

Official

**HOOKSETT ZONING BOARD OF ADJUSTMENT
MINUTES
Tuesday, May 19, 2009
HOOKSETT MUNICIPAL BUILDING
35 Main Street**

CALL TO ORDER

Chairman C. Pearson called the meeting to order at 7:04 PM.

INTRODUCTION OF THE BOARD

Chairman, C. Pearson, R. Duhaime, R. Bairam, J. Levesque, and R. Savoie.

Staff: P. Rowell, Code Enforcement Officer

Excused: G. Hyde

APPROVAL OF MINUTES

April 14, 2009

***R. Bairam motioned to approve the minutes of April 14, 2009 and attach the comments of M. Sorel submitted for the record. Seconded by R. Duhaime.
Vote unanimously in favor.***

CONTINUED PUBLIC HEARINGS

CHARLES & DEBORAH HOLT

313 Londonderry Turnpike, Map 25, Lot 39 and 39-1

Medium Density Residential

Variance from Article 5, Section A to allow certain limited commercial uses in a new building to be constructed on the property in a medium density residential district. Permitted uses would be limited to passive, low impact commercial uses including general, professional and/or medical office space, personal care providers and/or service companies such as mortgage companies or day care providers and similar low impact uses.

C. Pearson stated that the question before the Board is whether the application for the variance is sufficiently different from that addressed in 2005. Secondly, is the application too general and does the Board have enough information to evaluate the application?

R. D'Amante, Attorney representing the Holts: Is this sufficiently different from 2005? I received a letter from Matt Serge and the only thing we would be discussing would be the materiality of the Dover vs. Fischer decision.

Since Fisher vs. Dover came up years ago, Zoning Boards have had difficulty apply those test. One, is there a material change in circumstances or the application change in the use from the original application. The elements of the application are not relative to this test. The Fisher vs. Dover isn't the usually things zoning boards consider. You have a set of standards to apply. In this, you are dealing with something that is material. The application always says we comply and the opposition says you don't. Go to the Supreme Court for the answer. There have been two prior variance applications both denied by the ZBA. They were the same, retail use and restoration and repair of tractors. The new variance request has to do with office use only. We are not talking retail or industrial or repair. Therefore, based on that, I'm going to submit that the 2009 application is materially different and meet the Fisher vs. Dover test. In 2009 the Supreme Court came down with a Farrar vs. Keene case. In the Farrar case in 2007, the application applied for a use and area variance. The Area was to reduce parking from 22' to 10' and change from residential single to mixed use. The ZBA approved the application. On further appeal to the Supreme Court, they sent the case back for further action and didn't require the applicant to

specify a specific use. The Farrar case says the ZBA can grant the use without specifying a particular tenant. The Morgenstern vs. Rye in 2002 set forth the facts that constitute material changes. The Morgenstern case in 1993, applied to build a single family home on the upland part of the lot and the variance was denied. In 1994, they applied for a Building Permit and were denied. In 1995 they appealed the decision to the ZBA and were denied. They filed for Declaratory Judgment with the Superior Court and were denied. In 1998 they applied for a Variance for a single-family home on the upland. The ZBA refused to consider it on the grounds that there was no material change from the first application. They appealed to Superior Court and the Superior Court held that the ZBA's decision not to consider the second application for a Variance was reasonable. The ZBA grounds were the resubmitted plans were not substantially different from the first application. The ZBA said there was no future application for a single family dwelling that would ever be sufficiently materially different as to warrant ZBA review. The Superior Court said the stated difference were not enough, which were the redesign of the driveway to allow for more natural absorption for rainfall into the ground. The new driveway removed the need for a longer retaining wall. The ZBA and Superior court said this was not material.

The Supreme Court reversed this decision in 2002 and said the Superior Court was in error because the changes in the building were enough to constitute materiality and remanded the applicant back to the ZBA for further action. The use didn't change but the technical analysis changed with better infiltration of drainage and the change in the retaining wall since the wetlands were a factor the Supreme Court said that was enough.

