

**Town of Milford
Zoning Board of Adjustment Minutes
Oct. 6, 2011**

**Case #13-11
Carolyn Magri Halstead
Special Exception**

Present: Kevin Johnson, Chairman
Laura Horning
Fletch Seagroves
Steve Winder
Zach Tripp - Alternate

Absent: Steve Bonczar
Michael Unsworth - Alternate

Secretary: Peg Ouellette

Case #13-11 - The applicant, Carolyn Magri Halstead, owner of Map 52, Lot 18-1, 365 Melendy Rd and NH Rte. 13 South., in the Residence "R" district, is requesting a special exception from Article VI, Section 6.02.6:B to impact not more than 1,800SF of wetland buffer for the construction of a proposed driveway.
(Application tabled from 9/1/11)

Case #13-11 minutes were approved and signed on November 17, 2011

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; he then introduced the Board.

K. Johnson read the notice of hearing into the record as well as the list of abutters. This case was tabled from the August 4 Meeting to this meeting on September 1, 2011. Miriam Frederico was present as an abutter. Carolyn Halstead, the applicant, was present. K. Johnson stated that since there was a full Board present no waiver was needed.

The applicant stated that the Board should have the subdivision plan at this time and that in accordance with the Zoning Ordinance under Residence R classification, she can subdivide without a special exception from the ZBA. but needs access to the lot and the idea was that the existing woods road would be used for access to the new lot. The existing woods road does not meet standards for accessibility for fire trucks, so it needs to be upgraded. Different possibilities have been looked at. One possible location would come somewhere off Melendy Road; there would be problems with water going into it, the line of sight and there would be a much greater impact and disturbance for stormwater management. If she were to try to use the existing driveway as a shared driveway, there would be stormwater management issues due to elevation changes and the driveway would either go over the septic tank and leach field or in front of the house and along the side. She further stated that when she purchased the property nine years ago, the beavers had not been so active and that road was fine. Up until about a year ago the beavers were very active and she understands that was part of the reason for the encroachment into the wetland buffer. The Conservation Commission has done a site walk; they came out a couple of times, took pictures, and submitted a letter of recommendation to the ZBA containing certain stipulations. She doesn't see any problem with the stipulations as she doesn't salt the driveway, anyway; she doesn't expect to have to alter or even come near the buffer, and is fine with the required signage. She also stated there was a letter written by another party to the Board, but she doesn't think that party understood what she was trying to do. Beside the fact that the address (in the letter) is wrong – she lives at 365, not 265 - she is not trying to have a driveway go from Melendy Rd to Rt. 13. She is trying to have a driveway that goes to the new lot.

K. Johnson asked if the Board had any questions.

L. Horning asked how long the driveway is and how far is the applicant looking to penetrate the lot.

C. Halstead gave some examples for the house location and said the goal is for the driveway to get past the buffer zone and then figure it out.

L. Horning said it is very deep.

K. Johnson said, if you look at the subdivision plan it shows from Rt. 13 to the beginning of the buffer; that is the only piece of it that is shown. He pointed out the location where the approved septic would be, so that the location of the house could be anywhere that area and the driveway would not have to come from Rt. 13 across the buffer and then across the property to where they place the house. He pointed out an area on another map showing the wetland and said it would be most advantageous to place the house on the far side which would bring the drive from Rt. 13 across the wetland buffer across the property to the proposed house.

Z. Tripp asked whether there was that much water near the proposed driveway when she purchased the property?

C. Halstead responded not as far up as it is now because for a long time the beavers have been more active. On the conservation trail they built dams. Property owners in the area have lost a lot of property to beaver dams. That raised the water table on her property and on her back property the stone wall that you used to be able to walk on was actually under water. She couldn't do anything because the dam wasn't on her property and it took a long time for the town to take care of that.

K. Johnson asked if there were any other questions from the Board. There were none.

K. Johnson opened the meeting to public comment.

There were no comments.

