

**Moultonborough Zoning Board of Adjustment  
P.O. Box 139  
Moultonborough, NH 03254**

**Regular Meeting**

**May 7, 2014**

**Minutes**

Present:       Members:       Bob Stephens, Russ Nolin, Bob Zewski, Ken Bickford  
                  Alternates:     Jerry Hopkins, Paul Onthank, Richard Jenny  
Excused:       Member:         Joseph Crowe  
                  Alternate:      Nick DeMeo  
Staff Present:  Town Planner, Bruce W. Woodruff; Administrative Assistant, Bonnie Whitney

**I.     Call to Order**

Mr. Stephens called the meeting to order at 7:30 PM and introduced the members of the board to the public. Mr. Stephens appointed Jerry Hopkins to sit on the board with full voting privileges in place of excused member Joseph Crowe.

**II.    Pledge of Allegiance**

**III.   Approval of Minutes**

**Motion:**       Mr. Hopkins moved to approve the Zoning Board of Adjustment Minutes of April 16, 2014, as written, seconded by Mr. Bickford, carried unanimously.

**IV.   Hearings**

1.     Continuation of Public Hearing for Zaremba Program Development, LLC on behalf of Dollar General (52-18)(929 Whittier Hwy) Variance from Article XII.V(B)

Present this evening were Scott Holman, from the Zaremba Group, Attorney John Sokul from Hinckley Allen, Erin Lambert from Nobis Engineering and Tom Sokoloski from Schauer Environmental Consultants.

Mr. Stephens stated that this was a continuance of an application for a variance for Zaremba Program Development, LLC, noting this was a variance from Article XII.V(B) of the Zoning Ordinance dealing with stormwater management. Mr. Stephens reiterated what was said at the hearing on March 19<sup>th</sup>, the purpose of the hearing is for stormwater management, it is not to discuss what type of facility is going there, as that is not what is before the board this evening.

Ms. Lambert gave an update to the board of what has taken place since they were last before the ZBA. The Zaremba group reached out to the down gradient abutters to request permission to access their properties to take a look at the existing wetlands run down gradient of the property. They looked at the culverts that go under Moulton Drive that are currently experiencing issues. They wanted to look at those issues as they are in the flow path from the development from the site. A representative from Nobis Engineering and Tom Sokoloski walked the properties to take a look at the wetlands. Their plan as be adjusted slightly to reflect the path as it migrates through the three or four down gradient properties. Mr. Sokoloski has revised his report (Wetlands Assessment) which was submitted to the Town and reviewed by the Towns Engineer. Ms. Lambert went on to state that they looked at the down gradient culverts that

are under Moulton Drive. They had been told that they are under performing now, and they are. One is partially collapsed and the other is about a 12” culvert. Zaremba Group, in meeting with the abutters, has offered to upgrade the culverts if they can get all of the appropriate permissions and permits in place. They have done some additional analysis, they got a survey, they have delineated the wetlands, they have done an analysis and feel they need to be upgraded to two 18” culverts. They have started that process, and estimated what the wetlands impact would be. Ms. Lambert noted that she had met with the Conservation Commission Monday night to start to introduce them to that, having a wetlands application coming before them shortly. The other thing the board requested at the hearing in March was that a peer review of their analysis be completed by the Towns engineer. Nobis’ drainage report was submitted to KV Partners. They got comments back from Mr. Korber a couple of days ago, and they responded to them yesterday (Tuesday). Mr. Korber had a few comments on their model and a couple of questions and they provided that supplemental information to Mr. Korber. Mr. Korber has responded to the Town Planner that his comments have been addressed. Ms. Lambert stated that was what they have done since they were last here and asked if they were other board members that would like hear a little bit more about the development and the specific variance which was presented last month.

Mr. Zewski asked Ms. Lambert to point out where north was on the plan, and then asked if this site was the highest point along that area. She stated that there were two properties that were above this one and stated that their drainage analysis does take into account that there is a watershed that flows on to their property and continues on through. That was one of the questions that the review engineer had.

