

UNAPPROVED MINUTES

Town of Auburn Zoning Board of Adjustment February 24, 2015

Present: Mark Wright, Chairman, Jim Lagana, Vice Chairman, Mike DiPietro, Jeffrey Benson and Elizabeth Robidoux, Members. Robert Beaurivage, Alternate Member. Minutes recorded by Denise Royce.

Also Present: Carrie Rouleau-Cote, Building Inspector. Jeff Porter and Alan Villeneuve, Conservation Commission.

Absent: Peggy Neveu and Kevin Stuart, Alternate Members.

Mr. Wright called the meeting to order at 7:02 p.m. At this time Mr. Wright introduced the Board members to the applicants and everyone present. Mr. Wright informed every present tonight that there were three cases on the agenda for tonight's hearing and that he would recuse himself from the first case and turn the meeting over to the Vice Chairman, Jim Lagana.

Mr. Lagana explained the procedures for tonight's meeting to everyone present. Mr. Lagana proceeded to elevate Mr. Beaurivage to full voting status for tonight's hearing. At this time, Mr. Lagana asked Ms. Royce to read the first case for the record.

Case #15-01

JMJ Properties, LLC

Jean Gagnon

Lovers Lane, Tax Map 8, Lot 25

Zoned Residential Two

Applicant is requesting a Variance from Article 5, Section 5.08(1)(a), to allow a reduction of the 125 foot buffer to a Level One wetland for proposed lots 25-19, 25-20, 25-21, 25-22, 25-23, 25-24, 25-28, 25-29 and 25-30; a Variance from Article 5, Section 5.08(1)(a) to allow a stormwater detention pond within the 125 foot Level One wetland buffer; and a Variance from Article 5, Section 5.08(1)(b) to allow a reduction of the 75 foot wetland buffer from a Level Two wetland for proposed lot 25-19 in a Residential Two zone.

Mr. Mitchell presented on behalf of the applicant. Mr. Mitchell indicated that they will have to change the name of the plan and will do so later. Mr. Mitchell informed the Board members that they did review the plan with the Planning Board but because the plan still had to go before the ZBA for these variance requests they did not go into greater depth with the plan with the Planning Board. Mr. Mitchell stated that they were before the Board tonight to request several variances none of which have to do with the cluster development but have to do with wetlands and wetland setbacks. The project itself is located off of Lovers Lane. Mr. Mitchell asked Mr. Lagana if the Board wanted to take up the variance one at a time. Mr. Lagana said yes.

Mr. Mitchell began with the first variance request which was a variance to reduce the wetland buffer from the required 125 foot buffer on several lots which are listed above. At this time, Mr. Mitchell explained the location to the Board members by pointing the locations out on the plan.

They are asking for relief from the required 125 foot wetland buffer anywhere from 75 feet to 120 feet. Mr. Mitchell directed the Board to sheet 11 of 21 (NHDES Subdivision Plan Sheet) and talked about Lots 25-19, 25-20, 25-21, 25-22, 25-23 and Lot 25-24. Mr. Mitchell stated that they were trying to make the wetland setback lines that conform a little bit more to the lots that they have. Mr. Mitchell pointed out that there was a trail behind all these lots. Mr. Mitchell talked about obtaining relief from the ordinance now so that someone won't come back after the fact which will allow the homeowner more space. Mr. Mitchell pointed out that all wetlands are not the same and that each piece of property is different. At this time, Mr. Mitchell wanted to include for the record an example design of a vegetated buffer which was using Best Management Practices for erosion sediment control. Mr. Mitchell talked about the vegetated buffer in detail and believed that the buffer in these areas with the reduction would be adequate.

At this time, Mr. Mitchell read the application into the minutes for the record. Mr. Mitchell concluded his presentation by asking the Board members if they had any questions. Mr. DiPietro asked Mr. Mitchell if he had additional environmental wetland scientist support for what he is telling the Board. Mr. Mitchell pointed out that Mr. Sokoloski of Shaeuer Environmental was present tonight and that he also was a wetland scientist. Mr. Mitchell stated that they have done a lot of research and based on the science there is a range which is less than 75 and that 50 to 100 is pretty much where it's at. No wetland is the same and no land form is the same. Mr. Mitchell talked briefly about the research that was completed. Mr. Lagana asked Mr. Mitchell if he could certify the statement that was made in the application that "the proposed use would not diminish surrounding property values" and "the proposed buffer is sufficient to protect the wetlands" which is a pretty broad statement. As an engineer and wetlands soil scientist are you able to certify that statement so if they do grant this relief that the wetlands will be protected. Mr. Mitchell said no that he could not certify to that because it's Mother Nature and its people's habits and what they do. Mr. Mitchell said that, in his professional judgment that a 75 foot range is sufficient for the back of these lots but could not give a guarantee or attempt to. Mr. Lagana appreciated Mr. Mitchell trying to subdivide lots into very clearly understandable parcels so that when people buy them there is no question but if we do grant this variance that the homeowner now can put in lawns and jungle gyms and fertilizers which would cause more of an impact on the 125 foot wetland buffer. Discussion ensued with regard to the request for a reduction within the wetland buffer. Mr. Mitchell believed that you would have to look at the character of the buffer itself and whether it's vegetated or law or meadow they would look for a little bit more than if it was treed. Mr. Mitchell said if you take a look at the slopes and point out the article he passed out with regard to Best Management Practices that would take care of the flow to the buffer and again believed that a 75 foot buffer was sufficient. Mr. Lagana appreciated Mr. Mitchell's explanation. Mrs. Robdioux asked what the seasonal high water table was. Mr. Mitchell indicated that it ranged between 24 and 36 inches.

