

**Zoning Board of Adjustment
December 8, 2008**

Members Present: Elizabeth Ashworth, Chair; Barbara Richmond; Steve Russell; Sue Russell, Alternate; Helen Wright

Ms. Ashworth called the meeting to order at 7:15 p.m. and appointed Ms. Russell as a voting member for this meeting.

At 7:15 p.m. NH Dept. of Resources and Economic Development (DRED)/agent: New England Handicapped Sports Association (NEHSA), Bill Johnson – for property located on Mount Sunapee, Newbury, NH will seek a Variance from the requirements in Paragraph 9.3 of the Newbury Zoning Ordinance to permit the following: Construction in and around steep slope areas. Newbury Tax Map 013-386-092

Bill Johnson, Volunteer Instructor with NEHSA presented the application for Variance. He explained to the Board that the NEHSA Board of Directors asked him if he would supervise the planning and construction of a new lodge for the NEHSA Program.

Mr. Johnson explained to the Board that NEHSA was formed in 1970 by a group of disabled Vietnam Veterans. The Program is now a year-round adaptive sports and recreation program, not just skiing. In the spring/summer/fall months there are other activities involving kayaking, water skiing, therapeutic riding, wall-climbing, cycling, etc. NEHSA also works with other schools and hospitals that specialize in rehabilitation and terminally ill patients. NEHSA also works with area school programs so that students with special needs can participate in their school's winter ski program. NEHSA serves a wide range of people, not just Veterans. Last year, NEHSA gave over 2000 ski lessons. There may be 30 students on typical vacation week-day, which involves 2 – 3 instructors per student and means 150 +/- people per day. For every student who is given a lesson, one has to be turned away due to the lack of space.

Mr. Johnson continued to explain that the current facility has only one bathroom, 280 sq. ft., and only part of one floor is wheel-chair accessible. Most people overflow to the outside. The office area has become more of a storage area for skis, snowboards and staging. Constructing a new facility has been part of NEHSA's strategic plan for over 7 years and had been incorporated in the Mt. Sunapee Masterplan. NEHSA has worked with Mt. Sunapee for the past several years to identify the most feasible location for the new facility.

Mr. Johnson stated that the primary issue of importance is accessibility. He explained that 80% of the lessons are given at the South Peak slope. Currently the instructors must transport their equipment and students across the parking area to the Promenade Slope area. The "stand-up" skiers often have disabilities that limit their stamina, and the walk across the parking area exhausts them. If the students are not "stand-up" skiers, then the volunteer staff has to push them and their sleds across the parking area, which can be exhausting for the instructor depending on the size of the student and the snow/slush condition of the parking area. Therefore, the new facility needs to be as close to the slope as possible but also enable the student to begin on relatively level ground. Due to the constraints of the land and Beck Brook, this proposed site is the most feasible.

Mr. Johnson distributed maps of the site to the Board members. He explained that in the planning stages, the building team is trying to balance and hold the impacts to steep slopes and wetlands at a minimum. At a conceptual meeting the Planning Board indicated that the steep slopes and wet areas are a major concern, and suggested consideration should be given to use more of the existing Old Province Road as part of the proposed access road. As a result of the

Planning Board's input, NEHSA came up with this proposed plan. Mr. Johnson introduced Bruce Boedtger, PE of Bruno Associates to address the site selection process.

Mr. Boedtger explained that they tried to leave the wet area alone as much as possible which means they had to impede on steep slopes. This imposition will mean constructing three 10 ft. retaining walls in order to obtain the necessary grade for an access road and parking area. After trying several iterations, it has become evident that it is physically impossible to stay out of the steep slopes and wetlands. The proposed access road follows Old Province Road as much as possible. The building is designed to wrap around the cul-de-sac in order to minimize the impact. The parking area has been moved to a flatter, drier piece of land which is actually farther away from the building. There will be 13 handicapped parking spaces at the building, 14 regular parallel parking spaces along the end of the access road and a parking area of 26 regular spaces for the use of family and caregivers that are more capable of walking.

Ms. Wright asked how the proposed parking layout and access compares to the existing layout.

