

## **UNAPPROVED MINUTES**

### **Town of Auburn Zoning Board of Adjustment March 31, 2015**

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

**Absent:** Elizabeth Robidoux, Member. Peggy Neveu, Alternate.

Mr. Wright called the meeting to order at 7:03 p.m. Mr. Wright explained the procedures for tonight's hearing. Mr. Wright informed everyone present tonight that there were quite a few cases on the agenda for tonight's hearing and that he would like to take the cases out of order as he had a conflict of interest with both the Carlucci case and the JMJ Properties, LLC case.

Mr. Wright also indicated that after hearing the first three (3) cases that he would then turn the hearing over to the Vice-Chairman, Jim Lagana.

At this time Mr. Wright introduced the Board members to the applicants and everyone present and then proceeded to elevate Mr. Beaurivage to full voting status for the first case in the absence of one of the Zoning Board of Adjustment members in order to have five (5) voting members. Mr. Wright then asked Ms. Royce to read the first application for the record.

#### **Case #15-07**

#### **Maverick Development**

#### **Steve Febonio**

#### **Pingree Hill Road & Haven Drive, Tax Map 5, Lot 29 & 36**

#### **Zoned Residential One**

*Applicant is requesting 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 Two zone.*

Mr. Mitchell began his presentation on behalf of the applicant and informed the Board members that the plan has been submitted for final review with the Planning Board which was continued until April 8th. Mr. Mitchell continued his presentation by explaining that the reason they were before the Board tonight was for a variance because they have two areas where they have stormwater runoff is collected which they have to do detention and treatment for both the town and the state. The locations are in a low spot on the property and they have done the best they could by keeping the ponds away from the 125 foot setback. They have conditional use permits that are allowed for detention pond within the 75 foot setback but not for the 125 foot setback. Mr. Mitchell pointed out the locations on the plan submitted to the Board members for the members to review. Mr. Mitchell explained why they have chosen the location that they did was because it was at the lowest point where they can collect the water and treat it. They have to treat it for sediment control as well as flood control and some of the ponds will be infiltration. Mr. Mitchell indicated that they have discussed it with the Conservation Commission and what they have been able to do is push the pond behind the lot and the other one was combined with the other pond. Mr. Mitchell talked a bit more about the infiltration and the locations of the ponds and believed that it was the best location for them. Mr. Mitchell believed they have made

a lot of improvement on this to get it as far out of the way as possible. Mr. Mitchell also informed the Board that the Planning Board has not acted upon the request for a Conditional Use Permit as of yet as they needed to go before the Zoning Board to obtain relief first.

Mr. Mitchell also believed that the Conservation Commission had concerns about filling in a portion of the vernal pool but as long as the through road goes through they have a need for a crossing as well as a detention pond. Mr. Mitchell pointed out that the Planning Board has indicated a need to have the road go through and connect to Haven Drive. Haven Drive ends in a cul de sac road with a right of way to connect to this parcel before the Board tonight.

At this time, Mr. Mitchell passed out another portion of the plan for the Board to review which shows a connection to Cohas Drive. However, the problem they have with the connection is that the 50 foot right of way has no slope easements to it so they would have to build and confine it to the 50 feet that they have. Also, one of the houses is approximately 25 feet away from the road and the other house on the other side meets the requirements of 59 feet. Mr. Mitchell talked more about the connection to Cohas Drive and that this is very problematic because there is no place to put the water as there is no drainage easement. Further discussion ensued with regard to the connection to Cohas Drive and Mr. Mitchell did not believe it was feasible because they had no land in the areas to do their treatment and detention. Mr. Mitchell pointed out that this was the reason why they are proposing the connection from Pingree Hill Road to Haven Drive as opposed to the connection to Cohas Drive.

Mr. Mitchell concluded by asking the Board if they had any questions and if not then he would move on to the test for a variance. At this time, Mr. Mitchell read the application into the minutes for the record. Mr. Mitchell concluded by saying that although they are not permitted in our ordinance that, the detention ponds were there to protect the wetlands and the effect of the entire project on the adjacent property. Mr. Mitchell further stated that they have moved them as far away as possible and to still let them collect water. Mr. Mitchell asked the Board if they had any questions.

Mr. Wright asked the Conservation Commission for comment. Mr. Porter stated that they were waiting for Stantec's comments with regard to if the access to Cohas Drive was possible and if it is then this request for a variance would go away and change the plan entirely. Mr. Febonio wanted to comment on Mr. Porter's statement and explain that they have submitted final plans to the Planning Board, DES and understands that the Conservation Commission does not want them to go through the vernal pool but that the Planning Board was not in favor of the connection to Cohas Drive because there was not enough room. Mr. Febonio voiced his frustration and did not want to go backwards and that they were before the Zoning Board because the Planning Board has directed them to go before the ZBA. Mr. Febonio further stated that the way the ordinance is written, they have to treat the water from the road and because of that we have to obtain a variance. Mr. Febonio pointed out that he has also submitted the final plans to Fish & Game, DES and the Army Corp of Engineers. Mr. Febonio informed the Board members that they are scheduled to meet with the Planning Board on Wednesday, April 8<sup>th</sup>. He has spent a lot of money to get this far and does not want to go backwards at this point. They have made some major adjustments to the drainage areas to get them out of the wetlands and believed they have done a good job doing that. Mr. Febonio reiterated that the Planning Board has directed them to go before the ZBA and is very frustrated that Conservation Commission is again requesting them to look at connecting to Cohas Drive of which the Planning Board was not in favor of them doing. Mr. Wright asked if the Planning Board has signed off on the final plan yet. Mr. Febonio said no, they were unable to respond to

Stantec's comments and wanted to address Stantec's comments prior to meeting with the Planning Board because they received the comments the day of the Public Hearing.