K. Johnson closed the public portion of the meeting. He then read into the record two pieces of correspondence received concerning the case. A letter from concerned citizens that live in the area that are not direct abutters, Charles and Ann Read. (Charles and Ann Read were on the list of abutters read earlier. C. Halstead explained that they own the property across the street but do not live there). The letter was addressed to Kevin Johnson as Chairman of the Zoning Board. *We received a Notice of Public Hearing to be held on August 4, 2011. Carolyn M. Halstead is requesting permission to construct a driveway through wetlands to Rt. 13S from 265 Melendy Rd. We are not abutters, but have lived at 378 Melendy Rd. for more than 45 years and have an opinion. We are not in favor of granting a special exception as the applicant already has access to her property. Constructing a driveway will create flooding in the area, especially in the Spring, which can reach the State Highway and abutters' property. Also, filling in a wetland or buffer will affect wildlife. Please consider this application carefully in regards to the wetland and wildlife. Thank you. Respectfully, Charles and Ann Read.* The Board also received a memo from the Conservation Commission stating, *At its August 11, 2011 meeting, the Conservation Commission voted to recommend that the ZBA approve the Special Exception for the proposed buffer alterations, with stipulations, as required for the subject property development. The vote was 4 to 2 in favor. Stipulations were as follows: 1. No salting of the driveway; 2. No further alteration of wetlands or buffer; 3. Buffer to be identified by signage and the presence of buffer to be identified in the deed. The Conservation Commission's decision was predicated on the fact that it was demonstrated to their satisfaction that there was no practical alternative to the proposal in order for the applicant to have reasonable use of her property. Further, the proposed fill and buffer disturbances result in the least impact possible to provide the required access. Please let us know if you have any questions.*

K. Johnson asked the applicant to read her application into the record.

C. Halstead read the application:

Description of proposed use: Buffer impact of not more than 1,800SF to construct a driveway.

1. The proposed use shall be similar to those permitted in the district:

The driveway is necessary to access the lot and will be a gravel pervious surface.

2. The specific site is an appropriate location for the proposed use because:

The location of the proposed driveway has the least impact on the wetland buffer.

3. The use as developed will not adversely affect the adjacent area because:

The disturbance is only for a driveway which doesn't have adverse effects on the surrounding areas.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

This disturbance will allow us to make the driveway wider and the slope safer and all in compliance town and State driveway regulations.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

Proper erosion control measures will be in place such as silt fences and straw bales. The disturbed areas will be reseeded before winter to re-stabilize the area.

K. Johnson asked for any more questions from the Board.

F. Seagroves stated the applicant has spoken about gravel and asked her if she has plans for tar.

C. Halstead responded no.

K. Johnson stated that if this is a subdivision there would be nothing to prevent her from selling and the new owner hard-surfacing it.

L. Horning asked why the driveway can't be brought off the existing driveway.

C. Halstead said when you come in off the front, the ideal location would be to come straight back but the problem is a wide no tree area which is pretty much all leach field and septic. If you try to go around it, the elevation changes. It is really high and the disturbance to storm water management, the way the water would run, as she has been told, would be much worse.

L. Horning asked if ultimately she will have a property on each road.

C. Halstead responded yes.

L. Horning said there would be one on an industrial-facing area where there could be a prospective business and one on Melendy Road?

C. Halstead said that is correct.

K. Johnson asked for any further questions from the Board. There were none.

K. Johnson read the ordinances into the record. The first dealing with Special Exceptions: Town of Milford Zoning Ordinances Article VI Section 6.02.6: *A Special Exception Is Required For: A. Wetland (K. Johnson stated this paragraph does not apply to this case.). B. Buffer: A Special Exception from the Milford Zoning Board of Adjustment is required for any project not listed in 6.02.5 that is located within a wetland buffer and not in the right-of-way of a public road.*

K. Johnson stated that is the specific section of the ordinance that gives the Zoning Board permission to grant special exceptions for wetland encroachment. He stated, in addition, all special exceptions must meet five criteria as spelled out in the Milford Zoning Ordinances Section 10.02.1: *The Board of Adjustment may in appropriate cases and subject to appropriate conditions and safeguards as determined by the Board, grant permits for such special exceptions as allowed in the various zoning districts as set forth in Article II. The Board may refer all applications for special exceptions to the Planning Board for its review and recommendations prior to holding public hearing on the application. The Board of Adjustment, in acting on an application for a special exception shall take into consideration the following conditions: A. The proposed use shall be similar to those permitted in the district; B. The specific site is an appropriate location for the proposed use; C. The use as developed will not adversely affect the adjacent area; D. There will be no nuisance or serious hazard to vehicles or pedestrians; E. Adequate appropriate facilities will be provided for the proper operation of the proposed use.*

K. Johnson continued that in addition since this is in line with a wetland area, the criteria for evaluating projects in wetland areas are in Article VI, Section 6.02.7: *A. For all projects requiring a Special Exception the applicant shall demonstrate by plan or example that the following factors have been considered in their design: 1. The need for the proposed project; 2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers; 3. The impact on plants, fish and wildlife; 4. The impact on the quantity and/or quality of surface and ground water; 5. The potential to cause or increase flooding, erosion, or sedimentation; 5. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights; 7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.*

The Proposed Use Shall be Similar to Those in the Area.

F. Seagroves stated if this is access to a proposed house, he would say that is a similar use within the district.

This can actually be answered better by some of the other questions, but he would say yes.

S. Winder said it is similar to what is allowed in the district.

Z. Tripp said yes, there is plenty of residential housing on Rt. 13S that has driveway access.

L. Horning agreed.

K. Johnson agreed that the proposed use is similar to those permitted in the district.

The specific Site is an appropriate location for the proposed use.

Z. Tripp said he believes it is an appropriate location for a driveway and thinks they will address concerns about location in other questions.

L. Horning said, as cited by the Conservation Commission, that the applicant referred to in testimony, the Conservation Committee did a site walk and ascertained it to be an appropriate site and as can be seen from the topography which was also explained by the applicant, giving consideration to the topography, the way the wetland is constructed, and the obstacles she had to overcome to find a place for this driveway, she would say yes.

S. Winder agreed that the driveway is in the best location possible.

F. Seagroves said, looking at the area itself, it is the best place to put this in. There is already a road there; the applicant is just asking to upgrade the road to meet town and State requirements. Coming up her driveway would go across the septic system and you can't do that. He would say this is the only location she could use.

K. Johnson said on this specific question he is going to say that under certain conditions this site would be appropriate for the proposed use. He expressed concern, which he will address as they go through criteria, is whether it is the most reasonable one. If the Board decides the proposed use is a reasonable one, then this specific site would be appropriate for the proposed use.

The use as developed will not adversely affect the adjacent area.

S. Wilder said it has the potential to affect the surrounding area because we don't know what the potential impact is, whether it be additional flooding or impact on wildlife.

F. Seagroves said he kind of agrees with S. Wilder's statement, but he is going on what the Conservation Commission said. It looks to him that if there is any runoff the affected buffer is right against a swamp area and he thinks that is the only area that it would affect, so he doesn't see where there would be any adverse affect to the adjacent area.

Z. Tripp stated that two potential affects would be flooding or degradation of the wetland area. The Conservation Commission has looked and made recommendations to minimize the impact. With regard to flooding, the portion of the buffer zone that the driveway is impeding, he would not think that reduction in area would be enough to raise the level of that entire swamp area.

L. Horning said she would agree with S. Wilder. She believes that the use has propensity to affect the surrounding area. However, like F. Seagroves and Z. Tripp, she agrees that the Conservation Commission weighed all of these things very carefully and she places confidence in their decision-making. According to the applicant they walked the lot and made recommendations. She is weighing her decision based on the recommendations of the Conservation Commission but she would make further recommendations to the Board, i.e. not allowing paving of the driveway.

K. Johnson agreed with S. Wilder. He can see how this use as developed would adversely affect the adjacent area. Referring back to the Conservation Commission, he brought out two points. First, it was not a unanimous vote; it was a 4 to 2 vote in favor and that was based on a series of stipulations. Also, he re-read from their letter: *The Conservation Commission's decision was predicated on the fact that it was demonstrated to their satisfaction that there was no practical alternative to the proposal in order that the applicant have reasonable use of her property.* K. Johnson stated that reasonable use of a property normally comes under variance requests and it deals with any reasonable use. In this case, the applicant does currently have a reasonable use of her property. She currently has a house existing on it. What she is requesting is to divide that property, so the Board needs to consider not just the affect of granting a special exception to impact the buffers, but what the total impact of subdividing the property would have in that entire wetland area if that additional property as subdivided with a driveway is put in place, and the cumulative effect of that property on the wetlands. He would say in this case the applicant does not meet the third criteria of the special exception because this could in all probability have adverse impact to the adjacent area.

There will be no nuisance or serious hazard to vehicles or pedestrians.

L. Horning said if there were to be flooding, with the contribution of the driveway raising the water table further she cannot say there would be no nuisance or serious hazard for pedestrians. She doesn't see that the Conservation Commission did any kind of flood analysis, because it was not documented in any of the paperwork the Board received. It is a small driveway and she can only place her confidence in that it has been demonstrated to the Conservation Commission's satisfaction that there is no practical alternative. If the Conservation Commission did not see there would be any flooding or hazard, then she believes there would be no serious nuisance or hazard to vehicles or pedestrians.

Z. Tripp said he doesn't believe there is any nuisance or serious hazard to vehicles or pedestrians. There is not much pedestrian traffic on Rt. 13 and no evidence that it would raise the water level enough to flood Rt. 13 and cause serious hazard to vehicles.

F. Seagroves said using the road, without upgrading, would be a possible hazard to vehicles if they couldn't maintain it. Looking at the road from Rt. 13, the water goes to the left into the pond and it is going to come back to the road. He thinks the water is already flowing that way, so they'd be in the same boat.

S. Winder said he's not sure there would be any easy way to figure out if this would be a hazard. However, because of the driveway and potential of pushing the water, there is that possibility it would impact Rt. 13.

K. Johnson said he agrees with that argument. He doesn't feel there will be hazard or nuisance to pedestrians. That is a very highly-trafficked route that has very little pedestrian traffic, but he has concerns regarding vehicles. The required condition of the Conservation Commission that there be no salting of the driveway could lead to dangerous icing conditions in winter if the wetlands overflowed the drive or, based on the nature of where the protections for the wetlands are placed, it could drive water back onto Rt. 13 which could cause additional maintenance. So, he is not sure whether there would or would not be hazards to vehicles from the implementation of the special exception.

Adequate appropriate facilities will be provided for the proper operation of the proposed use.

Z. Tripp said yes. The applicant testified to the need to satisfy State requirement for coming off Rt. 13.

F. Seagroves agreed. He said before you can get a permit to come onto the highway the State will investigate it and they are going to look at the water coming down and whether it will cause any problems. He feels confident between the State giving permission and the Conservation Commission, they have looked at it fairly well.

S. Winder stated he's not sure what facilities a driveway needs.

K. Johnson said the term "facilities" is in every special exception and can cover many different things. The facility in this application is that the plans for the driveway are appropriate for proper operation of it.

L. Horning suggested attaching a condition to the approval, that they do not allow paving or any further alterations of the driveway, once it is in place. She restated her confidence in other commissions and boards that will be reviewing the construction of the driveway, but would request that the Board make the stipulation that this never be permitted to be any kind of impervious surface.

K. Johnson said from the design submitted by the consultants they show that the proposed driveway location meets or exceeds the safe sight distance from the NH Dept. of Transportation and so forth. So, as designed, the driveway would be appropriate to that area.

K. Johnson said the Board also needs to consider the seven criteria in Section 6.02.7: Criteria For Evaluation of Wetlands Impact.

The need for the proposed project.

S. Winder said the applicant has demonstrated a need. But the question is whether she had addressed every one of these items.

F. Seagroves said she wants to subdivide the property which she has a right to do. If she does subdivide the need for the other road is there.

L. Horning agreed. She has the right to do what she has proposed with her lot and she has demonstrated a need for this project.

Z. Tripp agreed.

K. Johnson said, predicated on the other criteria, that if the Board looks just at whether the subdivision itself meets the other criteria then this proposed project would be needed.

The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers.

S. Winder said she has a letter from the Conservation Commission saying it is the least impact.

L. Horning agreed, referring to the Conservation Commission letter that it is the least impact to the wetland and the buffer.

Z. Tripp said yes, the plan as proposed is the alternative with the least impact to the wetlands, surface waters and associated buffers. His question is if there are any alternatives coming off Melendy Road. Without getting into setback issues, is this a blind driveway? The Board should also consider the alternative of extending the current driveway, which is impractical due to the topography.

F. Seagroves agrees. He thinks the proposal has the least impact on the wetlands.

K. Johnson said he disagrees on this particular criteria. It is not the proposal that has the least impact on wetlands, it is the one that has the least economic impact to the applicant. It is the most convenient way to access that property, not necessarily the one with the least impact on wetlands.

The impact on plants, fish and wildlife.

F. Seagroves said he doesn't see any impact on plants, fish or wildlife. If anything, it will make it a little bit more of a swampland.

S. Winder said he feels there is going to be impact to plants, fish and wildlife. He doesn't know if the Conservation Commission addressed that; it is not in their letter.

Z. Tripp agreed with S. Winder; he doesn't know if there will be an impact on plants, fish or wildlife. It does look like the least impact to the buffer but there will be some impact to the wetland. Some area will be displaced and he would imagine that percentage of the size might have impact on plants, fish or wildlife. But, per 6.02.7A is that "*the applicant shall demonstrate by plan or example that the following factors have been constructed in their design.*" He doesn't see any evidence that impact on plants, fish and wildlife has been minimized. The Conservation Commission letter does not address that, either.

L. Horning agreed. She said that, as others pointed out, there is no way for the Board to know what the impact on fish and wildlife will be as there has not been any kind of study or consideration. It wasn't addressed by the applicant or in the Conservation Commission's letter. She is of the same opinion, any time you move water and earth you are going to impact any living thing that is in or around there. Impact on plants, fish and wildlife has not been demonstrated to her by the applicant in the application.

K. Johnson agreed with the rest of the Board. He has seen nowhere in the application or the letter from the Conservation Commission that the topic of the impact on plants, fish and wildlife has been addressed. The consultants' plan refers to erosion control but nothing regarding the flora and fauna.

The impact on the quantity and/or quality of surface and ground water.

F. Seagroves said quantity of water would probably be close to what it is now before they repair the road. It will not be a hard surface where water would completely run in one particular area. They are talking about putting gravel in there. It is almost like a buffer itself. He doesn't see any big change in quality of the groundwater.

Z. Tripp said he thinks this has been addressed with regard to the quantity. He's not sure the impact to the wetland would increase the quantity of surface water. As alluded to in the previous question, the plan did address erosion control. With regard to quality of surface water, if we ask stipulations that the applicant follow the guidelines of the Conservation Commission of no salting of the driveway and L. Horning's recommendation of no hard surfaces, he believes the quality of surface water will be maintained.

L. Horning disagreed. She understands the engineering company addressed erosion but no one has addressed the quality of the surface water. There is no way of telling until they have done some kind of study, address it with some kind of runoff study. As in question 3, the impact of disturbing plants, fish and wildlife will have an impact on the quality of the surface water.

S. Winder said there will be an impact on quantity but he is not sure if it will be negative or positive. On quality, there will be impact especially if it stays gravel, over time runoff from vehicles will potentially impact that area.

K. Johnson said he doesn't think the impact to the quantity of water would be, with a gravel surface as proposed would allow percolation. He is concerned with the quality affected by the runoff of water from the driveway. Particularly in looking at the site plan, if any development was placed in what would appear to be a fairly extensive area, it would require a fairly extensive drive which would give a fairly extensive area for runoff from vehicles. While the Board can say there is no salting the driveway, the highways in winter are chemically treated and any vehicles coming into the driveway would draw some of that in, and since the wetland is very close to the entrance to the driveway that would be the area most affected by any chemicals brought in on vehicles. So he would have concerns of the quality affect to the surface water.

The potential to cause or increase flooding, erosion, or sedimentation.

S. Winder stated he believed there is a possibility of increased flooding based on the proposed road, and you never know what is going to happen with the amount of rain and runoff, and during icing seasons. He doesn't know about the erosion, but with sedimentation there will be an impact, especially if it is never hard-coated there is going to be runoff from sediment.

F. Seagroves stated that in the notes it appears the erosion is being taken care of somewhat by putting grass down, but it is hard to say. After the last rain storm, places that we never thought would erode, were eroded. He thinks the is going to do everything possible to stop it.

K. Johnson stated that he feels that in the Board's considerations they need to consider what they feel is a normal year . We get hurricane-level rains once every 70 years or so. With a 50-year or 100-year storm, he doesn't believe it would be effective to consider those in making a decision. They want to look at the average season in considering flooding, erosion, etc.

Z Tripp stated that in an average season, the design of record shows measures in place for controlling erosion and he thinks on average that will be adequate. He doesn't believe the area being disturbed by the driveway is enough to increase flooding in an average season.

L. Horning said she doesn't see that the Conservation Commission nor the engineering company addressed any issues regarding flooding, so she will not speak to that. She will go based entirely on the Conservation Commission's, as well as DOT's recommendation, in making design recommendations for the driveway. Based on those facts, she feels the potential of causing flooding and erosion of sedimentation is probably minimal at best, based on their recommendation and what she can see. She cannot speak to the flooding because that hasn't been addressed by the nor DOT nor the Conservation Commission.

K. Johnson agreed with regard to erosion and sedimentation, both of those were addressed in the Fieldstone design. His concern would be flooding. The only concern of DOT was safety of the entrance to the driveway and they only have the split vote of the Conservation Commission to determine their concerns on the flooding. Looking at the nature of the disturbance to the wetland it would appear that could cause a barrier to the flow of water on that property and there is the possibility that it could increase flooding at some time and the driveway placement versus the wetlands versus the topography of that area, that particular disturbance could easily force water in another direction.

K. Johnson read Criteria #6: The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights.

F. Seagroves stated that the abutter, which he believes is the Town, owns the swampland. He doesn't see where they would make any changes. One other issue he would raise is that a lot depends on how much the road is raised, how high it is. He asked if there is information on that.

After consulting the plans and discussion, it was determined that It appears it will be raised within 4 and 6 feet above the existing contour. K. Johnson said the length of the disturbance goes across several lines and it appears that for the most part it would be four feet and in a couple of placed it would be six feet.

F. Seagroves said he doesn't see any effect there.

S. Winder stated he believes that if any abutters have permission to disturb the wetland that it would have an impact. He's not saying the Town of Milford would do anything to cause that or any of the other abutters but he believes there is potential that could happen.

Z. Tripp stated there is little in the evidence to go by, so he could imagine in an average season the owners of adjacent lots all had driveways that impacted the buffer and actual wetland the same amount as the , even though the special exception is just for the buffer, it does impact the wetland itself; so if all of those four lots had the same amount of impact he would say that in an average season it could add up to a cumulative impact.

L. Horning agreed and requested the Chair to allow her to read into the record Section 6.02.7 Criteria B. She said based on some of the decisions she has cited here in reviewing the case, it states in the zoning ordinance that "the Town of Milford shall place emphasis in preserving peatlands and marshes. This priority shall be based upon the rarity of those environments and the difficulty in restoration of the value and function of those

environments.” In weighing that and considering the impact, as Z. Tripp just stated with the several other abutters, if they were all to make what she is stating in her value a minimal impact, as Z. Tripp stated it definitely has the propensity to be cumulative. So she has to say that cumulative impact would result, would be a negative result. The Board must take these things into consideration as pointed out for them in the zoning ordinance.

K. Johnson read the criteria again. “The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex, and/or buffer were also permitted alterations to the wetland and buffer proportional to the extent of their property rights.” He stated this doesn’t just mean putting in a driveway. The reason that the wetland buffer is being impacted in this particular case is irrelevant. The Board needs to consider the proportional impact and based on the ’s property and the proportion of the wetland that she would impact, if that were applied to all the abutters of that wetland, that would result in a serious impact to this particular wetland area.

K. Johnson read Criteria #7: The impact of the proposed project on the values and functions of the total wetland or wetland complex. He stated that basically it is a summation of the previous criteria and their affect.

Z. Tripp being a summation of the previous criteria he would say there would be an impact, based on his response to question # 6.

L. Horning agreed, based on her response to question 3 and 4, partially 5 and the fact that neither the Conservation Commission nor the addressed the flooding issue, #6 and #7.

S. Winder agreed there is an impact on a negative basis to the value and functions of the wetland. He doesn’t know how significant because it was not addressed.

F. Seagroves stated this is just a small portion being impacted in the whole area of the wetland and he doesn’t think it will be that great an impact and he is going back to the letter from the Conservation Commission.

K. Johnson asked if there was any additional discussion.

L. Horning said she wanted to reiterate for the viewers and those in the audience and read into the record Section 6.02.7, “The Town of Milford shall place emphasis in preserving peatlands and marshes. The priority shall be based upon the rarity of those environments and the difficulty in restoration of the value and function of those environments.”

K. Johnson called for a vote. “After reviewing the petition and after hearing all of the evidence and taking into the consideration the personal knowledge of the property in question this Board of Adjustment member has determined the following findings of fact:

Is the exception allowed by the ordinance?

F. Seagroves – yes; S. Winder – yes; L. Horning – yes; Z. Tripp – yes; K. Johnson – yes.

Are the conditions present under which the exception may be granted? He stated that is taking into consideration the five criteria for the special exception and the seven criteria for the wetlands impact.

Z. Tripp – based on 10.02.02 C he would have to say no to C based on his response to question 6, so no.

L. Horning – no, the specified conditions are not present under the special exception may be granted.

S. Winder – no; F. Seagroves – yes; K. Johnson – no.

K. Johnson asked for a motion to reject the application in Case 13-11.

Z. Tripp made the motion to reject Case 13-11.

L. Horning seconded the motion.

K. Johnson asked for those in favor of disapproving this application.

Z. Tripp – yes; L. Horning – yes; F. Seagroves – no; S. Winder – yes; K. Johnson – yes.

The application was disapproved by a 4 to 1 vote.

K. Johnson informed the of the thirty-day appeal period.

The asked if she can make a comment. The Chair said yes. The said one neighbor that hasn’t been considered are the beavers who will do much more damage than the road will do. The Chair stated that the only response to that is that the beavers ARE the wetland. The responded, “to a point.”