Mr. Johnson explained that currently, the endcaps of the rows of parking spaces closest to the NEHSA building are reserved for the NEHSA program. From the parking spaces there is a slope up to the building which is basically just a footpath, which is a distance of approximately 50 yards. The volunteers have no preference in parking spaces. Most volunteers park in the second parking lot and walk over. At the proposed facility, there will be designated handicapped parking spaces at the door on level ground with a distance of less than 50 ft. There would also be provisions made for drop-off at the door which will be kept clear of snow and ice. In a nut shell, the new proposal would be slightly worse for the instructors, but much better for the patrons.

Peter Spear, wetland scientist from Natural Resource Consulting Services, explained to the Board that these wetlands are from little seeps that are coming out of the ground due to the slope. The ground water then works its way into a little man-made drainage way. Several years ago, there was a collection system that was built that directed surface water to the existing drainage swale. There are pockets of wet areas upland which are very common in forested wetland. They are not unique, and they support no special protected plant or animal life. There are no vernal pools associated with these wet areas.

The little ditch that goes through there carries more water because it is servicing two drainage basins. DES advised NEHSA that a wetlands board permit will be required which can be piggy-backed with the Army Corps of Engineers Mitigation Permit. Also, a State Alteration of Terrain Permit and a Federal Construction General permit would be required.

Mr. Spear explained that the steep slopes gather water which trickles along below ground until the slope breaks and then the water comes out, hence a "seep". Therefore, due to the slope, there are some naturally occurring seeps.

Ms. Richmond asked if there would be an excavation required.

Mike Burke explained that there were 10 test pits dug and none of them hit the water table. The soil is sandy and unusually well-drained. There is a basement planned for part of the building which will require some excavation.

Mr. Johnson commented that there is a very sophisticated water/drainage treatment plan in place and immediate restoration and vegetation for long term restoration and stability will be in place. There is proposed a closed drainage system along the road which will end up in an underground detention system under the parking area. There, the fines will be settled out and

the excess water will carry on to the drainage system under the road and to the existing detention pond. The swales will divert the water way from the building and into the drainage system to join up with the existing system. Some of the wetlands will have to be filled to accommodate the southerly portion of the parking area and the retaining walls. This plan will slow the water run-off and reduce the rate of discharge. Therefore the impact is actually an improvement on what is currently in existence.

Ms. Russell asked Mr. Johnson if he was aware of the March 2008 zoning amendment for Storm Water Management.

The Board reviewed the regulations of Article XXI Storm Water Management and determined that since the Mountain has its own district and regulations under Article XI, then Article XXI is not applicable to this hearing.

Ms. Wright asked, relative to the proposed building, what is the sewer capacity for the Mountain and can the Mountain's existing lagoons handle the added capacity of the proposed building.

Mr. Gamble stated that the Mountain's existing system can handle the proposed added capacity. He explained that currently, the existing conditions are not using 60% of the system. There will be an increase with the proposed building, but not enough to significantly impact the system. The Mountain's Comfort and Care Capacity is for 5200 people, of which only 60% is being used. To add another 50 to 100 people is not a significant amount. The actual amount of water usage is 4 gallons per skier per visit. The State requires that 10 gallons per skier per visit be used for calculations.

Ms. Ashworth asked Mr. Johnson how many people he thinks this facility will be able to accommodate.

Mr. Johnson commented that they have prepared a five-year strategic plan which has estimated about 10% per year for growth.

Ms. Ashworth asked Mr. Johnson what is the maximum capacity of the proposed building.

Mr. Johnson stated 150 people which includes 30 wheel chairs.

Ms. Ashworth asked Mr. Johnson if he considered use of the existing building.

Mr. Johnson stated that they did consider use of the existing building. However, the existing building is about 3,000 sq. ft. and due to the terrain and neighboring buildings, it is unable to be expanded. The land is very wet behind the near-by learning center, the parking area fronts the building, and Beck Brook runs along the other side. Also, there is an emergency access road near-by that cannot be blocked. The new building is proposed to have a quiet room for autistic patrons and a classroom for training sessions with a total of 13,000 sq. ft. There is no way to provide the services proposed in the 13,000 sq. ft. building within the existing 3,000 sq. ft. space. If the existing building would be renovated, there would be no improvements in terms of space, distance to the slope or drop-off accommodations.