Mr. Lagana asked the Board if the Board had any questions. Mr. Beaurivage asked for Conservation Commission input. Mr. Lagana wanted to take questions from abutters first and asked if there were any abutters with questions. Ms. Cleary of Lovers Lane stated that she knew the land pretty well and stated that the slope going down to the stream was very steep. Ms. Cleary did not believe that they needed to make allowances because the town spent a lot of money deciphering the wetlands within the Town of Auburn. Ms. Cleary believed that we should stick to the regulations that the town voted on. Ms. Cleary further stated that the land was beautiful and pointed out that there are deer out there as well as otters and coyote. Ms. Cleary also wanted to inform the Board and the Conservation Commission that there were Blanding turtles out there which lay their eggs in different areas and travel all over the place.

Ms. Cleary did not believe there was a hardship to justify reducing the wetland buffer in this development or giving them all these waivers. Ms. Cleary also pointed out that the area in the rear was very steep, that it was steep enough that there are waterfalls out there and recommended that the Board members walk it.

Mr. Lewis of Chester Road reiterated what he said at the Planning Board meeting last week that he did not care for the cluster development and suggested that they look at an alternative proposal such as a conventional subdivision so they wouldn't need all these variances.

Mr. Lagana asked if there were any other abutters that would like to speak. None were noted. At this time, Mr. Lagana asked for interested parties. Mr. Lessard of Pingree Hill Road wanted to say that all he's hearing is requests for variances and that these lots were only a quarter of an acre which to him were city lots. Mr. Lessard believed that there were too many variances being given out. Mr. Lagana commented that the ZBA was the only Board that can issue variances and that they are required to grant a variance if the five (5) criteria are met. Mr. Lagana pointed out that there are some properties are very unique where someone is just trying to enjoy their property that does need help and this Board takes very careful consideration in giving out variances.

Ms. Cleary commented that by allowing more lots than should be permitted is putting a burden on the town and the taxpayers. Mr. Lagana wanted everyone to stay on track tonight which is to deal with the setbacks from wetlands.

Mr. Lagana asked the Conservation Commission members present to comment. Mr. Villeneuve stated that they have met several times with Mr. Mitchell on this parcel and thought they had asked the question with regard to endangered species. Mr. Villeneuve wanted to ask about the endangered species of the Blanding turtles. Mr. Mitchell agreed that he has met with the Commission several times but did not recall that question ever being asked. However, in the process of doing their permitting through the state through the wetlands bureau that they have to see if there are any threats or endangered species hits within the general area and they did get a possible hit and because of that they requested that the two (2) wetlands crossing that they have that they put in box culverts with openings wide enough for Blanding turtles to cross. Ms. Cleary wanted to point out that the Blanding turtle may not use the box culvert as they may nest or winter in different areas as they travel and did not believe that the buffer should be reduced from the 125 foot wetland buffer. Mr. Porter also stated that the Conservation Commission several times and after hearing Mr. Mitchell's presentation today that he was uncertain that the design plans that they are seeing today were the same plans that they review at the Conservation Commission meeting. The Land Use Boards the Conservation/Planning Board and one of the biggest stipulations for new developments is a desire to stay out of the wetlands in all of the setbacks as any new development is in progress. General consensus for the 125 foot setbacks and whether or not it's a Level One or Level Two the Conservation Commission tends to error on the side of caution. Mr. Porter wanted to know what the date was on this plan and whether or not it was the same plan that the Commission was privy too and could not honestly speak to that and would like to ask Mr. Mitchell if it is the same plan that the Commission saw at their meeting at the beginning of February. Mr. Lagana asked Mr. Porter if he would be able to render an opinion with regard to the request for reduction of the wetland setback after hearing the testimony and evidence heard tonight that the wetlands would be protected. Mr. Porter said he would not be able to render an opinion without the Board and the fact that he was unsure whether or not the plans shown tonight were the same plans that they saw on February 3rd. Mr. Villeneuve said that they did do a lot of work there

and that there was a group that met the later part of last year to keep the setback lines as property lines so that this issue would go away. Mr. Villeneuve pointed out that he was the lone Conservation Commission member that thought that there were some areas that it could be possible to reduce the wetland buffer. Mr. Villeneuve was also surprised to hear about the Blanding turtles because it would have had more discussion as they are wanderers.

Ms. Donovan of the Conservation Commission stated that basically the Conservation Commission did not support any of the variance requests being made which can be found in the Conservation Commission minutes of February 3, 2015.

Mr. Lagana asked Mr. Mitchell if the plans shown tonight were the same plans that were shown to the Conservation Commission. Mr. Mitchell said yes that the plans shown tonight were the same plans that were shown to the Conservation Commission. Mr. Mitchell further indicated that there was no discussion about the Blanding turtles and did not believe that there was a vote made by the Conservation Commission with regard to the variance requests before this Board tonight. Mr. Mitchell pointed out that one of the things that is different tonight is that one of the variances is for a detention pond within the 125 foot wetland setback. The met with the Conservation Commission on a Tuesday and it was decided on Wednesday or Thursday to submit that to be on the same agenda for tonight because there was a question brought up by Stantec on whether or not it was allowed in the buffer or not and the Commission has not met since February 3rd. Mr. Mitchell reiterated that the plans submitted tonight are the same plans as submitted previously.

