

**Official**

HOOKSETT ZONING BOARD OF ADJUSTMENT

Tuesday, November 18, 2014

HOOKSETT MUNICIPAL BUILDING

**CLOSED SESSION (6:00 pm to 6:40 pm)**

**Attorney-Client Privilege Meeting**

**CALL TO ORDER**

Chair Chris Pearson called the regular meeting to order at 6:47 pm.

**PLEDGE OF ALLEGIANCE**

**ATTENDANCE:** Chris Pearson (Chairman), Roger Duhaime (Vice-Chairman), Michael Simoneau, Don Pare, Phil Denbow, Richard Bairam, Gerald Hyde, Jackie Roy, and James Levesque, Council Rep.

**STAFF:** Matt Lavoie, Code Enforcement Officer

**APPROVAL OF MINUTES**

**October 14, 2014 – R. Bairam motioned to approve the October 14, 2014 regular meeting minutes. Seconded by M. Simoneau. Motion carried unanimously.**

**CONTINUED PUBLIC HEARINGS**

**Gilles & Claudette Chalifoux**                      **Case #14-09**  
6 Phyllis Drive    Map 20, Lot 18  
MDR

A Variance is requested from Article 5, Section C, Article 26, Section B.2.a and Article 3, Section J of the Zoning Ordinance to permit a single family house to be built without further improvements to Phyllis Drive.

Attorney Andy Sullivan (representing the Chalifoux's): I originally brought a variance on the Chalifoux lot, Map 20, Lot 18 because I was told by the town I needed to go for variance. During that process, the town changed it's position and agreed this is grandfathered. My first variance is mute because I don't need a variance and can build. The second part of that variance was for a lot line adjustment. A variance is needed because when you have a grandfathered lot any alteration is not permitted unless you have a variance. I am asking that a portion of the Chalifoux lot be switched with a portion of the Desaulniers lot. Currently, there is the potential for someone to build close to the Desaulniers garage. Doing this prevents that from happening.

It also makes a better building lot. The frontage that is grandfathered in is the extension of Phyllis Drive and that doesn't change. It is 300' of frontage, of which 100' is abutting Phyllis Drive, changing to 200' frontage, with the same 100' frontage abutting Phyllis Drive. It has been a two year process to get here and the hardship is intrinsic with the land. The Chalifoux's bought this as a retirement property. To make it better suited for their needs, this reconfiguration works best for them. The dirt under Phyllis Drive is in a Quiet Title action brought forward by Desaulniers to acquire it. It is a right-of-way by agreement, right, and history, that the Chalifoux's have the right to use it. There is a shared maintenance agreement between these two parties regarding Phyllis Drive. The town has never done anything with Phyllis Drive and never will. The owners of Lot 18 and 19 will take care of the road. The reason it was tabled at the last meeting was comment was requested from the Planning Board and they are okay with it.

R. Duhaime: The key thing you are looking for is a variance from zoning, but you don't want to make any improvements to Phyllis Drive?

A. Sullivan: Correct.

R. Duhaime: One stipulation I would like to see on that was an apron. In this agreement, are there any improvements that are supposed to be made?

A. Sullivan: Just to maintain it.

C. Pearson: For variance Article 5, Section C, that is the road frontage?

M. Lavoie: No. That is not road frontage, that is lot area.

C. Pearson: I would like the dimensions

A. Sullivan: The existing area is 1.03 acres. The proposed area will be virtually within 50 sq. ft. of the same area. The frontage is the same.

C. Pearson: Why do you need the variance? What is non-conforming? What is the sq. footage?

A. Sullivan: That isn't why I need the variance.

C. Pearson: Why do you need the variance?

A. Sullivan: It is a grandfathered building lot. Any alteration of that requires a variance. I am not changing the dimensions, but the configuration, and that still would require the variance.

M. Lavoie: Do you have a square footage number? The Chairman is trying to figure out what the difference is.

C. Pearson: I am trying to figure out why he needs a variance to Article 5, Section C. What he is alluding to is Article 26, Section B.2.a. Matt it isn't the frontage, correct? The 200' doesn't apply to this?

M. Lavoie: It wouldn't apply to the grandfathered lot. Article 5, Section C states "when served by neither municipal water nor municipal sewer, the lot area shall not be less than 65,340 sq. ft. and the frontage shall not be less than 200'."

A. Sullivan: Without being exact, it is less than 65,000 sq. ft.

M. Lavoie: It is probably around 43,000 sq. ft.

C. Pearson: So it is the sq. footage that is non-conforming?

M. Lavoie: The square footage and the frontage. The frontage is only 100', where he needs 200'.

C. Pearson: We like to be specific when we grant a variance as to what is being asked for. We know you are asking for 100' where 200' is needed, but I don't know what you are asking for in regard to the sq. footage.