In the appeal of Parkland Medical Center, the Supreme Court reemphasized the Dover vs. Fisher test. The test and the nature of the way the court discussed were interesting. They reaffirmed the Morgenstern decision in 2008.

A small change on something can be material. I submit, that just like Morgenstern, the Holts are applying for an even greater change being a different use of an office use in a new building. This is a major change. You know from personal knowledge and experience that there is difference between office and retail. If you go south on the By Pass, you see Dr. Burleigh's Dental Office. To the North, there is retail activity, which has a different impact on the community. The use is very different. In 2003-2004 the request was for retail similar to the use on the North. Both of those applications did not have any request for offices. The new amendment is limited to office use. It is not in any way including any retail or industrial uses. The material differences from office to retail include hours of operation; Office being Monday through Friday, 8:00 am to 5:00 pm, while Retail could be Monday through Sunday, 9:00 am to 9:00 pm.

Traffic generation from office use is lower volume and arrives early and ends by early evening, 5 days a week. Retail is a totally different traffic impact.

Architecture will look more residential as does the Burleigh building which is more compatible with the neighborhood vs. retail.

This will create a greater tax base. This office use is more passive use and more compatible with the neighborhood.

With the professionally designed plans, we have buffers to enhance the natural buffers where necessary, enhanced setbacks, and visually appealing landscaping and lighting. Things that from your knowledge of office and retail is significantly different. There was an additional turn lane constructed in 2007, which gives better traffic control. This says the Holts are applying for a totally different request than in 2003 and 2004.

I would like to submit my testimony in writing to the Board for their use in making their decision.

C. Pearson: Both the first two applications were for retail?

R. D'Amante: Yes, with repair of tractors, which is a retail and industrial mix.

We submitted an amendment last week for office use only. If we get a favorable view from the Board that we pass the issue of sufficiently different as Fisher vs. Dover and you find in favor, we will revise the specific plan.

J. Levesque: The Holts originally wanted the Variance in 2003 to open an antique store for quilts and a hobby shop to repair tractors.

R. D'Amante read from the actual the application.

J. Levesque: What in the repair of tractors is industrial use? I think that would be more commercial use.

R. D'Amante: That is semantics and it is a greater impact.

R. Savoie: The town put auto body and repair into the Industrial zone only a few years ago.

J. Levesque: The Holts bought the property and immediately petitioned the Planning Board and the voters to have the zoning changed. They were denied every time.

R. D'Amante: That is all irrelevant. The test before you is the materiality of office use vs. retail use. Nothing that happened relative to retail use in the past is relevant except that office use is materially different.

R. Savoie: Would Mr. Holt need a variance to put a second floor on this house as it stands now? What businesses are zoned that you can do in a residence now?

P. Rowell read from ordinance relative to "home occupations".

Andrew Serell, Attorney representing Hollerans: I Object to the procedure regarding written material being submitted to the Board. All material was to be submitted 7 days prior to meeting to provide time to review.

R. D'Amante: Submitting material for findings and rulings is submitted at the end of the meeting.

All material will be held and distributed later by the zoning secretary.

A. Serell: Our client didn't have notice that this would take a different direction. The board needs to make clear if this is materially different. From Fisher vs. Dover, "when a material...." What does materially different means? Material difference has to mean a difference that could have a different decision. The Morgenstern case said, "The new application had a new footprint and driveway design". The Court looks at what is different that could make the Board act different and we submit that it doesn't make the application more approvable. The application was approved by the ZBA and the Superior Court reversed that decision. That proposal was for a home business to restore tractors and sell quilts. They didn't say that was high impact. It was limited but was not a home business. They were not talking about parking or true commercial. This is now talking about tearing down the residential and making a parking lot with 45 spots and a commercial building which is a much more intense use. R. D'Amante is saying this is office, which is better than retail but you can't just apply labels. You can't say this is more approvable than in 2004. The hours of operations he said are different but it is not. The traffic is much more of an impact now. He mentioned the turning lane. Our April submission says that now cars will have to cross the turn lanes. Everything that is different makes the application less approvable. There is not any significant change since the 2005 Superior Court decision. The applicant reapplied for a drive permit and was denied because there was not enough significant change for approval. In terms of if the project is too general to be considered, we think this is and it is more than just not specific tenants and the 45 parking spaces but rather speaks to higher impact than the low impact they are talking about.

