

Approved by the Zoning Board on October 6, 2011.

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
Thursday – August 4, 2011  
356 Main Street - Farmington, NH**

**Members Present:** Elmer W. "Butch" Barron III, John David Aylard and Joe Pitre

**Members Absent:** Joanne Shomphe and Paul Parker

**Town Staff Present:** Town Planner Kathy Menici, Code Enforcement Officer Dennis Roseberry and Department Secretary Bette Anne Gallagher

**Public Present:** Glenn Costanzo, Randy Tetreault and Randy Orvis

**Chairman Barron called the meeting to order at 7:05pm.**

**BUSINESS BEFORE THE BOARD:**

- Review and approve Meeting Minutes of June 30, 2011

*Joe Pitre motioned to accept the minutes of June 30, 2011 as presented, 2<sup>nd</sup> John David Aylard. Motion carried with all in favor.*

- Any other business to come before the board.

None.

**CONTINUED CASES:**

~~**Application for Variance from Section 2.00, Table of Permitted Uses by William L. Harvey (Tax Map R06, Lot 068): To allow a mixed commercial and residential use that is not permitted by the Town of Farmington Zoning Ordinance. The parcel is located at 2138 NH Route 11 and is in the Commercial Industrial Business Overlay District. CONTINUED TO SEPTEMBER 1, 2011, AT THE REQUEST OF THE APPLICANT**~~

**NEW CASES:**

**Appeal from an Administrative Decision by David J. Haycock (Tax Map R-47 Lot 5): To appeal the Code Enforcement Officer's interpretation of the Zoning Ordinance with regard to the classification of wetlands (Section 4.02 Wetlands Conservation Overlay District (E) – designation of Significant Wetlands and Buffer Zones and (F) Initial Designations. The parcel is located at 96 Bunker Street and is in the Urban Residential District.**

Applicant David J. Haycock was represented by Randy Orvis.

Planner Menici stated for the record that the Board tonight consisted of three of the five members and that this represented a quorum but that the applicant had the right to wait for a full board. Randy Orvis stated he would go forward and did not want to wait for a full board.

Mr. Orvis stated that he was in front of the Board because the wetlands on the site plan should be Class III but the classification was being questioned by the Code Enforcement Officer who felt the wetlands might be Class II.

Mr. Orvis distributed an enlargement of the parcel and wetlands. He stated that according to the National Wetlands Inventory Maps wetlands not classified as Class I or Class II are considered to be Class III. Additionally, the section in question are not contiguous but are physically separated by a culvert.

Additional materials were given to the Board including definitions and photographs.

At that time the Planner requested Board permission to give the information to the Code Enforcement Officer. Chairman Barron stated he thought Mr. Orvis and CEO Roseberry would already have reviewed and discussed this information. However, the information was being presented for the first time at this meeting. Permission was given and the map enlargement and photos were reviewed by the Board and staff.

CEO Roseberry said there were 2 reasons for the denial: one was the method of classification and two was the disparity between the original plan that showed the section in question contiguous to the Class II wetlands and the modified plan showing the culvert and classifying the section as Class III. A Class II designation would require a 50 foot buffer and Class III would have no buffer requirement.

The CEO felt due to the discrepancies it would be in the Town's best interest to request, as provided in the Zoning Ordinances, an alternate method of determining the classification. The applicable sections of 4.02, i.e., paragraphs E-1 through E-4 were considered by the Board.

Chairman Barron expressed the Board's concern that not considering seasonal runoffs or brook beds in the delineation of the type of wetlands could eliminate the Class III designation. It appeared that the second plan was submitted after the CEO's decision. John David Aylard asked if CEO Roseberry had physically inspected the site. He had not because he had taken the plans submitted by Randy Orvis as correct.

The Chairman said that taking into consideration both the Zoning Ordinances and the opinion of the CEO, he would like to find an avenue of resolution to this issue other than the ZBA. He asked if Mr. Orvis and CEO Roseberry would be able to work this issue out now that additional documentation has been submitted.

During the subsequent discussion, the Planner pointed out that there are three conflicting paragraphs within the Zoning Ordinances that will need to be reviewed by the Planning Board. Chairman Barron stated that the conflicts do not place a burden on the applicant.

Chairman Barron stated he can see and understand both sides of the issue and agreed that the ordinance creates confusion.

Joe Pitre asked if Randy Orvis and CEO Roseberry could come to an agreement. He said the additional study to determine classification would be a considerable expense to the applicant and that this situation did not meet the qualifications as specified.