Mr. Hopkins stated for the record that he had read the minutes and the material that has been provided electronically, however he asked that Ms. Lambert refresh, with a general summary, the proposal as he was not in attendance for the meeting on March 19<sup>th</sup>.

Ms. Lambert briefly recapped the project. The property is currently undeveloped, there will be a 2 acre parcel subdivided off that for the Dollar General. There will be a shared common driveway located across from Blake Road, which means if any of the remaining property gets developed in the future, they would access the parcel from the shared common access. There are a series of wetlands that cascade down. The soils are very poorly drained soils, with a high water table. They are trying to make sure that they take into account all of the water that currently flows through the property and off of our property. Prior to getting to their pavement there will be a swale and a pipe that the water runs through so some of the existing water that currently runs off of the upland will run through the property without interfering with the development, so it won’t need treatment. They are keeping it in the same channel that it is flowing in today. The site flows north to south. The water will be channeled through to a wetland up against the stone wall and continues in the current flow path. All of the water from their proposed development will be collected in the retention pond, will be treated and then will be detained so it will leave the site at the same rate at which it leaves today. There are a series of small ponds/puddles that will be used as infiltration basins to achieve their Groundwater Recharge Volume (GRV). They are before the board tonight for a variance for volume, as once they have intercepted the water, and it is not naturally infiltrating, they aren’t able to achieve the same volume of water as in the precondition. They are controlling the rate of runoff. The water that leaves the site will leave at the same rate at which it leaves today, but there will be an additional volume of water flowing, so it will flow for a longer period of time. That is one of the reasons they took a look at the culverts on Moulton Drive, to make sure that they have an adequate size to allow the water to flow, so if the water is flowing for a longer period of time the development will not have an adverse impact on the culverts.

Ms. Lambert provided the board with a handout which was an aerial photo of their site. It shows the down gradient properties, the wetlands path through those properties, and the culverts on Moulton Drive that they are proposing to upgrade. She stated that there is nothing on the site that has changed since the last hearing.

Mr. Stephens asked for input from the Town Planner, giving an overview of the independent peer review. Mr. Woodruff noted that the board had tabled the application on March 19<sup>th</sup> in order for the

applicant to do a couple of things. One was to submit their materials to the Towns engineer for a peer review to determine whether or not their assessment on how the stormwater would work given their infrastructure improvements. Was it valid and did the methodologies they used were correct. That has occurred, and as of today that was concluded. The second thing they had asked the applicant to do was to contact the down gradient property owners as there seemed to be an issue with stormwater running today even before this development would occur. The applicant has contacted the down gradient property owners, has met with them, has done an assessment on those properties that had not occurred prior to the March 19<sup>th</sup> meeting. There is a memo that speaks to what came out of that meeting. The applicant has proposed a mitigation strategy for the stormwater issues that occur today given their development. The second piece is the results of the peer review. The Town's Engineer (KV Partners) prepared a peer review memo that was given to Nobis Engineering on May 2<sup>nd</sup> with a number of comments and concerns which were addressed in three ways, a revised sheet C2 was prepared and the drainage analysis was revised to the satisfaction of KV Partners and a memo was prepared by them on May 6<sup>th</sup> explaining some of the other comments KV Partners had and that resulted in an email from KV Partners that said that all of the comments had been addressed.

Mr. Nolin questioned the changes on the revised sheet C2. Ms. Lambert stated the changes are where they showed the proposed well and septic. The septic is in the front and the well is just beyond the edge of pavement. There is some additional grading provided around the small infiltration puddles to make sure that they were bermed the way that they had modeled them. Mr. Nolin questioned if DES would have a problem with their stormwater that close to their well. Ms. Lambert commented that stormwater is not prohibited within the 75' protective well radius. It does have required setbacks to your property lines and the septic system. Mr. Nolin questioned the parking lot water. She stated that there is not a required separation from your well. The well will need to be permitted through DES.