Ms. Richmond asked what the basement in the proposed building would be used for.

Mr. Johnson explained that the basement will be used for season swapping of equipment such as winter storage for kayaks and cycles and summer storage for skis and snowboards. Mr. Johnson stated that there is no other information to present. He explained that they had a fixed-width feature for the cul-de-sac which dictated the width of the project. They tried to adapt everything else around that. These are exceedingly low-quality wetlands, therefore the more they could stay out of the steep slopes the better. The engineers were asked by DES to

respect the drainage swale. Even though it is man-made, it is still effective. The plan is to get all of the back grading to natural tree cover as quickly as possible so the new facility is nestled in the woods.

Mr. Johnson reviewed the criteria for a variance.

1. (16.7.1) Granting these variances will not be contrary to the public interest. In fact, it better, serves the public interest, as the new building with its close adjacency to South Peak will enable NBHSA to offer a much richer adaptive ski experience to many more disabled people than it currently can in its limited facility so far from the ski slopes. Today, NBHSA gives 2000+ adaptive ski/snowboard lessons to our wounded veterans, to the terminally ill, to local children with learning disabilities, etc. Yet we also turn many away because of our current space constraints. Also, our students with significant mobility, balance, and endurance issues waste a lot of their limited energy just trying to get to the slopes from the current lodge and back again, with little left for the actual skiing experience. The only way to fix these constraints on our charitable work is to build a larger facility right next to the ski slope. In other words, *not* granting these variances would be contrary to the public interest.
2. (16.7.2) Denial of these variances will result in unnecessary hardship to the owner as proved by the following arguments:
 - a. (16.7.2.1.1) Taking into account the unique setting of this property in its environment, the application of the cited paragraphs of the zoning ordinance to this property will interfere with the owner's reasonable use of the property because *there are no other sites that can meet the unique accessibility needs of the disabled community that NEHSA serves* (see attached Bruno Associates report). The only other accessible locations farther down the slope would be at the base of South Peak, where any development would cause far more serious wetland impact to Beck Brook, a protected stream that flows • along the bottom of the slope. Moving further up the slope puts the building on far too difficult terrain for its beginning students and increases the steep slope impacts exponentially. This particular site proposal embodies the most optimal tradeoff between steep slopes above and wetlands below – an inherent feature of all ski areas! If these variances were denied and we were forced to find a sub-optimal location or abandon the project altogether, those that would feel the hardship the most would be the disabled community that we serve.
 - b. (16.7.2.1.2) There is no fair and substantial relationship between the general purpose of the zoning ordinance and the restrictions placed on this property as evidenced by:
 - i. The purpose of the wetlands zoning ordinance is to protect areas that offer meaningful biodiversity and may support rare and endangered species, as well as areas that function as natural barriers and filters for stormwater runoff, the attached wetlands report by a professional consultant documents the low quality of the wetlands being protected by the zoning ordinance. It supports but a limited biodiversity without any particularly desirable flora or fauna, and provides no measurable benefit for groundwater protection or stormwater management. Its historical, recreational, and aesthetic

values are negligible NHDES has evaluated this report and accepts its findings.

