

**Town of Milford
Zoning Board of Adjustment Minutes
September 18, 2014
Case #2014-16
Shayna Appel and Robin Lunn
Special Exception**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice-Chair
Len Harten
Michael Thornton

Excused: Laura Horning
Joan Dargie

Secretary: Peg Ouellette

The applicants, Shayna Appel and Robin Lunn, owners of Map 5, Lot 32 located on Jennison Rd located in the Residence R District, are requesting a special exception from Article VI, Section 6.02.6:B. The total proposed area of disturbance is approximately 1,049 SF of wetland buffer.

Minutes Approved on October 16, 2014

Zach Tripp, 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 and introduced the Board. He read the notice of hearing into the record and the list of abutters was read. Shayna Appel and Robin Lunn, owners of Map 5, Lot 32 at 31 Jennison Rd were present. Abutters present were Gregory Wunsch of 48 Jennison Rd and John Swenson & Eileen Fitzgerald of 47 Jennison Rd.

Chairman Tripp stated there were only four Board members present and informed the applicants that they had the right to have the hearing postponed until there is a full Board. Regardless of the number of Board members present an affirmative vote from three Board members was required for approval. If they chose to proceed with four Board members, they must sign a waiver. They agreed and signed the waiver.

Applicants' presentation:

They want to build a garage on existing pavement, not into the wetlands. They went to the Conservation Commission to do additional landscaping to improve area behind the house and return it back more closely to what it was.

Z. Tripp asked if the current driveway or portion of it was in the buffer.

R. Lunn responded it was.

F. Seagroves asked if it was just a portion of the garage in the buffer, not the driveway.

R. Lunn said the garage in total would be built on top of the current pavement. They would not increase the area of impervious surfaces.

M. Thornton asked if there was no additional impact on the square footage.

R. Lunn responded, not of impervious surface.

F. Seagroves wanted to clarify for viewers whether they would replace the tar with a cement foundation.

R. Lunn said they would. They were proposing to build a slab on grade garage. It is two-story and will have a room above. Regrading is an opportunity to make sure water is going away from the wetland and managing roof runoff.

L. Harten asked about occupancy of the room above.

R. Lunn said it would be their offices for two home businesses and stated it would not be residential.

Z. Tripp said, looking at the map, it appeared they could take the garage toward the road and probably take the back corner out of the buffer zone. Was that feasible or had it been considered?

R. Lunn said they had looked at several possibilities and based on the location of the door and what they need the space to do, this was the best possible location.

M. Thornton noticed earlier something about "proposed deck" and asked if that would be done at the same time.

R. Lunn said probably in the spring. There is an existing patio which is hardscape; they are proposing a deck as opposed to a hardscape. She stated the deck is already outside the boundary of the buffer.

F. Seagroves pointed out that in #2 of the application it was noted the disturbance already existed. Were they referring to the disturbance when the tar was put in?

R. Lunn stated yes, they are just changing elevation of the impervious surface.

F. Seagroves said they are probably lessening the runoff into the wetland.

R. Lunn agreed. That was the goal, to control it.

Z. Tripp asked for any additional questions from the Board. There were none.

Z. Tripp opened the meeting for public comment. There were none. He closed the public portion of the meeting. He read the letter received from the Conservation Commission to the ZBA dated Sept. 19 stating that they met with the applicants and attended a site review. They determined the garage would not add to the amount of impervious surface and would be expected to be an improvement to the site since it would cap any petroleum release in a covered garage and not washed away in storm water.

Z. Tripp asked the applicant to read the application.

S. Appel read as follows:

Shayna Appel and Robin Lunn have lived at 31 Jennison Road for over four years. We chose this property because of the marsh and our love for the protection of habitats like the one on this section of Hartshorn Brook. For over four years we have been talking about how much we love living on this marsh and how we desire to maximize our stewardship of the property while we optimize our home. As the plans have been formulating we have watched the marsh flood and dry, the wildlife come and go and we are deeply committed to maintaining a balanced ecosystem for the habitat that thrives along this section of Hartshorn Brook. The history of this wetland habitat is an important part of the application. This is not a natural and undisturbed wetland and, from all accounts this was pasture land before it was stripped of its topsoil (in the 1970's?) and allowed to return to a "natural" habitat. In the 1990's this property was impacted by a contamination plume that caused the well to be capped some time before we purchased the property. We do not know what this contamination is or how it is impacting the ground water, birds, fish and animals that call our marsh home. In addition, we have observed siltation from disturbances upstream that have caused silt dams on the western side of the bridge and in growth of the marsh on the eastern side of the bridge. The soil operation abutting our property appear to be taking good care of their runoff so we are not sure why this is happening. Since we