A. Sullivan: It is not called out on the plan but it is virtually the same square footage. Parcel A, which is being removed, is .34 acres. Parcel B, which is being added, is .44 acres. The new lot will be .10 acres larger than the old one. Nonetheless, they are both under 65,000 sq. ft.

C. Pearson: Article 26, Section B.2.a, is where you are asking for the grandfathered lot?

A. Sullivan: I already had the grandfathered status as it exists. I am altering it, so I need your permission.

R. Duhaime: You are looking to change the lot of record and you don't want to do any improvements to Phyllis Drive. You have a driveway agreement. In the town of Hooksett, any driveway usually has an apron off of the road. I don't believe you have that now.

A. Sullivan: The gravel goes to Evelyn Street.

R. Duhaime: It is my opinion that some improvement be made. I think that at least an apron be made to help tracking dirt onto the town road.

A. Sullivan: If I do nothing, I don't need that because it is grandfathered in. I am not changing in any material manner the use, size, or location of the lot. I understand what you are saying, but if I do nothing, I don't have to do that. I have the building permit, as it exists, without an apron. I

think that it is over burdensome when I am not changing any traffic coming from that road to impair when the dirt hits the pavement.

R. Duhaime: I don't think we are asking for anything more than what is required of any other house being built in the town of Hooksett.

A. Sullivan: There is already a driveway that has been used for years by the Desaulniers.

R. Duhaime: I am talking about for a new house. I understand that was a lot of record many years ago, but now you are asking to put in a new home. There are impact fees in the town of Hooksett. I believe those will be addressed. I think this should be addressed also.

A. Sullivan: It wouldn't even come up if I wasn't changing the configuration.

C. Pearson: Would he need a variance from Article 3 if he didn't do anything?

M. Lavoie: If it is a lot of record, which we have determined, he would not need any variances as it is laid out, currently. It is because he is changing the lot line that he will need to obtain the variances.

A. Sullivan: I understand what you are saying, but if I wasn't going to make any changes I would not have to be here.

G. Hyde: If we are arguing Phyllis Drive is a private road, we are no longer talking about a driveway, we are talking about a road. What kind of stipulations are there about connecting roads to roads. Is there some regulation there would be to connect a private road to Evelyn Street.

M. Lavoie: It already connects, because it is already Phyllis Drive in that approved flat. If there were any, it would be in the developmental regulations and governed by Leo Lessard, the DPW director.

R. Duhaime: You are saving some expense on this end to change the lot, which I think the Board may be willing to do, and all putting the apron in would do would bring the driveway up to code with what is in the rest of the town. I don't think that is unfair hardship. It will make the lot a better lot and a better driveway. I think it is a win for the town and for you.

A. Sullivan: I understand your position, but I can do it without now, and you are adding an element, only because you can.

R. Duhaime: You are correct. You can leave the driveway the way it is, and the lot the way it is.

A. Sullivan: In terms of the purpose of what that acre would accomplish, nothing is changing. If I built the lot the way it is now, whatever impact would happen would be the same.

P. Denbow: Would anything along those lines be considered an improvement to the driveway?

C. Pearson: This isn't a driveway, it is a private road. The private road had to be part of that lot of record, correct?

A. Sullivan: It was a lot shown on a road dedicated to the town by a plan approved and signed off by the town of Hooksett Planning Board in 1976. By definition that becomes a lot of record. It is a non-conforming lot of record because of the size and lack of frontage on it.

C. Pearson: Phyllis Drive is a private road of record?

A. Sullivan: It is a private way. A road is something that is accepted by the town for maintenance and this has not been accepted by the town. It is not a Class 6 road and never was. A dedicated way would have to be accepted by the town, either by vote of the selectmen or by constructive use of the town maintaining it, none of which has happened. It is a dedicated way on a recorded sub-division plan, which makes it a lot of record. It has never been a town of Hooksett road.

M. Lavoie: I would describe it as a private way.

M. Simoneau: Will Desaulniers' mailing address change?

A. Sullivan: Yes it will. That was discussed at the Planning Board meeting.

P. Denbow: Roger is making a point about the apron and trying to make a condition as part of the variance. How would that affect the maintenance agreement of the driveway as far as upgrades and repairs? How will that be done?

A. Sullivan: I don't have an answer to that but assume it will be problematic. It will have to be further addressed with the parties.

M. Simoneau: That would be part of the conditions.

G. Hyde: There would have to be a new maintenance agreement, because the one they have is for a driveway, not a private way. That would be my view.

A. Sullivan: It is for the gravel/dirt way that goes from Evelyn Street to the Desaulniers' house, and to the Chalifoux lot.

G. Hyde: Is that agreement in a deed on record?

A. Sullivan: Not yet. It will be. Everything is contingent on what is happening. It has been signed off and agreed to by the parties.