R. Savoie: Don't you feel tonight we are discussing the viable difference? You make the case that is different, the traffic, the parking and the impact. You make the case that it is different.

A. Serell: Every application is different, but is it materially different? Every case that was found to be materially different all argued that it had to make it more approvable. You can't come forward with a new application that is further removed from the application that was previously denied. Parking, if it is a greater impact is not a material difference. If in the case of Morgensterns, the application had more impact on the wetlands, I guarantee the decision would have been different.

R. D'Amante: I don't want to reverse my 40 years as a lawyer; I never said retail is very bad. We are talking about impact. Andrew said turning lanes make things more hazardous. Why would DOT do that? Turning lanes handles the impact. It is not a traffic nightmare to cross two lanes. The ZBA has enough before them to determine that the application is materially different to say this is different. Doesn't Burleigh's building blend into the neighborhood? We have people that want to use their property in a responsible way.

C. Pearson: You say apply the knowledge of the town. I drive that intersection every day and it is a nightmare. That is a problem.

R. D'Amante: It is a signalized intersection. The use of that signal creates gaps and is an improvement. It may change levels of service and slows traffic.

Close Public Hearing

J. Levesque: The variance will not be contrary to the public interest.

R. Duhaime: We can't go back and vote on something from 5 years ago. We are only looking at the material differences. I think the turn lane has caused a material difference in the property.

R. Bairam: He's not trying to change the use of the house; he is changing the entire property by removing the building.

J. Levesque: I don't think it has changed.

C. Pearson: I don't think this is more approvable than what was before the town previously.

R. Duhaime: The town changes, I think it is different.

The Board requested input from Matt Serge, Attorney for the Town, relative to the testimony presented by the applicant as well as testimony from abutters.

J. Levesque motioned to continue the hearing to June 9th, 2009 to allow for time to review information received and to confer with the Town's attorney. Seconded by R. Savoie. The variance will not be heard until the decision on Fisher vs. Dover. Vote unanimously in favor

All Material to be submitted by June 1st.

HOMES FOR LIFE/JOAN ELLIOTT/STEPHEN AUSTIN

South Bow Road & Mary Ann Road, Map 12, Lot 14-4

South Bow Road & Mary Ann Road, Map 12, lot 13*

South Bow Road, Map 16, Lot 53*

Low Density Residential

Special Exception from Article 18, Section E.1 for construction of access roads; driveways, water impoundments and drainage ways at proposed subdivisions "LaBonville" and "Austin Woods"

*Variance from Article 18, Section G.2.a that requires a 40-foot setback from the wetland boundary to any structure or any paved area and shall remain in its natural, undisturbed state.

R. Bairam motioned to continue to June 9th. Seconded by R. Savoie.

Vote unanimously in favor

JENSENS, INC

3 Mailhouse Road, Map 19, Lot 4-1

An Appeal of Administrative Decision issued on March 16, 2009 by the Code Enforcement Officer which stated "the remaining 8 units in your 91 unit 'older persons' [over 55] must meet Article 7 section 3.f in that 10% of the dwelling units meet Americans with Disabilities Act requirement for accessibility.

Variance from Article 7 Section B.3.f which states within any elderly or older person housing developments, a minimum of ten (10) percent of the dwelling units shall be compliant with the requirements of the American with Disabilities Act (ADA)

C. Pearson: We will discuss the appeal of administrative decision specifically.

Bill Tanguay: The presentation needs to be made as a whole. You can't discuss one without the other. Part of what I will explain is when you look at ADA, what is specific because you can comply if you meet an equivalent test.

We have two requests saying we do meet ADA and if you decide we don't we will then go to a variance.

Easy Living Coalition will be speaking as well.

C. Pearson: Is Easy Living an approved substitute for ADA?

B. Tanguay: ADA is a standard from the Federal Government. Easy Living is a coalition that says they satisfy the standard and the purposes of what ADA is for.