Mr. Hopkins asked a question regarding the dry hydrant, noting it was the same water that was the runoff water in the first sediment pond. Ms. Lambert stated yes. There will be standing water in that pond at all times, and she went on to explain how the pond functions and the capacity of the pond.

Mr. Stephens opened the hearing to the public. Abutter Elizabeth Morin, from Imaginations, A Child's Place (day care) stated she had two concerns, one about the water in the pond, leaking gas into the ground and about possible well contaminants form gas and salt. Second she is concerned about standing water creating a mosquito problem. She uses a mosquito magnet now and tries not to spray the daycare children with harsh chemicals. Mr. Nolin asked if Ms. Morin had a dug well or a drilled well. She stated that she has a drilled well.

Abutter Lisa Randall noted her concern about what happens when the detention ponds overflow, the water going onto her property, the neighboring properties and eventually into Garland Pond.

Abutter Tom Lacey had a question regarding plan sheet C2, noting that most of the catch basins appear to be going into the detention pond but there is one that drains to the stone wall and doesn't go into the detention pond.

Abutter William Gordon questioned if the variance were to be granted, would it be limited to the scope of the development on the 2 acres, or to the entire property? If it were only to the 2 acres it would allow him the opportunity to argue any development in the future on the remainder of the property. Mr. Woodruff stated that there is only one lot at this time which is proposed to be subdivided. The variance is for the proposed 2 acre lot. The stormwater variance request is about, not about the entire lot, it is for the property they are proposing to develop. Any future subdivision of the larger lot would require action by the land use boards.

Justin Chapman, Bean Road, noted his concerns regarding the equal logical impact on the critters that may live in the area. There has been a lot of discussion about puddles and ponds and thought that those may actually be vernal pools, which provide habitat for plants and animals.

Peggy Hoburg, Lees Mill Road, questioned why there is a request for a variance. If there is a ruling in place requiring that the rate or amount of water be "X" amount, why in this instance should it be changed to accommodate more when it may have been put in place to protect Moultonborough. What motivation is there to grant the variance? Mr. Stephens replied the concept of a ZBA is to preclude an illegal taking of a property owners rights as a result of trying to make a regulation fit everybody regardless of the uniqueness of their circumstances. The board would not be changing the zoning ordinance if they were to grant a variance. They're concluding if that's what happens that there's circumstances that make the statutory requirements and criteria that would justify allowing an applicant to get the relief needed in order to proceed with their proposed development or construction.

Norman Larson, Vonhurst Road, had a follow up to the prior question, it is his understanding that variances are granted based on some certain defined hardship, and he hasn't heard that yet. It seems that the hardship is that the site is too small for the extensive development they are proposing. He questioned if they could have less parking or explore the use of pervious pavement to address storm water. Mr. Larson noted the discussion regarding the upgrading of the culverts on Moulton Road and asked if the abutters want the upgrade? Who would be responsible for obtaining and paying for the permitting and should any approvals for this project wait until those permits are all in place. Lastly he had questions and comments regarding the sizing of the culverts, commenting if there were no drainage issues, why would they need to increase the size of the culverts? Mr. Stephens stated that hardship is one of the five criteria that the board has to evaluate and they have not deliberated as a board to discuss the merits of their case and whether or not the hardship does or doesn't exist according to the statutory definition. Mr. Stephens commented in regards to the culverts, noting it was stated that the current culverts are in disrepair and are inadequate for the current conditions which has caused some problems with Moulton Drive. Through the evaluation by the engineer it was determined the upgrade is needed whether the site is developed or not, and the issue as to whether or not the applicant is involved in that process is strictly up to them. The ZBA cannot compel the applicant to do something downstream in order to bring it to what it should have been. Mr. Zewski noted that he saw in the materials that there were 36 parking spaces required, and they have chosen to go with 30, making the parking lot smaller. This would require a waiver from the Planning Board. The applicant does not have a lot coverage problem, therefore are not required to try and reduce coverage by using pervious pavement. Their total lot coverage is less than 40% which is less than required by the regulations. They had indicated that the ground conditions were such that you would not get the infiltration anyway.