C. Pearson: As long as we apply RSA 674:41, that removes Hooksett, and they have to work that out themselves.

M. Simoneau: A release from municipal liability could be signed.

C. Pearson: That is correct.

R. Duhaime: If there is at least an apron out onto the town right-of-way, the town doesn't have to maintain that dirt. The apron would keep it out of the town right-of-way. Right now there is dirt in the town right-of-way that is not being maintained.

C. Pearson: I can say, from knowledge, that road is maintained very well because Mr. Desaulniers maintains it. If he leaves, and then there another person, they may not maintain it as well, so I can see what Mr. Duhaime is saying.

**Open to abutters.**

Penny Desaulniers (3A Evelyn St.) We support the lot line adjustment because of the location of our garage. That would make it better for us, as far as privacy.

R. Duhaime: Do you have a problem with an apron at the end of that driveway to bring it into conforming use with other town driveways?

A. Sullivan: Could you please explain to her what that is.

R. Duhaime: It is a paved apron to make sure the dirt stays on your driveway.

A. Sullivan: It would be 10' deep and the width of the current driveway.

P. Desaulniers: Would I be in support of it? If this lot line adjustment goes through, and there are any modifications that need to be done to the road, then our lot line adjustment is null and void. Is that correct?

A. Sullivan: No. The way the agreement works, if this doesn't pass as presented, there is no agreement. The Chalifoux will build on the existing lot. If it is passed as presented, there will be the maintenance agreement. It is all contingent upon this being passed, as presented.

R. Duhaime: To reach to the law, 674:41, won't there have to be an agreement in place?

A. Sullivan: No. There only has to be a Release of Municipal Liability.

R. Duhaime: From both of you?

A. Sullivan: I believe the Planning Board has already passed muster on that. Part of 674:41 is if the Planning Board has already granted a building permit on this way, and they did by granting the Desaulniers' lot. I am not sure, because I have not done a search to see if they have signed a release of municipal liability? I am sure the Chalifoux's would be happy to sign one.

M. Lavoie: At that time, I believe it was thought that Phyllis Drive was owned by Desaulniers, and that was one continuous lot when he built that house. It wasn't the Planning Board, it was the Zoning Board, that made that happen.

A. Sullivan: I can only speak for my clients about signing a release of municipal liability. I can't speak for the Desaulniers.

C. Pearson: They will have to go in front of the Planning Board. We can make a contingency about the apron, or a recommendation.

**Close to abutters.**

**Open public hearing.**

No public comments.

**Close to public.**

G. Hyde: Does the Desaulniers claim to Quiet Title affect this and, if so, how?

A. Sullivan: In the 1950's and 1960's, St. Laurent developed that land and conveyed everything out except Phyllis Drive. However, the Desaulniers' Quiet Title says there was some sort of conveyance that may not have been recorded. They are pursuing a Quiet Title to obtain the fee interest so they will own the land beneath Phyllis Drive. There is no opposition to that Quiet Title, so we are just waiting for it to go through.

J. Roy: How long does that normally take?

A. Sullivan: It is a very slow process. I have never done one in less than 6 months.

J. Roy: You are not aware of anyone who is saying it won't go through?

Mario Desaulniers (3A Evelyn Street): No, we don't have any issues. We are just waiting.

***R. Bairam motioned to grant a variance in Gilles & Claudette Chalifoux, Case #14-09, 6 Phyllis Drive, Map 20, Lot 18 MDR, from Article 5, Section C. Seconded by G. Hyde. Voting members M. Simoneau, G. Hyde, R. Bairam, R. Duhaime, P. Denbow. Motion carried unanimously.***

***R. Bairam motioned to grant a variance in Gilles & Claudette Chalifoux, Case #14-09, 6 Phyllis Drive, Map 20, Lot 18 MDR, from Article 26, Section B.2.a. Seconded by G. Hyde. Voting members M. Simoneau, G. Hyde, R. Bairam, R. Duhaime, P. Denbow. R. Duhaime is against. Motion carried.***

C. Pearson: Is there a motion or discussion on Article 3, Section J? This is where we would apply RSA 674:41 for municipal liability to the applicant to enter into an agreement to maintain the road.

R. Duhaime: They are looking for no improvements to this road, and anyone else building a home in this town is required to put in an apron. I don't think it is unreasonable to ask the same here. You are building a home and not putting in a driveway so there is money saved from that. There are impact fees and other things to bring it up to standards. Every time we have someone come to the Board you want to have improvements and bring things up to code. Putting an apron on will bring this up to code and would be an improvement, but he is looking for no improvements, which I think is unreasonable.

J. Roy: I am in agreement with Roger that we should have that condition.

G. Hyde: Is there some way we could meet half way? The applicant is claiming this is a hardship to put in an apron. You may not think that. From an application standpoint, is there some way we can get around the 10' paved apron?

R. Duhaime: I think it should be 20', but 10' is reasonable. You are going to two homes on it instead of one.

P. Denbow: Even if we grant the third part of this variance, they still have to go in front of Planning. I am thinking about down the line if there is one additional lot, and the reasonableness of adding one house. I see you wanting to bring things to code. Does anyone know what an apron costs?