Mr. Porter agreed that they have done a substantial amount of work but that if the plan moves forward and they cross the vernal pool then these are acceptable then they will have to confirm that as a commission but these are things that they still have to do. Mr. Porter talked about properly noticing the hearing and that they were meeting with them on Tuesday, April 7<sup>th</sup> and then meeting with the Planning Board on Wednesday, April 8<sup>th</sup>. Mr. Villeneuve commented on the access to Cohas Drive and has asked Mr. Febonio to prove that the access to Cohas Drive was unacceptable. Mr. Villeneuve did state that the plan submitted tonight was an improvement. Mr. Febonio and Mr. Villeneuve talked about the detention ponds and the vernal pool. Mr. Febonio was unaware of noticing the Conservation Commission meeting but did not have a problem meeting with the Conservation Commission again.

Discussion ensued with regard to whether or not it would be a cul de sac if the connection to Cohas Drive were to occur. Mr. Mitchell pointed out that it was not discussed with the Board because they did not believe that a connection to Cohas Drive was feasible.

Mr. Mitchell informed the Board tonight that when they got to the Planning Board three (3) weeks ago that Mr. Febonio's project did not get heard and was continued to April 8<sup>th</sup>. The Pingree Hill Road project was heard and the JMJ project that is last on the agenda tonight could not be heard by the Planning Board because there was a problem with noticing the agenda for the hearing. Mr. Mitchell pointed out that this Public Hearing was properly noticed and if it were to be continued because of what happened with the Conservation Commission and then they go to Planning on the 8<sup>th</sup>, they would not be able to come back on the 25<sup>th</sup> which would then push them another month. They are trying to do things in order and would like the Board to give consideration because the abutters were notified by certified mail. Mr. Villeneuve informed the Board that the Conservation Commission met especially to talk about only the 77 Pingree Hill Road which is the only one that Mr. Mitchell asked them to talk about. Mr. Mitchell commented that it was an open and public meeting when they met with the Conservation Commission.

Mr. Wright asked if there were any questions or comments from abutters. Mr. Dandrade submitted a letter to the Board members which summarizes some comments on the variance application. Mr. Dandrade requested the Board to suggest to the applicant that they submit PDF copies along with hard copies to make it easier for abutters and interested parties to obtain. Mr. Dandrade asked the ZBA Board to inquire from the Conservation Commission if a peer review had been done. Mr. Porter said that they have had conversations with Stantec with regard to the Level One wetlands but did not believe that a peer review has been done. In Mr. Dandrade's opinion, did not believe that the applicant has shown enough justification to warrant a variance based on hardship.

Mrs. Armstrong stated that her lot sits right next to the vernal pool and strongly requested that they protect that area. Ms. Remillard of Haven Drive commented that everything was very wet and wondered about the septic systems on small lots and did not define this as a hardship. Ms. Remillard asked how big the lots were. Mr. Mitchell stated that they were half an acre to one acre lots. Mr. Febonio explained that they could have done grid but they wanted to maintain a wildlife corridor and they were trying to keep the lots out of the wetland setback. Mr. Febonio reiterated that they have met with Fish & Game, Army Corp of Engineers as well as DES. Mr. Febonio also pointed out to the Board that they have also had GZA to comment as well and

have spent a good amount of money. Mr. Febonio commented that possibly in the future that the Planning Board would be dealing with wetlands because they already deal with roads and drainage. Mr. Mitchell wanted to remind everyone that what they were dealing with tonight was having the detention ponds within the setback. Mr. Mitchell pointed out that it did not matter how big the lots were that they would still have to take care of the stormwater that is in the roads and treat it. Discussion ensued with regard to the request for variance. At this time, Mr. Wright had to remind the abutters to give everyone the courtesy to comment as some abutters were getting cantankerous.

Discussion ensued with regard to tabling this application. Mr. Wright understood that the Conservation Commission would be meeting with Mr. Febonio and Mr. Mitchell in the near future as well as other engineering reviews. Mr. Wright pointed out that the Board would have to figure out if there was enough information for this Board to render a decision.

At this time, Mr. Wright moved on to other abutter's comments. Ms. Cobuzzi of Haven Drive, who was not a direct abutter to the project commented that this was the first time she has heard of this meeting and does not want the road to go through. Ms. Cornett commented that she has spoken to a lot of wetland scientists about moving a vernal pool and was told that it costs thousands of dollars to move a vernal pool and it has been very unsuccessful. Ms. Cornett also talked about road runoff and the salt going into the wetlands. Mr. Villeneuve stated that if the Board was to table this hearing until next month that would be fine but he had a few technical questions and asked the Board to ask the applicant if he could put the detention pond outside of the 125 foot wetland buffer and to not impact that buffer at all. The other question was, if this was the only thing for zoning requests or would anything else be coming about. Mr. Wright wanted to remind everyone that what was before the Board tonight was not the vernal pool or the road going through but understood how it impacts the whole piece of property. Mr. Wright asked Mr. Mitchell if he was prepared to answer these questions. Mr. Mitchell stated the short answer would be no that they could not keep the detention pond outside the 125 foot buffer and that they have moved it as far away as they could. Mr. Wright and Mr. Mitchell discussed Stantec's thoughts. Mr. Mitchell also gave a copy of the Conservation Commission's meeting minutes of March 11, 2015 for the Board's review. Further discussion ensued with regard to the detention ponds.

Ms. Cobuzzi asked that more info to be added within the Notice to Abutters that is sent out so the average resident could understand better. Mrs. Armstrong asked about the water and how they have two (2) sump pumps and what effect this would have on their property. Mr. Febonio answered by saying that the detention pond would be lower than the pond itself and knew exactly where her property was and further stated that the water would be taken away from their property. Mr. Febonio reiterated that they have gone before all three (3) departments, DES, Army Corp of Engineers and Fish and Game.

Mr. Wright believed that Stantec was aware of this and has seen this and asked Mr. Porter what more he expected to comment when the Conservation Commission is waiting to hear back from Stantec. Mr. Porter stated that the biggest concern they have as a Conservation Commission is the vernal pool impact and they are holding off commenting until they hear back whether or not the connection to Cohas Drive was an option. Again, Mr. Febonio voiced his frustration to go back and discuss connection to Cohas Drive when it has already been discussed with the Planning Board and Fire and Police did not want it as well as the abutters because there was no room.

