

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

**Case # 15-11  
Shawn Morin  
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 #15-11 - The applicant, Shawn Morin, owner of Map 40, Lot 34, 15 Boulder Dr, 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; to maintain existing fill and a recently constructed shed.

**Case #15-11 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 and read the abutters list. Shawn Morin, the applicant, was present. James Starke of 555 Mason Road was present.

K. Johnson asked the applicant to present his case.

S. Morin went through a slide show presentation, copies of which were given to each Board member. He showed the plan that Dana McAllister used to reference where the shed would be built. The red box on the plan identified the shed and the green box identified the filled area which went in to level the ground for the shed.

K. Johnson pointed out that the plan showed the garage, but not the house and asked if this was just a section of the entire plot plan..

S. Morin responded that is correct and the reason they used it was to reference the PSNH pole on Boulder Drive.

S. Morin then showed photos of the shed: 1. From Boulder Dr. looking at the shed, the house being to the right at the other side of the fence; 2. A side view showing the house which was constructed about 1996 (he stated he purchased the home in 2008.) The house, at that time, was constructed well within the buffer zone but the ordinance was different. The house, the deck and the area behind the deck are all fill, up to the brook that runs to the left side of what is in the picture; 3. Another view of the property (from a longer distance) that shows the existing well head, which is also within the 50 foot buffer and the swale and plunge pool that was discussed during the walk-through and the subsequent meeting with the Milford Conservation Commission; 4. A view directly behind the shed going down to the brook. The water can be seen at the bottom of the hill; 5. The view from the neighbor's house on the opposite side of the brook looking up the hill. This view shows that there is quite a bit of erosion there already, the grade is very steep and it was all like that when he bought the property.

K. Johnson asked what the two poles denote.

S. Morin said he met with, Fred Elkind of the Conservation Commission on site, who explained that this was within the 50' buffer, so he had the contractor who did the fill work measure it to demonstrate whether he was inside the buffer and they confirm that the fill is inside the buffer, as is a foot or so of the shed. He then displayed the proposed plan saying it was to create a 2'by 2' deep swale filled with washed – washed because of concern with silt getting into the brook- washed crushed stone along the top of the hill to divert it into the plunge pool. The plunge pool would catch the water coming off the top of the hill and other parts of the property. this was a viable option, based on some publications and conversations he had with the UNH Cooperative Extension.

L. Horning asked if that was submitted to and reviewed by the Conservation Commission.

S. Morin replied yes.

L. Horning asked if the Conservation Commission was familiar with the plunge pool option.

S. Morin said yes they were with Fred being the most familiar

S. Morin referenced the photo of the house and shed (Photo #3 above).

K. Johnson said that photos can sometimes be deceptive, but pointing to the photo, he said it seems clear there is a slope from the shed down into the area in the foreground, and that the foreground area is vertically lower. Is that correct?

S. Morin said that is correct. You can see the drop from the retaining wall near the existing well head. It is a bit higher there. It was before the construction and excavation was done. It was a gradual slope but in order to level the area for the shed it was built up some.

K. Johnson asked if the fill had been sealed with any binders or such?

S. Morin said no.

K. Johnson asked if it is packed crushed stone.

S. Morn said yes. It hired a company to do the work and was done professionally with the right materials.

S. Morin continued that the purpose of the plunge pool is to reduce the flow and velocity of the water when it is moving in a particular direction so as not to erode the land it is going into and also allows it to filter into the ground without causing disturbance or erosion.

K. Johnson stated it would be similar to what we would call a catch-basin and the major difference between a plunge pool and a catch basin is that typically catch basins have grass or some type of herbal material in the bottom whereas the plunge pool has some type of rock.

S. Morin said yes.

L. Horning said that it is to avert any erosion or fast running water and to create some kind of filtration that might be running at a fast rate into the ground.

S. Morin said that is correct. So the height of the elevation from the top to the plunge pool would be 6" or 7" in elevation and the water caught in that swale would be rain water that falls behind the shed that may flow to where the brook is at the bottom of that hill. He thinks there will be minimal water caught there, but it is a precaution that seemed reasonable to the Milford Conservation Commission, and they did provide a letter. In addition to the swale and the plunge pool there is already some natural vegetation that has grown in, which can be seen in the photo, but he will also plant some bank mix which is recommended by Ron Christy at UNH Coop. Based on the time of year and the short growing season, winter rye will grow in temperatures to 30 degrees.

L. Horning stated this addressed one of her concerns about the vegetation and it will also help prevent anything that is not caught off the roof of the shed in a heavy downpour, inadvertently going over the bank.

S. Morin said we have had some heavy rains recently and he has been monitoring whether there has been any erosion and although there has been some, he expected there would have been more. Regarding impact to the buffer, there is no fill being added; the swale would remove some of the gravel that is there and replace it with the washed crushed stone. The same applies to the plunge pool – they are excavating material and replacing it with probably slightly less. The swale and plunge pool capture storm water runoff from the swale and other parts of the property. The total cost of the work would be \$1,050; \$1,000 for the swale and plunge pool material and labor and the mix is priced at \$50 but he would do that work himself. There were other options considered but they were more costly and not considered as viable.

Z. Tripp asked where the shed is relative to the brook and if the lot slopes down toward Wolfer Rd

S. Morin pointed out the shed on the plan.

K. Johnson stated, after a brief discussion, that the aerial photo was taken in 2007, prior to the construction of the shed, which is why the shed is not shown in the photo.

Z. Tripp asked if the estimate on the building permit was accurate at the time the work was done.

S. Morin said it was a little lower – around \$4,000.

Z. Tripp asked if there was an option to move the shed out of the buffer and how would that cost be compared to the \$1,000 for the proposed plan?

S. Morin responded that the shed is sitting on blocks, so it wouldn't be that difficult to move. One of the reasons it is in that location is that when he spoke to the Building Inspector Dana McAllister, he was informed that it had to be 30 feet from the road, so it sits about 36 feet from the road. When he filled out the building permit application, there was no discussion and he wasn't aware that there was a buffer. The only time it was mentioned and he heard that there was a problem was when the final inspection was done by the building inspector.

K. Johnson read the letter from Dana McAllister to the Board: "Members of the Board, On July 1, 2011 Mr. Shawn Morin of 15 Boulder Drive applied for a building permit to construct a 14' x 10' shed on his property, as part of the permit review we request the property owner provide a plan showing the proposed location of the structure. Mr. Morin noted the proposed location on a copy of the septic design originally prepared by Meridian Land Services on March 21, 1995. This was allowed because a certified plot plan is not required for new sheds, only that the applicant provides a plan that shows that structure is not located within the property setbacks. Since the submitted plan showed the proposed shed met the setback requirements, the building permit was

approved on July 12, 2011. Since the buffer was not defined any of the plans contained in the property file, Mr. Morin could not have been aware of it, or would his building permit have been denied.”

L. Horning asked the applicant if he had any plans of tarring the surface or with the Board placing a condition of approval that he could never tar it.

S. Morin responded no.

K. Johnson opened the meeting for public comment.

J. Starke said he is the abutter to the south of the applicant’s property. There has been some erosion and resulting sedimentation on the property since Sid Goodrich built back in the late 1980’s and Mr. Morin has been the first owner to actually address the issue of runoff. While he’s not a soil scientist, the amount of sedimentation coming down the slope has been vastly reduced and he thinks the boulders along the edge have stabilized the slope. Some of the pictures the applicant had are a little old, but there is now a lot more vegetation there, so it really has stabilized. He feels that to deny this would have an adverse impact on the applicant’s property and his property.

K. Johnson asked if anyone else wished to speak on this case; there were no other comments and the public portion of the meeting was closed.

K. Johnson read the memo received from the Conservation Commission dated Sept. 12, 2011 into the record. *“At its September 8, 2011 meeting, the Conservation Commission voted unanimously to recommend that the ZBA approve the Special Exception for the proposed buffer alterations as requested by Mr. Shawn Morin, owner. Mr. Morin presented a plan and maintenance program to the Conservation Commission which included the construction of a rock-lined swale and energy dissipating “plunge” pool. The swale will intercept drainage that would threaten the steep slope to the adjacent wetland. Therefore, the Conservation Commission requests that the Special Exception is conditioned upon implementation of the Option One plan as presented by Mr. Morin to the Conservation Commission at its meeting along with the associated management plan. Please let us know if you have any questions.”*

K. Johnson stated he would assume that based on the applicant’s discussion with the Conservation Commission, the plan presented to the ZBA was the Commission’s Option One plan, as well as may be inferred from the material in the packet.

S. Morin responded that is correct.

K. Johnson asked if there were additional questions from Board members. There were none.

Mr. Morin was requested to read his application into the record.

**Description of proposed use:** Maintain fill and shed within the wetland buffer.

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

The use of a shed is similar to other home owners in the area. The existing home & deck was constructed prior to jurisdictional changes dis-allowing fill in the buffer.

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

Fill as proposed will help stabilize the slope and help avoid silt from entering the wetland.

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

The proposed swale, plunge pool and bank mix seeding will help capture any potential silt from entering the wetland buffer. Use is consistent with others in the district.

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

The fill in question is not accessible to vehicles or pedestrians.

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

Building and maintaining the proposed swale and plunge pool will help safeguard the area Where the fill and shed are located.

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: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; 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; 7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.*

S. Morin asked if a buffer is considered encroaching on the wetlands?

K. Johnson explained that Section 6.02.7 treats encroachment on either the wetland or the buffer using the same criteria.

K. Johnson began the consideration of the five criteria for the special exception.

**1. Is this similar to uses permitted in the district?**

F. Seagroves said yes.

S. Winder said yes.

Z. Tripp said yes.

L. Horning said yes. It's a shed in a residential area.

K. Johnson said sheds are permitted in residential areas, so it is absolutely permitted in the district.

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

F. Seagroves said yes.

S. Winder said he doesn't see any other way to use it feasibly, so yes.

Z. Tripp said yes, the applicant testified he is within the proper setbacks and the portion of the lot the house is on which the shed is next to is the most level portion of the lot so it seems the most feasible location.

L. Horning said as testimony of the applicant clarified and as the Chairman did in questioning the applicant, and as the Building Inspector stated in his letter, the information was devoid of the applicant's understanding at the time of building the shed, so the specific site at that time was an appropriate location for this particular structure; yes.

K. Johnson said he would say yes. Even if the applicant had not already been approved for the construction of the shed and then had the determination made that we need to address this issue, he would still be here in front of the Board asking for this special exception. Based on the nature of this property, with the existing setback and the existing wetland buffer, the only way this applicant could construct a shed on this property would be to encroach the buffer or the setback in some form and either way the Board would be seeing this

applicant. This specific site is probably just as good as any other specific site considering the restrictions that exist now on the owner's property.

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

F. Seagroves said it will not affect the adjacent area. The fact is, by planting the rye and everything he is limiting the effects on the adjacent area.

S. Winder agreed.

Z. Tripp said in this instance it is not adversely affecting the adjacent area.

L. Horning said as the applicant's neighbor testified, there has been significant improvement to the adjacent area as well as his own. He has addressed any issue that affects adjacent property including his own, given the steep topography of the lot, so the use as developed will, in fact, improve it.

K. Johnson said it would not adversely affect the area.

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

F. Seagroves said he doesn't see any affect on vehicles or pedestrians.

S. Winder said this has no impact

Z. Tripp said this has no impact and moving it out of the buffer may actually increase the hazard.

L. Horning agreed. She doesn't see how it will become any nuisance or hazard to vehicles or pedestrians.

K. Johnson agreed, noting the comment that were this placed into the front setback there is always the potential it could block view of traffic. Therefore, this goes back again to the appropriate location question. He can conceive of no manner in which this shed would provide either a nuisance or hazard to vehicles or pedestrians.

**5. Appropriate adequate facilities will be provided for the proper operation of the proposed use.**

F. Seagroves said yes

S. Winder said yes. The applicant is doing something that is well above what needs to happen.

Z. Tripp said he has passed all the permitting necessary for the shed, so it is appropriate.

L. Horning agreed. He has the appropriate facility for the proper operation of the proposed use.

K. Johnson agreed. The fill was done professionally with appropriate fill for that area and based on the permitting you can assume the shed is appropriate for that. Considering the design that the applicant submitted for the buffer encroachment, based on applicant's conversations with the UNH Cooperative Extension Service and the design for the swale and plunge pool to catch the runoff, it appears to be a highly adequate appropriate facility for this special exception.

K. Johnson then asked the Board to consider the criteria for wetlands encroachment under 6.02.7A.

**1. The need for the proposed project.**

F. Seagroves said yes. There is a need for this project to catch the water and move it off slowly.

S. Winder agreed.

Z. Tripp said the shed is already built so there is no need to address is being inside the buffer, so yes.

L. Horning said applicant has demonstrated the need for the proposed project; yes.

K. Johnson concurred. The design has considered the need for the project and if the Board were considering the case from the beginning as a request to allow encroachment into the buffer to build the shed, the conclusions would be the same – that adding the shed to the property in Residence R district where we have a fairly rural nature to many of the properties, sheds can be nearly considered a necessity. The need to minimize runoff and to treat it has been considered in the design for the project for this proposal. So he said, yes the applicant clearly meets this first criteria.

**2. The plan proposed is the alternative with the least impact to the wetland s, surface waters, and other associated buffers.**

F. Seagroves said yes, it looks like he's basically increasing the buffer by putting the rye in, or improving the buffer zone.

S. Winder agreed. Other than doing something that is probably not cost effective, this is the best proposal.

Z. Tripp said the proposed plan, would make the least impact and move it out of the wetland,. There is evidence that this is increasing the quality of the wetlands, so this is actually an improvement and non-impact.

L. Horning concurred. The proposed plan poses the least impact to the wetlands or their associated buffers.

K. Johnson agreed. It is a well-thought-out plan that provides the minimum Impact to the buffer. While there is impact to the buffer, with the considerations that have been shown in the development of this plan, the purpose of the buffer to protect the wetland will actually be met through the applicant's construction.

**3. Impact on plants, fish and wildlife.**

F. Seagroves said he doesn't see that there will be any impact on fish or wildlife and as far as plants, he didn't see any other than what the applicant planted.

S. Winder agreed. The applicant is doing planting, so there is a benefit there.

Z. Tripp agreed. There is improvement in planting and from the photos, he doesn't think the brook is supporting much fish life so the impact of the buffer would be very minimal.

L. Horning said she believed the shed to be one foot into the buffer and the fill encroaches substantially more. There has been substantial consideration by this applicant to address that issue by himself and with the Conservation Commission. She would say yes, the impact on plants, fish and wildlife is minimal and certainly has been demonstrated to have been addressed by the applicant.

K. Johnson concurred with the other members that the applicant has considered the impact on plants, fish and wildlife. This is a seasonal brook which in all probability does not support an active fish population. The minimization of erosion which this plan would implement would actually be beneficial to the other forms of wildlife that frequent this area and the impact on the plants, by planting the winter mix as explained in the proposal, on the recommendation of the UNH Cooperative Extension will have a positive impact because it will continue to stabilize and reduce erosion.

**4. the impact on the quantity and quality of surface and ground water.**

F. Seagroves said that with the swale, the crushed rock and stone, he is filtering the water and making the water better.

S. Winder said there is a positive impact.

Z. Tripp said the quantity and the quality of the water with less erosion and sediment would probably be improved with the surge pool.

L. Horning agreed with the rest of the members.

K. Johnson concurred. He can see this plan has considered the impact on both quality and quantity. By creating the catch basin and plunge pool, to slow down the water and allow it to percolate it into the ground and minimizing erosion, it will neither affect quantity or quality of water.

**5. The potential to cause increased flooding, erosion or sedimentation.**

F. Seagroves said he doesn't see that this will increase flooding, erosion, or sediment; actually, it will decrease.

S. Winder said he thinks the applicant is improving it.

Z. Tripp said based on the testimony of the abutter, he is improving it.

L. Horning said she also believes he is improving it and has addressed it adequately. That is exactly what the plan is designed for; to address the potential increase of flooding, erosion or sedimentation.

K. Johnson agreed with L. Horning. The applicant, on this plan, has clearly shown concern to eliminate the possibility of flooding, erosion and sedimentation.

**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 said if all the abutters were doing the same thing as applicant, there would be no impact.

S. Winder said if his abutters did the same thing it would be a much greater positive impact.

Z. Tripp said based on testimony of the abutter who has first-hand experience of that wetland area, if all the other abutters had the same impact with the same plan, it would be improved.

L. Horning agreed. With the topography of the brook and how it appears on the plot plan to divert through the properties in the development, if all of the property owners were to take the time and consideration to address

the runoff on the impervious surfaces on their lots, there would be substantial improvements not just to their lots, but also a gain to the wildlife in the area.

K. Johnson agreed.

**7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.**

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

S. Winder said the impact would be positive.

Z. Tripp said based on his answers to 1 through 6, he agrees the impact would probably be positive.

L. Horning agreed, it is a positive impact.

K. Johnson concurred with the other members. This proposed project's actual impact is an improvement of the quality of the wetland buffer and is protecting that particular wetland.

L. Horning raised consideration for a condition that no further alterations be made or any more impervious surface created by tarring or paving the wetland buffer.

K. Johnson clarified the wording for that condition saying it should state that the existing crushed stone base cannot be hard-surfaced and a brief discussion followed.

K. Johnson called for a vote on the motion before the Board that if the special exception is granted, to place a condition upon it that the existing packed stone will never be hard surfaced.

Z. Tripp seconded.

All voted in favor and the motion was unanimously approved.

**Is the exception is allowed by the ordinance.**

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

**Are the specific conditions present under which the exception may be granted? K. Johnson said that is taking into consideration the five criteria for a special exception and the seven criteria for wetlands encroachment.**

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

K. Johnson asked for a motion to approve the special exception, Case 15-11.

L. Horning made the motion to approve.

Z. Tripp seconded.

**Final vote:**

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

**The special exception for Case 15-11 was unanimously approved.**

K. Johnson reminded the applicant of the thirty day appeal period.

The board thanked the applicant for the detailed application and the time and consideration taken for the whole ordinance and a clear well-presented case.