R. Duhaime: We are not asking anything from them that we are not asking from any other homeowner that is building in the town of Hooksett right now.

D. Pare: Will Leo make them do that when they file for a permit?

M. Lavoie: I don't know that answer.

R. Duhaime: If it is Mario's road, how can Leo make them do that? It is a private way.



***R. Duhaime motioned to grant a variance in Gilles & Claudette Chalifoux, Case #14-09, 6 Phyllis Drive, Map 20, Lot 18 MDR, from Article 3, Section J of the zoning ordinance to permit a single family house to be built without further improvements to Phyllis Drive, except for an apron at the end of the driveway, that meets the requirements of any other home being built in the Town of Hooksett, and a stipulation to agree to RSA 674:41.***

J. Roy: I would like to add clarification that it is not a driveway, it is a private way.

***P. Denbow motioned to grant a variance in Gilles & Claudette Chalifoux, Case #14-09, 6 Phyllis Drive, Map 20, Lot 18 MDR, from Article 3, Section J of the zoning ordinance to permit a single family house to be built without further improvements to Phyllis Drive. Seconded by R. Bairam.***

***G. Hyde amended to add RSA 674:41, the municipality liability agreement.***

***Amended motion: To grant a variance in Gilles & Claudette Chalifoux, Case #14-09, 6 Phyllis Drive, Map 20, Lot 18 MDR, from Article 3, Section J of the zoning ordinance to permit a single family house to be built without further improvements to Phyllis Drive, and includes the addition of RSA 674:41, the municipality liability agreement. Seconded by R. Bairam. Voting members: M. Simoneau, G. Hyde, R. Bairam, R. Duhaime, P. Denbow. R. Duhaime opposed. Motion carried.***

A. Sullivan: I just want to clarify this was passed with no apron required.

C. Pearson: Correct.

<b>Gary Roy</b>	<b>Case #14-12</b>
163 Whitehall Road	Map 20, Lot 31
LDR	

An appeal from an administrative decision of the Code Enforcement Officer with regards to storage of equipment on the property.

C. Pearson: Mr. Roy, this is a continuance from our previous meeting. Do you have any further input?

Gary Roy: I don't have any further input.

**Open public hearing.**

No public comments.

**Close to public.**

J. Roy: We should consider, within our motion, residents should be used for administrative supports for the business and at all times any equipment that is part of or registered to the business to be used for a limited or sole purpose of personal projects only, with prior notice of projects and their duration being provided to our Code Enforcement Officer.

G. Hyde: My personal feeling is, having to tell the town when he is doing work on his personal property, puts an undue burden on a private citizen, whether it is his business equipment or not that we would not ask any other private citizen to do. If he was hiring someone to do landscaping work on his private property, he would not have to inform us.

R. Duhaime: We have two neighbors who are using up time from the Police and Fire Departments and the Code Enforcement Officer and this is a tool to make an agreement to help both so Matt will know what is going on so he can tell the neighbor if there is a complaint. It may clarify the situation. I think for both parties it would be time better used than coming here again.

G. Hyde: I am not voting, but if that were the motion presented, my vote would be no, given there is not another resident in the town of Hooksett that is allowed to run a construction business out of their home.

R. Duhaime: There are some people who run construction business out of their homes, but they are on commercial property.

P. Denbow: Last time Matt read from an ordinance home businesses that were allowed, that were more office type businesses. I am trying to see if this is not unlike anyone else running a business with someone doing that type of work out of their homes.

C. Pearson: Matt, do you have those?

M. Lavoie: Home occupations in MDR include doctors, engineers, architects, lawyers or other recognized profession, or home occupations such as hairdresser, barber shop, day care facilities, kindergartens, dress makers, manufacturing of craft products, except the number of persons employed at one time, or one location, shall not be more than 4 persons, including the owner and tenant. The owner or tenant must occupy the house as their primary residence.

J. Roy: To clarify, we are not saying you can run your construction equipment business out of your home, we are saying you can run your administrative business, which is the clerical, which would be allowed for any other person doing a clerical office, and we are just allowing Mr. Roy to use his equipment for his personal use, which is what the intention is. We are just asking him to notify our Code Enforcement Officer, so when complaints come in, we are aware of it and it doesn't have to come to the Board every time.

G. Hyde: It seems we are opening one Pandora's box to close another.

D. Pare: How are the police going to know if Mr. Roy is doing work on his property when they get a phone call from the neighbors?

M. Lavoie: The only way I can see the police being involved is if there is a violation of the noise ordinance which would be operating before 7:00am or after 10:00pm. Other than that, there is no reason for the police to be there.