Mr. Villeneuve asked Mr. Mitchell if there was any more information that might have been vital that he chose not to give out because he was surprised that his wetland scientist who met with the Conservation Commission and walked the property with them did not say anything about an endangered species being on that property and he was the lone supporter from the Conservation Commission. Mr. Mitchell stated that the plans were the same plans that were submitted before and that Peter Schauer's office did not prepare the wetland's application but did the wetland's mapping and that Mr. Mitchell's office was the one that asked for query on endangered species and that this information was not withheld. Mr. Mitchell stated that they would move ahead as the Board chooses.

Mr. Lagana suggested that the Board go into deliberations. Mrs. Robidoux asked Mr. Mitchell where the query showed where the turtles were. Mr. Mitchell indicated that the query would not show exactly where the turtles are because they don't want anyone to go out there. Mr. Mitchell stated that it could be within several acres of the entire parcel and they only know that they have had several hits and it's in the general area. It could be on this particular property or the abutting properties. Mr. Beaurivage asked if Mr. Mitchell would confirm that the turtles do exist. Mr. Mitchell said no that it was not a requirement.

Mr. Sokoloski of Schauer Environmental wanted to add that when they do a wetlands mapping they do not do an endangered species at that time but in fact is done when the wetlands application is prepared which is a necessary requirement that goes into the wetlands bureau with the application. If there is an endangered species hit at that time, which could be within a mile of that area, then the applicant needs to consult with the New Hampshire Fish and Game Department to get a sense of what their level of concern is regarding that species in relation with that development. They look at roads, culverts and development close to special habitat features such as vernal pools or streams or ponds or known nesting areas where rare species might occur. That is why they did not do the wetland permit application and that there was no

attempt to mislead anyone.

Mr. DiPietro asked if the lots could be built on if the 125 foot wetland buffer was not reduced. Mr. Mitchell said yes and they are not before the Board tonight so that they can get extra lots but that they were just trying to square it up and keep the wetland buffers out of the lots. Discussion ensued with regard to septic locations on the lots and the current 125 foot wetland buffer. Mr. Mitchell indicated that they were before the Board to see whether or not relief can be had upfront just so that the land can be used more and taking the setbacks out of the lots. Mr. Benson asked Mr. Mitchell if relief was granted from the 125 foot wetland buffer that the septic systems could be moved to this location. Mr. Mitchell said probably not but that they were looking to provide more lawn area or placement of sheds and the like.

Mr. Snowdale of Pingree Hill Road reiterated what he had said at the Planning Board Public Hearing held on Wednesday, February 18th and the number of variances and believed that they should follow the regulations for the Town of Auburn.

Mr. Porter talked about the Level One wetland and how they are trying to protect the wetland buffers because they have seen in the past when the buffer has been reduced to 75 feet that there was still encroachment beyond the 75 foot buffer and this was why the Land Use Board has been trying to protect the 125 foot wetland buffer. While it may appease the development it does not protect it further because once you go beyond that, now you're in further into that buffer. Mr. Lagana stated that they have heard a lot of testimony and would like to hear from the Board members.

Mr. DiPietro made a motion to enter into deliberations. Mrs. Robidoux seconded the motion and the Board entered into deliberations at 8:14pm.

Mr. Lagana explained the procedure for the Board going into deliberations and that no questions could be asked by audience members as it was for the Board to discuss amongst themselves. Mrs. Robidoux began by saying that she was very sensitive to endangered species with regard to the Blanding turtles and that the wildlife will adapt with development around them and will be in people's backyards. Mrs. Robidoux also pointed out that the ZBA has no control over the number of lots within the development because that was in the purview of the Planning Board. Mrs. Robidoux was unsure if all the lots needed relief and agreed that the Level One wetland is very important and that they should be highly protected. Mrs. Robidoux also pointed out that there was 21 acres between this development and Calef Pond and did not think that this development would have an effect on Calef Pond as some of the other things going on around the pond. Mrs. Robidoux believed that lot #28, #22, #21 and would not agree for the reduction in the 125 foot wetland buffer for lot #19 but would for the other reduction for lot #19 and would be receptive to the reduction for the detention pond.

Mr. Beaurivage agreed with Mrs. Robidoux and added that there was extensive density on lots #19, #20 and #22 with the steep grade areas. Mr. Beaurivage was surprised that there wasn't a vote taken by the Conservation Commission.

Mr. DiPietro added that with Lots #19, #20, #21 and lot #22 that what they were trying to do was take the buffer off the property so that property owners don't have to come back before the ZBA Board to put up a swing set or a shed within the buffer and believed that there could possibly be a compromise of some sort.

Mr. Benson touched upon the density and usage lot by lot and gave an analogy of if you set the speed limit at 75 then they'll go 80 and if you reduce the buffer to 75 feet then they'll go beyond that because they'll push the envelope and then it opens it up that they can do anything there. If they're going to do something that is disruptive then they don't have to come back before the Board to get a variance.

Mr. Lagana had the same concern and whether or not the 125 foot setback is decreased or not it's still there and now you have smaller lots. Mr. Lagana stated that he would prefer to see the setback taken right out of the lots and all of the lots being built outside of the 125 feet. Mr. Lagana was having a hard time with the shotgun approach to this. Mr. Lagana asked the Board that if they act on the variance as presented then it would be an all or nothing type situation. It would be onerous to condition eight (8) different lots on this one variance. Mr. Lagana thought of possibly asking them to go back to take the lots out of the wetland setback so that there were fewer lots seeking a variance and asked the Board what they thought. Mr. Benson believed that the lots could have already been configured to take it out but that they chose to configure it this way. Mr. Lagana agreed. Mr. DiPietro thought that if they do them all that it would make it cleaner or they could not grant any variances and it's possible that none of the people would come back for variances. Mr. Lagana said that this was almost his concern because if they grant the variances as presented this evening and there's a few lots that would have a significant area within the 125 feet that they will have to do whatever they want in but they wouldn't have to come back before us. Discussion ensued with regard to the variance request and whether or not to vote on it as a whole or take individual lots and that the 125 feet is an issue. Mrs. Robidoux added that if they grant the variances that she did not want two inches by two inch placards but wanted to see bigger placards and suggested 11 x 17 placards. Mrs. Robidoux believed that they could grant relief on individual lots and did not believe that it had to be all or nothing. Mr. Beaurivage thought maybe they could send the applicant back to the Planning Board and say there's a problem here and maybe they should reconsider. Mr. Lagana believed that they would be doing that by not granting the variances as we heard from abutters and interested parties that they're upset by the amount of variances being issued.