Planner Menici asked the CEO if there was a level of information that would resolve the disparity for him. CEO Roseberry said the photos and information submitted tonight appear to answer the question of the contiguous connection and if the Board feels the sections are not contiguous, he would be okay with their decision. The CEO said in the photos presented the wetlands do not appear contiguous. He stated his original decision was based on the site plans only and the information provided at this meeting would have helped immensely if it had been provided prior to the public hearing.

Chairman Barron said based upon the original site plan he would have made the same decision. However, the Chairman also stated that the only point to decide upon tonight was if the wetlands are contiguous. He asked if the zoning ordinances have a definition of contiguous. Planner Menici said it is not specifically defined in the Town's zoning ordinances so the common definition applies and that would be "any connection". She stated that is why there is a problem with the ordinance.

The Chairman said that definition is not acceptable and cannot imagine that it was the intention of any governing body to eliminate the Class III designation. He also felt further study was not reasonable.

At this point the following motion was made:

*Joe Pitre motioned to grant David J. Haycock's Appeal from an administrative decision with regard to the classification of wetlands for Tax Map R-47 Lot 5. Based upon new evidence that was not available prior to the hearing and that contradicts the original information submitted, it appears that the wetlands in question are not contiguous to Dames Brook and are Class III wetlands. 2<sup>nd</sup> John David Aylard. Motion carried with all in favor.*

**Application for a Special Exception under Section 1.12 Non-Conformity (C) (3) by Karen Cameron (Tax Map U-3 Lot 15-2): To allow a pre-existing non-conforming lot to annex 6,139 sq. ft. to an abutting lot. The annexation of land will increase the non-conformity of the subject parcel. The parcel is located at 14 Beechwood Ave. in the Commercial Business District.**

Randy Tetreault said he would be representing Karen Cameron and Glenn Costanzo.

Chairman Barron again stated for the record that the Board tonight consisted of three of the five members and that this represented a quorum but that the applicant had the right to wait for a full board. Randy Tetreault stated on behalf of his clients he accepted the three members.

Mr. Tetreault stated that a special exception for a boundary line adjustment is required because the property now lies within the CB Zone and is a pre-existing non-conforming lot. The property was originally subdivided in 1989 and met all requirements under the previous zoning standards. Both the subject property and the adjoining lot are fully developed sites with each having a single family home, accessory structures, on-site septic and town water.

The change in area would be 6,139 square feet. The adjusted line would be the existing line of occupation and would result in the subject lot being 1.53 acres and the abutting lot being 0.96 acres. The CB zone

requires a minimum 2 acre lot but in comparison lot size requirements in the SR zone are one acre or three-quarters of an acre with town water.

The reason for the change is that the existing boundary runs close to the Costanzo's driveway and the new line would follow the line of occupation. If one party decides to sell, the adjustment would clarify the lot lines.

Mr. Tetreault reviewed the 3 criteria required under Section 1.12 (C) of the Zoning Ordinance:

- a) Both lots are fully developed with existing utilities and utility connections and meet all other residential special requirements;
- b) The proposed minor lot line change (6,139 sf) will move the line along the existing line of occupation at both owners' request; and
- c) The applicants will submit a formal application to the Planning Board for a Boundary Line Adjustment upon notification of ZBA approval.

Chairman Barron said the ZBA has already run into this more than once because of the 1,000 foot setback requirement. The Planner said the PB has had an initial discussion about this area and that insufficient study was done when the change in setback was made. The Chairman stated the change to 1,000 feet was well intended but not completely thought out.

The Planner said that this change is less than 10,000 square feet and would normally require only committee review but because of the special exception, if granted, will go before the full Board. Mr. Tetreault asked how the special exception affects the PB decision. Planner Menici said the hearing is more of a formality necessitated by the special exception.

Randy Tetreault said the new line will be approximately 25 feet from the driveway and the adjustment will not create a new lot. New frontages will be approximately 200 feet for Costanzo and 123 for Cameron. The Planner said adequate separation between the residential units remains.

There was no further discussion and the following motion was made:

***Joe Pitre motioned to grant the Special Exception to allow the boundary line adjustment. Motion 2<sup>nd</sup> John David Aylard. Motion carried with all in favor.***

There being no further business before the Board, the following motion was made:

***At 8:07 pm Joe Pitre motioned to adjourn, 2<sup>nd</sup> John David Aylard. Motion carried with all in favor.***

Chairman Barron adjourned the meeting.

Respectfully Submitted,  
Bette Anne Gallagher  
Department Secretary

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Elmer W. "Butch" Barron III, Chairman  
Zoning Board of Adjustment

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Date