D. Pare: Haven't the police been there on multiple occasions?

M. Lavoie: Yes, for different reasons. Not anything to do with the noise ordinance.

C. Pearson: The alternative is to deny the appeal, then the applicant would have to remove the administrative part of his business, what his customers know is his business address, and what he has used for years. From we heard from the applicant he would prefer not to do that. At that point, he could do whatever he wants and have equipment there, just like any other person. That changes the dynamic of it.

G. Hyde: It is like asking me, as a private citizen, to inform the Code Enforcement Officer whenever I am doing work on my property if I have that equipment. Running the business is against the ordinance that is in place, but we are asking him to do something we wouldn't ask anyone else to do.

C. Pearson: The flip side of it, because you were not here at the last meeting, is the decade long dispute between neighbors.

G. Hyde: Is it town business when neighbors do not get along?

C. Pearson: Our business is whether or not we grant the appeal and the best way to go about that.

G. Hyde: Exactly.

J. Levesque: If somebody has equipment and he agrees to keep it off his property, why shouldn't he be able to bring his equipment home to work on a project. If he has to call the building inspector to let him know he is doing something, if phone calls come in, he will know about it, and it won't escalate. I think informing the CEO is a happy medium.

C. Pearson: This is one of the ordinances this town needs to address, and it is on the docket to be addressed.

G. Hyde: I agree with Jim and my point is that makes sense for Mr. Roy. My question is should we codify it, asking him to do something we are not asking any other private citizen to do?

J. Levesque: To keep peace for one person it would work. If you own equipment and, even if you don't keep it at your house, you are going to use your own equipment if you are going to do something at your house. If you don't need that equipment for another job, you could use it on your own property for possibly 2-3 weeks. What is the difference if someone else was doing the work?

C. Pearson: Maybe we could put a condition on it for a year so Matt is involved and aware, it doesn't become a neighbor dispute, and we have factual evidence of what is going on. At that point, it can be readdressed after a years time. That way Matt can see if he is doing his own projects or if he doing business out of his house with construction equipment. If Matt is made aware of when Mr. Roy is doing a project, it will help educate us. If we had some quantitative information from Matt, it may help the situation.

J. Roy: The only thing we are doing is allowing administrative support for his business to be done out of his house, subject to a condition. If he sells and someone else purchases, and they are not running a construction company the conditions don't apply. If we have the condition of saying he has to report for a year, it still is a condition of a condition for the only thing being approved, which would be administrative support being run out of the home. I wanted to clarify that.

C. Pearson: If the appeal is granted, Mr. Roy will be able to keep his business address of 163 Whitehall Road, and conditions can be added.

***M. Simoneau motioned to grant an appeal from an administrative decision of the Code Enforcement Officer with regards to storage of equipment on the property of Gary Roy, Case #14-12, 163 Whitehall Road, Map 20, Lot 31, LDR, allowing the administrative support for the business, with equipment that is part of or registered to the business for the limited or sole purpose of personal projects only, with prior notice of projects and their duration being provided to our Code Enforcement Officer. Seconded by P. Denbow.***

***D. Pare added "to be reviewed after one year."***

***Amended motion: To grant an appeal from an administrative decision of the Code Enforcement Officer with regards to storage of equipment on the property of Gary Roy, Case #14-12, 163 Whitehall Road, Map 20, Lot 31, LDR, allowing the administrative support for the business, with equipment that is part of or registered to to the business for the limited or sole purpose of personal projects only, with prior notice of projects and their duration being provided to our Code Enforcement Officer, to be reviewed after one year. Seconded by R. Bairam.***

***J. Roy clarified the period of one year does not apply to the administrative support of the business.***

**Voting members: M. Simoneau, D. Pare, R. Bairam, P. Denbow, and C. Pearson. Motion carries unanimously.**

G. Roy: To clarify, I am supposed to notify the Code Enforcement Officer specifically for equipment.

C. Pearson: Yes, when you are doing work around you house.

G. Roy: What about carpentry tools? Is that considered equipment?

C. Pearson: No.

R. Duhaime: To clarify, it is construction/heavy equipment that you would use for your business.

**NEW PUBLIC HEARINGS**

**Jocelyn Scarpetti**

Edgewater Drive

MDR

**Case #14-13**

Map 1, Lots 4, 6, 8 & 9

A Special Exception is requested from Article 18, Section E of the Zoning Ordinance to permit a proposed driveway serving the subdivision which will impact approximately 925 SF of wetlands.

**Jocelyn Scarpetti**

Edgewater Drive

MDR

**Case #14-14**

Map 1, Lots 4, 6, 8 & 9

A Variance is requested from Article 8, Section E.9 of the Zoning Ordinance to permit a conservation subdivision with approximately 13.62 acres, where a minimum of 20 acres is otherwise required.