Ms. Lambert spoke to the questions raised by the abutters and concerned members of the public. She noted other options available for treating storm water which is required by towns and the state. Infiltration is one of the best ways to do that, because it also achieves groundwater recharge. Their site soils don't allow them to do that. They have chosen the retention pond, which is a wet pond, is another way to achieve both retention of stormwater and treatment. The pond is designed to meet the NH DES AOT standards for stormwater. The site would meet the state standards for control of volume, as they are controlling it in a 2 year storm, which is the requirement of the state standards. They are achieving the GRV with the small infiltration ponds. These ponds will be planted with wetland plants so they are a replacement for some of the wetlands that are going to be disturbed as part of the development. The ponds are designed to be allowed to be maintained. There is a four bay that will be maintained semi-annually, and our ordinance requires an operations and maintenance plan that will be submitted as part of the site plan application. The pond is designed to treat all of the runoff that comes from any impervious surfaces. It will treat any sediment, sand and salt. The pond is designed for a 100 year storm. She explained the model for the pond, the capacity and the function of the pond again. As noted in March, they had explored the option of pervious pavement, but because of the rate of infiltration, as well as the height, they aren't able to utilize those pervious materials as they don't have the required separation. Ms. Lambert stated that the culverts are undersized on Moulton Drive now, that condition exists today and will continue to exist regardless of whether this development happened. She then spoke to the parking, noting that it will come up during site plan review. They will request a waiver for the reduced number of spaces, as that is part of the site plan regulations and not in the zoning ordinance, which would require a variance. Ms. Lambert

stated the reason they are here for the variance is not because of the size of the building, and that any development would have trouble constructing parking or any kind of impervious surfaces because of the inability to re-infiltrate the stormwater.

Mr. Stephens reviewed his notes of the issues that had been brought up, which were; well contamination, mosquito concerns due to open pond, overflow, drainage by stonewall, vernal pools and culverts.

Ms. Lambert addressed each of these again. The pipe going through the property is taking water that comes from the uplands, and allowing it to be conveyed through the property like it does today. The pond is designed in accordance with best management practices and state standards for providing treatment for runoff of impervious surfaces. The retention pond is sized for a 100 year storm that will address any overflow issues.

Mr. Nolin questioned where the proposed snow storage area was and how they are addressing snow melt. Ms. Lambert stated snow would be stored as much as they can onsite and after that they would need to remove it from the site and that the pond is designed to filtrate contaminates from the parking lot.

Tom Sokoloski, Certified Wetland Scientist of Schauer Environmental addressed the question regarding vernal pools and mosquitos. He stated that there aren't any vernal pools on the property. He noted that there is a pond that was dug, two properties down, that has permanent standing water, which has habitat for green frogs and bull frogs, rather than the wood frogs. There is not an important vernal pool habitat there. He stated that there will be mosquitos in the pond, as they are in any area of temporary or permanent water unless there's a viable fish population that's able to eat the larvae before they become adults. He does not feel their pond will be contributing to a larger mosquito problem. There is no doubt, there are mosquitos in your backyards and there's no way to get rid of them all together. There will not be a large increase due to the proposed development.

Scott Holman, from the Zaremba Group, stated they are a partner developer with Dollar General. Zaremba Group does not own the property, Dollar General will be the owner, and they only facilitating permits. Mr. Holman noted the questions relating to pervious pavement and the number of parking spaces has been addressed. He noted the issues regarding the culverts currently exist. They are not increasing the rate of water, but the volume would increase, meaning if one of the neighbors has standing water based on an event, that that water would last about 10-19 hours longer. Their backyard will not be flooded out for an entire summer it is a difference of 10-19 hours. After looking at the down gradient properties and the culverts it was determined they are currently under sized for current conditions, predevelopment. If the culverts are upgraded to two 18" culverts it will not only solve the existing problem, and going with their assumptions and modeling, everything will work perfectly fine and there would be no flooding of the road. They have offered to Mr. Chase to replace the culverts to correct the current situation. Everything related to the replacement of the two culverts, if the development is approved and built, would be the burden of Dollar General. The engineering costs, the permitting cost, the construction cost.

There was further discussion and explanation of the retention ponds, the engineering study, and stormwater runoff with Ms. Lambert and Mr. Sokoloski explaining the drainage report, models and graphs. In short existing wet areas will remain wet for a longer period of time.

Mr. Woodruff reiterated that he agrees with the applicants' statement that no reasonable use of this property in this zone can occur if the ZBA does not grant relief from this one section of the stormwater management requirement. The type of soils would preclude development of any kind. He noted that the amount of water that comes off the site at any given time stays the same, that's the rate. But the flow goes on for longer and that's the volume, which is more. That is what they are asking the relief from, Section C of the Stormwater Management Ordinance. That's what's before the zoning board.

Jim Hoburg, Lees Mill Road declared his own bias, in which he commented that he hated the idea of a Dollar General. Mr. Stephens interrupted Mr. Hoburg noting the applicant is here to deal with a water mitigation problem, not the type of facility. Mr. Hoburg commented that it appears that Dollar General wants to put in a facility where there are not any others of its kind and they need a variance to allow them to build this. Mr. Stephens interjected that Mr. Woodruff had just explained that the only way this property can be developed is through the mitigation of this particular issue. There would be no reasonable use of this commercially zoned land. Mr. Hoburg went on will several questions that were not related to the application before the board. Mr. Stephens stated that the applicant is before the board for relief from a water related issue.

Mr. Stephens acknowledged the fact that the Board had received a citizens' petition signed by many. The petition relates to the type of facility, which is not what is before the board and therefore it was only noted for the record as being received by the board.

Sally Carver asked if the state had any regulations requiring the distance between detention ponds and schools. Mr. Woodruff stated no. It was noted that the detention pond will be fenced in.

Mr. Bickford questioned if the board had to concern themselves with the issues such as the operations and maintenance plan, is it part of their decision? Mr. Woodruff stated no, and what is before the board is a request for relief from Article XII.V.B of the Zoning Ordinance. The rest of the requirements, the criteria in the Stormwater Management section of the Zoning Ordinance are under the authority of the Planning Board, including the fact that a stormwater management has to be prepared, inspection forms have to be submitted, and inspections be done in perpetuity, and the maintenance will be done from now until the end of time. That is under the purview of the Planning Board.

Ms. Hoburg questioned if the water level of this site was too high for taking on this project. Is the proposal appropriate to the commercialization given the structure of the land?

Mr. Stephens asked if any abutters or members of the public had any questions, there were none. There were no further questions from the board at this time.

Mr. Stephens stated the board was going into deliberative session at 8:44 PM to discuss each of the criteria for granting the variance. The board came out of deliberative session at 9:18 PM.

Mr. Woodruff noted that the abutting lot, down gradient from this lot appears to be approximately the same size, with like soils and will face the same issues when a development plan comes to the boards. He felt that there were two questions that needed to be posed to the engineer or the applicant, one could they increase the size of the piece of land so that they would not need ZBA approval, and second, if the lot cannot be increased in size and 2 acres is all they can buy, could a development be proposed, being smaller, therefore reducing the stormwater, that they could then meet the stormwater management requirements of the ordinance and not have to go before the ZBA for any approvals.

Attorney John Sokul from Hinckley Allen was present on behalf of the applicant. Mr. Sokul made a couple of points regarding comments. Is the lot too small, because it hasn't been subdivided yet? He stated that that goes back to older variance cases where a self-created hardship was the end of the game. That is no longer the variance standard. Another was that you needed to prove that no reasonable use of the land could be made if the variance was not granted. This is not the way the variance standard works in NH anymore. The variance standard is the one set forth in the ordinance and he believes they have met it. He went on to speak to these issues, noting the use is allowed under the ordinance. The proposal meets every dimensional requirement in the ordinance, building size, lot coverage, lot size, frontage, setbacks, everything. They have complied. The lot is not too small. They have not fully built out the lot. It is 2 acres. The average size of a Dollar General throughout the country is about 2 acres. It is customary for a use of this type. The lot size is right on point. The board has lost track of what is going on. They had a soil scientist come in and map the flow of where the drainage will go. They have shown that it will not

