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**Meeting Minutes  
Town of North Hampton  
Zoning Board of Adjustment  
“Special Meeting”  
Tuesday, September 30, 2014 at 6:30pm  
Town Hall, 231 Atlantic Avenue  
North Hampton, NH 03862**

These Minutes were prepared as a reasonable summary of the essential content of the Meeting, not as a transcription. All exhibits mentioned, or incorporated by reference, in these Minutes are a part of the official Case Record and available for inspection at the Town Offices.

**Attendance:**

**Members present:** David Buber, Chair; Phelps Fullerton, Vice Chair; George Lagassa, and Charles Gordon. (4)

**Members absent:** None.

**Alternates present:** Jonathan Pinette and Lisa Wilson. (1)

**Administrative Staff present:** Wendy Chase, Recording Secretary.

**Preliminary Matters; Procedure; Swearing in of Witnesses (RSA 673:14 and 15);  
Recording Secretary Report**

Chair Buber Called the Meeting to Order at 6:30 p.m.

Pledge of Allegiance - Chair Buber invited the Board Members and those in attendance to rise for a Pledge of Allegiance and noted that reciting the Pledge of Allegiance is solely for those who choose to do so and failure, neglect or inability to do so will have no bearing on the decision making of the Board or the rights of an individual to appear before, and request relief from, the Board.

Introduction of Members and Alternates - Chair Buber introduced Members of the Board and the Alternates who were present (as identified above). Chair Buber seated Mr. Pinette for Mr. Landman, who resigned from the Board on August 29, 2014.

Recording Secretary Report - Ms. Chase reported that the September 30, 2014 Special Meeting Agenda was properly posted at the Library, Town Clerk's Office, Town Office and on the Town's website on September 15, 2014 and a corrected agenda was posted on September 29, 2014 to reflect the review and approval of the September 23, 2014 meeting minutes instead of the September 11, 2014 meeting minutes.

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 Zoning Board of Adjustment.

Swearing In Of Witnesses – Pursuant to RSA 673: 14 and 15, Chair Buber swore in all those who were present and who intended to act as witnesses and/or offer evidence to the Board in connection with any Case or matter to be heard at the Meeting.

**Minutes - September 23, 2014 – Mr. Pinette moved and Mr. Fullerton seconded the motion to approve the September 23, 2014 Meeting Minutes as written. The vote passed in favor of the motion (3-0-2). Mr. Lagassa and Mr. Gordon abstained.**

Mr. Fullerton read the case description into the record:

### Unfinished Business

1. **Case #2014:06 – Applicants Gregory Raiff, Meghan Raiff Trusts, Matthew Raiff Trust, Nola Raiff Trust, 3 Park Circle, North Hampton, NH 03862. Owners: Same as above; Property location: 3 Park Circle, North Hampton, NH 03862; M/L: 017-107-010; Zoning District: R-2 Residential Medium Density.** The Applicants requests the following Variances, (1) Article IV, Section 409.9B – to permit a new barn, colonnade, driveway and related features approximately 53-feet from wetland where approximately 10-feet exist and 100-feet is required, (2) Article IV, Sections 403 and 405, Table R-2 – to eliminate 1 of the bedrooms in the main home, to allow kitchen/bath/bedroom for family /visitor use only in new barn creating 2 dwellings on 1 lot where 1 dwelling is permitted, and (3) Article V, Section 501.2 – To allow the new barn, colonnade, driveway and related features, which expands the existing nonconformity of structures located within the wetland buffer. This Case is continued from the September 11, 2014 “Special Hearing” to properly notify Abutters that were initially omitted.

#### In attendance for this application:

Greg Raiff, Applicant/Owner

Attorney Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, Counsel to the Applicant, Gregory Raiff

Corey Colwell, MSC Engineering

Charles Hoyt, Charles Hoyt Designs

Mark Jacobs, Professional Wetland Soil Scientist

Michael Cuomo, RCCD, Certified NH Soil Scientist and NH Certified Wetland Scientist

Chair Buber then briefly explained the Board’s operating Rules and Procedures to those present.