It is not a federal standard. It does require a certification and there is a Board that enforces the standard. Jensens is in an awkward spot and the ordinance says 10% is required and 90 units are built and 8 are left. There has been no communication from the Town and we are not blaming the town but we are now in an awkward position. Jensen's didn't know about it and now the Planning Board and CEO have raised the issue.

C. Pearson: Did Jensens know about this?

P. Rowell: I was not here then but the Planning Board at their meeting last night stated that they did know. I think they are looking at how they can comply now.

B. Tanguay: Jensens is a good neighbor and has a good reputation and wants to remain a good neighbor. We want relief without violating the intent of the rule. We can do that by looking to the Easy Living criteria. I reviewed the minutes of May 5, and there the Planning Board stated that the 8 remaining units must come into compliance. The Planning Board was concerned it would create a precedence. The Planning Board talked about the Harmony Place plan having ADA units on the plan. It is one large building built all at once, compared to Jensens, which is single family manufactured homes built on demand. Jensens then customizes the unit and has them built. They can't pre designate units. The Planning Board was concerned because they said it's not hard to make a house ADA compliant with doorway widths and ramps. If that was all it included, we would be happy to make ramps and widen doorways. We propose all houses will be on grade so there will be no need for ramps. There will be no stairs. We can meet the doorway widths with the Easy Living Standard. We believe the 10% standard is not meant for any freestanding project. It is customer based. It is not an inventory of units as in a 24 unit building where you designate a number of units as handicap. This would be appropriate when the entire building is built at once. I invite you to think about a situation where you as a developer will build +55 and older on individual lots and gets all approvals and then sells the project. He may sell 3 units to one builder and 3 to another and one to an individual owner. How can you enforce that? We believe the purpose of the ADA is to be inclusive and provide accessible housing for as many people as possible. This, however, will become exclusive because if we have to put in the remaining 8 units as ADA, they will remain unbuilt. Buyers do not ask for ADA houses. No one has ever asked for a

fully ADA house. They may ask for something in the kitchen or bath and Jensens has complied but no one has asked for a fully ADA home. There is no demand.

C. Pearson: What is the ADA requirement that you don't want to do?

B. Tanguay: It has a big turn around area that takes a lot of space in front of every bathroom fixture. There has to be a 5-foot turn around area including the kitchen and laundry room. If you made a Jensens house fully ADA, you loose a bath and breakfast nook and the utility room is lessened and the master bath is less. You loose all the cabinetry in the bath and kitchen for wheelchair access. With Easy Living in every bath and kitchen, there is maneuvering space that is a 4.6' area and doesn't loose the cabinetry. There is no market for this type of house.

C. Pearson: Can you build the houses bigger?

B. Tanguay: You could but it will cost \$10,000 more. It would have a walk up first floor. Easy living requires wide doors and rectangular space and living area on the main floor. We can comply with those things. You have a series of floor plans before you. The Easy Living Standard floor plan on top and the ADA on the bottom. The laundry in the Easy Living has a utility area and the ADA becomes just a laundry area. The Easy living has a morning room and the bottom has that lost. The Easy living has two baths with a rectangular maneuverability area and a master bath with the same rectangular area and a 16 x 16 bedroom. In the ADA home you have one smaller bath and a smaller bedroom. The Franconia floor plan shows the ADA and Easy Living Floor plan shows landscaping the house to avoid stairs.

The last two are ADA materials. The kitchen, to be ADA, loses all the cabinetry. This (Easy Living) provides accessible housing and has wider doors, no steps and wide turnarounds. I believe P. Rowell looks at this favorable.

Easy Living: Walk in without steps, wider doors and halls, full bath and bedroom kitchen and entertainment on the first floor and maneuverability in front of all fixtures.

ADA Standards: 100 pages of standards. For accessibility to places of commercial facility. 2.2 called equivalent facilitation; departures from the particular requirements are appropriate. You can come up with substantial equivalent for usability of the facility. We believe that Easy Living provides that without features that buyers don't want.

The decision said you must comply with ADA and we say ADA should apply to use because we are not a commercial facility and even if we do, we can depart from the standard.

Easy Living has been described as a universal design, one that can accommodate everyone from raising children to empty nesters. The creation of these homes benefits home owners by expanding the usability of the homes.

This is a standard that Easy Living is trying to promulgate throughout New Hampshire.

R. Savoie: Who is Easy Living?

B. Tanguay: They are a coalition and Sara will speak to that. She's here and works with Granite State independent living. Last month, we had an individual who works with the Governor's counsel for the disabled. Sara works with people whose major function is working with people who are disabled.

R. Savoie: Who are they, are they sponsored by contractors or are they a government agency.

B. Tanguay: It is made up of people who certify the home before it is occupied. We would be willing to get such a certification.

Sarah Denoncourt, Granite State Independent Living: We work with people throughout the State. I work for a non-profit and are an independent living center, which is outside the scope of government agencies. We are a coalition of a lot of organizations. I'm here to provide information and do not want to influence you on your decision but am simply here to provide information only.

Easy Living has basic accessibility features. It is to increase the availability. The program was started in Georgia by a disability rights organization and builders to make reasonable houses. The features include wider doors and main floor bath, bedroom, entertainment space and kitchen. As far as ADA, I'm not an expert but ADA requires outlets and switches, which are at a particular height and we do not require that.

Read members into the record.

There is a broad representation. This is a good way to increase the housing stock in NH that is accessible without a great cost.

R. Savoie: Who certifies these homes?

S. Denoncourt: When I have a builder interested in meeting the standards, he works with a few members of the coalition, and once built, a group of members go through a checklist and measure the doors, etc. Once we find it satisfactory, we give a certificate to the builder and the homeowner. If there are deficiencies, the builder has an opportunity to make changes.

P. Rowell: Energy Star is something similar that you may be familiar with. It is not a government group but a separate group. They certify Energy Star homes and Green certification is a program to keep the contractor in check. Easy Living would be criteria to get a Certificate of Occupancy.

R. Savoie: Would you double check as well?

P. Rowell: Yes, and no one would come in to inspect for ADA except myself. The certification for ADA would be myself.

R. Savoie: Would you be comfortable with this?

P. Rowell: Being fully ADA probably wouldn't sell. This is a good compromise.

S. Denoncourt: There are construction features in the packet. It is a compromise and it is one that is a good way to expand the accessible housing available. We had a grand opening in the one in Boscawen and I have many friends in wheelchairs that were very happy with the results.

P. Rowell: It would be a lot easier to convert an Easy Living Home to ADA than a standard home.

S. Denoncourt: I found working with people with disabilities that there is a large spectrum of needs. If you put in a full ADA, it may not meet the individual needs anyway.

R. Duhaime: Can the Board view the one in Boscawen?

S. Denoncourt: The one in Boscawen is the first in this State. The home in Boscawen is a private residence now so there is no viewing. I do have photos that I could email.

R. Duhaime: No, thank you.

P. Rowell: They did say if they were required to do full ADA they would not build them.

C. Pearson: I think we need to act on the appeal. We are fixing a problem and I don't believe the Planning Board understands ADA. I think the Planning Board should also hear about Easy Living.

B. Tanguay: Do we meet ADA, technically no, but we meet substantially equivalent which the ADA allows.

R. Savoie motioned to deny the appeal to overturn of the decision of the COE based on the fact that they are not meeting the requirement of the Zoning Ordinance. Seconded by J. Levesque.

Vote unanimously in favor

C. Pearson: I would like the Planning Board to look at Easy Living.

M. Sorel: I won't speak for the Planning Board, but as a member, the Planning Board has just approved a +55 condo unit from complying with the ADA. Webster Woods had no objections to building ADA requirements. Brookview is before us for +55 and they all are required to do 10% ADA. 15 years ago I was on a committee to rebuild town hall. We knew at our first meeting we had to meet ADA. From Senator Smith's office we got a copy of the requirements and were told that there was a governors commission in Concord that advised us on what we could do. I advise you as a Board that to confirm what you have heard. You could have that person come before you. There will continue to be an issue. We complied in the old building with their assistance.

