



**Public Hearing  
Meeting Minutes  
North Hampton Planning Board  
Tuesday, March 1, 2011 at 6:30pm  
Town Hall**

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These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

**Members present:** Phil Wilson, Chair; Shep Kroner, Joseph Arena, Laurel Pohl (arrived at 6:42pm), Mike Hornsby, and Jim Maggiore, Selectmen’s Representative.

**Members absent:** Barbara Kohl, Vice Chair

**Alternates present:** Michael Coutu

**Others present:** Brian Groth, RPC Circuit Rider, and Wendy Chase, Recording Secretary

Mr. Wilson seated Mr. Coutu for Ms. Kohl.

Mr. Wilson convened the Public Hearing at 6:32pm, and noted for the record that the meeting was properly posted and the material on each proposed zoning amendment was made available at the Town Office on February 18, 2011.

Mr. Wilson explained that he would open the a Public Hearing on each proposed zoning amendment, and then the Planning Board would vote to approve or disapprove to place it on the Town Warrant for the May Election.

1. A Citizen’s Petition to amend a Zoning Ordinance: To repeal Article IV, Section 409.12 of the Zoning Ordinance, which authorizes the Planning Board to issue Conditional Use Permits for constructing or expanding structures on certain lots in the Wetlands Buffer Zone or the Wetlands Conservation District.

**Mr. Gordon, 10 Sea Road** – presented the Citizen’s Petition to amend the Zoning Ordinance to repeal Article IV, Section 409.12. <sup>i</sup>(A copy of his written presentation is attached to these minutes). Mr. Gordon said that at the March 16, 2010 Public Hearing, when the Planning Board voted to change Section 409.12 from a ZBA Special Exception to a Planning Board Conditional Use Permit, the Chair said that the Planning Board should make a conscious effort to find out how many lots in town are official lots of record prior to March 8, 1988. Mr. Gordon asked if such a determination was made, and if so, how many lots are impacted by wetlands and buffer zone ordinance restrictions. Mr. Gordon disclosed that his property is one of those impacted lot.

46 Mr. Gordon pointed out in his presentation that the requirement that “no reasonable and economically  
47 viable use of the lot can be made without the [Conditional Use Permit]. He states that it may be a  
48 reasonable condition for” undeveloped” lots, but its application to almost any “developed” lot would  
49 compel denial of the application.

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51 Mr. Gordon asked that the Planning Board support the Citizens Petition to repeal Section 409.12 of the  
52 Zoning Ordinances.

53

54 Mr. Wilson opened the Public Hearing at 6:42pm.

55 Mr. Wilson closed the Public Hearing without public comment 6:43pm.

56

57 Mr. Wilson asked for Board comment, and noted that Ms. Pohl arrived at 6:42pm.

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59 Mr. Kroner said that, generally speaking, there has been degradation of water quality in places like Little  
60 River Marsh and degradation of water quantity on the whole seacoast region. He said part of that is due  
61 to many Variances and Special Exceptions that were granted for wetland relief, and that led Planning  
62 Board down the road of coming up with Innovative Land Use controls that would be consistent with the  
63 Master Plan.

64

65 Dr. Arena said the change to Section 409.12 has made it more efficient and less costly in the long run.  
66 He said that unless there are rules that mean something and that are going to be followed all the way  
67 through no progress is made as far as the wetlands are concerned, and protection of the wetlands is the  
68 number one issue.

69

70 Mr. Coutu said that in his view Section 409.12 allows an additional set of eyes to what is being  
71 contemplated, with respect to expanding or constructing structures; it is examined perhaps in a  
72 different light, or perhaps a similar light, but in doing so it goes to the more critical issue; to prohibit,  
73 limit and restrict what otherwise might be deterioration of wetlands.

74

75 Ms. Pohl asked to review a copy of Mr. Gordon’s presentation.

76 Mr. Gordon provided a copy for her to review.

77

78 Mr. Wilson said that there was a question as to whether this was a legitimate application of the  
79 innovative land use provision in the RSAs. Mr. Wilson said that it certainly is; under the provision it  
80 specifically lists environmental issues. Mr. Wilson said that the Town adopted wetland setbacks in 1988  
81 and it would have caused some lots in Town to be unbuildable, so Section 409.12 was adopted as a  
82 Special Exception from the ZBA to give relief to those lots that would be affected. He said that the value  
83 of the wetlands with respect to wild life, plant life and water quality and quantity has become more  
84 obvious to people over the past ten (10) years. Mr. Wilson said that among the list of the most  
85 important wetlands, prepared by the Rockingham Conservation District, many are found in North  
86 Hampton, and that a scientific analysis determined that they are considered incredibly valuable based  
87 on natural resource value. Mr. Wilson said that it is important that the Planning Board continue to hear  
88 and adjudicate applications for Conditional Use Permits, and the he is not in favor of eliminating Section  
89 409.12.

90

91 Mr. Groth asked that if Section 409.12 were appealed, would a variance be required.

92 Mr. Kroner said that based on Mr. Gordon's argument he, and the people who signed the Petition, feel  
93 that no one can meet the conditions of the Conditional Use Permit and because of that the belief by  
94 many is that a Special Exception is less onerous to receive. He said when the Planning Board changed it  
95 to a Conditional Use Permit process it made it more difficult to get relief based on the way the  
96 Ordinance was written.

97  
98 Mr. Wilson added that because the Boccia Case is referenced in the Petition, he believes that the recent  
99 changes in the "hardship" criterion for a variance have made it easier to get a variance than the way the  
100 reasonable and economically viable use criterion is written under the Conditional Use Permit. He said  
101 that it is virtually impossible to meet this standard because it would mean that any proposal to develop  
102 would have to be developed outside the wetland setback. He said that the fundamental principle of this  
103 Ordinance is to protect the wetlands and there ought to be a burden placed on someone who wants to  
104 build in the wetland setback.

105  
106 Dr. Arena said that scientific studies have shown that the amount of wetlands in the United States as a  
107 whole has been diminishing and deteriorating at a significant pace; people should be more respectful of  
108 the wetlands and the Town as a whole.

109  
110 Mr. Maggiore referred to the 2010 Town Survey for the Master Plan, and the feedback to the questions  
111 regarding "rural nature" were to maintain "rural nature" in Town. He said that the basis of Section  
112 409.12 is to maintain or stay in line with at least those respondents.

113  
114 **Dr. Arena moved and Mr. Hornsby seconded the motion that the Planning Board recommend that the**  
115 **voters not adopt the amendment, submitted by a Citizens Petition, to repeal Section 409.12**

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117 **The vote was unanimous in favor of the motion (7-0).**

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119 2. Proposed amendment to Article V, Section 506.2.J – materially altered signs and Section 506.3 –  
120 Change of Tennant, to clarify the definition of materially altered ground, monument, pole or  
121 pylon signage to simplify the administration and enforcement of the sign regulations when  
122 there is a change of tenancy to ensure that ground, monument, pole or pylon signs are not to  
123 be confused with wall signs, and to accelerate improvement of signage in the  
124 Industrial/Business-Residential District by reducing the number of non-conforming wall signs  
125 over a shorter period of time.

126  
127 Mr. Wilson opened the Public Hearing at 7:07pm.  
128 Mr. Wilson closed the Public Hearing at 7:08pm without public comment.

129  
130 Mr. Wilson commented that the Town's Attorney did comment on the proposed amendment to the sign  
131 ordinance. He explained that due to the difficulty in determining whether or not a sign is materially  
132 altered, requiring Planning Board approval, the proposed amendments were made to help eliminate  
133 confusion about the definition of "materially altered". He further explained that the Board concluded  
134 that if an Applicant is going to change a wall sign then it should be brought into conformance and meet  
135 all the provisions of the Sign Ordinance including the prohibition of internally lighted signs. Attorney  
136 Serge stated in his review of the proposed ordinance that essentially if an Applicant were to come and  
137 argue that a wall is the same as a support structure for a free standing sign, and that the owner of a wall  
138 sign has the right to change a message (business name etc.) on a wall sign, without altering the sign's

139 dimensions, lighting etc. similar to the owners of ground, monument, pole or pylon signs. Mr. Wilson  
140 said that his own response is that a wall is not a supporting structure for a sign; the bolts and brackets  
141 are the supporting structure to apply the sign to the wall. He said that the only potential issue is if a  
142 tenant comes in and just wants to change the message on the face of an existing internally lighted sign  
143 and nothing else because the Board, according to the Constitution of the United States, cannot regulate  
144 the content of the sign.

145  
146 Dr. Arena said that he splits a “wall sign” into two fractions. One is that the framed wall sign is attached  
147 to a wall within a frames and the other is the free standing letters wall sign. He said that he is against  
148 “backlit” signs with fluorescent tubes, but is not against individual letters attached to a wall individually  
149 illuminated with a frame of each letter with just enough lumens in each to avoid spillage of light.

150  
151 Mr. Maggiore said that clarification is necessary because there is room for argument when it comes to  
152 “materially altered”.

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154 **Mr. Maggiore moved and Mr. Coutu seconded the motion to accept the proposed amendments to**  
155 **Article V, Section 506.2.J, and Section 506.3 and take it to Town Warrant.**

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157 Dr. Arena said that the Board should take his comments into consideration.

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159 **The vote was unanimous in favor of the motion (7-0).**

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161 3. Proposed Amendment to Article V, Section 508 – Agriculture, to replace in its entirety for the  
162 purpose of promoting responsible agricultural operations throughout Town by balancing  
163 between the rights of property owners who want to farm their land and, of abutting property  
164 owners who want to enjoy their property without offensive sounds, odors, or pollution of the  
165 environment.

166  
167 Mr. Wilson explained that there was an effort put forth to modify the Agriculture Ordinance last year.  
168 The Board decided not to take the proposal to the Town Warrant due to the serious questions raised at  
169 that time. The Planning Board decided to form an Ad hoc Agriculture Committee to work on a new  
170 Ordinance, and during the course of a year they came up with the proposed Agriculture Ordinance.

171  
172 Mr. Wilson said that there are actually three (3) proposed amendments:

- 173 1. The main amendment is to replace Article V, Section 508 as it exists now with the new proposed  
174 ordinance.
- 175 2. Replace the definition of *Agriculture* with the definition that is introduced in the new Agriculture  
176 Ordinance so they would be consistent.
- 177 3. Amendment to Section 405.3. When this ordinance was written the Planning Board wanted to  
178 prohibit large scale hog factories or cattle feed lots, but it would prohibit farmers from selling  
179 their products at farmers’ markets, farm stands and local grocery stores.

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181 Mr. Wilson opened the Public Hearing at 7:23pm.

182  
183 **Dick Wollmar, Walnut Avenue** said that he is a small farmer, and has been actively farming for 34 years.  
184 He said that his property has been a farm since 1729. He made the following comments on the proposed  
185 Agriculture Ordinance:

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- He suggested the four (4) acre requirement be changed to two (2), to be more consistent with Town’s 2-acre requirement that has been in existence since 1972.
- He suggested that it be added somewhere in the Ordinance that the Agriculture Commission should review all Conditional Use Permits involving Agriculture to give advice and comment to the Board to take into consideration prior to the Hearing.

**Lisa Wilson, 9 Runnymede Drive** said that she serves on the Agriculture Ad hoc Committee and explained that the Committee came up with the four (4) acre requirement based on the subdivision ordinances where land cannot be subdivided with less than four (4) acres. She said that the lots have to be considered on a case by case basis because there could be a two (2) acre lot with better land than a four (4) acre lot that’s mostly wetlands. She said that if the Planning Board came up with a viable alternative the Committee would be open to it.

Ms. Pohl said that the Committee wanted to find a threshold that would trigger the Planning Board to review these types of requests.

Dr. Arena said that he has no qualms about the botanical aspects of the Ordinance, but has concerns over the animal aspects.

**Eli Levy, 109 Exeter Road** suggested the Board change the proposed acreage requirement from four (4) acres to two (2) acres of upland.

Mr. Kroner said that the more he read the new Ordinance the more he realized that it does not prohibit those with less than 4 acres. The Planning Board has opened up an avenue for an Applicant to come before the Board to make their case to prove that their property can harmoniously exist with more animals per lot than is allowed in the Ordinance while allowing the opportunity for their neighbors to voice an opinion.

Discussion ensued on the four (4) acre requirement. Mr. Hornsby said that regardless of the condition of the land the provisions under *Best Management Practices* require a certain amount of square footage per animal. He said that you could own twenty (20) acres of land, but if only one of the acres is uplands then you are restricted in the amount of animals you can have.

**Cindy Jenkins, 93 Exeter Road**, said that she serves as a member of the Agriculture Commission and explained that the *Best Management Practices* by the State and the UNH Cooperative Extension publication entitled *Guidelines for Space and Housing of Farm Animals* are incorporated in the proposed ordinance and if neighbors feel that the animal owners are not complying with these guidelines and regulations they can file a complaint with the State, and with the Town; the State will follow up.

She questioned Section 405.3 – Commercial Husbandry Facilities and asked what would determine a “Commercial Egg Farm”.

Mr. Wilson said that if someone were to operate a Commercial Egg Farm for distribution it would be considered a commercial operation and prohibited, but if they are selling their eggs at farm stands and local grocery stores it would be allowed under the proposed amended Section 405.3.

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Ms. Jenkins commented that it bothers her that one (1) animal is allowed on one (1) acre. She said that animals do not thrive well if they are alone. She said that they have to trust *Best Management Practices*.

Dick Wollmar made the following points:

- New Hampshire is a “right to farm” State, in every district, and in every zone. Producing our own food is very important.
- The Cooperative Extension of UNH is an outreach of the Agricultural School; it incorporates 4-H, Home Economics, Vegetable Growing and Animals.
- In farming communities families had flocks of chickens to feed their families and earn extra money.
- Proprietorship is not a commercial operation.

Mr. Kroner commented that the new Ordinance allows a farm structure to be 15-feet from the property line, the same standard for “Accessory structures”, and the original ordinance requires the structures to be 200-feet from a neighboring property line; a significant difference.

Mr. Wilson agreed with Mr. Wollmar’s recommendations and suggested adding a “b” under Conditional Use Permit Review that states *The Planning Board shall refer all applications for Conditional Use Permits under this Section to the Agriculture Commission for advice and comment*. Mr. Wilson also suggested changing the four (4) acre requirement to two (2) acres of contiguous uplands.

Ms. Pohl said that he issue with that is in the very first paragraph there are three (3) references to the four (4) acre requirement.

**Dieter Ebert, Lovering Road**, serves as a member of the Agriculture Ad hoc Committee He said that under the space guidelines, one could own one (1) horse on a 1/100 of an acre. He said that if we go towards limiting per uplands we will be more restrictive than the 1/100 of an acre. He said restricting further under animal husbandry is not a positive thing.

Dr. Arena said that a lot more work needs to be done to the ordinance. The animal aspect needs to be better clarified.

**Dr. Arena moved and Mr. Maggiore seconded the motion that the Board not recommend that the proposed amendment to Section 508 be placed on the Town Warrant this year.**

Mr. Kroner called for a Point of Order.

Mr. Wilson recognized Mr. Kroner.

Mr. Kroner asked if a motion can be made during an open Public Hearing.

Mr. Wilson ruled that the motion was in order.

Mr. Maggiore agreed with Dr. Arena that the proposed ordinance needs clarification regarding “animals”. He questioned whether or not it is clarified under *Best Management Practices* or if the Board needs to clarify it in the ordinance.

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279 Mr. Hornsby said that the needs and space for each individual animal is outlined on the *Best*  
280 *Management Practices and the Guidelines for Space and Housing of Farm Animals*. He said that it seems  
281 like it is the same arguments over and over again.

282  
283 Mr. Kroner said there has never been a perfect piece of legislation in the history of our democracy. He  
284 wondered what the mechanism is for any review if you have a lot greater than four (4) acres.

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286 Mr. Wilson said that complaints are handled through the State of New Hampshire.

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288 Mr. Wilson allowed Mr. Wollmar to comment on the motion made by Dr. Arena.

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290 Mr. Wollmar said that the current Agriculture Ordinance is inadequate and the new proposed ordinance  
291 is 99% good; the Town needs the proposed ordinance to work from.

292  
293 Dr. Arena said there has been a very fluid conversation between the Board and the People in the  
294 audience. He said the biggest problem with the proposed ordinance is the animal portion of it. The  
295 terms are far too generic to come up with specifics; the animal aspect needs more work.

296  
297 Mr. Wilson suggested changing Section 508.5.B.2.b.2 to read “involving no more than four (4) animals”  
298 and strike “per acre”, and changing Section 508.5.B.2.b.3 to read “involving more than four (4) animals  
299 per lot”. He said the changes would satisfy the lot size issue and density issue. He also said that the  
300 whole purpose of the Conditional Use Permit is to give abutters the opportunity to say their peace when  
301 someone wants to create a nuisance in a neighborhood; to strike a balance between the farmer’s rights  
302 and the neighbor’s rights.

303  
304 Mr. Hornsby noted that animals cannot be housed in wetlands under the *Best Management Practices*.

305  
306 Dr. Arena said that if it is “spelled out” how much square footage per animal is needed under the *Best*  
307 *Management Practices* and the proposed ordinance refers back to it, then the ordinance can be passed  
308 because it does away with the generic term “animal”.

309  
310 Ms. Pohl said that the number of acres (2 or 4) doesn’t restrict anyone, but it triggers the review  
311 process.

312  
313 The Board voted on the motion – not to recommend that the proposed ordinance be placed on the  
314 Town Warrant this year.

315  
316 **The vote was 0 in favor, 6 opposed and 1 abstention. Dr. Arena abstained. The motion failed.**

317  
318 **Mr. Kroner moved and Ms. Pohl seconded the motion to add under Section 508.5.B.2.b(4)(b) “the**  
319 **Planning Board shall refer all applications for Conditional Use Permits under this Section to the**  
320 **Agriculture Commission for its advice and comments.**

321 **The vote was unanimous in favor of the motion (7-0).**

322

323 **Mr. Coutu moved and Mr. Hornsby seconded the motion to change Section 508.5.B.2.b.2 from one (1)**  
324 **animal to four (4) animals and strike “per acre” and to change Section 508.5.B.2.b.3 from one (1)**  
325 **animal to four (4) animals.**

326  
327 Mr. Maggiore mentioned Dr. Arena’s concerns and said that they needed to be sure the word “animal”  
328 cannot be brought into question.

329  
330 Mr. Wilson said that if you use the reasonable and customary meaning of the word you don’t need to  
331 define it.

332  
333 **The vote was unanimous in favor of the motion (7-0).**

334  
335 Ms. Chase confirmed that the last day to hold the second and final Public Hearing on amended Zoning  
336 Ordinances is March 15, 2011.

337  
338 **Mr. Kroner moved and Ms. Pohl seconded the motion to hold the second and final Public Hearing on**  
339 **the proposed Agriculture Ordinance, Section 508 on March 15, 2011.**  
340 **The vote was unanimous in favor of the motion (7-0).**

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342 **4.** Proposed Amendment to Article III, Section 302.3 (definition of “Agriculture”) so that it is the  
343 same as the definition in the proposed Section 508.

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345 Mr. Wilson opened the Public Hearing at 9:00pm.  
346 Mr. Wilson closed the Public Hearing at 9:01pm without public comment.

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348 **Dr. Arena moved and Mr. Maggiore seconded the motion to put the proposed amendment on the**  
349 **Town Warrant.**  
350 **The vote was unanimous in favor of the motion (7-0).**

351  
352 **5.** Proposed Amendment to Article IV, Section 405.3 – Prohibited Uses for all Districts – Commercial  
353 Animal Husbandry Facilities, to ensure that the sale of local produce in local farm stands, farmers’  
354 markets, and food stores is not prohibited.

355  
356 Mr. Wilson opened the Public Hearing at 9:08pm.  
357

358 Ms. Cindy Jenkins said that she interprets the amendment to not allow egg farms.  
359  
360 Mr. Wilson agreed that a word was missing; he suggested adding the following language: *except for*  
361 *production for sale at farm stands, farmers markets, and local food stores.*

362  
363 Mr. Wilson closed the Public Hearing at 9:12pm.

364  
365 **Mr. Kroner moved and Mr. Maggiore seconded the motion to amend Section 405.3 by adding *except***  
366 ***for production for sale at farm stands, farmers’ markets, and local food stores.***  
367 **The vote was unanimous in favor of the motion (7-0).**

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Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH  
RSA 91A:2,II. They will not be finalized until approved by majority vote of the Planning Board.



369 **Mr. Kroner moved and Dr. Arena seconded the motion to take the proposed amendment to Section**  
370 **405.3 to the second and final Public Hearing on March 15, 2011.**

371 **The vote was unanimous in favor of the motion (7-0).**

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373 **The meeting adjourned at 9:15pm without objection.**

374

375 Respectfully submitted,

376

377 Wendy V. Chase

378 Recording Secretary

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380 **Approved April 21, 2011**

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At its March 16, 2010 public hearing, when the Planning Board voted to change Section 409.12 from a ZBA Special Exception to a Planning Board Conditional Use Permit, the Chair said that "the Planning Board should make a conscious effort to find out how many lots in town are official lots of record prior to March 8, 1988." Has such a determination been made in the 12 months that have expired since the Chair made that statement? More to the point, perhaps, is how many of those lots are impacted by wetlands and buffer zone ordinance restrictions?

Here I must disclose that my own property is such an impacted lot, which is why I am particularly sensitive to this whole issue. But I have no doubt that many other North Hampton residents would share my concern if they fully appreciated the impact of Section 409.12, first as it was revised at the behest of the Planning Board in 2009, and secondly, as it has been further modified, again on the Planning Board's initiative, just last year.

We now have two classes of wetlands-impacted lots in North Hampton: the post-1988 lots, which still may apply to our now fully-elected ZBA for a variance from Section 409.9 in order to build or expand in the buffer zone, and which can seek ZBA review of a denial before shouldering the financial burden and suffering the extended delay of seeking Superior Court relief, and the pre-1988 lots, which (in the Planning Board Chair's view, as recorded in the minutes of its March, 2010 meeting, may not request a ZBA variance under 409.9 "because the applicant is not authorized under the zoning ordinance to do what it is they want to do without a conditional use permit."

*reconsider-  
what was*

It bears noting that, at the same meeting, that assertion (at least insofar as it applies to undeveloped lots) was directly refuted by Mr. Groth, when he advised that "two different avenues" are available to an applicant, who may also apply, "for a variance to section 409.A.2 from the ZBA."

On which of them should a property owner seeking relief rely for guidance, the Chair or Mr. Groth? And how does the divergence of their opinions impact a developed lot?

On the question of whether a denied applicant may appeal to the ZBA, I have already cited Mr. Groth in support of my argument to you, so I will not quarrel with his concurrence, based on the innovative land use laws, that no such appeal is available, although I do question the extremely tenuous connection that has been made between that body of law, intended to make some room for cluster and low-income housing, and other such special uses, and what, in this case, is essentially a set-back requirement historically and properly within zoning board jurisdiction.

On the matter of developed lots, there is--at least in my mind--a glaring and, I suspect, unintended flaw in Section 409.12 as originally adopted, which would be eliminated if the provision were repealed: that is the requirement that "no reasonable and economically viable use of the lot can be made without the [Conditional Use Permit]." This may be a reasonable condition in the case of an undeveloped lot. But its application to almost any developed lot would compel denial of the application, in direct contravention of the preamble to the section, which states that it allows for the expansion of existing structures as well as for