affect any improvements on down gradient properties. The water will follow existing wetland water courses. At the prior hearing the board had requested that they prove this. They walked the land. The wetland scientist looked at what was there. They adjusted the flow a little and essentially the hypothesis was proved out but the facts on the ground. What's happening? Existing wetland areas are going to stay wet. In a 50 year storm, where you get 5-6 inches of rain in 24 hour period, existing wetland areas are going to stay wet for less than one day. Nobodies' basement is going to be flooded. There won't be a flow of water going onto anybody's building, porch or sunroom, or anything. Pieces of land out in back, people's improvements that are wet today are going to stay wet. Mr. Sokul noted the purpose section of the Stormwater Management Ordinance is "To protect, maintain and enhance the public health, safety, environment, and general welfare by establishing minimum requirements to control the adverse effects of increased post-development storm water runoff, etc..." They have shown that there are no adverse effects. Nobody is going to suffer anything. Existing wet areas are going to remain wet. This project complies with every state standard regarding off site stormwater drainage. It complies with every town standard except for one. It misses the mark on that by a very, very small margin. Mr. Sokul stated that this is a classic case of why a variance should be granted for a use that is allowed under the ordinance and complies with every provision in the Moultonborough Zoning Ordinance. No one will be adversely harmed, the situation can be improved and they have offered to improve it. There are special conditions related to this land that justify the granting of a variance.

Mr. Holman stated that they had been before the board in March. At that time they discussed all of the things that were discussed tonight, and now there are a few more board members, but everyone had discussed this. They were asked to one thing, come back and specifically talk about the drainage, what was existing on the ground. They have done that and there is an existing problem on Moulton Drive. They have come back showing that their assumptions were close. They have offered to improve the conditions on Moulton Drive. They have proven that everything will remain the same, minus, if this is approved the condition of Moulton Drive being flooded will be eliminated. Mr. Holman stated that he came here today figuring they just proved what they thought was true and now there a lot of whole new issues.

Mr. Nolin stated again that he felt a joint meeting with the Planning Board would be beneficial. As this still needs to be subdivided, the Planning Board may make a major change that could affect the outcome of the ZBA's decision.

**Motion:** Mr. Hopkins moved to deny the request for variance for Zaremba Program Development Group, LLC, Tax Map 52, Lot 18, close the hearing, and to direct staff to draft a formal Notice of Decision, for Board discussion only, based on the Finding of Facts during tonight's hearing, which will be reviewed for accuracy only, and signed by the Chair at the next scheduled meeting, seconded by Mr. Nolin, motion passed, three (3) in favor (Nolin, Bickford, Hopkins) and two (2) opposed (Stephens, Zewski).

Mr. Stephens noted the 30 day right to appeal in accordance with NH RSA 677:2 would begin tomorrow.

2. Karen G. Walsh Realty Trust (226-1)(51 Garnet Point Road)  
Variance from Article III.B(4)

Mr. Stephens stated that this was an application for a Variance to Article III.B.(4). He noted the Planner had received an e-mail dated May 5, 2014, from the agent requesting a continuance and that they be placed on the ZBA's agenda for June 18<sup>th</sup>.

**Motion:** Mr. Stephens moved to table the application for the Karen G. Walsh Realty Trust (226-1) and to continue the public hearing until June 18, 2014, seconded by Mr. Zewski, carried unanimously.

3. William Garber (130-48)(Gansy Lane)  
Variance from Article III.B(4)

Mr. Stephens stated that this was an application for a variance for relief from Article III. B (4) to allow the construction of a 120 sq. ft. gazebo structure where the shore land setback proposed is 20 ft. where 50 ft. is required.