Richard Uchida (Attorney with Hinckley, Allen and Snyder): I am representing Paul and Jocelyn Scarpetti. With me is Jennifer McCourt, who is the engineer for the project, and Peter Schauer, who is a wetland soil scientist. The application involves property on the west side of the Merrimack River. There are a total of 4 lots involved. Lots 4, 8 and 9 are owned by the Scarpetti's. There is an old road that used to go through the Class 6 portion of Edgewater Drive. There is a Lot 6 that was a piece of land that used to be between the road and the river. It is washed away and there are bits and pieces that remain and go up and down the shoreline. The parcel is approximately 13.5 acres and is in the MDR district. It consists of about 3,800 feet of frontage along the Merrimack river. At it's widest, the lot is about 260' but there are places where it is only about 100' across. It is bounded on the west by the railroad, to the north by the town of Bow line and some property owned by RH White, and on the south by Joseph and Cathy Slemp past where the cul-de-sac is. Our proposal is to form a condominium on this entire parcel, place five single family units on the parcel, and create some common area spaces around

those properties so people can have privacy around their units. On the remainder of the property, other than the five limited common area spaces, is going to be recreational open space. We have agreed to have it as open space for the development for those living there, but it would also be open space that would be open to town residents. There is about 71% open space on this development. The Town Council has voted to recommend the concept of discontinuing the Class 6 portion of Edgewater Drive and to convey what is left of Lot 6. Our plan is to construct the cul-de-sac on the southern end of the site, and build out the property with the private driveway to access these units. In order to do that, we need two pieces of zoning relief from the Zoning Board. We only have 13.62 acres where your ordinance requires 20 acres. The first is a variance to get a conservation sub-division, which is what we are creating. We only have 13.62 acres, where your ordinance requires 20 acres to create this kind of sub-division. We also need a special exception to impact about 925 sq. ft. of wetlands.

R. Duhaime: You are looking for a conservation sub-division, but you want condominiums, so it will be a private road? I thought with a conservation sub-division it was a public road?

R. Uchida: Not necessarily.

R. Duhaime: But you will have public access over a private road, because you will allow public access to the open space?

R. Uchida: Correct.

Paul Scarpetti: The road would be gated for vehicular traffic. This is a non-vehicular recreation easement that we are giving to the town. We have been talking about this with the Conservation Commission. The land is as narrow as 3' to 30' wide due to erosion. It goes to the Bow town line. Jocelyn and I purchased the property over 10 years ago, in 2004. When we purchased the land, it was four parcels and had 3 separate landowners. It was overgrown and zoned industrial. We came before this Board in 2005, and it was granted approval for a single family home. The land has since been re-zoned MDR. With the approval in hand, we hired a farmer, brush hogged all of the overgrowth, and established a new driveway because the right-of-way was not passable. We established a driveway that was on our own property. Upon clearing the land, it became apparent that the land had been used as a dumping zone. We removed pick-up loads of tires, small and large appliances, and televisions, and new debris started to appear, so we gated the south and north ends of our access. We installed gravel at the southern end. There is no provision for a turn-around and people were getting stuck on our property, so we did that for the trucks and residents to turn around. We continued to save money and started working on the plans for a new home, but a pattern started to emerge. We had rope swings appear, unattended fires, beer cans and bottles. The chains we installed had been cut countless times, and at one time someone cut our lock and put their own lock on the chain. We posted a sign that said: "Private property, enjoy it, please respect it." That got shot off of a tree. We never posted no-trespassing signs on the land. The final straw was about five or six years ago when we noticed some gang markings on some rocks, and my son found a discarded

hypodermic needle. My wife said she did not feel comfortable building our home in the field being secluded and alone. Since then we have continued to pay the property taxes, hay the field, and maintain the driveway. The chain continues to get cut, and a year and a half ago a 4-wheel drive truck tore up the field so badly we had to plow the field and reseed it. Last summer we started to discuss what we should do. We had been approached by a horse farmer to buy the property a couple of years ago and we declined to sell it because it is a unique property, and if we sold it, it would most likely become a private estate and public access would be limited, at best. Still having the dream of building our home on the property, and through collaborative effort, we came up with this other plan. We took it before the Town Council, and they gave us an acceptance subject to obtaining the necessary town approvals. It was for six homes, they were going to discontinue the Class 6 road, and release any claim they had to Lot 6 which is scattered along the shoreland. Upon reviewing the perimeters of building the six homes, we voluntarily decided to reduce it to five, to preserve the existing tree line which will give a greater buffer between the abutting properties, help ecologically, and add more green space for the town to enjoy. We also plan on limiting the homes to a two bedroom design which will appeal to the empty nesters. As part of the property exchange agreement, we would provide the town cul-de-sac and the interior parking for nine cars. Then it is over nine acres of non-vehicular recreational easement to be used for fishing, biking, walking, running, snowshoeing, cross-country skiing, etc., and it would be in perpetuity. We propose to build a private gated driveway for the homeowners to use. We chose to make it 20' instead of the 18' as discussed during the TRC meeting we attended last year. We will maintain the 18' at the wetland crossings only. We chose to widen the road to provide a safer passage for pedestrian traffic. The new homeowners association would be responsible for the maintenance of the recreation easement. We have met with the State Shoreland and Fish and Game Departments. They had no objections, but we still need to obtain written approval. The Hooksett Conservation Commission has voted to approve the project and has recently approved the wetland impact, but with the agreement we have with Town Council, we have to return back to the Conservation Commission, upon obtaining all approvals, for one last look at the project. We are scheduled to return to the Planning Board for the wetland impact, but they sent a letter of compliance of concept only to the Town Council. Leo Lessard from the Hooksett DPW has spoke at a previous Town Council meeting that he is in favor of having a cul-de-sac, and does not feel the additional traffic from the new homes will be a concern. I have spoken with all but one resident of Edgewater Drive, and all but one has had encouraging comments about this project. Some of them have signed a petition in favor of this project. We have been maintaining the property and have been told those who misuse the property will stop using it.

***P. Scarpetti showed photos of the existing property.***

Jennifer McCourt (McCourt Engineering Associates): We would be putting in a town approved cul-de-sac. At the interior of the cul-de-sac, in speaking with Leo Lessard, he thought putting parking in the interior would be great so that there could be access to a bit of the shoreland. There would be a gate, but there would be pedestrian access. A long skinny piece exists today. It has quite a few other challenges as well; pockets of wetlands throughout the property, two

stone culverts that cross underneath the railroad tracks, and existing culverts that cross underneath the road that is on the Scarpetti land. On the plans it shows a 40' buffer setback on those two because they are not isolated, they are connected by larger wetlands, so it would be over an acre. Along with that, we have the shoreline protection which requires a 50' waterfront buffer, and there is a 150' woodland buffer. That 100' between the two buffers is where you can put your houses, septics, wells, etc. We met with Fish and Game and wetlands. Their major concern was making sure that we did not cut down pine trees when we met with Shoreland. They were excited if we could get the Class 6 road discontinued, because it runs along the top of that bank. You can bushwhack through there and you may have to swim to get through part of it. Walking up the gravel road is much nicer. There are two trees on either end of the wetland area, but neither one are pine trees. We will be cutting trees so that we can put the cul-de-sac in. When we got to the wetlands, we narrowed it from 20' to 18' to minimize the wetlands impacts that were occurring. We also have 100 year flood plan that comes into the site and the narrow part again. We are trying to minimize the impact to that and that is why we stayed to the existing road that is there. Along with the design to the road, the entire 18' will be sloped towards the interior of the site so that the only outflow to the river will be at the designated points where it is now to minimize the erosion and keep the banking stable. Where the right-of-way is, where the brush and trees have come in, and the bank is fairly stable, there are a couple of places that we may have to look at stabilizing a bit, but it is coming in. With the Scarpetti's and the other four owners, there will be more control over what is happening there. There is a longer, consistent area that is wider, so that is where we were able to put the buildings and septics to be able to meet our setbacks. This creates a buffer. We are keeping an existing tree line to keep the buffer to the RH White development. Continentals gravel pit provides a natural buffer. Clustering the buildings together in that area is meeting all the requirements, minimizing or eliminating the cutting of the pine trees, and minimizing the ecological and environmental impacts to create the conservation sub-division. We went to a TRC and worked with Fire and Public Works to have the 18', but we thought the 20' would be better for pedestrian access. There is about 800' in the area that would be 18' wide so we are hitting the least amount of wetlands. The end of the road is extended far enough so that the fire truck would be able to turn around in the common driveway. There are five units. Two sets of two have common driveways to minimize the impervious area. From the end of the roadway, there will be a small path that will hook into the existing trail that goes to the Bow town line so that people can walk. The wetland impact is 925 sq. ft. The bulk of it is along the sliver of the road that we are widening to 18'. All of this is so I can maintain the existing gravel road on the east side with the eastern edge of the new road, so I am widening into the site away from the river and extending the two culverts minimally. Putting in new head-walls will create the impact there.

Peter Schauer (Schauer Environmental): There are four impacts. There is a red maple area that collects water in the spring but disappears quickly due to the sandy soils. There is another area where water gets trapped, and was probably trapped when the road was constructed. There are no vernal pools. In a third area, there is a culvert underneath the railroad and that runs through a small section of intermittent stream. It is more like a dug channel which was probably dug for the purpose of draining the water from the railroad operations. There is a culvert in the fourth



wetland impact area, but that is completely plugged so there is no water coming through there. All four of these are forested red maple wetlands, fully drained soils, and very low impact to the wetland systems. Functions and values probably used for wildlife corridor because of the railroad. Maybe some sediment trapping in the pockets which have no outlets, which is a good thing. This will be paved so the sediment problem will get less as time goes on. Other than that, very low wetland functions, and very low impact, which is the way it should be.

