



**MEETING MINUTES**  
**BARRINGTON PLANNING BOARD MEETING**  
**Barrington Annex (next to the Elementary School)**  
**572 Calef Highway**  
**Barrington, NH 03825**  
**Tuesday August 5, 2014**  
**6:30 p.m.**

**ROLL CALL**

Members Present

Anthony Gaudiello-Chair  
Jason Pohopek Vice-Chair arrived at 6:35  
George Calef  
Bob Williams  
Dennis Malloy, Ex-officio

Members Absent

Joshua Bouchard  
Jackie Kessler

Alternate Member Present

Daniel Ayer

Town Planner: Marcia Gasses

D. Ayer sat for J. Bouchard

Without objection the minutes were moved to the end of the agenda

**MINUTES REVIEW AND APPROVAL**

1. Approval of the July 22, 2014 Meeting Minutes

The Board adjourned without approval of the minutes.

### ACTION ITEMS

2. [224-10-GR-14-SR \(Town of Barrington\)](#) Request by the applicant for a Site Review to build a building which is expected to be 4,800 s.f. and be located behind the current garage on an 84.6-acre lot located at 226 Smoke Street (Map 224, Lot 10) in the General Residential (GR) Zoning District. Notice is given consistent with RSA 674:54. By: Jeff Adler, Dubois & King, Inc.; 18 Constitution Drive, Suite 8; Bedford, NH 03110
- All proposals meet the setback requirements of the Town of Barrington Zoning Ordinance
  - The proposed use does not appear to be a substantial change in use or new use but an expansion of the current use of the parcel
  - John Scruton will present the proposal to the Board
  - The Board may make comments relative to conformity of the proposal with normally applicable land use regulations.
  - The public should be invited to comment on the proposal

John Scruton, Town Administrator explained the Town's plans. The site owned by the Town was over 85 acres in size, drainage would sheet flow on site. The Selectmen had not chosen the bid award but would be meeting with Groen construction, who had submitted the low bid. Of the three proposed layouts, the more likely proposal was a variation of the building with 3 doors on one end and one door centered on the opposing end. The drive through would be centered in the building. The proposal was not a major change for the site, but just constructing a building to house existing equipment owned by the Town and located on site. The parking was proposed to be gravel at this time.

A. Gaudiello asked for comment from the Board.

None

Ken Smith of Barrington wanted to know if the Town had enlisted local builders.

John Scruton explained Groen Builders was currently the low bidder and they were out of Rochester.

John Wallace explained the conservation Commission had no comments.

A. Gaudiello closed public comment.

A. Gaudiello explained this was a governmental use and his recommendation was to be mindful of the drainage.

3. [203-7-GR-14-SD \(Joseph & Virginia Carbaugh\)](#) Request by applicant for a 2 lot subdivision to create a back lot and a 9.6 Special Permit on a 10.52 acre lot on 282 Second Crown Point Road (Map 203, Lot 7) in the General Residential Zoning District. By: Kenneth A, Berry, PE, LLS; 335 Second Crown Point Road; Barrington, NH 03825

Ken Berry of Berry Surveying & Engineering represented the applicant. Mr. Berry explained the Special Exception granted by the Zoning Board, which allowed the applicant to take access from the side of the property. Mr. Berry explained that part of the driveway on Second Crown Point Road included a small portion of the applicant's frontage. The driveway had been moved to address the 75' setback from the Berry River. Mr. Berry reviewed the 2-lot subdivision. The proposed back-lot subdivision would divide a 4.19 acre lot on the back side of the Berry River. The application included a 9.6 Special Permit to allow construction of the driveway to be located between the Berry River Shoreland Protection setback and woodland jurisdictional wetlands. The proposed driveway generally followed a wood road that had been used by the current owner and his grantor. The woods road had been used for logging and firewood purposes on an annual basis. Erosion and Sediment Control measures would be installed to prevent the alteration of or impact to the adjacent wetland. There would be no trees cut on the slopes adjacent to the Berry River and no surface water runoff would be routed onto adjacent slopes.