Nicol Roseberry from Ames Associates was present representing William Garber. Ms. Roseberry stated that she met Attorney Justin Richardson, who was present this evening on behalf of Philip King, 66 Gansy Lane. She had just received a copy a letter dated May 7<sup>th</sup>, 2014 opposing the applications. The Kings are not in support of the applications and asked in the letter if the hearings could be present to a time that they could attend. In addition they have received Shoreland and Wetland approvals for both the gazebo (variance) and for the walkway (special exception), noting that both of those approvals are being appealed to NH DES by the Kings.

Mr. Stephens asked based on the information the board and Ms. Roseberry just received, and the fact that the DES approvals are under appeal, would Ms. Roseberry, as agent, wish to proceed this evening or request a continuance in order to make a reassessment as to how they would like to proceed.

Mr. Bickford commented that he went to the site today, noting that this is a very unusual lot, very hard to distinguish where the boundaries are, and feels the board should conduct a site visit.

Ms. Roseberry stated considering the Kings strong objection to the project overall, and in her opinion, she would like to continue the application in order to review the material and to allow for the board to conduct an onsite visit. And noting that at a future date the Kings may be able to attend the hearings.

Attorney Richardson commented that that would be appropriate and stated that they have raised not only the issue as to whether the variance should be granted, but whether the proper variances have been sought. He stated that the applicant may wish to consult with legal counsel and the board or the Towns Planning Department as well. Mr. Richardson stated they had only filed this today, not to cause a surprise, but they had just received the notice through another abutter. He stated in addition to the legal questions of whether or not this particular variance gets granted, there is a question whether other variances may be needed. They would like the board to conduct a site visit.

Mr. Stephens commented the board would need to continue this to a date specific and if there is a site visit scheduled they should request that the location of the gazebo and property lines be staked out. He was not certain of the logistics of the board setting a date for an onsite until they know if the applicant is moving forward.

Mr. Woodruff stated that the board should make it clear that they have opened this case tonight. Mr. Stephens stated that they have opened the public hearing, allowing Ms. Roseberry to present, representing the applicant. Mr. Woodruff verified that the board was asking the applicants agent to make out what they think are the common boundary lines. Mr. Stephens added as well as the location of the proposed gazebo. Mr. Woodruff noted adding the disputed area as well. Mr. Richardson requested they would like to see the locations of the gazebo, walkway, and parking lot, which are all within the wetlands buffer. Mr. Woodruff commented that there is a boundary dispute on the common boundary line between the two properties and that any approvals if given may be conditional on the boundary dispute being agreed to, which is what the surveyor suggested back in 2003. Mr. Woodruff referred to the "neighborhood" map included with his staff memo, taken from the tax maps, which is not surveyed data +/- 3-4 ft., noting that there are activities that are going on that seem over the property lines and he doesn't know which lot is doing that. He asked that they mark out what the applicant believes is their property line. Mr. Stephens asked if Ames Associates has done any surveying of the lot lines. Ms. Roseberry stated that they have not done a boundary survey at this lot. They are using a 2003 Hambrook



survey that was done for abutter Johnston. Ms. Roseberry commented that she has not heard anything regarding a dispute. Mr. Johnston did refer to a question about his shared boundary line with the Garber's.

Ms. Roseberry commented that she does not know the state of the Wetlands Council, or when their meetings are, or when the Kings will be back in the area. Mr. Richardson commented there is also the issue they raised that Mr. King and his family don't want to have a waiver of the 20 ft. setback and the 20 ft. setback isn't a part of this application. No variance has been applied for it, so the board is being asked to issue a variance for a project that isn't allowed by the Zoning Ordinance and the same is for a special exception. He stated if the special exception comes before them they would have to deny it because it's within the setback and there is no request for a variance. He thinks there is a significant procedural issue here and it is smart to continue in light of that. He thinks it might make sense to have them start over as there are so many other setbacks.

Ms. Roseberry stated they could be ready for the first meeting in June, but she didn't know about the Wetlands Council. After further discussion she requested the hearing be continued to June 18<sup>th</sup>, 2014.