have lived on the marsh we have tried to understand the habitat that exists there. We observe that there are no visible cattails in the marsh and no native blue or yellow flag iris but there is significant loose strife and other non-native invasive species. There are some sedges, lilies, pickerel reed and other water based plants in the impound area near the bridge. There are several herbaceous shrub species (alder and dogwood) that can indicate intermittent wet areas or more permanent wetlands as well as wild grapes, bittersweet and other upland species. There are beaver that make their home(s) along the brook as well as heron, mallard and wood ducks, mink, fox, bob cat, wood chuck, skunk, opossum, turkey, deer and moose that we have seen since we have lived there. In addition the water appears clear and fish, turtle, frogs, salamanders and other water creatures are seen regularly. Hawks, owls, and many bird species live on the marsh with many nesting pair of migratory birds breeding on this open habitat. Dragonflies, skidders, and other water related insects live on the brook and the bats help keep the mosquito population in check. We hope from this narrative description you can hear and see that we care deeply about the marsh on Hartshorn Brook that we are stewards of and that any project we plan takes into account how the wetland and surrounding habitat is impacted by our actions.

SEVEN FACTORS FOR SPECIAL EXCEPTION

1. Need for the proposed project:

The owners wish to have a garage and based on the existing location of the house there are no alternative locations for a garage.

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

For over two years we have been working to develop a plan for adding a garage that will minimize the impact on the landscape and wetlands buffer that surrounds the house.

The proposed plan DOES NOT DISTURB ANY ADDITIONAL SQUARE FOOTAGE BEYOND WHAT HAS ALREADY BEEN DISTURBED DURING THE ORIGINAL CONSTRUCTION OF THE DWELLING.

There will be no negative impact of groundwater runoff as the current area of disturbance is not being enlarged. The proposed garage will be built on the existing pavement footprint of the driveway. Since there is a slope already existing to the north of the driveway that flows down to the orchard areas, a boulder retaining wall is proposed that will allow for the existing slopes on the north/brook side of the house to be feathered in. To the rear/east of the house an extension of the boulder retaining wall is being proposed to allow for the fill from the foundation to be used on the site. Currently there is a grassed slope from the rear of the house to the edge of the wetland that has significant settling which makes it difficult to maintain. A boulder retaining wall will allow for the grassed area at the patio elevation to be extended allowing roof drainage to be filtered through the relocated infill behind the retaining wall. The area below the retaining wall will be regraded with a more gentle slope allowing a more natural ebb and flow of spring runoff in this major impound area of the Hartshorn Brook watershed. In addition, the shed that is currently at the edge of the wetland will be relocated out of the wet area to a slightly higher spot along the southern property line. ***The total proposed area of disturbance is approximately 1049 square feet. The proposed retaining wall will be no closer than 35 feet to the wetlands and the re-graded area will be no closer than 15 feet to the wetlands.***

3. THE IMPACT ON PLANTS, FISH AND WILDLIFE:

This proposal will allow for a more natural migration of wildlife on the lower portion of the yard and no impact on plants or fish/turtles, etc.

4. THE IMPACT ON THE QUANTITY AND/OR QUALITY OF SURFACE AND GROUND WATER:

As stated above, the roof and surface runoff associated with the existing house will be reduced with a grassed runoff area of infill at the patio level.

5. THE POTENTIAL TO CAUSE OR INCREASE FLOODING, EROSION, OR SEDIMENTATION:

No increase erosion, flooding, or sedimentation will occur due to this project and all appropriate silt barriers will be installed during construction.

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:

There are no residential structures within this wetland complex that either do not already have a garage or do not have an alternative location for one outside the buffer zone.

7. THE IMPACT OF THE PROPOSED PROJECT ON THE VALUES AND FUNCTIONS OF THE TOTAL WETLAND OR WETLAND COMPLEX.

Since there is no additional area being disturbed as a part of this project and the proposed retaining wall and relocation of the existing shed will improve the value and function of the wetland this project has an overall positive impact on the value and function of the wetland and wetland complex on this portion of Hartshorn Brook.

Z. Tripp asked if the regarding was along the side of the garage.

R. Lunn responded that the hatched area on the plan is a boulder wall. Area below is where the hill will be regraded to match the north side of the garage.

Z. Tripp asked for any other questions from the Board. There were none. He proceeded to discussion of the case.

A. The need for the project.

L. Harten – he felt there was a need. It is always nice to have a garage, and Conservation Commission seemed to like the fact there would be a garage so any sludge or drainage from vehicles could be contained. He couldn't see any reason that the proposed project would not be needed.