Mr. Berry explained in the past there had been three mill sites located on the Berry River. Mr. Carbaugh owns a third of the driveway entrance. The Doughty's were willing to give an easement to the Carbaugh's. Lot 7-1 will contain 4.19 acres and contain 3.74 acres of contiguous uplands. The Conservation Commission had expressed the river was the most important attribute to protect.

Ken Berry addressed the 9.6 application. He described the purpose and intent of the ordinance. 9.1 Town of Barrington Zoning Ordinance, the general purpose of this District is to preserve and protect the many wetland areas in Barrington for the benefit of public health, safety, and welfare. The intent of this section is to restrict the use of wetland areas and their buffers to promote the following goals:

- 9.1(1) Prevent the pollution of surface waters and ground waters;
- 9.1(2) Prevent the dewatering of wetlands;
- 9.1(3) Prevent adverse impact to wetlands that provide flood protection, recharge of groundwater supply, augmentation of stream flow during dry periods, habitat for plants, fish, or wildlife, or commerce, recreation or aesthetic enjoyment; and
- 9.1(4) Permit those uses that can be appropriately and safely located in wetlands and their buffers areas.

Erosion control berm would be constructed to keep anything from going into the vegetated wetland. There would be no impact within the 75' of the river. An orange construction fence would be installed to identify the boundaries of the work area.

Ken Berry addressed the 9.6 criteria.

1. The proposed use for the lot was a single family detached dwelling which was allowed in the zoning district

2. In order to get to the buildable area the driveway would have to cross the wetland buffer at some point. The area shown where the driveway would be located would have the least impact on the buffer.
3. The proposed driveway is located so as to be as far from the Berry River as possible, although closer to the forest wetland
4. Erosion and construction notes would be put on the plan set and it will be known by the contractor hired to construct the driveway.
5. To make sure the buffer zone would be repaired a note would be added stating that any disturbance to the surrounding buffer area would be repaired and restored upon completion of construction.

Mr. Berry explained the Doughty's did not want the access higher on their driveway and submitted a letter to that effect.

Ken Berry explained the berms could stay on the site and be raked out.

A. Gaudiello opened for public comment

John Wallace explained the applicant was taking the lesser of two evils but there would be impacts long term. The Conservation Commission had submitted a memo to the Planning Board explaining their position. The Commission was not in favor of the request.

Mr. Carbaugh explained the exiting road he was used for fifteen years and there had never been any significant erosion. They take trucks and skidders in and out for forestry purposes without any issues.

A. Gaudiello explained it comes down to whether what the applicant is asking for is lawful. He went through the Conservation Commission memo. He was not sure what to say to the comment there was already one house on the lot. The question was whether they were addressing the elements of the 9.6 in total. The law said there has to be some measureable impact. See attachment A.

John Wallace stated there would be petrochemical runoff over time.

A. Gaudiello explained the board's job was to hold to the law.

G. Calef expressed that the board does not know that the wetlands would be impacted. The state has a rule you do not build in the wetland, the town had gone 50' beyond that. He expressed that the increase in impact is 6.8 times.

Mr. Carbaugh question what chemicals were going to be put in the driveway.

A. Gaudiello closed public comment.

*A motion was made by D. Ayer and seconded by G. Calef to approve the 9.6 Permit*

J. Pohopek expressed that the request was made as part of a subdivision. This was not a precedence that has already been set.

G. Calef expressed that this particular buffer would deny the landowner a significant use of his property.

D. Ayer believes that everything had been done right and presented to the Board. The berm was a better way to go.

J. Pohopek believed that applications have to be looked at on a case-by-case vote.

A. Gaudiello called the vote.

*The vote was unanimous (6-0)*

Ken Berry went over the subdivision. Mr. Carbaugh controlled the land on the Berry River and was responsible for the dam permitting. Subdivision approval had been given by the State.

The Planners comments are below:

- April 14, 2014 the ZBA granted a Special Exception to from the terms of Article 4.1.2 of the Barrington Zoning Ordinance to allow access to the property from a side not the frontage
- The Application for subdivision was received on May 13, 2014
- The applicant appeared before the Planning Board on June 3, 2014 and the application was continued to allow time to address a 75' setback from the Berry River
- The Application includes a request for a 9.6 Special Permit to allow an 18' wide driveway to access the buildable area of the lot
- The Applicant appeared before the Board on July 8, 2014
- The application was accepted as complete on July 8, 2014
- The public hearing was continued to August 5, 2014 and a site walk was schedule for July 22, 2014
- A site walk occurred on July 22, 2014 with members of the Planning Board & Conservation Commission in attendance
- The Board should first address the 9.6 Special Permit for Construction in a Wetland Buffer

For reference:

Article 9 Wetlands Protection District Overlay

9.1 Purpose & Intent of this District is to preserve and protect the many wetland areas in Barrington for the benefit of public health, safety, and welfare. The intent of this section is to restrict the use of wetland areas and their buffers to promote the following goals:

9.1(1) Prevent the pollution of surface waters and ground water;

9.1(2) Prevent the dewatering of wetlands

9.1(3) Prevent adverse impact to wetlands that provide flood protection, recharge of groundwater supply, augmentation of stream flow during dry periods, habitat for plants, fish or wildlife, or commerce, recreation or aesthetic enjoyment; and

9.1(4) Permit those uses than can be appropriately and safely located in wetlands and their buffers

9.6 Special Permit for Construction in a Wetland Buffer

A use not otherwise permitted in the wetlands buffer may be undertaken if the Planning Board approves an applicant’s request for a Special Use Permit, provided such use is in keeping with the intent and purposes set forth in this Ordinance as permitted in the base zoning district and meets the standards listed below.

9.6(1) After review of all reasonable alternatives it is determined to be infeasible to place the structure outside the buffer zone.

9.6(1) (a) the structure must be setback as far as possible from the delineated edge of the wetland or surface water;

9.6(1) (b) Appropriate erosion control measures must be in place prior to and during construction; and

9.6(1) (c) Any disturbance to the surrounding buffer zone must be repaired and restored upon completion of construction; and

9.6(1) (d) all available mitigation measures to address changes in water quality and quantity is implemented, along with design and construction methods to minimize adverse impacts, if required by the Planning Board.

A. Gaudiello opened and closed public comment.

None spoke.



**Planning & Land Use Department**

**Town of Barrington**

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**DRAFT NOTICE OF DECISION**

<i>[Office use only</i>	<i>Date certified:</i>	<i>As built received:</i>	<i>Surety returned</i>
<b><i>"Applicant", herein, refers to the property owner, business owner, individual(s), or organization submitting this application and to his/her/its agents, successors, and assigns.</i></b>			
<b>Proposal Identification:</b>			

<b>Applicant: Joseph P. &amp; Virginia M. Carbaugh</b> <b>By: Kenneth A. Berry, P.E., LLS</b>	<b>Dated: /2014</b>
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**Dear applicant:**

This is to inform you that the Barrington Planning Board at its XXXX, 2014 meeting **CONDITIONALLY APPROVED** your application referenced above.

All of the precedent conditions below must be met by the applicant, at the expense of the applicant, prior to the plans being certified by the Planning Board. Certification of the plans is required prior to commencement of any site work or recording of any plans. Once these precedent conditions are met and the plans are certified the approval is considered final.

Please Note\* If all of the precedent conditions are not met within 6 calendar months to the day, **by XXXX, 2014**, the Boards approval will be considered to have lapsed, unless a mutually agreeable extension has been granted by the Board. *Reference 8.2.3 of the Town of Barrington Subdivision Regulations*

## **Conditions Precedent**

- 1 a) Add the owner's signature to the final plan  
b) Add the wetland scientist stamp & signature to the final plan
- 2) The applicant's surveyor shall certify in writing that the bounds and pins have been installed according to the plans.
- 3) This driveway will require a street name and everyone on this driveway will be required to have a new address. Written documentation shall be provided indicating lot owners on this shared driveway understand this requirement.
- 4) Add the following plan revisions to the plans:
- 5) Add the following plan notes:
  - a) List Special Permit for Wetland Buffer (*# granted*)
  - b) Add the State Subdivision Approval number to the plan
  - c) The driveway is required to have turnouts constructed every 250' (as required by the Fire Chief) and built to acceptable town standard (*Reference 12.3.2 of the Barrington Subdivision Regulations*)
- 6) Town Counsel shall approve driveway easement language.
- 7) Any outstanding fees shall be paid to the Town

- 8) Proper and complete survey monumentation shall be installed on the properties as a condition to final approval of the application. Granite bounds shall be set at the intersection of existing or proposed lot sidelines with existing proposed streets. Iron pins (pipe or rod) are to be placed at all property line corners and angles, and all points of curvature and points of tangency. Monuments for the lot being developed shall be placed not more than 300 feet apart in any straight line. The applicant's surveyor shall certify in writing that the bounds and pins have been installed according to the submitted plan. (*Reference 8.8 of the Town of Barrington Subdivision Regulations*)

Final drawings. (a) three sets of large black line plus (c) one set of 11"x17" final approved plans plus (d) one electronic version by pdf or CD must be on file with the Town. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans. Note. If there are significant changes to be made to the plans, as specified above, one full size paper check print must be sent to the Planning Department for review prior to producing these final drawings.

### **General and Subsequent Conditions**

- 1) The Code Enforcement Officer will inspect and approve the wetland buffer restoration prior to the issuance of a certificate of occupancy.
- 2) Current Use subject property or a portion of it is presently in Current Use. The applicant must provide the Town of Barrington Assessing Department a revised current use map and/or any other items needed to assure that the requirements of RSA 79-A and the New Hampshire Department of Revenue's Administrative Rules are satisfied.

*A motion was made by J. Pohopek and seconded by B. Williams to approve the application with the conditions as stated. The motion carried unanimously*

When certification was provided to the Chair that the precedent conditions were met, the Chair would take the information to the board for permission to sign the plans.

4. [240-15.5-NR-14-SP \(Fisheve Properties, LLS\)](#) Request by the applicant for a 9.6 Special Permit to provide access to the 7,560 s.f., more or less, building envelope located in the rear portion of the lot on a 1.91 acre lot on Young Road (Map 240, Lot 15.5) in the Neighborhood Residential (NR) Zoning District. By: David Vincent, LLS, Land Surveyor Services; PO Box 7418; Rochester, NH 03839-7418

Comments from the Planner:

- Application was received by the Land Use Office on July 16, 2014
- Abutter Notices were sent on July 22, 2014
- The Notice was posted in Fosters Daily Democrat on July 23, 2014



- The applicant should describe the type of planting to be used for revegetation of disturbed areas
- If the Board approves the permit a condition should be added stating “Code Enforcement shall verify erosion control measures are in place prior to the issuance of a building permit”
- If the Board approved the permit a condition should be added stating “The Code Enforcement Officer shall inspect the restoration of the buffer impact prior to the issuance of a certificate of occupancy”
- The Board may reference the sections from Article 9 of the Zoning Ordinance referenced in the comments on the Carbaugh Application

David Vincent represented the applicant, Paul Thibodeau of Fish Eye Properties. Mr. Vincent explained there was a significant amount of building envelope to the rear of the property. The property to the rear had a very desirable view. A pocket of wetland just over 3000 sq. ft. was identified. They could reevaluate the wetlands to see if they had increased or decreased. The proposed impact was not within the prime wetland setback. The driveway was located close to the pocket wetland to allow for protection of the higher value wetland. The rear of the lot was very appealing. Mr. Vincent did not know whether the driveway would be paved or gravel but both were considered impervious under shoreland permitting. Mr. Vincent went over the photographs included in the application materials.

A. Gaudiello expressed that the applicant had a large hurdle to jump. He asked how the applicant could get around that there was a large buildable area to the front of the lot. The first question was whether there was a reasonable alternative.

Mr. Vincent explained that the applicant could seek a wetland-crossing permit from the State and not even have to appear before the Board for a Special Permit.

J. Pohopek expressed that he did not feel there was a reasonable alternative. That the structure that was being discussed was the proposed driveway.

M. Gasses asked Mr. Vincent if there was not an appeal process to a State wetland permit.

Mr. Vincent expressed there was.

A. Gaudiello opened public comment.

John Wallace expressed that there was a very reasonable alternative, the building envelope in the front of the lot. A site walk may be an alternative to voting on the application.

A. Gaudiello asked the Board if there was interest in a site walk.

D. Malloy and J. Pohopek were amenable to holding a site walk. The majority of the Board did not express a desire or need for a site walk.

A. Gaudiello expressed there was a reasonable alternative.

*A motion was made by J. Pohopek to approve the 9.6 Special Permit application and seconded by D. Malloy for discussion purposes.*

D. Malloy expressed from what he was hearing there were alternatives.

B. Williams expressed he was stuck on reasonable alternative as well.

J. Pohopek expressed he was looking at the original subdivision and was seeing two building envelopes and he believed the second building envelope was a reasonable use.

A. Gaudiello asked what the discussion was regarding the 9.6 during the original subdivision approval.

David Vincent expressed there had not been any discussion regarding the need for a 9.6 Special Permit. That driveway encroachments had not been followed through with until the present planner arrived.

J. Pohopek expressed the back portion had been identified as a building envelope.

A. Gaudiello reopened public comment

John Wallace asked if there was a wetland crossing would this be reasonable.

J. Pohopek expressed the wetland crossing from the State would be easier to obtain.

John Wallace expressed that he did not believe the State would grant a wetland crossing.

A. Gaudiello closed public comment.

A. Gaudiello recapped the requirements of a 9.6 Special Permit.

A. Gaudiello reopened public comment.

Paul Thibodeau explained he was owner of the lot and was choosing to build in the envelope to the rear of the lot. The rear was the more desirable location and he had the right to build on the portion of the lot he chose.

A. Gaudiello closed public comment.

A. Gaudiello called for those in approval 3 in favor D. Ayer, J. Pohopek, and D. Malloy

A. Gaudiello called for those against A. Gaudiello, B. Williams

A. Gaudiello called for those voting present, G. Calef

*The motion carried three in favor, two opposed, one abstention*

5. [224-1-NR-14-Sub \(W. Paul Cullen-Cullen Woods\)](#) Request by the applicant for an 11 lot Single family Subdivision, a waiver for underground utilities on a 48+/- acre lot on Smoke Street in the Neighborhood Residential (NR) Zoning District. By: Michael Garrepy, Tuck Realty Corp.; 34 Raeder Drive; Stratham, NH 03885

Planner comments:

- Applicant has notified the Land Use Office they have had further wetland delineation done and will not need a 9.6 for the driveway for Lot #1
- Driveways to Lots 2, 4, 6, 9 on plan set dated July 16, 2014 as presented will require a Special Exception under 4.1.2 of the Town of Barrington Zoning Ordinance. The Zoning Board of Adjustment may permit, by granting of a Special Exception, that a different side of the property be used for access because site constraints make using the otherwise required frontage inconsistent with protecting the safety, health, and welfare of the public.
- Remove Highway Commercial Overlay District (HCO) from sheet 3 of 13
- Add State subdivision approval to the final plan
- Dimension the pavement width of Smoke Street
- Designate each proposed lot by Map and Lot number as provided by the assessor
- The area of the neck for lots 4 & 10 must be deducted from the area on sheet 8 of 13
- State contiguous uplands for each lot on sheet 8 of 13
- Provide a draft easement in favor of the Town of Barrington for the fire pond this would also require acceptance by the Selectmen
- The Selectmen would need to vote to accept the open space
- The application appears to be complete. The Board should consider accepting the application so that they may begin discussion on the details of the proposed subdivision.

Michael Garrepy with Tuck Realty explained that the proposed 11-lot road frontage subdivision which was located on a 48 acre parcel with an open space portion although not a Conservation Subdivision. The open space parcel may be donated to the Town. Mr. Garrepy explained the three reasons they were seeking a Special exception to take access from a side not the frontage for 5 of the driveways, which included avoiding wetland buffer impacts, minimizing curb cuts on Smoke Street, and sight distances. Mr. Garrepy explained they had submitted an application to the Zoning Board of Adjustment for the August 20, 2014 meeting.

*A motion was made by J. Pohopek and seconded by B. Williams to accept the application as complete. The application was unanimously accepted as complete.*

A. Gaudiello asked that the applicant address the underground utilities waiver request, where the subdivision was a road frontage subdivision.

Mike Garrepy explained the utility pole location was an issue they had historically looked at post approval.

A. Gaudiello explained that there was one letter, which had been submitted from an abutter and would be placed in the record.

A. Gaudiello opened public comment

John Wallace expressed the Conservation Commission had submitted a memo. The commission was hoping an adjustment could be made where the existing trails run across much of the private land.

Mike Garrepy expressed that some of the trails could be relocated. They were trying to provide a buffer to the building envelope to some of the lots. Protection of Mallego Brook was the larger concern.

Kenneth Smith explained the trails were all logging roads.

A. Gaudiello asked about the Fire protection discussions with the Fire Chief.

Mike Garrepy explained there was a 20,000-gallon cistern on the highway department site. The applicant would locate a centralized cistern. They would need to talk to the chief.

M. Gasses asked M. Garrepy to discuss the building envelope sizes.

Mike Garrepy explained the lots all contained good size building envelopes.

Mike Garrepy explained why they no longer needed a 9.6 for the driveway on lot 1. The Wetland scientist had redelineated the wetlands and there was sufficient area for construction of the driveway without impacting the buffer.

A. Gaudiello opened public comment

Kenneth Smith asked when the applicant would like to get started with construction.

M. Garrepy explained when they got through the approval process. There was no road construction, which needed to take place.

A. Gaudiello closed public comment

*A motion was made by J. Pohopek and seconded by B. Williams to continue the application to September 9, 2014. The motion carried unanimously*

6. [268-1& Additional Lots –GR-13-SUB \(Gerrior Lane Trust\)](#) Request by applicant to present a Section 9.6 application for Special Permit for Construction in wetland buffer, Subdivide and create 10 lots, construct approximately 990LF of roadway, a shared driveway and realign a portion of Saint Matthews Drive located on Gerrior Lane and Saint Matthews Drive (Map 268, Lots 1, 1.1, 1.2, 1.3, 1.4 & 1.5) in the General Residential (GR) Zoning District. By: Michael Sievert, P.E.; MJS Engineering, P.C.; 5Railroad Street; Newmarket, NH 03857.

FX Bruton represented the applicant. He was hired to address the Conservation easement. Attorney Bruton explained there was the requirement to go before the A.G. because a conservation easement created a Charitable Trust. The selectmen and the Conservation Commission both wrote letters of support for the request to adjust the Conservation Easement. The adjustment included adding acreage and removing a small portion.

A. Gaudiello asked when the applicant had asked for the A. G. to take action.

F.X. Bruton explained that he has been involved more recently.

A. Gaudiello opened public comment.

John Wallace asked if they had received the letter from the Conservation Commission.

Jeff Garnett engineer with MJS Engineering explained there were 30 comments from Dubois & King. A full revised set of plans and drainage have been presented.

J. Pohopek mentioned 20 of the comments were to the drainage requirements.

The Planner included the following comments to the Board:

- The original approval was signed by the Boards designee on September 22, 2005
  - Application for modification of Phase II was received on May 15, 2013
  - The Technical Review Committee met with the applicant’s representatives on June 13, 2013
- Comments:

Dick Conway, Police

Comments: Concern with width of driveway  
Will need clear identification markings  
Michael Sievert explained the driveway would have a paved width of 20’ to the turnaround

Rick Walker, Fire

Comments: Area with split needs to be large enough for a truck to back around  
The private drive needs to be named

Cisterns need to be located within 1000 drivable feet.  
Planning Board could waive the requirement & possibly selectmen if homes are sprinklered

Peter Cook, Road Agent

Comments: Would like to see a road apron of 30' on the private road

Suzanne McNeil, Assessing

Comments: Intent to excavate needed if greater than 1000 cubic yards to be removed from site

Jeff Adler, Dubois & King

Comments:

John Scruton, Town Administrator

Comments: Asked whether there were any issues with the current drainage pipes from pond  
Jeff Adler explained the three remaining issues were the brush, pile of stone, and curve.

4-way stop which will need to be approved by the selectmen

John Wallace, Conservation Commission

Comments:

Tom Abbott, Code Enforcement

Comments: Questioned whether the shared driveway was being constructed as part of the subdivision

Wanted to make sure maintenance easements were in place

Well location on proposed lot #5

Wetland Buffer needs to be added to Mr. Conroy's lot

Removal of home from road prior to the signing of the plat

Marcia Gasses, Town Planner

Comments: Crushing of stone for removal and sale may need a permit

Discussed the need to correct the tax map and lot numbers

Add additional land to Conroy's lot which was part of first approval

- Revised plans were received on July 1, 2013
- The application was accepted as complete on July 9, 2013 and has been continued to this point while the applicant hired Counsel to work on modification of the conservation easement area.
- Revised plans were received on July 21, 2014
- Abutters were renotified on July 22, 2014

- The existing building in the right of way must be removed prior to certification of the plans, please label “to be removed”
- Add the Aot Permit number to the plan
- Add the State subdivision approval number to the plan
- The amount and type of performance guarantee must be set prior to final approval of the plan. (Reference 8.3 & 12.8 of the Town of Barrington Subdivision Regulations)
- Maintenance easement for shared driveway reviewed by Town Attorney
- Intent to excavate must be filed if more than 1000 cubic yards of material leaves the site
- The board should address the 9.6 permit for the shared driveway
- Lots on sheet C2 are numbered incorrectly
- Plan set should include the existing approved layout for reference purposes
- Show wetland buffer on land to be transferred to Conroy, lot line adjustment part of prior approval
- Explain if the shared driveway will be constructed in conjunction with the proposed road construction. The construction of the shared driveway involves a number of drainage structures and should be completed in conjunction with required road improvements.
- Send revised plans to Dubois & King for second review, money must be placed in escrow to cover estimated cost of review
- Drafts of all easement language which may need to be revised from the prior approval must be provided to the Land Use Office for review by Town Counsel
- The Applicant’s legal counsel should be present to explain their progress on reconfiguration of the Conservation Easement.
- The Board may wish to schedule a site walk

*A motion was made by J. Pohopek and seconded by D. Malloy to schedule a site walk on August 19, 2014 at 5:00 p.m. The motion carried unanimously.*

Paul Howes asked about the proposed easement frontage on Homestead Lane.

Jeff Garnett explained there was proposed to be conservation easement where previously there had been lots.

*A motion was made by J. Pohopek and seconded by D. Ayer to continue the application to September 9, 2014*

## **COMMUNICATIONS RECEIVED**

## **REPORTS FROM OTHER COMMITTEES**

## **UNFINISHED BUSINESS**

## **OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD**

7. Discussion on conditional approvals for Brasseur/Halla and Gibb Auto Sales to extend final conditions from 3 months to 6 months. 8.2.3 Subdivision Regulations vs concurrent application 9.5.4

J. Pohopek recused himself.

A. Gaudiello explained the situation, where the applications were continued for 90 days instead of the allowed six months. The Board was voting to allow for 6 months to meet the precedent conditions of approval.

*A motion was made by G. Calef and seconded by D. Ayer to extend the time to meet conditions of approval for the Brasseur/Halla application from 90 days to 6 months. The motion carried unanimously*

*A motion was made by D. Ayer and seconded by B. Williams to extend the time to meet conditional approval from 90 days to 6 months on the Gibb Auto Sales application. The motion carried unanimously*

## **SETTING OF DATE, TIME AND PLACE OF NEXT MEETING AND ADJOURNMENT**

A. Gaudiello discussed having a meeting with the Conservation Commission meeting after the site walk at the Boards regular meeting.

Without objection, the meeting was adjourned at 10:10 p.m.

Respectfully submitted,

Marcia J. Gasses  
Town Planner & land Use Administrator



Attachment to minutes  
Attachment A

To: Planning Board  
From: Pam Failing, Vice-Chair, Conservation Commission  
Re: Carbaugh, Crowne Point Road, 9.6 Wetland Buffer Impact  
Date: July 31, 2014

After seeing the new location of the proposed driveway and reviewing the site plan, the conservation commission still does not support the request for a 9.6 *Special Permit for Construction in a Wetland Buffer*. While the new location helps alleviate our greatest concern, protection of the Berry River, the proposed area of disturbance (and additional areas needed for cut/fill of the driveway) still creates a significant wetland buffer impact. Referring to our Article 9 - Wetland protection District Overlay:

Per Section 9.4, a driveway is not a permitted structure in a wetland or buffer, nor is it consistent with the purposes expressed in Section 9.1

***Re 9.4 not permitted – agreed it is not a use which does not require a 9.6 waiver. It is in fact why the 9.6 is sought. (Note: the otherwise not permitted clause—)***

***RE 9.1 Purpose statement – cannot be understood to be an inviolate or absolute expression. The purpose statement is must be considered as intending to provide restrictive protections not absolute prevention – otherwise the 9.6 special permit provisions would make no sense. In the context of this proposal the PB needs to consider:***

- (1) the mitigation efforts being made as these relate to the practical and measurable values of the wetland.***
- (2) the rights, as these may be qualified or modified by law, of the property owner to the full use and enjoyment of property.***

Per 9.5.1, a driveway is not an exception to the rule.

***9.5.1 Agreed – that is why the 9.6 is being requested. If the requested action were an exception then a 9.6 would not be required. It is because it is not an exception to the rule that the 9.6 is presented.***

Per 9.6, This request is not “in keeping with the intent and purposes set forth in this Ordinance... (9.1)”.

**Restated objection Same comment as given above.**

Further in this section, note that "After a review of reasonable alternatives it is determined to be infeasible to place the structure outside of the buffer zone". We now understand the other driveway locations are not possible.

However, the desire to create a new lot actually creates a conflict with zoning ordinance and a buffer/wetland impact, thus we do not consider this an "alternative" (*emphasis added by amg*).

We do understand that buffer impacts may be needed to make use of a pre-existing undersized lot. And we have agreed with these requests. However when an action involves creating new lots, we feel that conflict with our zoning ordinances should be avoided when planning or approving the new lots.

Also we discussed that there is already a house on the lot being proposed for the subdivision. We thus believe that the owners already have 'reasonable use' of their property, which does not support the building of a second house.

In summary, the reasons stated above make this application unsupportable.  
Thank you for your consideration.

**What's seems to be asserted here is that making lawfully permitted use of one's property according to the Zoning Ordinance while meeting the standards for granting a 9.6 special permit is foreclosed because it is in general "unreasonable" to have a second house if it is necessary to seek a special permit (available under the law) to have it." This not a valid reason for rejecting the proposal..**

**The only available and applicable tests to be applied by the planning board as set forth in the Zoning Document ZO 9.9 are:**

- 1) Is the use permitted in the Zone
- 2) Standards listed in 9.6(1 thru 5)

To act outside these parameters might well be grounds for a "taking charge" against the town. would remove the protections against "taking" on the part of the town.

Failing an assertion that

- 1) Other reasonable and available alternative exist
- 2) That the structure (or construction) are not set back as far as is possible
- 3) The erosions control measures are inappropriate for the construction proposed
- 4) That there is no provision in the plan for restoration of the disturbed areas after construction
- 5) That there are reasonable and appropriate mitigation that are not be employed

It would be an unfair of treatment of a ion or

The manifest logic of the buffer is to protect the wetland by providing "distance" between the wetland and, in this case, construction activity and its effect on the practical measurable values of wetlands. One of the purposes of 9.6 is to require that reasonable provision be made to offset the loss of the protection of distance with other safeguards. The applicant has addressed himself to that issue in his proposals.

- 482-A:3, X "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- 482,A:3, XI. "Wetland functions" means the practical measurable values of wetlands. The 12 primary wetland functions are ecological integrity, wetland-dependent wildlife habitat, fish and aquatic life habitat, scenic quality, educational potential, wetland-based recreation, flood storage, groundwater recharge, sediment trapping, nutrient trapping/retention/transformation, shoreline anchoring, and noteworthiness.