**Motion:** Mr. Stephens moved to continue the public hearing for William Garber (130-48) (Gansy Lane) to June 18, 2014, with the board requesting that the applicant identify the location of all proposed structures, walkways and lot lines, and to schedule a site visit for Wednesday, June 4, 2014 at 4:30 PM, seconded by Mr. Zewski, motion carried unanimously.

Mr. Woodruff commented that all applications that come before the board, before they get to them, has been reviewed by the Development Services Office (ODS) to make sure that the article and section that the application is asking relief from, whether it is a special exception or variance, is correct and complete. If there is a question about that, he suggested to the abutter's attorney that they talk with the ODS about filing an Appeal of an Administrative Decision. It is his position that this is correct and he will not change what is before the board as it is the correct interpretation of the ordinance. Mr. Woodruff noted that the application was received and reviewed on April 25<sup>th</sup>, and on April 26<sup>th</sup> the 30 day clock began to tick with regard to getting an appeal of this decision to bring the application forward to the ZBA.

Mr. Richardson requested that the ZBA have the Planning Department send them an advice of that determination, as he understands the law (citing case law) statutory notice is a necessary prerequisite to rule on an issue. His clients have never heard of this determination in April so there is no way they could have possibly found out about it. They weren't given notice or a chance to appeal it. Mr. Woodruff stated the 30 days would be from the date that they received notice. Mr. Richardson commented that an application can be received, but they weren't provided with the copy of a determination. Mr. Woodruff stated that the agreement that what's been put before them is incorrect or incomplete, is a separate issue and should be adjudicated by them as a separate issue as to whether the administration has done the correct thing in saying that these are the sections in the ordinance that need relief.

4. William Garber (130-48)(Gansy Lane)  
Special Exception from Article III.B(6)

Mr. Stephens stated that this was an application for a special exception for relief from Article III. B (6) to allow for the construction of a raised walkway to a water body within the setback.

Nicol Roseberry from Ames Associates was present representing William Garber for the special exception. She commented based on several reasons that were addressed in the previous hearing, she requested the hearing be continued to June 18<sup>th</sup>, 2014.

**Motion:** Mr. Zewski moved to continue the public hearing for William Garber (130-48) (Gansy Lane) to June 18, 2014, seconded by Mr. Bickford.

Mr. Hopkins stated that they could include it in the onsite. Motion carried, unanimously.

Mr. Richardson requested that the site visit be part of the proceeding to continue to June 18<sup>th</sup>, that the site visit on June 4<sup>th</sup> be included in the motion.

**Motion:** Mr. Zewski moved to withdraw his previous motion.

**Motion:** Mr. Hopkins moved to reconsider the previous motion to continue the Garber Application for special exception, seconded by Mr. Zewski, carried unanimously.

**Motion:** Mr. Hopkins moved to amend the previous motion that was made to include the consideration for the special exception in the onsite visit at 4:30 PM on June 4<sup>th</sup>, seconded by Mr. Zewski, motion carried unanimously.

## V. Correspondence

## VI. Unfinished Business

1. Review and possible authorization for the Chair to sign the formal Notice of Decision for the April 16<sup>th</sup>, 2014 denial of a variance for David DeVito (282-27)(23 Adams Shore Road).

The Board reviewed the Draft Notice of Decision prepared by staff, as directed by the Board at the hearing on April 16<sup>th</sup>. There were no changes made to the draft.

**Motion:** Mr. Nolin moved to direct the Chairman to sign the Notice of Decision as written for David DeVito, Tax Map 282 Lot 27 and staff to mail said notice to the applicant or applicant's agent, seconded by Mr. Hopkins, carried unanimously.

2. Mr. Stephens noted that the board had postponed the review and possible approval of their Policies and Bylaws until such time that all elected members could be present. At this time all elected members have returned and he asked what date they would like to review them. It was the decision of the board to take up the review and possible approval of the policies at 7 PM on Wednesday, May 21<sup>st</sup>, 2014.

## VII. Adjournment

**Motion:** Mr. Stephens made the motion to adjourn at 10:05 PM, seconded by Mr. Zewski, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant