FRANCIS DAMI:**

Mr. Dami was present to ask the Board to explain the ballot question regarding vegetated buffers. P. Harris explained the ballot question did not pass. Mr. Dami asked if a permit was necessary to drain wetlands. C. Daigle noted it was.

ADJOURNMENT:

MOTION: On a motion by N. Patten, seconded by B. Paquette, it was voted unanimously to adjourn at 9:38pm. (5-0).

Respectfully submitted,

Candace L. Daigle