M. Thornton was pleased they took time and got the solution within the footprint as the driveway so it was no more impermeable area to the runoff. He asked where the runoff to the side of the garage would go.

R. Lunn said it will be taken to the south side.

M. Thornton said yes.

F. Seagroves said yes.

Z. Tripp agreed. A garage is a valid addition to the residential property and given the fact the driveway is currently in the buffer you could argue there is a need for potentially containing petroleum accidents.

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

F. Seagrove - yes. There is already tar there stopping water from seeping into the ground. Putting a garage there and controlling the drainage is the best plan.

M. Thornton – yes. It is the proposed alternative with the least impact.

L. Harten – he would reiterate M. Thornton's comments about the excellent job in putting the proposal together. From what he could see, he believed the impact on wetland and surface would be minimal.

Z. Tripp agreed

C. The impact on plants, fish and wildlife:

M. Thornton saw none.

L. Harten agreed.

F. Seagroves didn't see any increase in impact that wasn't already there.

Z. Tripp agreed.

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

L. Harten said from precautions proposed and mentioned, he didn't see impact on quality or quantity.

M. Thornton saw a change for the better because the impermeable area now is not property guttered and directed, but it will be in future.

F. Seagroves agreed with M. Thornton.

Z. Tripp agreed for reasons stated and according to the memo from the Conservation Commission that it will reduce likelihood of petroleum releases.

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

M. Thornton saw only positive impact because of the decrease in slope and runoff.

L. Harten agreed.

F. Seagroves agreed.

Z. Tripp said they have taken precautions in construction, same amount of impermeable surface and with applicants' testimony of improving grade on the north side, he didn't see it would increase flooding, erosion or sedimentation.

F. 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 the buffer was already impacted by the tar. They are making changes to runoff, but to the better.

L. Harten agreed.

M. Thornton said they are the only property that has ability to directly impact the area and impact is positive.

Z. Tripp agreed.

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

M. Thornton saw none.

L. Harten agreed. He didn't believe there was any impact from the proposed project on the value, functions or the total wetland and wetland complex because of precautions they are going to be putting in place.

F. Seagroves agreed.

Z. Tripp said the disturbance in the buffer should have minimal impact. He referred to the Conservation Commission memo statement "Impact will not alter the function of the buffer."

Z. Tripp moved on to the discussion of the criteria for a special exception.

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

F. Seagroves – yes. Garages are permitted in the district.

L. Harten – yes

M. Thornton – yes

Z. Tripp agreed. Garage is permitted in the district and special exception for disturbance in the buffer is allowed per 6.02.6:B

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

L. Harten – yes. There is probably no other location on the property that would have lesser impact. He wasn't stating there was an impact. He believed the site was appropriate in its location.

M. Thornton – it was the best location given the existing structure it is going to be married to.

F. Seagroves agreed.

Z. Tripp agreed.

C. The use developed will not adversely affect the adjacent area:

F. Seagroves said he didn't see a two-car garage would affect adjacent area.

L. Harten didn't believe any adverse effect.

M. Thornton saw no negative impact.

Z. Tripp agreed. Typically in this question the adjacent area is the surrounding neighbors. In this case, you could argue the adjacent area is the wetlands and they have discussed that pretty thoroughly.

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

L. Harten – no. The statement by applicants is that no fill will be removed from the site and all construction related equipment will be kept on site. He couldn't see any hazard to vehicles or pedestrians.

M. Thornton saw nothing in the plan that would indicate they would be putting anything in the zone that would possibly impact a pedestrian who was not on their property.

F. Seagroves – there will be no serious hazard.

Z. Tripp agreed.

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

M. Thornton – yes

L. Harten – yes

F. Seagroves – yes

Z. Tripp – agreed.

Vote

Is the special exception allowed by the ordinance?

Fletcher Seagroves - yes M. Thornton – yes L. Harten – yes Zach Tripp – yes

Are the specific conditions present under which a special exception may be granted?

M. Thornton – yes F. Seagroves – yes L. Harten – yes Z. Tripp – yes

Z. Tripp asked for a motion.

M. Thornton made a motion to approve

F. Seagroves seconded.

Final Vote:

M. Thornton – yes F. Seagroves – yes L. Harten – yes Z. Tripp - yes

Case #2014-16 was approved by unanimous vote.

Z. Tripp informed the applicants they had been approved and reminded them of the 30 day appeal period.