- ii. The steep slope zoning ordinance is intended to minimize destructive erosion caused by building projects that disturb the natural terrain with significant cutting and filling of the landscape. Most of the steep slope disturbance of this project within Newbury has very little upslope incursion, but rather is driven by the long length of this relatively shallow disturbance. This disturbance is very easily managed during construction with standard erosive control techniques, and will be re-stabilized after construction through restoration. It would be a different story if the disturbance encompassed significant cuts into the steep slope, but the zoning ordinance does not do such differentiation.
 - c. (16.7.2.1.3) Granting a variance in this case will not injure the public or private rights of others. In fact, *it enhances the public rights of others* as NEHSA's new lodge would in fact be a public facility used for public outreach. Its operation is 100% compatible with the general recreational activities that are zoned for the Mount Sunapee Recreation District. And the only private abutter within any reasonable distance is the Mount Sunapee Resort, and they enthusiastically support both this project in general and this location in particular, as evidenced by the attached letter.
 - d. (16.7.2.2.1)N/A
 - e. (16.7.2.2.2) N/A
3. (16.7.3) The use will not be contrary to the spirit of these ordinances because:
- a. The purpose of the wetlands zoning ordinance is to protect areas that offer meaningful biodiversity and may support rare and endangered species, as well as areas that function as natural barriers and filters for stormwater runoff. The attached wetlands report by a professional consultant documents the low quality of the wetlands being protected by the zoning ordinance. It supports but a limited biodiversity without any particularly desirable flora or fauna, and provides no measurable benefit for groundwater protection or stormwater management. It's historical, recreational, and aesthetic values are negligible. NHDES has evaluated this report and accepts its findings.
 - b. The steep slope zoning ordinance is intended to minimize destructive erosion caused by building projects that disturb the natural terrain with significant cutting and filling of the landscape. Most of the steep slope disturbance of this project within Newbury has very little upslope incursion, but rather is driven by the long length of this relatively shallow disturbance. This disturbance is very easily managed during construction with standard erosion control techniques, and will be re-stabilized after construction through restoration. It would be a different story if the disturbance encompassed significant cuts into the steep slope, but the zoning ordinance does not do such differentiation.

4. (16.7.4) By granting the permit substantial justice would be done because a disadvantaged population within our society, the disabled community, would reap great benefit, with no measurable cost to the rest of society in terms of any meaningful environmental impact or loss of private and public rights.
5. (16.7.5) The proposed use will not diminish surrounding property values because:
 - a. This use is totally compatible with the recreational activities that the Mount Sunapee Recreational District is zoned for.
 - b. The services offered by NEFISA in the facility will broaden the potential for attracting new visitors to the area, supporting the commercial businesses in the area.
 - c. NEHSA will be making a significant investment in a state-of-the-art facility that will serve as a model for other adaptive programs. The building exterior is being designed to tastefully reflect the common architectural themes in the Lake Sunapee area. It is also significant to note that the only abutter within the viewshed of this new facility is Mount Sunapee Resort, and as mentioned above, they are an enthusiastic supporter of this proposal.
 - d. There will be no measurable addition to existing traffic density or flow patterns in the Mount Sunapee State Park area, as no new through roads are being created.

Mr. Johnson commented that Mount Sunapee was the only abutter to provide input, and they are enthusiastically supportive of the project.

Ms. Russell asked if the facility would be open all year 'round.

Mr. Johnson said yes. He explained that they would like to provide rehabilitative yoga classes, which needs lots of floor space, a rock climbing practice area, storage and access of summer sports equipment, etc.

Mr. Gamble commented that he and the principals of NEHSA are aware of steep slope and wetland issues. For decades, they have successfully worked with in and around those sensitive areas. As a result of changes in zoning, more restrictions have evolved that require compliance. Although the zoning is relatively new to the Industry, the conditions of the land are not.

Ms. Ashworth opened the meeting to the public for questions and/or comment.

Linda Newell asked what would become of the old NEHSA building.

Mr. Johnson commented that NEHSA does not have an intended use for it. Mount Sunapee has first refusal on the use of the building per the lease agreement.

Ms. Newell commented that she thinks this is a good project.

There were no further comment/questions from the public.

There were no further comment/questions from the Board. The Board began deliberations.

The Board determined that it will rule on the application based on Article 9.3 of the Zoning Regulations.

Ms. Richmond commented that this application was well explained and planned out. The application was well organized and clear.

Ms. Ashworth commented that the applicant gave a vague answer regarding the number of expected patrons, especially if they are expanding out to the community. She reminded the Board members that the applicant will also need to go to the Planning Board for Site Plan Review.

Ms. Wright made a motion to vote on the variance request as per Article 9.3 Development on a Steep Slope of the Zoning Ordinance. Ms. Russell seconded the motion. All in favor.

Ms. Richmond voted to grant.

Mr. Russell voted to grant and stated that the proposal was well presented and well thought out and the impacts are kept at a minimum.

Ms. Russell voted to grant and stated that the facility is really needed and it is obvious that a lot of time was put in to look at all of the possibilities.

Ms. Wright voted to grant and stated that she is concerned regarding the number of people that will be visiting this location, which she feels may not be ideal.

Ms. Ashworth voted to grant and stated that she believes the applicant met all of the variance criteria.

Ms. Ashworth informed Mr. Johnson that there a 30-day appeal period for any abutter to appeal the Zoning Board's decision.

Ms. Ashworth made a motion to take a short recess until it is time for the next hearing. Ms. Richmond seconded the motion. All in favor.

At 7:45 p.m. NH Dept. of Resources and Economic Development/Agent: New England Handicapped Sports Association, Bill Johnson – for property located on Mount Sunapee, Newbury, NH will seek a variance from the requirements in Paragraph 8.4 of the Newbury Zoning Ordinance to permit the following: Construction in and around some wetland areas. Newbury Tax Map 013-386-092.

Mr. Johnson commented that Peter Spear, NH Certified Wetland Scientist has already described the wetlands as being low quality, no uniqueness, no flora or fauna, and no recreational value. The feature we were asked to protect per the feedback from DES is the existing drainage ditch because it is functional.

Mr. Johnson reiterated the same criteria for variance as previously stated for the Steep Slope Variance.

Ms. Wright commented that she disagrees with Mr. Johnson's opinion of the wetland. All wetlands are special; they are often considered the kidneys of the environment. They are important for filtration. The Townspeople implements these regulations to protect the wetlands because they are important.

Mr. Johnson commented that the storm water retention plan will do a better job than the existing wetlands are now doing in terms of cleaning and filtering the drainage.

Mr. Spear stated that this process was also a trade-off between competing resources and obtaining the goals of the project. Compared to other wetlands, these are low-value wetlands, but are not without any value. While planning the project, the engineers have tried to remain cognizant of that value. If you mapped out jurisdictional delineation of the wetlands, there are many acres of similar wetland wherever

the slope breaks. It is seasonally wet. NEHSA will be forced to do some type of wetland mitigation per NHDES due to the cumulative amount of area in Newbury and Goshen. It is not significant, comparatively speaking. These areas are not able to act as kidneys for the environment because they are frozen in the winter and dried up in the summer. Some of the types of mitigation may be reconstruction of wetland in another area, payment into the State's ARM Fund, etc.

Ms. Ashworth asked Mr. Johnson if they have consulted the Newbury Conservation Commission.

Mr. Johnson said they have not consulted the Newbury Conservation Commission at this time. The Planning Board sent NEHSA to the ZBA only. Mr. Johnson provided the Board with a copy of a letter from DRED Commissioner George Bald in support of the project.

Mr. Gamble commented that this wet area is not a named wetland. There are more of the steep slopes that will be impacted than the wetlands. At the end of the day, with all impacts considered, this is the final best balance between the two.

There were no further questions from the Board.

Ms. Ashworth opened the meeting to the public. There were no questions/comments from the public. Ms. Ashworth closed the meeting to the public.

The Board began deliberation.

The Board clarified that Article XI, Mount Sunapee Recreation District, overrides the steep slope regulations, and there is no Article that overrides the wetlands regulations.

Mr. Russell commented that the engineers have made it very clear regarding the quality of the seasonal wetlands. Additionally, they would be creating a better scenario.

Ms. Richmond commented that the impact is minimal compared to the need. Considering the type of wetland and that there is no real use for the wetland, the redirecting and diverting is a better solution.

Ms. Wright commented that according to the wetland criteria, the purpose is to protect wetland areas. The ordinance says that there will be no building in a wetland. Diverting is not protecting what is natural.

Ms. Ashworth commented that another option for mitigation would be to create more wetlands elsewhere.

Ms. Russell commented that according to the regulations, variances could be given for roads and culverts, but not permanent construction.