Attorney Phoenix presented his case:

- The Raiff property consists of 28.7 acres with only 18,000-feet of buildable land after considering the 100-foot wetland setback.
- The house was built in 1999-2000 and other improvements have been approved and installed subsequent to the house being built, such as a pool, pool house, deck and patios at the time when the wetland setback was 50-feet.
- The wetland buffer requirement changed from 50-feet to 100-feet in 2003.
- A building permit was approved in 2001 to construct a barn behind the house that met the 50-foot setback, but was not built. He said if the barn they currently propose to build was built when the house was built they would not need a variance to the wetland setback requirement.
- The septic system built in 1999 is designed for a four bedroom house.

- Proposal includes interior modifications to the house, reducing it from a four bedroom to a three bedroom, an accessory barn and driveway connected to the main house by a colonnade.
- The proposed barn will house multiple vehicles (Mr. Raiff is a car collector) and storage. The first floor will have a small kitchen area designed primarily for pool-side service and a bedroom (4<sup>th</sup>) will be added to the second floor.
- The Raiffs intend to live in the new barn while the house is being renovated. The new living quarters in the barn will never be used outside the family.
- They situated the improvements to the lot that is the least destructive.
- They addressed the Rockingham County Conservation Commission's (RCCD) concerns.
- The second major variance request deals with the living quarters in the barn. The Ordinance allows accessory apartments and duplexes, but the proposal of the barn doesn't meet either definition. The ordinance doesn't allow two dwellings on one lot.

Mr. Hoyt presented his part of the case:

- He was hired by the Raiff family to renovate the existing house. One of the four bedrooms will be turned into a closet/storage space. Mr. Hoyt designed a post and beam barn per Mr. Raiff's request to be used as storage, storing vehicles and living quarters during renovations; a bedroom will be added. With the elimination of one bedroom in the house and an addition of one bedroom in the barn there will be a total of four bedrooms.

Mr. Fullerton questioned the gross living area of the entire barn. He calculated the first floor to be 2,300 square feet and the second floor, including the mezzanine, at 2,000 square-feet, totaling approximately 4,300 square feet. Mr. Hoyt said that sounded correct. He and the owner have had discussions on how to develop the basement level but have not come up with a final decision.

Mr. Fullerton mentioned his familiarity of the IRC Building Code and asked how they planned to address the lack of fire separation walls between the garage and living space which is required.

Mr. Hoyt said that they thought about putting in a sprinkler system, or use fire rated sheet rock where required, but they have not made final decisions on that.

Mr. Colwell presented his part of the case:

- The proposed building will be tied into the existing septic system which has a 600 gpd capacity with a four bedroom design.
- The septic system flow figures are based on the number of bedrooms, not kitchens and bathrooms.
- The flow is calculated for 150 gpd per bedroom.
- He went over the plans he submitted – Sheet S1 – existing conditions; Sheet S2 – proposed conditions, and Sheet S3 – blow up of proposed conditions. He also submitted a copy of the proposed drainage system.
- The lot consists of 28.7 acres with 175-feet of frontage.
- The property is 93% wooded and most of the back lot is wetland, North Brook flows into the Little River.
- 1.3% is covered with impervious area that includes the driveway and half of the house, the pool, patio and shed. 99% is pervious. The septic system, half of the house and water service is outside of the wetland buffer.