Mr. DiPietro made a motion to come out of deliberations. Mrs. Robidoux seconded the motion and the Board exited deliberations at 8:30pm.

Mr. Lagana informed everyone that the Board was out of deliberations. Mrs. Marzloff talked about the issue of where the Planning Board is and informed the Board that the Planning Board has met numerous times on this project which was for informational and discussion purposes and that they have had one meeting on the formal application which is contingent on the ZBA's action. The Planning Board is not firm on any of these lot lines but are awaiting the ZBA's decision. The Planning Board over the last few months have had numerous discussions with regard to keeping the wetland buffers out of the lots. The Planning Board will be working on revising the cluster and that is one of the issues.

Mr. Mitchell talked about 125 foot wetland setback in the Town of Auburn's ordinance and to request that cluster lots have no wetland setbacks in it is something totally different than what has happened in the past and understand the Board's concern but the wetlands ordinance as the 125 foot buffer applies you have to take a look at wetlands and what they are and in the cases that they looked at they looked at the wetlands, its location of the land form, what the surrounding buffer might look like whether it's big or smaller and have to deal with that on a case by case basis. If they have to take the lot lines out of the buffer which is completely different and not something that Mr. Gagnon bargained for. What they are trying to do is for the purposes to prove the variance that they believe they can do less than 125 feet. Mr. Mitchell

believed that the Board could go lot by lot and decide. Maybe it shouldn't be 125 feet in all cases but one thing to consider is, is 125 feet the absolute under all conditions everywhere and we understand that the Board can conditionally approve it if they so choose. Mr. Lagana thanked Mr. Mitchell and moved on to further questions.

Mr. Porter stated that our rules have been set at 125 feet from a Level One for several years and the fact that it is assumed that development is to be inside of that area is because of the fact of the variances and exceptions that have been granted almost unilaterally with new development coming in. This is not something that the Town of Auburn residents want to see continued and that is why Land Use Boards are standing up and saying this is our rules and this is what has been in place for a number of years and this is what the residents of the town voted for. We are trying to enforce the rules the way they were designed and approved by the town itself.

Ms. Cleary pointed out that there are developers coming in and expecting that because they bought the property the same variances and waivers and now the Planning Board is saying that they have made mistakes and were not going to give you the same waivers as before. Mr. Lagana commented that every variance that has been given was carefully considered and if it is given it's for very good reason. The ZBA works very hard at upholding the ordinance and only grant variances when necessary. Mr. Lagana explained that there are more variances given now because all the easy land is gone and what's left is either underwater or up a rock wall and they do try to uphold the ordinance as much as they can.

Mr. Lagana stated that the Board has heard testimony for an hour and 40 minutes and wanted to move this along as there are other cases this evening. Mr. Lagana asked what the Board would like to do.

The Board discussed briefly whether or not to vote on it as a whole or individually.

Mr. DiPietro made a motion to vote on the application as presented for Tax Map 8, Lot 25, seconded by Mr. Benson.

Mrs. Robidoux wanted to amend the motion to include "that placards be established every 200 feet along the buffer denoting that it is a no disturb buffer and the placards need to be 11x17 at least."

Mrs. Robidoux amended the motion made by Mr. DiPietro to include "that placards be established every 200 feet along the buffer denoting that it is a no disturb buffer and that the placards need to be 11x17 at least. Mr. Benson did not believe they met the hardship definition and with the recommendation of the Conservation Commission voted to deny, Mr. Beaurivage voted to deny, Mrs. Robidoux voted to deny because she believed relief could have been granted to individual lots, Mr. DiPietro voted to grant, Mr. Lagana also voted to deny as he believes the application fails all five (5) of the criteria. The motion was denied by a vote of 4 to 1.

Mr. Lagana informed Mr. Mitchell as well as interested parties that they have 30 days to appeal the ZBA decision. At this time, Mr. Mitchell wanted to speak with his client. After speaking with his client, Mr. Mitchell wanted to proceed with the second variance request.

Mr. Mitchell began by saying that there was a separate application that was filed for Lots 28, 29

and 30. Mr. Mitchell directed the Board to look at Sheet #10 with regard to the request from the wetland buffer for Lots 28, 29 and 30. Mr. Mitchell believes that a reduction down to 75 feet is appropriate and that all the lots are still buildable whether they get the reduction or not. Mr. Mitchell believes that the wetlands will still be protected and that the buffer would be wooded. At this time, Mr. Mitchell read the application into the minutes for the record. Mr. Lagana stated that the Board is in charge of granting minimal relief if the five (5) factors are met and asked Mr. Mitchell if he needed the whole 50 feet reduction from 125 feet down to 75 feet and if they could make it less. Mr. Mitchell said yes they could but they believed that 75 feet is justified and the Board has the right to issue conditions.

Mr. Lagana asked if there were any questions from the Board. None were noted. Mr. Lagana asked if there were any questions from abutters or interested parties. Ms. Cleary feels that the Board should uphold the regulations and have them go back to the Planning Board and look at it more closely on how it's all laid out. Mr. Lagana also pointed out that the Board has heard testimony that the land was sloping towards the building lots and not towards the wetlands.

Mr. Lagana asked the Conservation Commission for input. Mr. Porter stated that they have discussed this at some length and where the spike is where the Level One is the slope is going down towards the wetlands and not towards the building lots. Discussion ensued with regard to the slope and Mr. Porter showed the Board members on the plan where the slope goes down towards the wetlands. Mr. Lagana thanked Mr. Porter. Mr. Mitchell further pointed out to the Board members that they were looking at putting up a split rail fence with placards on it so that people will see what's there. Ms. Cleary said that no one monitors this and someone can relocate the little triangles and ripping them up and no one will monitor whether they're gone or not.

Mr. Lagana asked the Board members for questions. Mr. Beaurivage asked Mr. Mitchell, what percentage of the lot was going towards the wetlands. Mr. Mitchell stated 15 to 20% but that it was very flat before you get to the lot line.

Mr. DiPietro commented that regardless of the distance of the setback the land still slopes to the wetlands. Mr. Benson did not have a comment. Mr. Lagana would feel more comfortable with more than a 75 foot buffer. Mr. Lagana believed that there was more of an impact to Lot 29 than Lots 28 and 30 and believed that this was taking a shotgun approach to three (3) lots in one hearing. Mr. DiPietro asked Mr. Lagana if he would give relief to two (2) of the lots or just one. Mr. Lagana believed it was a good question. A brief discussion ensued with regard to these three (3) lots and Mr. Lagana thought that they could issue relief to Lots 28 and 30 and condition Lot 29 with something greater. Mr. Lagana pointed out that they weren't soil scientist and did not know if 100 feet would be any better as it was dependent on the type of soils. Mr. DiPietro stated that he would be inclined to vote on this application as presented.

Mr. DiPietro made a motion to vote on the application as presented for Tax Map 8, Lot 25, Case #15-01, seconded by Mr. Beaurivage. Mr. Beaurivage voted to grant, Mrs. Robidoux voted to grant, Mr. DiPietro voted to grant, Mr. Benson voted to deny and Mr. Lagana also voted to deny based on the fact that there was not enough information and he did not feel comfortable using the shotgun approach to all three (3) lots and thought that two (2) lots were worthy but not lot 29. The motion passed by a vote of 3 to 2.

Mr. Mitchell moved on to the third request for a variance regarding having a detention pond within the wetland buffer. Mr. Mitchell asked Mrs. Rouleau-Cote to speak on this regard. Mrs.

Rouleau-Cote stated that she was at the Planning Board meeting last week and basically left it up to the Planning Board and they felt that the applicant should come to the Zoning Board. Mr. Lagana asked Mrs. Marzloff for any comments. Mrs. Marzloff did not have any comments at this time.

Mr. Mitchell pointed out that it was regard to Section 5.098(1)(a) and directed the Board members to go to Sheet 11 of 21(Plan & Profile) regarding Lot 25-7. Mr. Mitchell explained the location of the proposed detention pond and stated that it would be approximately 30 feet from a Level One wetland. Mr. Mitchell stated that the purpose of the wetlands ordinance is to filter out sediment before it gets into the wetlands and detain water so that it did not flood downstream. Mr. Mitchell explained that it had a four bay area to remove sediment which is required by state for stormwater. This particular one will have water in it but is not a manmade wetland.

At this time, Mr. Mitchell read the application into the minutes for the record and concluded by asking the Board members if they had any questions.

Mr. Lagana asked the Board members if they had any questions. Mr. Benson asked Mr. Mitchell if the detention pond would be 75 feet from the Level One wetland. Mr. Mitchell said no, that it would be approximately 30 feet. Mr. Benson asked what kind of disruption goes into building it. Mr. Mitchell talked about a silt fence and the pond itself will be stabilized with either ground cover or matting. The construction is very quick as far as doing the pond. Mr. Mitchell believed that this was the only place to put the detention pond and that it does mitigate and prevent against flooding.

Mr. Lagana asked Mr. Mitchell about public safety because there would be a hole in the ground with water in it. Mr. Beaurivage pointed out that there were three (3) lots that abut this detention pond. A brief discussion ensued with regard to the detention pond and public safety. Mr. Mitchell stated that they could put a fence but once you put a fence it's something that someone wants to climb but they will do whatever this Board wants them to do. Mrs. Robidoux asked Mr. Mitchell if it this was part of the application to the state. Mr. Mitchell said yes it's been submitted to the state for Alteration of Terrain Permit but that they have not reviewed it yet.

Mr. Lagana asked if there were any abutters that had any questions. Ms. Cleary said that the impact was huge and that it was devastating and wanted to know what the Planning Board is saying about this. Mr. Lagana asked Mrs. Marzloff if she could speak on behalf of the Planning Board as she was present tonight. Mrs. Marzloff stated that she would give her opinion and would not be speaking for the Board but she did not believe the detention pond belonged within 30 feet from a Level One wetland and that it should be fenced in. Mrs. Marzloff pointed out that the difference between a manmade pond and a naturally occurring pond is that with regard to a manmade structure puts the responsibility on the town.

Mr. Lagana asked the Conservation Commission if they had any questions. Mr. Villeneuve wanted to ask Mr. Mitchell about cluster development and putting this pond within the wildlife corridor is helping that corridor. Mr. Mitchell informed the Board and the Conservation Commission that they have not done a wildlife study and explained the location of the wildlife corridor within the open space and reiterated that he believed that this was the best place to put the detention pond. Mr. Benson asked if there was an alternative. Mr. Mitchell said that they did not have one as there is no better place to put it. Ms. Cleary suggested that Mr. Mitchell

turn to sheet 3 of 21 to give a better picture of what the impact would be to the Level One, Level Two as well as the vernal pool. The Board and Mr. Mitchell reviewed the area on Sheet 3 of 21. Mr. Lagana asked the Conservation Commission if they had any comments regarding this detention pond location. Mr. Porter talked about the endangered species and this is the corridor and near a Level One wetland and supposedly the filing went through a month or so ago. Mr. Porter further pointed out to the Zoning Board members that they have not seen this at all as it was all new to them and wanted it on record. Mr. Lagana asked Mr. Porter that the Conservation Commission has not seen this yet. Mr. Porter said correct that the Conservation Commission has not seen this request. Mr. Mitchell explained that the zoning application took place two (2) days after they met with the Conservation Commission and that they have not met since and it was on the ZBA agenda. Mr. Lagana asked the Conservation Commission that by having this detention pond would it protect the wetlands. Mr. Porter gave his opinion by saying that he believed that there were other options to allow that detention pond within another location but that he was not an engineer.

Mr. DiPietro believed that they could continue this portion of the hearing until the Conservation Commission meets next month. Mr. Benson also asked what Stantec's view on this. Mrs. Rouleau-Cote did not believe that Stantec has done a review yet.

Mr. DiPietro made a motion to TABLE the matter until such time the Conservation Commission, Planning Board and Stantec is able to respond to this request for variance regarding the location of the Detention Pond for Tax Map 8, Lot 25, Case #15-01 until our next meeting which will be held on Tuesday, March 24, 2015, seconded by Mr. Beaurivage. Mr. Beaurivage voted to grant, Mrs. Robidoux voted to grant, Mr. DiPietro voted to grant, Mr. Benson voted to grant and Mr. Lagana also voted to grant. The motion passed in the affirmative and the case was TABLED until March 24, 2015.

Mr. Mitchell stated that they did have one more variance request but that they could also Table this section until next month as well. Mr. Mitchell further added that it was a variance request for Lot #19 asking for relief for reduction down to 75 foot buffer.

Mrs. Robidoux made a motion to TABLE the matter until such time the Conservation Commission, Planning Board and Stantec is able to respond to this request for variance regarding the reduction in the wetland buffer down to 75 feet for Tax Map 8, Lot 25-19, Case #15-01 until our next meeting which will be held on Tuesday, March 24, 2015, seconded by Mr. Beaurivage. Mr. Beaurivage voted to grant, Mrs. Robidoux voted to grant, Mr. DiPietro voted to grant, Mr. Benson voted to grant and Mr. Lagana also voted to grant. The motion passed in the affirmative and the case was TABLED until March 24, 2015.

Mr. Lagana thanked Mr. Mitchell for his presentation tonight.

At this time, Mr. Wright rejoined the Board members to chair the next two (2) cases.

Case #15-02

**Strategic Contracting Company, LLC
77 Pingree Hill Road, Tax Map 5, Lot 19
Zoned Residential One**

Applicant is requesting a Variance from Article 5, Section 5.08(1)(a), to allow a reduction of the

125 foot buffer to a Level One wetland for proposed lots 19-7 and 19-8; and, a Variance from Article 5, Section 5.08(1)(a), to allow a stormwater detention pond within the 125 foot Level One wetland buffer in a Residential One zone.

Mr. Mitchell began by saying that he is here tonight on behalf of Strategic Contracting Company, LLC. Mr. Mitchell further informed the Board members that they were before the Planning Board as design review as well as for a formal application. Mr. Mitchell stated that this was a standard grid subdivision and not a cluster subdivision. Mr. Mitchell pointed out that they have applied for a reduction within the wetland setback. Mr. Mitchell continued to say that, similar to the last application that they were asked to submit for detention within the buffer zone and believed that they would ask to be Table for that part as well because the Conservation Commission has not seen that one either. The application before this Board tonight is for relief for Lots #7 and #8 reduction in the 125 foot wetland buffer down to 75 feet. Mr. Mitchell directed the Board members to Sheet 2 and pointed out the location on the lots where they are seeking relief from the wetland buffer. Mr. Mitchell stated that they are not doing this to get extra lots and that the building envelopes are big enough to build on but wanted to point out that since it was a field already they were trying to allow for a bigger envelope so if somewhere down the line they would be able to do what they want to do within a bigger area. Mr. Mitchell reiterated what was said during the last presentation with regard to split rail fencing indicating the wetland buffer with placards on them. Mr. Mitchell stated that they would still be able to build on these two lots with or without the variance. Mr. Mitchell believed that the reduction down to 75 feet was appropriate and that the two lots go hand and hand because they are side by side.

Mr. Mitchell went on to point out on Sheet 4 with regard to Lot #8 showing the open field. At this time, Mr. Mitchell passed out copies of a typical wetland demarcation lot layout for the Board members to review. At this time, Mr. Mitchell read the application into the minutes for the record and concluded by asking the Board members if they had any questions.

Mr. Wright asked if there were any abutters present that would like to speak. Mr. Snowdale of Pingree Hill Road asked about the plan and the Level One to Level Two wetland buffer and how the levels have changed again. Mr. Snowdale believed that if we have regulations that they should be followed.

Ms. Cornett asked if it was only lots #7 and #8. Mr. Wright said yes. Ms. Cornett further talked about the reducing the buffer and how lot #7 was over five (5) acres and lot #8 was over two (2) acres.

Mr. Wright asked if the Conservation Commission wanted to speak with regard to the request for a reduction in these lots. Mr. Porter began by saying that they have had a great deal of discussion in this and from a planning perspective there is enough room to have a house without encroaching within the wetland setbacks and doesn't warrant a waiver or variance to go into the buffer area. Lastly, Mr. Porter informed the Zoning Board members that he did not support relief for these two (2) lots because there's a substantial amount of land on these lots. Mr. Villeneuve added that they show lot #8 as a 4,000 square foot area where Mr. Mitchell's client told the Conservation Commission that they would be placing the septic system in front of the house which would leave at least 80 feet to the 125 foot wetland buffer. They would not want to grant relief to the builder without knowing at all what some homeowner wanted to do and believed that, that would be the time for them to come before the Zoning Board to seek relief. Mr. Villeneuve stated that there was no benefit from a Conservation Commission

standpoint in decreasing the buffer in that area. There was no hardship of him trying to get something because everything can be put in a people can still have a pool. A brief discussion ensued with regard to the field on these two properties and what was existing now. Mr. Mitchell wanted to respond to some of the comments and began with the comment regarding how the level numbers have changed and the application they have show's it as a Level Two to a Level One and the Conservation Commission believes it's a Level One in both areas so the Planning Board is sending it for a review with Stantec which is nothing that we're talking about tonight. Mr. Mitchell moved on to the comment about a hardship and that he has a hard time understanding what a hardship is because he knew what it used to be. Mr. Mitchell pointed out that it has to do with the spirit of the ordinance and if it's reasonable. Mr. Mitchell believes it's a reasonable use and it's a field and did not know when it was last mowed because it just transferred last year but recalled the owner took his mower and mowed all around so that the Conservation Commission could walk through it and what they are trying to do is allow the back buffer to grow in. Mr. Lagana asked if there was a seasonal nature of this field. Mr. Mitchell stated that the field was all uplands. A brief discussion ensued with regard to the field. Mr. Villeneuve pointed out that if relief was granted to reduce the buffer that someone could build a garage 75 feet from a Level One wetland.

Mr. Porter asked about hardship and that he has not seen any changes in the hardship criteria. At this time, Mr. Wright explained that it has changed and that it used to be a lot more difficult than it is now. The standard has relaxed and it has been changed by the state. Mr. Porter asked if we have adopted that policy. Mr. Wright said yes everyone has and our application has been updated to reflect that new standard.

Ms. Cornett quoted Mr. Mitchell from the Conservation Commission that he stated that he did not have a hardship. Mr. Mitchell commented that the hardship was not the same as it used to be and it's the standard of hardship that used to be and still believes that the relief of the ordinance as the homeowner will want to use the field. Mr. Villeneuve pointed out that no matter what the buffer will be in the field. Mr. Wright believed Mr. Villeneuve made a very compelling argument to wait until someone has something they want to do with the property that would encroach on the wetlands rather than give a blanket approval that would allow for structures or other things because we do not know what will be done at this time. Mr. Wright wanted to point out that you are asking for the minimum relief to use the property and not the maximum and does not see the case here because we don't know what someone is going to do. It would be making some assumptions of what someone may want to do. Mr. Wright believed that Mr. Mitchell was looking for the Board to relax the Board's standard without understanding exactly what they would be approving for this piece of land and did not believe it was good policy on their part to make those decisions when they have very finite pieces of property that they could deal with in the future when the landowner comes before them with a plan and dimensions and this is why it would not impact the wetlands. Mr. Wright believed it was overreaching by coming in and asking for it not knowing what it is that someone may want to do with it because they would want to know before they grant a variance. Mr. Mitchell understands that it is difficult now as they would do whatever they would do to use it as their lot whether it's for a shed or a lawn and what they are doing now is not waiting until they do it. Mr. Wright believed that Mr. Mitchell was presuming they were going to come and ask for forgiveness instead of permission as we should be presuming that they would do the right thing. They should know where their markers are and know what they can do because whoever sells them the lot should inform the buyer and then when they know what they want to do and figure if it's going to be outside whatever they're permitted dimensions are then come before the Board and that's how it's supposed to work. Mr. Lagana agreed with Mr. Wright and

pointed out that they were acceptable building envelopes on these two (2) lots and believed that there was no reason to give a variance and if we give the variance ahead of time it almost becomes a marketing tool to sell the lots. Mr. Lagana believed that possibly the new owners would look out there and want to keep the field and hope that they don't want to disturb the area back there. Mr. Lagana agreed that someone can automatically put up the pole barn and would rather deal with it when the time comes.

Mr. Wright asked Mr. DiPietro for his thoughts. Mr. DiPietro stated that he tends to agree with Mr. Wright and Mr. Lagana but has also heard from the other side that there wasn't enough room to put a pool or a shed and also thought that the Planning Board took care of these things. Mrs. Robidoux said that they used to but is now changed. Mr. Beaurivage agreed with Mr. Wright and Mr. Lagana. Mrs. Robidoux also agreed with the rest of the Board that it was premature to grant a variance at this time. Mr. Benson also agreed with what has previously been said by the rest of the Board. Mr. Mitchell after hearing what the Board is leaning towards requested to withdraw his application at this time without prejudice. A brief discussion ensued with regard to Mr. Mitchell's request. After a brief discussion the Board was okay with Mr. Mitchell withdrawing his application without prejudice. Mr. Villeneuve asked about demarcation of the wetlands and if it was something that the Planning Board could do. Mr. Mitchell informed the Board members that it was brought up with the Planning Board previously. Mr. Wright believed that it was more in the Planning Board's purview and did not see the need to get into that and if it has already been submitted to the Planning Board then they can make the conditions.

The Board discussed whether or not it would require a motion for Mr. Mitchell to withdraw his application. Mr. Wright believe that if the applicant wanted to withdraw his application before it went to vote then he would accept the applicants request without any action on the part of this Board.

Mrs. Robidoux asked Mr. Mitchell if he wanted the Board to continue the last variance request. Mr. Mitchell said yes he would like to request that it be continued provided they can get on the agenda for the next Conservation Commission meeting at the beginning of March. Mr. Porter and Mr. Villeneuve both agreed.

Mrs. Robidoux made a motion to TABLE the matter until such time the Conservation Commission, Planning Board and Stantec is able to respond to this request for variance regarding the location of the Detention Pond for Tax Map 5, Lot 19, Case #15-02 until our next meeting which will be held on Tuesday, March 24, 2015, seconded by Mr. DiPietro. All were in favor, the motion passed unanimously and the case was TABLED until March 24, 2015.

Case #15-03

Aaron and Lorelee Reyes

186 Depot Road, Tax Map 13, Lot 34-01

Zoned Residential One

Applicant is requesting a Special Exception from Article 4, Section 4.06(3)(n), to allow a Dwelling Unit – Duplex within the Residential One zone.

Mr. Reyes explained the reason why they are before the Board tonight to request a Special Exception to allow a duplex within the residential one zone. Mr. Reyes stated that he was looking to make a legal multi-family so that his parents could live closer. What they are

proposing to do is add on a garage with the living area above the garage. Mr. Reyes pointed out that it would have only one bedroom. Mr. Reyes passed out the proposed plans for the addition. At this time, Mr. Reyes read his application into the minutes for the record.

Mr. Wright asked Mrs. Rouleau-Cote, the Building Inspector if she had anything to add. Mrs. Rouleau-Cote stated that the only comment that she would have was that even though the septic was for a four (4) bedroom if there is going to be two (2) dwelling units that the state would be looking at the multi-family as a two (2) bedroom so then they would have to have a septic design prepared to show that the lot can accommodate the additional loading and then when the current system fails the new system would be installed. When he prepares the plans he will also be showing where the new septic tank will be and would show septic details. Mr. Reyes stated that his home currently has three (3) bedrooms and was unsure what was being asked. Mrs. Rouleau-Cote explained that, what he was asking for was to have two (2) separate units which would be looked at as a minimum of two (2) bedrooms according to state regulations. Discussion ensued with regard to possibly removing one of the bedrooms to make it a total of four (4) bedrooms between the two (2) units. Mr. Wright asked Mrs. Rouleau-Cote if this would give it greater flexibility than an in-law apartment because we don't usually see duplexes. Mrs. Rouleau-Cote stated that we didn't use to because you needed the same acreage for each unit but when we redid the zoning ordinance in 2009 it was changed. In this particular case, having a multi-family unit it would have no communication between the two units. Mrs. Robidoux asked if it mattered if it was attached or detached. Mrs. Rouleau-Cote pointed out that it would still have to be attached but there would be no communication between the two (2) units. A brief discussion ensued with regard to the proposed plan and picture of what the building would look like.

Mr. Wright noted that there were no abutters present and that there was only Mr. Reyes father that was present along with Conservation Commission. Mr. DiPietro wanted to vote on the application as presented.

At this time, Mr. Phil Reyes gave a brief explanation of what it meant to him to be able to move closer to his son as he had lived in a few different states and worked with seniors as well as different organizations and was looking forward to living closer to his family. Mr. Reyes understood that if the septic system fails then they would have to put in a new one. Mrs. Rouleau-Cote said yes that at a minimum they would have to have a septic design prepared so that she would have it on file and that when the current system failed then the new design would be installed and that's not knowing what the plans are because we may find that you may need to have a design prepared because you'll be putting in a septic system for the new unit because she did not know if the plumbing would make it. Those will be details that will be worked out as part of the building permit process.

Mr. Wright thanked both Mr. Reyes' for their presentation and comments and that they were coming before the Board to do it the right way.

Mrs. Robidoux made a motion to grant the Special Exception as presented for Tax Map 13, Lot 34-01, Case #15-03, seconded by Mr. DiPietro. Mrs. Robidoux voted to grant, Mr. DiPietro voted to grant, Mr. Lagana voted to grant, Mr. Benson voted to grant and Mr. Wright also voted to grant. The motion passed in the affirmative.

Mr. Wright informed the applicant that they had two (2) years for substantial completion and if they don't meet that period of time then they would have to come back before the Board to

obtain an extension.

General Business

Mr. Wright asked if there was any new business. None was noted.

Minutes

Mr. DiPietro made a motion to accept the minutes of November 18, 2014 as written, seconded by Mrs. Robidoux. All were in favor, the motion passed with Mr. Wright and Mr. Benson abstaining.

Other

At this time, Mr. Lagana informed the Board that the next meeting is on the 24th of March and that Mr. Wright also had an issue with the next meeting being on March 24th and the Board decided to move the meeting until March 31st. THE NEXT ZBA MEETING HAS BEEN MOVED UNTIL MARCH 31, 2015.

Adjourn

Mrs. Robidoux made a motion to adjourn, seconded by Mr. DiPietro. All were in favor, the motion passed unanimously and the meeting stood adjourned at 8:05 p.m.

The next ZBA Hearing has been changed from March 24, 2015 and is now scheduled for March 31, 2015 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.