Ms. Ashworth closed the meeting to deliberation and reopened the meeting in order to obtain clarification from the applicant.

Mr. Russell asked how the wetland connects to Beck Brook.

Mr. Spear explained that there is a small man-made drainage feature which is not a stream that goes for approximately ¼ mile before it gets to a perennial stream. The seeps are basically pockets of somewhat poorly drained soil. In the spring, it is mushy. Through the summer, the seeps dry up and the drainage-way dries up. There are no pools for spawning, no nesting areas for water fowl, and there are some song birds – the same as in the upland forest. There are no species of animals that are tied to this area for any period of their lifetime. This area filters some of the natural run-off into the drainage way. When the run-

ff gets to the manmade channel, it goes faster and on into Beck Brook. From a post-development standpoint, there will be less run-off and cleaner run-off getting to Beck Brook than there is under existing conditions.

Ms. Russell commented that the access road will add salt and sand to the run-off that isn't there now.

Mr. Craig commented that the run-off from the access road will go through an underground filtration system and the salt and sand fines will be pulled out before it gets to Beck Brook.

Mr. Gamble advised the Board that the Mountain does not use salt on their property, only sand. If there is freezing rain, then sometimes minimal salt is used for public safety.

Mr. Johnson commented that he understands that the Board has to balance everything. The mere fact that humans are here means we will impact the environment. The bottom line is to be the best stewards of the environment while living our lives. He commented that he understands the Board members being skeptical with applicants and their experts. But, since the Board is listening to a reputable applicant with a well-thought out plan and experts, then the Board ought to listen. NEHSA will also have to comply with the Wetlands Board.

Mr. Johnson commented that they are truly getting to the Spirit of the wetlands ordinance because post development conditions will provide better filtration and water quality than existing conditions.

Ms. Ashworth closed the meeting to public input.

The Board began deliberations.

Ms. Russell clarified that the variance request is to build in the wetland and in the wetland buffer.

Ms. Wright commented that the Townspeople have voted in these regulations and it is the Board's responsibility to comply and enforce them. If the wetlands are delineated, then it is what it is.

Mr. Russell commented that if you keep the purpose and intent of Article VIII in mind and use the specified criteria, then this project satisfies the ordinance.

Ms. Ashworth commented that the intent of this Article is to protect the wetlands. The applicant is going to improve the situation. There appears to be no alternative to relocate the building. Although, she commented, that she is not comfortable with construction in the wetland.

Ms. Russell commented that if construction is performed in the wetland, then the damage is done and it cannot be undone. However, she agreed that the reason and intent of the project is good and honorable and does have great benefit.

Mr. Russell commented that each case should be judged on its own merit. Consideration should be given to the impacts on this wetland as being minimal, which by definition are not significant. Also, the wetland will not disappear but will be redistributed, and the function of the wetland will be essentially the same.

Ms. Richmond commented that cleaner water will also mean less mosquito larvae.

Mr. Russell made a motion to vote on the variance request as per Article 8.4 Uses Permitted in a Wetland. Ms. Wright seconded the motion. All in favor.

Mr. Russell voted to grant. He commented that the applicant has done everything they could do to address the impacts. The function of the wetland is not going to change and the impact is negligible. The functionality should be better.

Ms. Russell voted to grant. She appreciated that consideration was given to a wide variety of possibilities. Also, impact over the whole piece of property is not as significant when realizing there will be mitigation.

Ms. Wright voted to grant. She commented that this is a great facility with an enormous need, but she was still uncomfortable that there is not a guarantee that the water quality would be unharmed.

Ms. Richmond voted to grant. She commented that the application and plan are very well thought out and the need is imperative. She acknowledged that there is a lot of care and sensitivity to wetlands in the construction industry.

Ms. Ashworth voted to grant. She commented that this is a unique situation with unique merit to the application, and no precedence would be set.

Ms. Ashworth informed Mr. Johnson that there a 30-day appeal period for any abutter to appeal the Zoning Board's decision.

Ms. Ashworth made a motion to adjourn. Ms. Russell seconded the motion. All in favor. Meeting adjourned at 9:55 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary