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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**

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

12

13 **Attendance:**

14

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

17

18 **Members absent:** None.

19

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

21

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

23

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

25 **Recording Secretary Report**

26

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

28

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

33

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

37

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

43

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.

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

47

48 **Minutes - September 23, 2014 – Mr. Pinette moved and Mr. Fullerton seconded the motion to**  
49 **approve the September 23, 2014 Meeting Minutes as written. The vote passed in favor of the motion**  
50 **(3-0-2). Mr. Lagassa and Mr. Gordon abstained.**

51

52 Mr. Fullerton read the case description into the record:

53

## 54 **Unfinished Business**

55

56 **1. Case #2014:06 – Applicants Gregory Raiff, Meghan Raiff Trusts, Matthew Raiff Trust, Nola Raiff**  
57 **Trust, 3 Park Circle, North Hampton, NH 03862. Owners: Same as above; Property location: 3**  
58 **Park Circle, North Hampton, NH 03862; M/L: 017-107-010; Zoning District: R-2 Residential**  
59 **Medium Density.** The Applicants requests the following Variances, (1) Article IV, Section 409.9B  
60 – to permit a new barn, colonnade, driveway and related features approximately 53-feet from  
61 wetland where approximately 10-feet exist and 100-feet is required, (2) Article IV, Sections 403  
62 and 405, Table R-2 – to eliminate 1 of the bedrooms in the main home, to allow  
63 kitchen/bath/bedroom for family /visitor use only in new barn creating 2 dwellings on 1 lot  
64 where 1 dwelling is permitted, and (3) Article V, Section 501.2 – To allow the new barn,  
65 colonnade, driveway and related features, which expands the existing nonconformity of  
66 structures located within the wetland buffer. This Case is continued from the September 11,  
67 2014 “Special Hearing” to properly notify Abutters that were initially omitted.

68

69 In attendance for this application:

70 Greg Raiff, Applicant/Owner

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

72 Corey Colwell, MSC Engineering

73 Charles Hoyt, Charles Hoyt Designs

74 Mark Jacobs, Professional Wetland Soil Scientist

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

76

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

78

79 Attorney Phoenix presented his case:

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

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- 90 • Proposal includes interior modifications to the house, reducing it from a four bedroom to a  
91 three bedroom, an accessory barn and driveway connected to the main house by a colonnade.  
92 • The proposed barn will house multiple vehicles (Mr. Raiff is a car collector) and storage. The first  
93 floor will have a small kitchen area designed primarily for pool-side service and a bedroom (4<sup>th</sup>)  
94 will be added to the second floor.  
95 • The Raiffs intend to live in the new barn while the house is being renovated. The new living  
96 quarters in the barn will never be used outside the family.  
97 • They situated the improvements to the lot that is the least destructive.  
98 • They addressed the Rockingham County Conservation Commission's (RCCD) concerns.  
99 • The second major variance request deals with the living quarters in the barn. The Ordinance  
100 allows accessory apartments and duplexes, but the proposal of the barn doesn't meet either  
101 definition. The ordinance doesn't allow two dwellings on one lot.  
102

103 Mr. Hoyt presented his part of the case:

- 104 • He was hired by the Raiff family to renovate the existing house. One of the four bedrooms will  
105 be turned into a closet/storage space. Mr. Hoyt designed a post and beam barn per Mr. Raiff's  
106 request to be used as storage, storing vehicles and living quarters during renovations; a  
107 bedroom will be added. With the elimination of one bedroom in the house and an addition of  
108 one bedroom in the barn there will be a total of four bedrooms.  
109

110 Mr. Fullerton questioned the gross living area of the entire barn. He calculated the first floor to be 2,300  
111 square feet and the second floor, including the mezzanine, at 2,000 square-feet, totaling approximately  
112 4,300 square feet. Mr. Hoyt said that sounded correct. He and the owner have had discussions on how  
113 to develop the basement level but have not come up with a final decision.  
114

115 Mr. Fullerton mentioned his familiarity of the IRC Building Code and asked how they planned to address  
116 the lack of fire separation walls between the garage and living space which is required.  
117

118 Mr. Hoyt said that they thought about putting in a sprinkler system, or use fire rated sheet rock where  
119 required, but they have not made final decisions on that.  
120

121 Mr. Colwell presented his part of the case:

- 122 • The proposed building will be tied into the existing septic system which has a 600 gpd capacity  
123 with a four bedroom design.  
124 • The septic system flow figures are based on the number of bedrooms, not kitchens and  
125 bathrooms.  
126 • The flow is calculated for 150 gpd per bedroom.  
127 • He went over the plans he submitted – Sheet S1 – existing conditions; Sheet S2 – proposed  
128 conditions, and Sheet S3 – blow up of proposed conditions. He also submitted a copy of the  
129 proposed drainage system.  
130 • The lot consists of 28.7 acres with 175-feet of frontage.  
131 • The property is 93% wooded and most of the back lot is wetland, North Brook flows into the  
132 Little River.  
133 • 1.3% is covered with impervious area that includes the driveway and half of the house, the pool,  
134 patio and shed. 99% is pervious. The septic system, half of the house and water service is  
135 outside of the wetland buffer.

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- 136 • The property is 99% green – wooded or lawn. 1% of the property is represented with pavement  
137 or rooftops.
- 138 • Stormwater from Park Circle, including this site, receives adequate treatment prior to entering  
139 these wetlands.
- 140 • There are only 18,315 square-feet of buildable area on the lot. Mr. Colwell referred to Zoning  
141 Ordinance Article IV, Section 409.9.B.1 – if buildable area outside the wetland buffer is 16,000  
142 square-feet or less the prior wetland buffer of 50-feet shall apply. He said that if the wetland  
143 were bigger on the property they would have less than 16,000 square feet of buildable upland  
144 area and would not require a variance.
- 145 • Propose to construct a two story barn and slight relocation of the driveway to include a  
146 “branch” driveway. The part of the driveway that crosses the buffer is the only encroachment of  
147 the wetland and will remain the same because they intend to have a driveway serving the house  
148 and a separate driveway serving the barn.
- 149 • The closest part of the barn will be 53-feet from the wetlands and the shed on the property is  
150 10-feet from the wetlands. They also propose a colonnade connecting the new barn to the  
151 house and the impervious system that will help reduce stormwater flow into the wetlands.
- 152 • In Mr. Colwell’s opinion, the construction of the barn, colonnade and driveway will have no  
153 negative effect on the wetlands.
- 154 • A sophisticated drainage system will be constructed to infiltrate the stormwater into the ground  
155 causing less stormwater drainage into the wetlands than what exists today. The system will  
156 handle 5-inches of water runoff per hour.

157  
158 Mr. Fullerton referred to the Zoning Map. He said the wetland conservation district extends up into the  
159 Park Circle cul-de-sac and it is not depicted on Mr. Colwell’s plans.

160  
161 Mr. Colwell said that aerial photos are used to map the conservation district on the zoning map. He said  
162 that there is a section in the Ordinance that states on site investigations of soils supersedes those lines  
163 on the map. The 100-foot wetland buffer is included in the wetland conservation district.

164  
165 Mr. Fullerton questioned why the Applicant did not request a variance from Article IV, Section 409.5 –  
166 Permitted uses in the Wetlands Conservation District.

167  
168 Mr. Phoenix said he met with the Code Enforcement Officer many times and they requested relief from  
169 Section 409.9 at the direction of the Building Inspector. He said he doesn’t believe that the conservation  
170 district requires 100-feet on top of the required 100-foot wetland buffer requirement.

171  
172 Mr. Colwell said that Gerry Lang from RCCD reviewed the drainage analysis and plans. MSC Engineering  
173 addressed all of his comments from the review letter and revised the plans. He read the summary of the  
174 letter from Mr. Lang to the Board dated September 23, 2014, “The designers have either incorporated  
175 my comments and recommendations into the revised documents or responded to them to my  
176 satisfaction”.

177  
178 Mark Jacobs presented his portion of the presentation:

179  
180 Mr. Jacobs is a Wetlands Scientist and Soil Scientist of record for the project and also a Certified  
181 Professional of Erosion and Sediment Control.

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

191  
192 Attorney Phoenix explained that he concentrated on Article IV., Section 409.9.B, which the Building  
193 Inspector also focused on because it deals with developed lots of record. The section specifically applies  
194 to the Applicant’s situation. The proposal is to build a structure within the 100-foot wetlands buffer zone  
195 and this is the section he needs relief from.

196  
197 Attorney Phoenix submitted copies of prior approved building permits into the record. All improvements  
198 were made at the time when the wetland buffer requirement was 50-feet.

199  
200 **Variance Test –**

201  
202 **1. Granting this variance will not be contrary to the public interest.**

203  
204 Contrary to public interest and spirit of the ordinance is considered together pursuant to Malachy Glen  
205 Associates, Inc. v. Town of Chichester, 152 N.H. 102 (2007). The Board must determine whether granting  
206 this variance “would unduly and to a marked degree conflict with the ordinance such that it violates the  
207 ordinance’s basic zoning objectives”. “Mere conflict with the zoning ordinance is not enough”.

208  
209  
210 The proposal is defined in the ordinance as two houses on one lot, but it really is not the case, only one  
211 family will reside on the very large lot.

212  
213 Neither the wetland buffer variance nor kitchen/bath/bedroom within the barn will alter the essential  
214 character of the locality. The wetland will be protected.

215  
216 **2. Granting this variance the spirit of the ordinance is observed.**

217  
218 **3. Granting this variance substantial justice is done.**

219  
220 If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is  
221 satisfied. Private property owners can use their property rights within reason and Zoning Ordinances  
222 make sure people are using their property reasonably. The Applicant believes the proposal is a  
223 reasonable way to use the property. There is no harm to the public. The wetlands may be better  
224 protected by the drainage system they plan to put in. There will be no change in municipal services.  
225 There is no benefit to the public that would outweigh the hardship to the applicant via denial, while  
226 denial results in a grave injustice to the Raiff family.

227  
228 **4. Granting this variance the values of surrounding properties are not diminished.**

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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-foot 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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275 as nutrient attenuation and habitat screening. Lawns are typically treated with fertilizers and  
276 pesticide which contribute to pollutant loads.

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

280

281 Mr. Pinette inquired about the impervious driveway.

282

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

285

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

288

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

293

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

300

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

304

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

308

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

310

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

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

324

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

327

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

330

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

336

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

341

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

347

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

350

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

353

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

355

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

358

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

363

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

368

369 Mr. Fullerton referred to Supreme Court Case, Bacon v. Town of Enfield, 150 N.H. 468 (2004) and asked  
370 for Attorney Phoenix's perspective. The case is in regard of an appeal to house a shed on lake front  
371 property and the Supreme Court concluded that although the small shed may not affect the overall  
372 value of the lake as a natural resource, an a cumulative impact of many such projects might well be  
373 significant and could be inconsistent with the Spirit of the Ordinance. He asked what would be the  
374 cumulative effect if everyone was permitted to construct a 4,300 square foot building.  
375

376 Mr. Phoenix said the Bacon case was a shore-front community. Every case should be viewed on their  
377 own merit. He said since the house was put there when the situation already existed of 50-feet they  
378 should be allowed to build the proposed barn because it would not further harm the wetland.  
379

380 Mr. Phoenix said that they will replace the driveway with pervious material and they won't cut the trees  
381 beyond the edge of where they are building the driveway and they will add a restriction in the deed that  
382 the barn living area will be used for family and friends only and not further rented. He said the purpose  
383 of the wetland buffer is to protect the wetland and the applicant has done that.  
384

385 Mr. Cuomo said that the increase of the wooded buffer is the direct result of the restoration that is  
386 required of DES because of a wetland violation. He clarified for the abutters that there is no tree cutting  
387 limitation to the property line or in the wetland buffer in the Town's Ordinances.  
388

389 Mr. Gordon asked if they would be willing to stipulate that neither structure will be rented. Mr. Phoenix  
390 said that was unreasonable, because the owner has every right to rent out his house if he needs to.  
391

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

394 **The vote was unanimous in favor of the motion (5-0).**  
395

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

397 Chair Buber reconvened the meeting at 9:15 p.m.  
398

399 Chair Buber suggested the Board act on the variance requests in the order that they were placed on the  
400 Agenda.  
401

402 **Article IV, Section 409.9.B**  
403

404 Mr. Fullerton said, when looking at the scale of this proposal, it's a large structure and if permitted will  
405 reduce the amount of wetland buffer. He finds some significance of Mr. Cuomo's professional  
406 perspective that if everyone were allowed to do this then the wetland buffer would be environmentally  
407 worthless. He said it's a matter of semantics whether it is a barn or carriage house; this is the  
408 construction of a second house on a single family lot. He still feels some significance of Supreme Court  
409 comments in the Bacon v. Town of Enfield case that the impact may not be that significant but many  
410 projects over time would have the accumulative effect and could be inconsistent with the Spirit of the  
411 Ordinance. That would be the ripple effect of having everyone put two houses on one lot.  
412

413 Mr. Lagassa said that a down-scaled version, in his view, would be more acceptable. He said the  
414 colonnade looks beautiful in the picture, but is it necessary to be so big, could they not have a smaller  
415 barn or shorter colonnade.  
416

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

424

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

426

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

431

432 Chair Buber addressed the five criteria of the variance test:

433

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

437

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

439

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

446

447 3. Granting this variance substantial justice is done.

448

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

451

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

453

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

457

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

460

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

465  
466 Mr. Lagassa said when balancing the interest of the owner versus harm to the general public; the harm  
467 seems to have been mitigated as stated in Dr. Lord's earlier email to the Board. He said he may be  
468 persuaded to vote in favor of this request.

469  
470 **Mr. Pinette moved and Mr. Gordon seconded the motion to approve the variance from Article IV.,**  
471 **Section 409.9.B, as requested by the Applicant with the following conditions:**

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

477  
478 Variance request #2 - Article IV, Sections 403 and 405, Table R-2 – to eliminate 1 of the bedrooms in the  
479 main home, to allow kitchen/bath/bedroom for family /visitor use only in new barn creating 2 dwellings  
480 on 1 lot where 1 dwelling is permitted.

481  
482 Mr. Gordon said that because the Board granted relief for the intrusion into the wetland he has no  
483 problem with the construction of the guest/carriage house, but he would not want to see it rented out  
484 to a third party.

485  
486 Mr. Pinette said he would be in favor of granting the variance if there were a condition that language be  
487 added to the deed that neither the primary residence nor the carriage/guest house could be rented out.  
488

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

491  
492 Mr. Fullerton said he doesn't see any circumstances to justify the construction of a second residence on  
493 a single family lot in the R-2 zone. He referred to the Bacon v. Town of Enfield case and the ripple effect  
494 it would have on properties.

495  
496 Chair Buber said it is a second dwelling on 18,000 sq. ft. of buildable area; it is an overload on the  
497 property. The two acre requirement was put in place so not to overburden property. He said if it didn't  
498 have a bedroom, kitchen and was half the size that is being proposed he would be more receptive to it.

499  
500 He made the following comments related to the variance criteria:

- 501
- 502     • On a cumulative basis it could have the potential of effecting the public health, safety and  
503     welfare.
  - 504
  - 505     • A part of observing the spirit of the ordinance is to protect land from being overburdened and  
506     overloaded.
  - 507
  - 508     • There was no testimony on property values in the area.

509  
510 Mr. Fullerton said that he doesn't feel the *hardship* criterion is being met to allow a second residence on  
511 the property. It is a self created hardship and contrary to the *Public Interest* because there is a small  
512 buildable area and it would be an overloading of the property by adding another residence. Mr. Cuomo

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

515  
516 Mr. Gordon said it was his understanding that the Board allowed the variance for construction of the  
517 proposed structure; not the “use”.

518  
519 Chair Buber said, “No”, “we didn’t.”

520  
521 Mr. Pinette said, “Yes”, “the variance was for the setback”.

522  
523 Chair Buber explained that the Board said it could penetrate the buffer, but not with what, or how big,  
524 or for what purpose.

525  
526 Mr. Gordon said that that was not his understanding.

527  
528 Chair Buber said that he tried to make it as clear as he could, “if the Board wants to revisit it...”

529  
530 Mr. Fullerton said it is very clear in the variance application: “to permit a new barn”.

531  
532 Chair Buber said, “Yes”, but it doesn’t necessarily have to be this particular structure; it could be a barn  
533 of a different size, or without a residence or a living room.”

534  
535 Mr. Fullerton said that the Applicant’s use of the term “barn” is consistent throughout the application.  
536 He said it was not fair that after the applicant has referred the new structure as a “barn” everywhere,  
537 that the Board can go back and say to the applicant that the proposed structure can only be a utilitarian  
538 barn and not what they proposed.

539  
540 Mr. Lagassa asked if the denial of variance request #2 makes variance request #3 moot, and if  
541 acceptance of variance request #1 makes variance requests #2 and #3 moot?

542  
543 Chair Buber, Mr. Fullerton and Mr. Lagassa agreed that all three variances requested were needed.

544  
545 Mr. Gordon said that he was not sure the Applicant needed the third variance request.

546  
547 Mr. Fullerton said that the Applicant was consistent in referring to their proposal as a barn and that’s  
548 how he interpreted variance request #1, not as a utilitarian building.

549  
550 Chair Buber said that he looked at the variance requests differently than what the Board did. He looked  
551 at the first variance request as a penetration into the 100’ wetland buffer for a barn, not any particular  
552 barn, “a new barn”. He looked at the first request in isolation, and then looked at the second request,  
553 requesting relief to allow a second dwelling in the new barn and he said he is not in favor of that  
554 request.

555  
556 Mr. Fullerton said that was semantics, they refer to the structure as the new barn.

557  
558 Chair Buber asked whether or not the Board wanted to go back and negate their earlier judgment.

559

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

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

564

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

567

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

569

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

572

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

575

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

578

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

581

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

583

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

587

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

589

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

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

597

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

599

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

602

603 Respectfully submitted,

604 Wendy V. Chase

605 Recording Secretary

606 Approved October 28, 2014