G. Hyde: How far from the nearest abutters building is the proposed cul-de-sac?

P. Schauer: Approximately 80' to 90'.

P. Scarpetti: They have a 6' stockade fence along the property line.

R. Duhaime: Why did you go to the conservation sub-division for the condominiums, not a condominium development?

J. McCourt: Because of the zoning district. The condo is usually done for multi-family, and this is not. The conservation sub-division is allowed in this district, it is just due to the overall lot size.

***R. Uchida read the application into record for the variance.***

G. Hyde: I am getting lost between condominium and conservation. Are we talking about creating an actual condominium trust or a homeowners association?

R. Uchida: There will be a homeowners association. The only difference between what we would normally think of as regular sub-division and a condominium sub-division is these five lots are part of common areas. They are part of the condominium and not individually owned lots. The way you get by that is to give people a bit of privacy making a limited common area.

G. Hyde: We have had this type of thing brought to us before, and historically we denied it because the view of the Code Enforcement Officer, at the time, was that was not a condominium. A condominium is a multi-family building.

R. Uchida: I believe it is under state statutes, under the definition of condominium.

G. Hyde: That is what I said, but not the view of the town at the time.

R. Uchida: Fair enough. I know when you think of condominiums you think of attached building or multi-story buildings with units inside.

G. Hyde: As a Board member, I want to make sure we are consistent with our judgments. That being said, I think this is probably the best conservation sub-division I have ever seen here and is very well put together.

J. Roy: The area that is set aside for public use, how do we know that will be forever? If it is a private road, how does that play out?

R. Uchida: There is a property exchange agreement that has been provided to the Town Council. One of the pieces of that is an open recreational space easement that will be granted to the town in perpetuity. In the condominium documents you have the declaration of condominium and in that it refers to uses as an exhibit of that easement saying you have a condominium, but that condominium is subject to this recreational open space easement that will forever be a part it.

J. Roy: Does that make the town responsible for maintenance?

R. Uchida: No. Because it is also common area of the condominium, we can make it the association's responsibility to maintain that common area. I think the town will have some interest in making sure it is not misused, but the association will maintain that property.

P. Scarpetti: The Conservation Commission will oversee to make sure it gets maintained.

J. Roy: My biggest concern isn't the maintenance that, it is the maintenance of the road to get to it. What if there is a flood and part of that road gets washed out?

R. Uchida: That is a private driveway, so if that road got washed out it is solely the condominium association's responsibility.

J. Roy: Even getting to the easement for any type of repairs?

R. Uchida: Correct.

***R. Uchida read the application into record for the special exception.***

C. Pearson: Are you putting docks in?

P. Scarpetti: We will probably apply for them. I may do something like a common area between the houses to minimize what we can.

**Open to public.**

No public present, however, letters were received.

**Close to public.**

*C. Pearson read a letter into record from Plourde Sand and Gravel, Co., Inc., addressed to the Town of Hooksett Zoning Board, dated October 31, 2014, which opposes this special exception and variance.*

C. Pearson read a letter into record from Joseph Slemo, which opposes this special exception and variance.

P. Scarpetti: If I had the intention of building this as a developer, I would not have sat on the land for over 10 years. We have wanted to do something on this land, and I have explained why we have not, due to the problems we have had. Joe can attest to it. He has called me when the chains have been cut, when there have been fires, and for other things. We were fine until I told Joe we were going to do something. We were approached by a horse farmer to buy it and we declined to sell it because that isn't what we wanted to do. If a horse farm goes there, from what I hear they can fence it and cut trees down because it is a farm, and I don't want to see that happen. Leo stated to the Town Council that he has no problems and he wants to see a cul-de-sac. Right now they are turning around on our land. If we sell it, it is in jeopardy of the turn-around, and they will be using Joe's driveway to turn around. I think this is the best use. We have been thinking about and working on this for over a year. As far as the tree farm, the land went up for sale, it was two large lots, my brother is not a farmer. He still owns one lot for himself and sold off three lots. We have nice people who live there and don't see the problem. I have had people sign my petition. They want to see something happen so we don't have the unknown. Trucks were coming in from the Bow side. We put a barrier up and they tore through that and tore trees down to get through with 4-wheel drives so people wouldn't know they were in the field.

D. Pare: Will there be a curfew?

R. Uchida: We haven't put any hour limitations on that. We are going to rely on the relationship we have with the police and try to be reasonable. We do have an overnight camping ban on the property.

P. Denbow: How big is the large open area on the back side at the end?

P. Scarpetti: I believe it is an acre. That was a separate lot that we bought. We bought that lot because at that Bow town line there are no trees from there into Bow. They clear cut it and I didn't want to see that happen so we bought it.

C. Pearson: We need to set a site walk and this will be continued after the site walk.

***A site walk was set for November 29, 2014 at 8:30am.***

***R. Bairam motioned to adjourn. Seconded by J. Roy. Motion carried unanimously.***

## **ADJOURNMENT**

The meeting adjourned at 8:53 pm.

Respectfully submitted by,

AnnMarie White  
Recording Clerk