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- The property is 99% green – wooded or lawn. 1% of the property is represented with pavement or rooftops.
- Stormwater from Park Circle, including this site, receives adequate treatment prior to entering these wetlands.
- There are only 18,315 square-feet of buildable area on the lot. Mr. Colwell referred to Zoning Ordinance Article IV, Section 409.9.B.1 – if buildable area outside the wetland buffer is 16,000 square-feet or less the prior wetland buffer of 50-feet shall apply. He said that if the wetland were bigger on the property they would have less than 16,000 square feet of buildable upland area and would not require a variance.
- Propose to construct a two story barn and slight relocation of the driveway to include a “branch” driveway. The part of the driveway that crosses the buffer is the only encroachment of the wetland and will remain the same because they intend to have a driveway serving the house and a separate driveway serving the barn.
- The closest part of the barn will be 53-feet from the wetlands and the shed on the property is 10-feet from the wetlands. They also propose a colonnade connecting the new barn to the house and the impervious system that will help reduce stormwater flow into the wetlands.
- In Mr. Colwell’s opinion, the construction of the barn, colonnade and driveway will have no negative effect on the wetlands.
- A sophisticated drainage system will be constructed to infiltrate the stormwater into the ground causing less stormwater drainage into the wetlands than what exists today. The system will handle 5-inches of water runoff per hour.

Mr. Fullerton referred to the Zoning Map. He said the wetland conservation district extends up into the Park Circle cul-de-sac and it is not depicted on Mr. Colwell’s plans.

Mr. Colwell said that aerial photos are used to map the conservation district on the zoning map. He said that there is a section in the Ordinance that states on site investigations of soils supersedes those lines on the map. The 100-foot wetland buffer is included in the wetland conservation district.

Mr. Fullerton questioned why the Applicant did not request a variance from Article IV, Section 409.5 – Permitted uses in the Wetlands Conservation District.

Mr. Phoenix said he met with the Code Enforcement Officer many times and they requested relief from Section 409.9 at the direction of the Building Inspector. He said he doesn’t believe that the conservation district requires 100-feet on top of the required 100-foot wetland buffer requirement.

Mr. Colwell said that Gerry Lang from RCCD reviewed the drainage analysis and plans. MSC Engineering addressed all of his comments from the review letter and revised the plans. He read the summary of the letter from Mr. Lang to the Board dated September 23, 2014, “The designers have either incorporated my comments and recommendations into the revised documents or responded to them to my satisfaction”.

Mark Jacobs presented his portion of the presentation:

Mr. Jacobs is a Wetlands Scientist and Soil Scientist of record for the project and also a Certified Professional of Erosion and Sediment Control.

- The proposed project will minimize pollution because there will be a net decrease in lawn area, less pollution from pesticides and fertilizers.
- The permeable pavers will re-infiltrate stormwater runoff and help recharge the ground water supply and the augmentation of stream flow.
- The 100-year flood plain is in the heart of the property several hundred feet away from the buffer.
- There will be a decrease in “surface water” flow due to the pervious pavers.
- There will be some tree removal.
- The portion of the driveway going toward the garage is made of impervious asphalt.

Attorney Phoenix explained that he concentrated on Article IV., Section 409.9.B, which the Building Inspector also focused on because it deals with developed lots of record. The section specifically applies to the Applicant’s situation. The proposal is to build a structure within the 100-foot wetlands buffer zone and this is the section he needs relief from.

Attorney Phoenix submitted copies of prior approved building permits into the record. All improvements were made at the time when the wetland buffer requirement was 50-feet.

#### **Variance Test –**

##### **1. Granting this variance will not be contrary to the public interest.**

Contrary to public interest and spirit of the ordinance is considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 152 N.H. 102 (2007). The Board must determine whether granting this variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives”. “Mere conflict with the zoning ordinance is not enough”.

The proposal is defined in the ordinance as two houses on one lot, but it really is not the case, only one family will reside on the very large lot.

Neither the wetland buffer variance nor kitchen/bath/bedroom within the barn will alter the essential character of the locality. The wetland will be protected.