B. Tanguay: That is a commercial building, which ADA does apply.

R. Duhaime: You said this doesn't fit your location. I don't understand the argument. Are these designs by a professional engineer?

B. Tanguay: We went back to the manufacturer. This doesn't fit because this is a single family; each home is it's own structure and built on demand. They are not built all at once. This is set up like a subdivision. It is not the kind of model that I believe the town had in mind. I think most people had in mind a big building with many units and you can designate those that are compliant. This isn't an inventory driven situation. This is buyer driven. The fact it is a single-family residential structure and the way they are manufactured and sold make it different. Most of the projects are big building.

R. Duhaime: You don't currently have any units, which come close to ADA requirements or ramps?

B. Tanguay: There are buyers that have requested specific items like wider doors.

R. Duhaime: Is there in this community one handicap person in a wheelchair?

J. Levesque: They own the home and rent the lot?

B. Tanguay: Yes, they rent the lot and get services such as lawn care. There are 91 total and 8 are left to be built.

C. Pearson: I don't believe anyone on the Board is an ADA expert. I would like the Planning Board to hear about Easy Living.

R. Savoie: I would like to hear from someone on the Planning Board.

B. Tanguay: We don't have an application before the Planning Board. I would be happy to present to them as well.

Continue to June 9th and direct applicant to present to Planning Board.

RONZELLO (PROPOSED SUPERMARKET)

54 & 58 West River Road & 1 Central Park Drive, Map 37, Lots 2-3, 3, 4, 5

For a proposed development of a 74,575 square foot supermarket, 373 parking spaces, utilities including an on-site septic system and storm water infiltration basins, and a multiple-egress point driveway for emergency access and safety, which will require the following variances:

Article 18.G.2.to would allow for work within a 40-foot wetland setback to construct multiple driveway egress points for safety and emergency access.

Article 18.D.1 to allow the altering of the natural surface configuration by the addition of fill or dredging within poorly drained soils.

Article 19.E.10 to allow for earth removal within 8 vertical feet of the seasonal water table.

Article 19.E.11 to allow for an infiltration system within 4 vertical feet of the seasonal high water table.

Jim Lamp, Jamco

Bob Clarke

Eric Teel, THE

Tom Sukoloski, Wetland Scientist.

Site walk was completed.

Jim Lamp read criteria into record. See file, revised criteria.

J. Lamp: Article 18.d: 40' Wetland Setback disturbance is associated with the perennial stream. We are proposing to connect to Central Park Drive and disturbing the creek. That would disturb the vegetation as well. There is a 145' swatch that is being requested as well. That is a request that could be under a utility but we are still requesting the Variance. This is also an access drive.

Open Public Hearing

None

Close Public

R. Duhaime motioned to approve the request for a Variance from Article 18.G.2.to allow for work within a 40-foot wetland setback to construct multiple driveway egress points for safety and emergency access. Seconded by R. Savoie Unanimously in favor.

J. Lamp: Article 18.d1 is for 657 s.f. of wetland impact. That had the ditch coming out of the wetland. The s.f. increased to create a berm to keep the wet area wet.

Open Public Hearing

None

Close Public

R. Duhaime motioned to approve Article 18.D.1 to allow the altering of the natural surface configuration by the addition of fill or dredging within poorly drained soils. Seconded by R. Savoie. Vote unanimously in favor

Article 19E 10 to allow for earth removal within 8 vertical feet of the seasonal water table.

J. Lamp: This is for excavation within 8 feet of the seasonal high water table. It was much higher than estimated. When designing septic you look at high levels by modeling. We went down 20 feet and didn't hit water. H T E said based on the borings and based on the area being excavated, we looked at the ability of the site to function as an aquifer and it didn't have any storage capability at the site. Excavating will not affect the town's aquifer. There is a groundwater contour map as part of the report.

Eric Teal: We put in 10 monitoring wells and drilled until we hit bedrock or hit ground water.

Where we didn't hit, it varied from 7.5 feet to 23 feet. These are equilibrated ground water levels. This is the top of the groundwater table. We did it twice. During the 2 days of test, there was 1.5 inches rain and you'd expect fluctuation. We saw places where it went up slightly and other

areas where it went down. The levels are much lower than you'd expect to see. On the south, in two locations, it goes toward the stream and on the north it is go to the Merrimack River.

R. Duhaime: So you can stay within 6 feet?

E. Teal: Correct.

Open Public Hearing
None
Close Public Hearing

***R. Savoie motioned to approve Article 19.E.10 to allow for earth removal within 8 vertical feet of the seasonal water table. Seconded by R. Bairam.
Vote unanimously in favor***

Article 18E.11

P. Rowell stated that since the site is being raised, there may be no need for the Variance.

J. Lamp: We believe we don't need it but in case there is a location where the ground water is within 4 feet of our basin in the final design we might need it.

B. Clarke: We are not finished with our Technical Review so we might still need this.

R. Duhaime: Will there be oil separators in the parking lot?

B. Clarke: Yes.

Open Public Hearing
None
Close Public Hearing

R. Savoie: Is it necessary for the 4-foot article and can it wait for the final drawings on the septic?

B. Clarke: On paper, we are 4 feet and by your town regulations, we are right on the line. I think we need the Variance.

J. Lamp: It is subjective and we didn't dig test pits on the entire site. We feel it's prudent to ask for the Variance. We are comfortable that we will be two (2) feet above the state requirements.

***R. Bairam motioned to approve Article 19.E.11 to allow for an infiltration system within 4 vertical feet of the seasonal high water table. Seconded by J. Levesque.
Vote unanimously in favor***

NEW PUBLIC HEARINGS

GREEN MOUNTAIN REALTY

180 West River Road, Map 24, Lot 57

For a proposed development of a 13,446 square foot building (5346 SQ. Ft. Office and 8100 SQ. FT. Warehouse) with 38 parking spaces. Utilities include On-Site Septic and Municipal Water (Village) on 3 acres of commercial land.

Special Exception from Article 18, Section E.1 to allow a wetland crossing for the construction of a driveway.

Variance from Article 18, Section D to allow the filling of 2100 sq. ft. of wetlands for the purpose of constructing a parking area for a new office/warehouse building.

Variance from Article 18, Section D to allow the disturbance of 100 sq. ft of wetlands and the 40' wetland buffer for the purpose of installing drainage piping and rip rap for site drainage.

Joseph Maynard, Benchmark Engineering: According to my meetings with Mr. Rowell, I need a Special Exception.

P. Rowell: The culvert is installed.

C. Pearson: With a Special Exception, we will need to schedule a site walk.

Joseph Maynard, Benchmark Engineering: This site came to their attention and is adjacent to the Transfer Station. We would like to subdivide a 3-acre parcel and access through the NERR driveway. There is already a culvert in place and we need to install a guardrail and pave. It is also a little steep for the access of trucks.

Pictures were distributed of the site to the Board.

This site was an old gravel and sand pit. The property is disturbed. There is a seasonal brook that runs along the existing driveway. There is a vegetative buffer along Route 3A. There is an old driveway where pavement has been removed and is bare ground.

The applicant read from the criteria for the Special Exception (see file)

The applicant is scheduled to appear before Conservation Commission on June 3rd.

J. Maynard: To the south of the driveway, the soil scientist found a wetland that had been excavated out. The water from the brook goes to permeable soil and leaks out creating a wetland. This area is in the middle of the parking lot. It is a man made feature. There is a second area adjacent to Route 3A of 100 s.f. that is for the construction of a drainage pipe and will be restore to its' original condition when done.

Criteria for the Variance will be read at the next meeting.

Site walk scheduled for May 23 at 8:00 AM at the culvert.

Public Hearing to be continued to June 9 2009.

ADJOURNMENT

The chair adjourned the meeting at 10:10 pm.

Respectfully submitted,

Lee Ann Moynihan