Mr. Wright sensed Mr. Febonio's frustration and that whether they approved it or not, the Planning Board still has to sign off on the final plans. The Planning Board may or may not depend on what they are hearing and seeing on the horizon. If the Board tabled it and didn't grant relief would the Planning Board sign off on the final plans pending this back before the Zoning Board to grant the variances or would they kick it back and say the Zoning Board needs to act first and you have to get all the relief you need and then we'll sign off on the plan. Mr. Febonio stated that this was part of their concern because if they can't go before planning then they still have to go before ZBA and Conservation Commission. Mr. Wright added that if they approve this conditionally upon the Planning Boards final approval of this plan then they would not have to come back before them assuming they did not put the brakes on and decide to send Mr. Febonio in a different direction. Mr. Febonio agreed.

Mr. Wright asked the Board members if they had any questions or comments.

***Mr. Lagana made a motion to enter into deliberations. Mr. Beaurivage seconded the motion and the Board entered into deliberations at 8:30pm.***

Mr. Lagana started by saying either tabled or continued and understood Mr. Febonio's frustration and believed that the Board should table this matter tonight. Mr. Lagana had a couple of reasons for suggesting to table this matter tonight and began by saying that based on the merits of grid subdivision or cluster subdivision were very heavily discussed and did not believe it was worth reviewing again. The applicant came before the Board and they have heard from abutters and interested parties and that the project was approved and although he is very sensitive to people's opinions for or against cluster, he did not believe they should be reviewed again. Mr. Lagana talked about appeals and how a meeting was not properly noticed by the Conservation Commission and how they are awaiting word from the town's engineer, Stantec. They have also heard from the applicant that he has made his final plan to the town and that he has no desire to open Cohas Drive. Mr. Lagana believed that any decision they make tonight would be appealed. Mr. Lagana believed that the testimony heard tonight was very important and did not believe we needed to hear them again and they should wait to hear back from Stantec before we move forward.

Mr. Beaurivage believed that there was a procedural issue and the meeting should have been properly noticed and it wasn't and with that in mind believed it was appropriate to table or continue the hearing. Mr. Wright wanted to clarify that for purposes of the Zoning Board hearing tonight that notice to abutters and interested parties was properly noticed and that the notice we are talking about was for the Conservation Commission and the variance for this case has met all legal requirements with regard to notice and publication. Whether or not another board did or did not follow proper procedures and that the ZBA board has done nothing to stop this board from making a decision tonight. Mr. Lagana, Mr. DiPietro both agreed with Mr. Wright. Mr. DiPietro believed that the applicant has met all five (5) factors and thinks it's reasonable and that the applicant showed that he's gone back and forth with the town engineers. Mr. Benson believed that they could condition it with the mitigation strategies of the vernal pool and leaving an open end that the Conservation Commission and the Planning Board agree with the applicant on mitigation with the vernal pools. Mr. Wright noted the number of agencies the applicant has gone through as well as the Planning Board and Conservation Commission is very mindful. Mr. Benson reiterated that they could condition it. Mr. Stuart also agreed with Mr. Lagana and believed that the applicant has met all the requirements to vote tonight and there was some sort of confusion with the Conservation Commission that they did not know they would be meeting regarding this plan. Mr. Stuart

believed that they could have the Conservation Commission formally look at this before the Zoning Board makes its decision.

Mr. Lagana stated that he would be willing to move on a vote this evening conditioned upon clearly defined conditions and if we did that then this case can move along and some order can be established. Agree with Mr. Wright that this meeting was properly noticed and believed that they could vote on the application tonight. Mr. Wright agreed with Mr. DiPietro that the applicant has gone through the process and his view is that they have met the criteria and also view the Planning Board and Conservation Commission input. Mr. Wright would want to condition it upon the Planning Board's approval of this plan after they have seen Stantec's and Conservation Commission input and made the decision that this is the best plan then would be prepared to vote on the application and that the applicant has met the criteria as presented for the variance. Mr. Wright pointed out that they have heard a lot of opinion with regard to cluster and grid and that it was not their job and that their job is to deal with the request to allow a detention pond within the 125 foot buffer.

Mr. Wright asked if any other Board member wanted to make a final comment. Mr. DiPietro wanted to comment that they have heard from abutters with regard to Planning Board issues and whether or not this was the right plan. Mr. DiPietro pointed out that if they condition it upon Planning Board approval then he believes they have made the right decision.

***Mr. DiPietro made a motion to come out of deliberations. Mr. Benson seconded the motion and the Board exited deliberations at 8:44pm.***

Mr. Wright asked the Board if they had any questions for the applicant and if not then he would entertain a motion.

***Mr. Lagana made a motion to vote on the application as presented to allow a stormwater detention pond within the 125 foot Level One wetland buffer conditioned upon; 1) approval of this exact plan by the Conservation Commission at a properly noticed meeting; 2) approval of this exact plan by Stantec; and, 3) approval of this exact plan by the Planning Board and after conferring with Stantec and the Conservation Commission for Pingree Hill Road and Haven Drive, Tax Map 5, Lots 29 & 36.***

Mr. Wright asked the Board members if there was a second to Mr. Lagana's motion. There was no second so the motion failed. Mr. Wright stated that the only concern he had was that he had no problem tying it to the Planning Board as they are a board that makes decisions. A brief discussion ensued with regard to meetings and properly noticing meetings and that this meeting had been properly noticed.

At this time, Mr. Lagana stated that he would like to amend his motion that he previously made.

***Mr. Lagana made a motion to vote on the application as presented to allow a stormwater detention pond within the 125 foot Level One wetland buffer conditioned upon; 1) approval of this exact plan by the Planning Board at a properly noticed meeting; and 2) approval of this exact plan by Stantec for Pingree Hill Road and Haven Drive, Tax Map 5, Lots 29 & 36, seconded by Mr. Beaurivage. Mr. Beaurivage voted to Grant, Mr. DiPietro voted to Grant, Mr. Benson voted to Grant, Mr. Lagana voted to Grant and Mr. Wright also voted to Grant. The motion passed in the affirmative.***

Mr. Wright informed everyone present tonight to show up at the Conservation Commission meeting as well as the Planning Board meeting.

**Case #15-02**

**Strategic Contracting Company, LLC  
77 Pingree Hill Road, Tax Map 5, Lot 19  
Zoned Residential One  
TABLED from February 24, 2015**

*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. Wright elevated Mr. Beaurivage to full voting status for this case.

Mr. Mitchell began his presentation with regard to the above matter and pointed out that this was tabled from last month and noted that the first variance was withdrawn at the previous hearing. Mr. Mitchell moved on to discuss that they are before the Zoning Board tonight to seek a variance to allow a stormwater detention pond within the 125 foot buffer. Mr. Mitchell also pointed out that they were seeking a reduction to 100 feet for lot 3 and for relief down to 75 feet at the beginning of the street to allow a driveway. Mr. Wright asked Mr. Mitchell to start with the variance that was continued from last month. Mr. Mitchell stated that they were before the Planning Board last month and that they did grant a Conditional Use Permit for the roadway to go next to the Level 2 wetland and a Conditional Use Permit to allow a detention pond within a Level 2 buffer, however, anything within a Level One buffer has to go before the ZBA and that was why they were before the board tonight. At this time, Mr. Mitchell presented the Board with a copy of the Conservation Commission minutes which they made a motion to support the design changes as submitted on the plan as shown tonight which is regarding the variance to Lot 3 and Lot 6 and the variance for the detention pond. Mr. Mitchell reiterated what was said at the prior case as they were similar.

At this time, Mr. Mitchell read the application into the minutes for the record. Mr. Mitchell also pointed out the areas where they are seeking relief. In conclusion, Mr. Mitchell asked the Board if they had any questions.

Mr. Porter stated that they have been before the Conservation Commission and what they are proposing was agreeable.

Mr. Wright asked if there were any questions from abutters. There were no questions from abutters. Mr. Wright asked if the Board had any questions. None were noted.

***Mr. DiPietro made a motion to vote on the application as presented to allow a stormwater detention pond within the 125 foot Level One wetland buffer for 77 Pingree Hill Road, Tax Map 5, Lot 19, seconded by Mr. Lagana. Mr. Beaurivage voted to Grant, Mr. DiPietro voted to Grant, Mr. Benson voted to Grant, Mr. Lagana voted to Grant and Mr. Wright also voted to Grant. The motion passed in the affirmative.***

**Case #15-06**

**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 19-3 and 19-6 in a Residential One zone.*

Mr. Mitchell began by saying that the relief they are looking for is on Lot 19-3 and Lot 19-6 and pointed out the locations for the Board. Mr. Mitchell pointed out that there would be a berm used as a wetland buffer demarcation which will prevent any stormwater coming down. There would also be signage on the berm stating that it was a conservation buffer of which uses are restrictive and that you cannot do anything on it. Mr. Mitchell talked about ornamental trees and fencing with markings on them. At this time, Mr. Mitchell read his application into the minutes for the record. In conclusion, Mr. Mitchell asked the Board if there were any questions.

Mr. Wright asked if there were any abutters. Mr. Snowdale of Pingree Hill Road talked about the regulations. Mr. Wright explained that the Zoning Board's function is to interpret the ordinance and when appropriate grant relief from the restrictions and requirements. There are a bunch of things that people can and cannot do with their property and this Board sits here because there are times when strict compliance with the ordinance and requirements are unreasonable and state law says that there are times when this Board, if the conditions are met for a variance or special exception, is obligated under law to grant relief so that there is not strict literal enforcement of this ordinance if those various factors are met. The Board will weigh that and grant relief and still protect and follow the ordinance. There are times that the applicant can deviate from that but they have to follow the requirements for a special exception or variance. That's the purpose of why this Board is here.

Mr. Dandrade asked about the structure on Lot 19-3. Mr. Mitchell explained that it was approximately 10 feet from the line and that the building would be within the buffer itself as well as any other structure on the property. A brief discussion ensued with regard to what was noted as a postage stamp lot and whether or not it was a usable size lot. Mr. Wright believed it was a fair comment.

Ms. Cornett asked about the driveway for Lot 19-6 and believed that there was no room for a driveway. Ms. Cornett believed that a fire truck had to be able to get around a house. Mrs. Rouleau-Cote answered by saying that a fire truck did not have to have the ability to get around a house. Ms. Cornett also talked about the amount of waivers that developers are seeking.

Mr. Burnham of Chester Road, who was not a direct abutter, believed that the Board should not deviate from the Zoning Ordinance and that developers are finding loopholes to get around the ordinance. Mr. Wright informed Mr. Burnham that all the board members were residents of Auburn. Further discussion ensued with regard to the changes within the Town of Auburn.

Mrs. Rouleau-Cote, Building Inspector, Code Enforcement Officer had a question with regard to the 100 foot buffer and if they would be putting language in the deed that there is to be no activity within the 100 foot buffer because the Town of Auburn Zoning Ordinance would permit somebody by right to put an accessory structure 240 square feet or less within 75 feet of a Level One wetland. Mr. Mitchell said yes, they could put it in the deed that there would be no disturbance within the 100 feet.



Mr. Mitchell had a few more comments that they have applied for a special exception for a cluster in the Residential One zone that was withdrawn and the reason it was withdrawn was because the Planning Board asked if they could do a conventional subdivision and the applicant said yes. A brief discussion ensued with regard to what was previously submitted with regard to the cluster subdivision.

Mr. Mitchell proceeded to talk about the test for the hardship rule and believed what they were asking for was reasonable. Mr. Mitchell went on to talk about putting a berm on Lot 6 at the beginning because their plan is to build in the back. Mr. Mitchell also pointed out about putting up fencing to delineate the wetland buffer. Mr. Mitchell stated that they would be willing to condition on Lot 6 that the 125 foot buffer that no disturbance is to occur. Mr. Wright believed that putting it in the deed puts the homeowner on notice and makes it more difficult for them to come before this Board knowing they went into this with these restrictions on their deed.

Ms. Cornett pointed out Lot 7 and the small building envelope. Mrs. Rouleau-Cote commented that this was separate because they have a 125 foot buffer which is no different than a lot of other lots in town. Mr. Wright agreed with Mrs. Rouleau-Cote that the lot is fine the way it sits and that it was not up to the Zoning Board to micro-manage each lot.

Ms. Cornett commented on the first plan that was submitted early on where Mr. Mitchell's wetland scientist had a 75 foot wetland buffer to a running stream. Mr. Mitchell wanted to comment by saying that the plan she is talking about was one of the first plans that was presented where their wetland scientist went out there to distinguish whether it was a Level One or Level 2 wetland and that in his report he determined it was a Level 2 wetland. At this time, Mr. Mitchell presented the Board with a letter from Peter Schauer, a wetland scientist. With this in mind, that is why they are seeking a reduction down to 100 feet. Mr. Porter believed it has always been a running stream which is classified as a Level One which requires a 125 foot wetland buffer. Mr. Villeneuve also agreed with Mr. Porter that it is a Level One and that they have never agreed that it was anything but a Level One and that's why they are before the Board tonight.

Mr. Wright wanted to hear what the Board had to say. Mr. Benson wanted to know what the shortest distance on Lot 6 where the green line starts. Mr. Mitchell stated that it was approximately 75 to 80 feet to 125 feet. Mr. Benson moved on to ask about Lot 3. Mr. Mitchell did not expect to come back and believed that the builder would be able to build a house on it and that the homeowner would have plenty of space to put a pool, shed or play area within the lot. Mr. Villeneuve stated that the Conservation Commission supports what he is proposing.

Mr. Lagana asked why they decided to put both request for variances on one application as opposed to separating them because he can see his way on the driveway setback for relief from the wetland but the other Lot 19-3 is difficult because of the size of the building envelope. Mr. Lagana believed that they would be seeing the homeowner coming back before them to place a jungle gym or something within the buffer. Mr. Mitchell stated that the main reason was because it was the same Level One wetland and it impacted these two lots but certainly understand if the Board wanted to take them up separately. Mr. Mitchell further commented that he believed there was ample room for them to do what they want to do and they still can go into the side setbacks with their lawns. A brief discussion ensued between Mr. Mitchell and Mr. Lagana with regard to the size of the building envelope and what may occur within the setbacks.

Mr. Wright asked if there were any other questions. Mr. Starace, owner of the property stated that he was very sensitive about is making sure that on the sides of the house that there is 20 feet of good grass before the berm and would clear at least 50, 60 or 70 feet in the back which ends up being a pretty good size back yard.

Mr. Wright asked if the Board felt comfortable voting on this case. Mr. DiPietro believed that all the factors have been met and would vote on the application.

***Mr. DiPietro made a motion to vote on the application as presented with the condition that the restriction of the 100 foot setback be placed in the deed.***

Mr. Benson asked for both lots. Mr. DiPietro said yes. Discussion ensued with regard to the distance. Mrs. Rouleau-Cote believed it was 75 feet for Lot 6 and 100 feet for Lot 3. At this time, Mr. DiPietro wanted to clarify his motion.

***Mr. DiPietro made a motion to vote on the application as presented with the condition that the delineation on the marked berms should be recorded on the deed as shown on the plan for Tax Map 5, Lot 19-3 & 19-6, Case #15-06, seconded by Mr. Benson. Mr. Beaurivage voted to Grant, Mr. DiPietro voted to Grant, Mr. Benson voted to Grant, Mr. Lagana voted to deny as he did not see his way clear on the Lot 19-6 and because Lot 19-3 is grouped together that it does fail substantial justice and the spirit of the ordinance and Mr. Wright voted to Grant as he believed the applicant has met all of the criteria. The motion passed by a vote of 4 to 1.***

Mr. Wright recused himself from the remainder of the cases and turned the meeting over to the Vice Chairman, Mr. Lagana.

Mr. Lagana elevated both Mr. Stuart and Mr. Beaurivage to full voting status for the rest of the cases before the Board tonight in the absence of Mr. Wright.

#### **Case #15-04**

**Dana & Jocelyn Carlucci**

**Silver Hill Road, Tax Map 2, Lot 25**

**Zoned Rural**

*Applicant is requesting a Variance from Article 5, Section 5.08(1)(a), to allow excavation within the 125 foot wetland setback of a Level One wetland in a Rural zone.*

Mr. Roscoe Blaisdell presented on behalf of the applicants. Mr. Blaisdell began by saying that the excavation pit has not been touched in several years and that it abuts a Level One wetland. What they are proposing to do is remove some gravel off the property which would amount to approximately one acre and then restore a half an acre. It currently has a 125 foot setback and what they would like to obtain is a 25 foot setback. Mr. Blaisdell pointed out that it was not a huge pit and that the project would take less than a year and they would leave a berm in place. They would put a detention pond in place and silt fence. Mr. Blaisdell indicated that if they were to obtain a variance tonight that, he would then go out and do a survey with topography. Mr. Lagana asked if any of the sand pit was in the wetlands or was it in the setbacks. Mr. Blaisdell stated that no wetlands have been touched and that the existing pit was way within the 125 foot setback. Mr. Lagana asked if it would be blasted or was it back run. Mr. Blaisdell stated that it was sand.

At this time, Mr. Carlucci began to say that he and his wife purchased the pit back in 1977 from Clifford and Lillian Stacey. Mr. Carlucci stated that they would like to stabilize the pit because they have ATV's that are ripping the place up so they would like to flatten it out a bit. The pit is all outside of the wetlands and what they would like to do is remove some sand that is within the wetlands. Mr. Blaisdell and Mr. Carlucci explained that the beavers have dammed it up. Mr. Blaisdell commented that they would like to be 50 feet off the property line for state regulations and that the neighbor is okay with what they are proposing.

Mr. Lagana asked Mr. Blaisdell or Mr. Carlucci to go through the five (5) factors. Mr. Carlucci read his application into the minutes for the record. Mr. Lagana asked if the Board could obtain a copy of what was read into the minutes for the file. Mrs. Carlucci stated that she could scan a copy of it and send it to Ms. Royce. (A copy has since been added to the file on 4/3/15) Mr. Blaisdell stated that they would like to remove material and close the pit and reclaim the land. Mr. Lagana pointed out that if a variance is granted it goes with the land.

Mr. Lagana asked if there were any abutters that would like to speak. None were noted. Mr. Lagana asked if there were any interested parties. Mr. Dandrade talked about the sensitivity and connection to Cohas Brook. Mrs. Rouleau-Cote pointed out RSA 155-E (which is included in the file for the record) which states *"No excavation shall be permitted within 75 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area or within 25 feet of any other stream, river or brook which normally flows throughout the year, or any naturally occurring standing body of water less than 10 acres, prime wetland as designated in accordance with RSA 482-A:15, I or any other wetland greater than 5 acres in area as defined by the department of environmental services."* At this time, Mr. Lagana and the other Board members reviewed RSA 155-E. Discussion ensued with regard to RSA 155-E. Mr. Blaisdell did not believe that RSA 155-E, II-a applied to them and agreed to abide by RSA 155-E

Mr. Villeneuve pointed out that they did a site walk in the late fall last year and asked the Board members if they had a copy of the Conservation Commission minutes. The Board did not. Mr. Villeneuve also stated that there is a crossing of Cohas Brook that has a dump truck body overturned and that there is a large culvert onto their property and was concerned about dump trucks going into there. In conclusion, Mr. Villeneuve stated that they did not support of any reduction.

Mr. Porter believed it would still be used by ATV's even if it's reclaimed and that they felt very strongly that it has not been touched and should not be touched and to allow the excavation would damage it further. Mr. Carlucci answered by saying that there are a lot of people that hike through there and there are a lot of people that hunt through there and right now the way the face of the pit is it can't be used and they do not encourage people to use it but they also do not discourage people from using it. Mr. Carlucci does not believe that it could ever be a house lot. The pit has not been used prior to 1977. Mr. Blaisdell would oversee the project and that they would like to stabilize it. Mr. Lagana talked about the challenges of the road and the difficulty of crossing the culvert is an issue. Mr. Lagana talked about the fact that the Conservation Commission has not seen a formal plan and no real discussions on this plan. Mr. Blaisdell pointed out that it would be an in and out thing and that they would like to restore it. Mr. Beaurivage also pointed out that there was no topography on the plan presented. A brief discussion ensued with regard to the plan submitted. Mr. Carlucci stated that they have to go back before the Planning Board and they needed to get into the buffer and if they could not get

into the buffer to excavate it would not be worth going through the topography and the detail plan. What they are before the Board tonight is to obtain a variance to get into the buffer and then they would go back to the Planning Board and they would determine how it was done. Mr. Blaisdell talked about most of the property being wet. Mr. DiPietro suggested that the applicant work with the Conservation Commission to work with a ruff restoration plan and then the Board could probably move from there. Mr. Lagana stated that Mr. DiPietro made a valid point and wanted to ask the Conservation Commission that, if a reasonable excavation plan could be worked out and a satisfactory restoration plan be worked out would the ultimate product be a benefit to the town. Mr. Villeneuve said that what there is now is open bank of sand that has been there since 1977 and with the issues going on in town in recent years perhaps there is a little more pressure to reclaim it or stabilize it one way or another. Mr. Villeneuve pointed out that they could not base an opinion on what is presented tonight because it doesn't show anything because there are no details on the plan. Discussion ensued with regard to the entrance to the pit and the quality of the road. Mr. Porter suggested that the Board read the minutes of the Planning Board.

Mr. Stuart asked the applicant if they were proposing to expand the pit. Mr. Carlucci said no. Mr. Lagana asked Mr. Carlucci if they wanted to withdraw their application and come back or Table the case until they can speak with the Conservation Commission. Mr. Blaisdell did not believe that by putting topography on the plan would change the Conservation Commission's mind and did not want to waste the applicants money. Mr. Blaisdell asked the Conservation Commission members that were present that if they put topo and more detail on the plan would they be in favor of allowing them to go 25 feet or 50 feet from the pit. Mr. Villeneuve in guessing there would not be a lot of support for going less than 75 feet. Mr. Blaisdell stated that it was not doable because you cannot have a gravel pit 20 feet wide and 100 feet long. Ms. Donavon commented on Mr. Blaisdell's comment about it not being doable that when they had the conversation and they asked how little can you do it in your space and the comment was 50 feet and the Conservation Commission said no and that was how it was left. Mr. Porter pointed out that the edge of the base of the sand is at least 6 feet from the water. Discussion ensued with regard to the disturbance which is already there and what the Conservation Commission doesn't want to see happen is it going further into the disturbance.

Mr. Benson asked the Board how this would fit within a Conditional Use Permit. Mr. Lagana pointed out that it was considered a Level One wetland and you cannot do anything within a Level One wetland. At this time, Mr. Benson reviewed the section regarding Conditional Use Permit and noted that it was beyond a Conditional Use Permit. Mr. Benson asked if the pit permit had been renewed every single year. Mr. and Mrs. Carlucci said yes for the last 38 years. Mr. Benson believed that they should check to see if this was grandfathered. Mr. Lagana talked about the Planning Board minutes of December 3, 2014 where no decision was made. Ms. Cleary believed that the Planning Board should not be voting on this as they needed to walk the property. Mrs. Rouleau-Cote had photos of when she did a site walk of the gravel pit with the Planning Board and Conservation Commission. At this time, the Board reviewed the photos shown by Mrs. Rouleau-Cote.

Mr. Lagana asked what the pleasure of the Board would be. Mr. Stuart had another question regarding ongoing excavation. Mr. Carlucci said no, nothing has been excavated but they did have an active permit. Mr. Stuart asked why the permit was not renewed. Mr. Carlucci stated that the Planning Board wanted a reclamation plan and in order to develop a reclamation plan they needed to determine how much material they had disturbed and that's where Mr. Blaisdell came in and it was determined that 40,000 cubic yards was going to be disturbed and if they

get approval to work within the buffer then they would develop a reclamation plan based on that for the Planning Board. Mr. Stuart asked if they were looking to get a variance to excavate to prepare a reclamation plan to close the pit. Mr. Carlucci yes, they want to close the pit and reclaim the pit and eliminate liability.

Mrs. Carlucci explained that when they purchased the pit from Mr. Stacey that he had a pit permit and he had been taking material off the property and they bought the pit with the intention of eventually doing something in the future. Now they are at the age that they are able to do something and have been obtaining a pit permit for 38 years in hopes of eventually removing material so now they cannot get a pit permit until the ZBA says okay and then go back before the Planning Board with a reclamation plan to reclaim and close the pit.

Mr. Porter believed that they have removed all the material that they planned to remove and that a reclamation plan has never been put in place. Mr. Porter believed that the pit should have closed many years ago but didn't and to grant additional relief for additional excavation into that area when the plan was never completed is puzzling.

Ms. Cleary did not think that they should be allowed to pull more fill out and then reclaim it. Mr. Lagana believed the applicants were trying to do the right thing and its great sand for septic systems and the Board is trying to come to a reasonable decision. Mr. Lagana wanted to try and wrap up testimony as they have been hearing the same thing. Mr. Villeneuve wanted the Board to keep in mind the number they chose because others would be coming before the Board seeking the same relief and that this was the head waters for Cohas Brook.

Mr. Beaurivage talked about having something on paper. Mr. Villeneuve added that if it was something that was presented to them then it would be great but what they are presenting tonight and what was presented to the Conservation Commission did not show anything. Mr. Blaisdell pointed out the location of the detention pond, the berm and the contours of the property. Mr. Lagana suggested to Mr. Blaisdell and the applicants to prepare a formal plan which is what the Conservation Commission was looking for with a cohesive excavation and reclamation plan then we could move forward. Mr. Blaisdell reiterated that he has spent 2 hours with the Conservation Commission explaining this and if he showed them the contours and a berm that they would want the setback to be 125 feet which would not work. Mr. Blaisdell asked the Conservation Commission members present that if he prepared a plan showing the contours and the berm and the setback at 25 feet if they would approve it. Mr. Porter stated that it was not a conversation that they could have tonight before this Board that they would have to come back to meet before the Conservation Commission.

Mr. DiPietro wanted to make a motion to table it until the next ZBA meeting. Mr. Lagana asked Mr. Blaisdell if he would be willing to go back before the Conservation Commission. Mr. Blaisdell again reiterated that he did not believe that the Conservation Commission would approve a 25 foot buffer or a 50 foot buffer. Mr. Lagana pointed out that they just did at a prior case tonight but without the proper information it was very difficult. Mr. Carlucci explained that they had a deadline with the Planning Board. Mrs. Rouleau-Cote explained that they would have to go back before the Planning Board and say that they have a plan in the works or that you've abandoned the plan because they have asked you for a restoration plan. Mr. Carlucci believed they would have to go before the Planning Board to seek an extension. Mr. Lagana further informed the applicant that they would have to come before the ZBA to seek a variance. Mr. Lagana explained that, any activity within a wetland buffer that the ZBA looks for the opinion of the Conservation Commission. The Board doesn't always agree with it but most of

the time they do. Mr. Lagana believed they were asking the Board to act on something that they did not have the details for. A brief discussion ensued with regard to what is being required and possibly tabling this matter for 60 or 90 days.

Discussion ensued with regard to Planning Board request, ZBA request and what Conservation Commission. Mr. Carlucci stated that if the Board felt more comfortable with a more detailed plan then they would be willing to go back before the Planning Board to see if they would give them an extension and then authorize Mr. Blaisdell to dig a little deeper and then go to the Conservation Commission to get their view and then come back before the Zoning Board.

Mr. Blaisdell asked to table it for two (2) months. Mr. Lagana asked if two (2) months was enough time for them to complete everything they needed to do. Mr. DiPietro thought to table it until June 23, 2015.

***Mr. DiPietro made a motion to TABLE the Public Hearing until June 23, 2015 for Tax Map 2, Lot 25, Case #15-04, seconded by Mr. Beaurivage. Mr. Benson voted to Grant, Mr. Stuart voted to Grant, Mr. Beaurivage voted to Grant, Mr. DiPietro voted to Grant and Mr. Lagana also voted to Grant The motion passed in the affirmative.***

Mr. Benson asked Mr. Lagana if they could obtain advice from legal counsel regarding grandfathering with regard to the excavation pit. Mrs. Rouleau-Cote believed it would be in the Planning Board's purview. Mr. Lagana asked Ms. Royce to prepare something asking the Planning Board to obtain advice from legal counsel regarding grandfathering of excavation pits.

#### **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 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.

**TABLED from February 24, 2015**

Mr. Mitchell began by saying that they would like to withdraw the request for a variance to allow a reduction of the 75 foot wetland buffer for lot 25-19 because they modified the plan.

Mr. Mitchell moved on to talk about the variance request to allow a stormwater detention pond within the 125 foot Level One wetland. Mr. Mitchell presented the Board members with a copy of the Conservation Commission meeting minutes dated March 11, 2015 for the Board to review. Within the minutes, the Conservation Commission move to approve the plan as presented which did not pass. Mr. Mitchell pointed out that the Board did support an additional revision to the plan to move the detention pond further out of the setbacks. Mr. Mitchell talked about moving the detention pond further out of the wetland buffer but did not seem reasonable and therefore showed the Board the placement of the detention pond near lot 25-7.

At this time, Mr. Mitchell read the application into the minutes for the record. After going through the test for the variance, Mr. Mitchell asked the Board members if they had any

questions.

Mr. Lagana asked if there were any abutters present. Mr. Burnham commented that he was not a fan of cluster development and did not believe that they should place a detention pond within a Level One wetland because they did not want to lose a lot. Mr. Lagana explained that the ZBA is entrusted by the town to upholding the ordinance and the ordinance does allow cluster development. Mr. Lagana went on to say that the applicant has hired an engineer to prepare these plans and they have been granted a variance to build cluster and that all the good land is basically all gone. The Board does also seek input from abutters and engineers and that they try to make decisions as best they can.

Ms. Cleary agreed with Mr. Lagana that all the good land is gone and all that is left is steep slopes and wetlands which makes the ZBA Boards job more challenging. Ms. Cleary does not believe what the applicant was asking for was reasonable. Mr. Villeneuve believed it would come down to whether it was a hardship by pushing the detention pond further into the lot and losing a lot. Mr. Villeneuve further talked about the cluster and open space but would like to see the detention pond moved around would increase the wildlife corridor. Mr. Porter brought up the fact that the only subdivision that was supposed to be discussed at the last meeting was 77 Pingree Hill Road and believe that it would be better suited to be moved further into the lot.

Mr. Stuart asked what the number of lots they were proposing for this development. Mr. Mitchell pointed out that there were three (3) conventional lots in the front and 26 cluster lots in the rear. Mr. Mitchell responded by saying that he did not believe it was reasonable for Mr. Gagnon to lose a lot. Further discussion ensued with regard to the detention pond. Mr. Villeneuve asked Mr. Mitchell what would be involved in creating a lot in another area. Mr. Mitchell explained that they could not put a house there. Mr. Villeneuve stated that he was not trying to get them to lose a lot but did think that by moving the detention pond into that area would be a significant improvement. Mr. Porter added that, the engineers confirmed that moving the detention pond into that area is very doable. Mr. Lagana stated that if they move it into the lot that they would lose that lot.

The abutters talked about the pie shape lots and keeping the corridor open because of the wildlife and the Blanding Turtles.

Mr. Lagana asked the Board members if they had any questions. Mr. Stuart began by saying that he was having difficulty where the Conservation Commission is stating that the pond could be moved. Mr. Mitchell stated that the only way they could move the pond more into the lot which would render the lot unbuildable. Mr. Stuart pointed out that the hardship would be more to the owner rather than the land. Mr. Mitchell said no, the hardship is based on the land and the slope they have on the back of the land and crossing the brook. Mr. Mitchell explained that they would have to divert the water on both sides. Discussion ensued with regard to some way of obtaining a lot. Mr. Mitchell stated that if they could have gotten more lots in the beginning that they would have done it earlier.

Discussion with the Board and Mr. Mitchell ensued with regard to the detention pond and possibly putting a fence. Mr. Mitchell also stated that based on the wildlife that they have not done a study with regard to the wildlife corridor. Mr. Villeneuve commented that Mr. Mitchell is correct that there are certain standards that are much greater than what has been allowed here. It has been discussed but neither Mr. Mitchell nor the Conservation Commission knew the exact number.

Mr. Lagana asked Mrs. Rouleau-Cote if she had any comments. Mrs. Rouleau-Cote said no. Mr. Lagana asked the Board how they would like to proceed. Mr. DiPietro stated that he would move to vote on the application as presented. Mr. DiPietro believed that the applicant has met the criteria.

***Mr. DiPietro made a motion to vote on the application as presented tonight for Tax Map 8, Lot 25, Case #15-01, seconded by Mr. Benson. Mr. Benson voted to Deny based on the recommendation of the Conservation Commission and the fact that it fails 3 of the 5 criteria, hardship, spirit of the ordinance and granting the variance would result in substantial justice being done, Mr. Stuart voted to Deny based on hardship and substantial justice, Mr. Beaurivage voted to Deny based on hardship and substantial justice, Mr. DiPietro voted to Grant and Mr. Lagana also voted to Deny based on it fails hardship and the spirit of the ordinance. The motion was Denied by a vote of 4 to 1.***

**Case #15-05**

**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 and 25-20 in a Residential Two zone.

Mr. Mitchell began his presentation on behalf of the applicant and stated that they were before the Board last month looking for a variance for the back of these lots which was denied. What they have done since then was make some changes and moved stuff around by rearranging these lots. Mr. Mitchell explained the location on the plan to everyone present tonight. Their proposal is to put a berm in the entire back of the lots which would direct any water down along the top of the berm.

Mr. Mitchell read the application into the minutes for the record. Mr. Mitchell indicated that they did meet with the Conservation Commission and gave a copy of the minutes for the Board to review. Mr. Lagana asked about the existing woods road and if they would be removing it. Mr. Mitchell said yes so that the berm down through there will divert the water. Mrs. Rouleau-Cote asked if the buffer line would be the property line. Mr. Mitchell said yes.

Mr. Lagana asked if there were any abutters that wished to speak. Ms. Cleary did not believe anything had changed and asked if the property line was changing. Mr. Lagana believed that the berm would be the property line. Mr. Mitchell stated that they have maintained the 75 foot buffer and moved the lot line so that it was out of the 75 foot buffer. Mr. Porter stated that they did have discussion about this but that it was not a voted meeting and would like to have it formally noticed and discussed. Mr. Lagana brought up the last request for a variance that had several lots and thanked Mr. Mitchell for coming back before the Board with only two (2) lots at this time. Mr. Villeneuve commented that they encouraged encroaching onto the Level 2 buffer instead of the Level One buffer.

Mr. Lagana asked the Board members if they had any questions. Mr. Beaurivage made a motion to vote on the application as presented tonight.



***Mr. Beaurivage made a motion to vote on the application as presented tonight for Tax Map 8, Lot 25, Case #15-05, seconded by Mr. DiPietro. Mr. Beaurivage voted to Grant, Mr. DiPietro voted to Grant, Mr. Stuart voted to Grant as he believes all five (5) criteria have been met, Mr. Benson voted to Grant and Mr. Lagana also voted to Grant as he believed that all five (5) criteria have been met. The motion passed in the affirmative.***

## **General Business**

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

## **Minutes**

***Mr. Benson made a motion to accept the minutes of February 24, 2015 as written, seconded by Mr. Beaurivage. The motion passed in the affirmative with Mr. Stuart abstaining.***

## **Adjourn**

***Mr. Stuart made a motion to adjourn, seconded by Mr. Benson. All were in favor, the motion passed unanimously and the meeting stood adjourned at 11:48 p.m.***

*The next ZBA Hearing is scheduled for April 28, 2015 at 7:00 pm and will be held at the Town Hall, 47 Chester Road.*