##### **2. Granting this variance the spirit of the ordinance is observed.**

##### **3. Granting this variance substantial justice is done.**

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Private property owners can use their property rights within reason and Zoning Ordinances make sure people are using their property reasonably. The Applicant believes the proposal is a reasonable way to use the property. There is no harm to the public. The wetlands may be better protected by the drainage system they plan to put in. There will be no change in municipal services. There is no benefit to the public that would outweigh the hardship to the applicant via denial, while denial results in a grave injustice to the Raiff family.

##### **4. Granting this variance the values of surrounding properties are not diminished.**

The wetland will not be harmed. The proposed lot will remain "family use"; the new improvements will not "crowd" the neighbors, only the relocated bedroom creates the need for relief. The area will be limited to family/visitor use so the variances will have no effect upon neighboring property values. The project will increase the value of the Raiff property which is likely to have the effect of maintaining or even increasing surrounding property values.

**5. By not granting this variance, literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.**

**a. Special conditions distinguish the property/project from others in the area.**

The lot is large but the available building area is very small due to the wetlands; nothing can be built on the lot without wetland buffer relief. The proposed barn is placed in the most optimum location on the lot considering existing wetlands and home.

The lot is a very large area; the buildable area is very small. The buildable area is 18,000 square-feet and when taking out all the required setbacks into consideration it leaves only 9,000 square-foot of buildable area.

**b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.**

The purpose of the wetland buffer is to protect the wetland. The proposed building will be 53-feet from the wetland at its closest point, compared to 10-feet for existing impervious surfaces; there is no basis for imposing the 100-feet of buffer.

**c. The proposed use is reasonable.**

Requiring the variance is reasonable. The wetland is protected and only the Raiff family will utilize the new kitchen, bath/bedroom.

Mr. Cuomo introduced himself and explained that he reviews projects for the Town of North Hampton dealing with wetlands and wetland buffers. Mr. Cuomo went over the report he submitted to the Board dated August 28, 2014:

- The applicants have done all they can to reduce the impacts on the wetlands given the project and he has no additional suggestions to reduce impacts.
- Preexisting, non conforming uses can be expanded with a certain percentage. The proposed is above and beyond that, but it is up to the Board to determine whether to grant the variances.
- He doesn't see a way to reduce the impacts without reducing the size of the proposal.
- A second kitchen that doesn't serve a separate dwelling doesn't require an increase to the septic system; if it were an accessory apartment an increase to the septic system would be required.
- He said it is a mistaken belief that humans can do a better job than nature in protecting the wetlands.
- RCCD doesn't consider lawns as appropriate wetland buffers. Lawns do not provide the same functions to protect the adjacent wetland that a naturally vegetated buffer would provide such

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as nutrient attenuation and habitat screening. Lawns are typically treated with fertilizers and pesticide which contribute to pollutant loads.

- RCCD agrees that roof runoff is relatively clean at the point of discharge, but clean roof runoff then flows across lawns or similar “dirty” surfaces and it is likely to pick up pollutants and carry them into the wetlands.

Mr. Pinette inquired about the impervious driveway.

Mr. Phoenix said that Mr. Raiff will take out the entire impervious driveway material and replace it with pervious material.

Mr. Lagassa asked about the letter to Mr. Ganotis relating to a violation to the wetlands, and asked what the violation was.

Mr. Jacobs said that 65,000 sq. ft. of wetlands was cleared of trees and stumped. NHDES ordered Mr. Raiff to restore the damages. It took 18 months to design a restoration plan that met the Conservation Commission and State for approval. They are required to monitor the site for 3 years and the Conservation Commission will be kept abreast of the developments.

Mr. Raiff said that he moved into the house in 2000 and built the barn and porch with approved building permits. He said that he hired a local man to clear trees which he did but the area was clear cut, stumped and re-graded to create a lawn and playground area in the wetlands. The then Building Inspector became aware of the wetlands violation and informed Mr. Raiff he was in violation and contacted NH DES; hence the restoration plan. He had to remove the lawn and pay a large mitigation fee, which he did.

Mr. Cuomo referred to #4 of his letter of August 28<sup>th</sup> that states the applicant proposes additional development in the buffer which will result in about 90% of the wetland buffer under their control being developed; he believes it is really more like 80%; he didn’t originally focus on the entire property.

Mr. Gordon asked if Eben Lewis from NH DES has been consulted on this project. Mr. Jacobs said he has been. Mr. Gordon pointed out that the Board has not heard any opposition from Eben Lewis pertaining to this proposal.

Mr. Buber opened the Public Hearing at 8:19 p.m.

**Tom Gillette, 2 Park Circle** – said he is a direct abutter to Mr. Raiff’s property. He said the area is beautiful and doesn’t want to see anything damage that environment. It was mentioned that if the project was done before 2003 they would not need the variance relief. He said that point is baseless; there were things land and business owners were able to do 40 years ago that would be considered outrages in 2014. The rationale used that they should be granted the variance because the existing structures are already in the wetlands buffer doesn’t make sense; two wrongs don’t make a right. There have been a lot of trees falling down over the years by their roots because the increased amount of moisture in the soil. They are afraid that granting the variance to the wetlands will exacerbate this problem. The proposal to the barn appears to be a self-sustaining additional living area. They propose to eliminate 1 bedroom from the house and questions what would prohibit Mr. Raiff or another home owner in reestablishing the bedroom in the house. The proposed structure will alter the characteristics

to the neighborhood. He wondered how long a project like this would take to construct. He believes that there is no hardship and a variance should not be granted.

**Kathy Gillette, 2 Park Circle** – said it is such a large structure being proposed, she asked what trees would be cut down.

Mr. Colwell said that under the wetland restoration plan the wooded area is increased by 5.6%, 70,000 sq. ft.

**George Davis, 2 Park Circle** – said that his driveway is very close to their property; he believes it to be 7-feet away. He voiced concern over the runoff gathering up in the wetland area of the lower part of 2 Park Circle. He mentioned the pavers are impervious but the only access is through the sand/grout area. He is concerned with snow removal from Mr. Raiff's driveway; he said there is no place to put it so it will be pushed onto his lot.

Mr. Colwell said the snow will have to be stored on either side of the driveway because there is a swale between the end of the driveway and the adjacent lot. Plowing the snow onto the adjacent property or into the swale would be an enforcement issue. He said that the gaps between the pavers are larger in impervious pavers and will be able to infiltrate the stormwater runoff.

**Lisa Wilson, 9 Runnymede Drive** – said she is an Alternate Member of the Zoning Board but was speaking as a resident. She said that the architects did a nice job on the design but it looks like two separate structures with a shared driveway. It would be two houses on one lot that is already a nonconforming lot and there is nothing in the ordinance that says that a guest house is just that, in perpetuity. She doesn't see how the Code Enforcement Officer could enforce it.

Mr. Buber said language could be added in the decision letter dealing with the guest quarters and the decision letters are recorded at the Registry of Deeds.

Mr. Colwell answered Mrs. Gillette's question and said that 35-feet of trees will be removed from the existing tree line. The distance from the driveway to 2 Park Circle is 18-feet.

Mr. Hoyt said that the barn project would take about a year to complete.

Chair Buber mentioned that when it is all done there will be three bedrooms with three children and two parents.

Mr. Phoenix said that they have to follow the rules; the kids will have to share a bedroom. He said that everyone deals with "what if" and if Mr. Raiff or a future owner wants to reestablish the 4<sup>th</sup> bedroom then they have to apply for a building permit and go through the process. He said Mr. Raiff is before the Board tonight because he is following the rules.

Mr. Phoenix said he misspoke earlier; the project is not benefiting the wetland, it is less intrusive. He said the square footage of the barn is designated for storage and for Mr. Raiff's car collection. He said he disagreed with Mr. Cuomo referring to Section 409.9.2.a.iii – "addition or extension shall not intrude further in the wetland buffer setback than the current principal heated structure".



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Mr. Fullerton referred to Supreme Court Case, Bacon v. Town of Enfield, 150 N.H. 468 (2004) and asked for Attorney Phoenix's perspective. The case is in regard of an appeal to house a shed on lake front property and the Supreme Court concluded that although the small shed may not affect the overall value of the lake as a natural resource, an a cumulative impact of many such projects might well be significant and could be inconsistent with the Spirit of the Ordinance. He asked what would be the cumulative effect if everyone was permitted to construct a 4,300 square foot building.

Mr. Phoenix said the Bacon case was a shore-front community. Every case should be viewed on their own merit. He said since the house was put there when the situation already existed of 50-feet they should be allowed to build the proposed barn because it would not further harm the wetland.

Mr. Phoenix said that they will replace the driveway with pervious material and they won't cut the trees beyond the edge of where they are building the driveway and they will add a restriction in the deed that the barn living area will be used for family and friends only and not further rented. He said the purpose of the wetland buffer is to protect the wetland and the applicant has done that.

Mr. Cuomo said that the increase of the wooded buffer is the direct result of the restoration that is required of DES because of a wetland violation. He clarified for the abutters that there is no tree cutting limitation to the property line or in the wetland buffer in the Town's Ordinances.

Mr. Gordon asked if they would be willing to stipulate that neither structure will be rented. Mr. Phoenix said that was unreasonable, because the owner has every right to rent out his house if he needs to.

**Mr. Fullerton moved and Mr. Gordon seconded the motion to close the Public Hearing and go into Board deliberation.**

**The vote was unanimous in favor of the motion (5-0).**

Chair Buber recessed the meeting at 9:09 p.m.

Chair Buber reconvened the meeting at 9:15 p.m.

Chair Buber suggested the Board act on the variance requests in the order that they were placed on the Agenda.

**Article IV, Section 409.9.B**

Mr. Fullerton said, when looking at the scale of this proposal, it's a large structure and if permitted will reduce the amount of wetland buffer. He finds some significance of Mr. Cuomo's professional perspective that if everyone were allowed to do this then the wetland buffer would be environmentally worthless. He said it's a matter of semantics whether it is a barn or carriage house; this is the construction of a second house on a single family lot. He still feels some significance of Supreme Court comments in the Bacon v. Town of Enfield case that the impact may not be that significant but many projects over time would have the accumulative effect and could be inconsistent with the Spirit of the Ordinance. That would be the ripple effect of having everyone put two houses on one lot.

Mr. Lagassa said that a down-scaled version, in his view, would be more acceptable. He said the colonnade looks beautiful in the picture, but is it necessary to be so big, could they not have a smaller barn or shorter colonnade.

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Mr. Gordon said that when the lot was bought and developed it was all conforming and subsequently the Town increased the wetland buffer 100%, which is a significant change after a significant purchase was made. According to the presentation made, the surrounding properties are not as impacted as Mr. Raiff's property. The area they are proposing to develop is not in its natural state, he doesn't think grass is a particularly good surface for permeability. Dr. Lord states in his letter dated 9/30/2014 that the RCCD is now satisfied with the drainage analysis and design. He reminded the Board that NH law does not permit the ZBA not to grant variances in the wetland buffer in all cases.

Mr. Fullerton said it is not about encroaching into the wetland buffer; it is the size of the structure.

Mr. Pinette said the design of the barn is well thought out and he is going to be using it to store cars from his car collection. He said he understands the amount of wetlands on the property, but it is a large lot that would be able to support two living structures on one lot; he doesn't see that it would be a huge impact.

Chair Buber addressed the five criteria of the variance test:

1. Granting this variance will not be contrary to the public interest. Would the variance unduly, and in a marked degree conflict with the zoning ordinances basic objective? Would the proposed use alter the essential character of the neighborhood, and would it threaten the public health, safety or welfare?

2. Granting this variance the spirit of the ordinance is observed.

Tests 1 and 2 have been treated by the Courts as one item. Chair Buber said that he is focusing on the encroachment into the 100-foot buffer. There has been a lot of design work done regarding drainage and a lot of back and forth between the Wetland Scientists and RCCD. Gerry Lang's concerns were addressed and satisfied by him. He doesn't believe the structure and encroachment into the wetlands would alter the character of the neighborhood too much, or threaten the public health safety and welfare. He went on a site walk of the property in June.

3. Granting this variance substantial justice is done.

Chair Buber doesn't think there is an injustice to the general public, but there could be a loss that is outweighed to the applicant.

4. Granting this variance the values of surrounding properties are not diminished.

Chair Buber said that he did not personally see how the proposal would diminish the property values. The Board did not receive professional testimony except for a statement made by Mr. Davis, an abutter to the property.

5. By not granting this variance, literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

Chair Buber said that he doesn't believe the land causes the hardship, but rather the size of the structure proposed so close to the wetlands. He said that because of all the work done to protect the wetlands, the drainage analysis and studies and pervious pavers; he is inclined to grant the variance to encroach into the 100-foot wetland buffer.

Mr. Lagassa said when balancing the interest of the owner versus harm to the general public; the harm seems to have been mitigated as stated in Dr. Lord's earlier email to the Board. He said he may be persuaded to vote in favor of this request.

**Mr. Pinette moved and Mr. Gordon seconded the motion to approve the variance from Article IV., Section 409.9.B, as requested by the Applicant with the following conditions:**

- 1. Removal of the existing impervious driveway and replacing it with pervious pavers.**
  - 2. The installation of a permanent barrier, left to the design of the applicant that would preclude the depositing of snow at the end of the driveway into the existing swale.**
- The vote passed in favor of the motion (4 in favor, 1 opposed and 0 abstentions). Mr. Fullerton voted against.**

Variance request #2 - Article IV, Sections 403 and 405, Table R-2 – to eliminate 1 of the bedrooms in the main home, to allow kitchen/bath/bedroom for family /visitor use only in new barn creating 2 dwellings on 1 lot where 1 dwelling is permitted.

Mr. Gordon said that because the Board granted relief for the intrusion into the wetland he has no problem with the construction of the guest/carriage house, but he would not want to see it rented out to a third party.

Mr. Pinette said he would be in favor of granting the variance if there were a condition that language be added to the deed that neither the primary residence nor the carriage/guest house could be rented out.

Mr. Lagassa said that he is distressed in allowing two homes on one lot when there is concern in the community in allowing duplexes in the R-2 zoning district.

Mr. Fullerton said he doesn't see any circumstances to justify the construction of a second residence on a single family lot in the R-2 zone. He referred to the Bacon v. Town of Enfield case and the ripple effect it would have on properties.

Chair Buber said it is a second dwelling on 18,000 sq. ft. of buildable area; it is an overload on the property. The two acre requirement was put in place so not to overburden property. He said if it didn't have a bedroom, kitchen and was half the size that is being proposed he would be more receptive to it.

He made the following comments related to the variance criteria:

- On a cumulative basis it could have the potential of effecting the public health, safety and welfare.
- A part of observing the spirit of the ordinance is to protect land from being overburdened and overloaded.
- There was no testimony on property values in the area.

Mr. Fullerton said that he doesn't feel the *hardship* criterion is being met to allow a second residence on the property. It is a self created hardship and contrary to the *Public Interest* because there is a small buildable area and it would be an overloading of the property by adding another residence. Mr. Cuomo

pointed out that this project will develop 80% of the wetland buffer. There is a considerable amount of benefits the wetlands provide and the *Spirit of the Ordinance* is to control that "mushroom" factor.

Mr. Gordon said it was his understanding that the Board allowed the variance for construction of the proposed structure; not the "use".

Chair Buber said, "No", "we didn't."

Mr. Pinette said, "Yes", "the variance was for the setback".

Chair Buber explained that the Board said it could penetrate the buffer, but not with what, or how big, or for what purpose.

Mr. Gordon said that that was not his understanding.

Chair Buber said that he tried to make it as clear as he could, "if the Board wants to revisit it...."

Mr. Fullerton said it is very clear in the variance application: "to permit a new barn".

Chair Buber said, "Yes", but it doesn't necessarily have to be this particular structure; it could be a barn of a different size, or without a residence or a living room."

Mr. Fullerton said that the Applicant's use of the term "barn" is consistent throughout the application. He said it was not fair that after the applicant has referred the new structure as a "barn" everywhere, that the Board can go back and say to the applicant that the proposed structure can only be a utilitarian barn and not what they proposed.

Mr. Lagassa asked if the denial of variance request #2 makes variance request #3 moot, and if acceptance of variance request #1 makes variance requests #2 and #3 moot?

Chair Buber, Mr. Fullerton and Mr. Lagassa agreed that all three variances requested were needed.

Mr. Gordon said that he was not sure the Applicant needed the third variance request.

Mr. Fullerton said that the Applicant was consistent in referring to their proposal as a barn and that's how he interpreted variance request #1, not as a utilitarian building.

Chair Buber said that he looked at the variance requests differently than what the Board did. He looked at the first variance request as a penetration into the 100' wetland buffer for a barn, not any particular barn, "a new barn". He looked at the first request in isolation, and then looked at the second request, requesting relief to allow a second dwelling in the new barn and he said he is not in favor of that request.

Mr. Fullerton said that was semantics, they refer to the structure as the new barn.

Chair Buber asked whether or not the Board wanted to go back and negate their earlier judgment.

Mr. Pinette moved and Mr. Gordon seconded the motion to grant the variance from Article IV., Sections 403 and 405, Table R-2 to remove one (1) bedroom from the house and constructing one (1) bedroom and kitchen in the new barn.

The vote was 2 in favor, 3 opposed and 0 abstentions. The motion fails.

Chair Buber thought that as a result of the vote it brings the third request from Article V., Section 501.2 to a moot position.

Mr. Fullerton disagreed and said he thought the Applicant needed all three variance requests.

**(3) Article V, Section 501.2 – To allow the new barn, colonnade, driveway and related features, which expands the existing nonconformity of structures located within the wetland buffer.**

Mr. Lagassa said that he would not have a problem granting this request, but would need more information on “related features”.

Mr. Fullerton said it must be features related to the new barn, colonnade and driveway that they put in their proposal.

Attorney Phoenix informed the Chair that although the Public Hearing has been closed he would answer the question regarding “related features” and any other questions of the Board.

Chair Buber said he would rather not allow it because it would constitute a reopening of the Hearing.

Attorney Phoenix said it is in his experience that the Board members are allowed to ask questions of what was intended with the application. He said that he would not object to reopening the Public Hearing.

Chair Buber did not allow it. He said it would be a reopening of the Hearing.

**Chair Buber moved and Mr. Fullerton seconded the motion to deny the variance request from Article V., Section 501.2 to allow the new barn, colonnade, driveway and related features, which expands the existing nonconformity of structures located within the wetland buffer. The primary reason is because there is no definition of “related features” and in this particular case because the second variance was denied that the third variance request is a “moot point”.**

**The vote passed in favor of the motion (3 in favor, 2 opposed and 0 abstentions). Mr. Gordon and Mr. Pinette voted against.**

Chair Buber reminded the Applicant of the 30-day appeal period.

**Mr. Lagassa moved and Mr. Pinette seconded the motion to adjourn the meeting at 10:30 p.m. The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,

Wendy V. Chase

Recording Secretary

Approved October 28, 2014