

**Town of Milford
Zoning Board of Adjustment Minutes
June 7, 2012
Case #2012-09
Stephen Trombly
Special Exception**

Present: Kevin Johnson, Chairman
Laura Horning
Fletch Seagroves
Zach Tripp

Absent: Len Harten, Alternate

Secretary: Peg Ouellette

The applicant, Stephen Trombly, owner of Map 8, Lots 5 & 10, off North River Rd, in the Residence "R" district, is requesting a Special Exception from Article VI, Section 6.02.6A for the proposed bank stabilization and the restoration of the 50 ft. riparian buffer in three areas totaling 124 linear feet; and Article VI, Section 6.02.6:B for proposed restoration of 1,453 SF of riverbank/buffer.

THE MINUTES FROM JUN 7, 2012 WERE APPROVED ON AUG 16, 2012

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. He read the notice of hearing into the record as well as the list of abutters. Stephen Trombly of Trombly Land Trust, of 241 North River Road, was present.

This case was tabled from the May 17, 2012 meeting.

Chairman Johnson stated there were only four Board members present and informed the applicant that he has the right to have his hearing postponed until there is a full Board. Regardless of the number of Board members present he must have an affirmative vote from three Board members for approval. If he is comfortable with four Board members, he must sign a waiver. He agreed and signed the waiver.

Applicant's presentation:

Chris Guida of Fieldstone Land Consultants spoke on behalf of the applicant. He stated that Mr. Trombly and his family have farmed their land on North River Road for many years. The area is designated as prime farm soils which are rapidly disappearing these days. The Trombly's have made an extra effort to preserve their farm land and promote local agriculture and conservation in Milford. There is a conservation easement along the property by the river which allows the public to walk it as part of the Souhegan River Trail. In order to protect the farm fields a vegetation buffer along the river needs to be maintained. Over the years, the river has encroached beyond the farm fields and they are right up to the river bank now. In an effort to restore the buffer he has entered a program agreeing to donate approximately 4 acres along the bank to be restored. The riparian buffer and bank have been deteriorated and he wants to restore it to maintain the farm field and the riverbank. In the October 2011 snowstorm they lost several large trees; when the trees fell the roots pulled up the riverbank and trees laying in the river redirected the flow. The NRCS through the Environmental Quality Incentive Program (EQUIP) restores the buffer but in this area it has been destabilized and it must be stabilized in order to repair the buffer. In February, Mr. Trombly had federal, state and local officials out to view it and come to a determination on how to solve the problem, including people from NH DES and NH Fish and Game. After lots of discussion they came up with the proposal before the ZBA. There are three areas less than 50 linear feet each along the bank. The method they came up with to stabilize it is by removing loose soil, putting in large boulders, backfilling, riprap, filling in with soil to prevent erosion, re-vegetation, etc. The proposed work will prevent erosion and further damage to the riparian buffer as well as pollution to the river and detrimental effects to fish and other aquatic species. The solution was recommended by Director Richardson and a Civil Engineer with NRCS. He concurred that this is a proven method that gets re-vegetated quickly and established the riparian buffer as quickly as possible.

F. Seagroves commented that that area is known for flooding, not just in last October's storm. If there is further flooding will this stand up?

C. Guida responded that is the intent of the plan. The river meanders, and at flood stage cuts new channels. This is one of the best methods to get root structures into the bank. He said there will always be huge storms, but scientific knowledge is the best way to minimize erosion and maintain the river and bank. If you minimize erosion, you minimize effects on wildlife downstream.

K. Johnson stated, for the benefit of the audience, that the NRCS is the Natural Resource Conservation Service, which is part of the USDA.

K. Johnson asked the Board if there were any further questions; there were none. He opened the meeting for public comment.

Audrey Fraser, Chair of the Milford Conservation Commission, spoke. She said she was at the meeting and it was quite impressive. The Conservation Commission does support the project.

Chad Corcoran, Director of Conservation for NRCS for Hillsborough County said parts of the project were involved directly in establishing the riparian buffer. They and the federal government have an interest in making it work. The concern is that with the flood and the trees toppling it could cause serious bank erosion cutting into the farm field which would rip out the buffer they are trying to establish. For their

agency this is a big deal. They don't very often get farms to take farmland out of production for the good of the land.

K. Johnson asked if stabilization of the bank would help significantly to prevent additional silt from occurring.

C. Corcoran said yes, they are being very judicious in use of hard armor riprap they are putting in. Riprap is always the stabilizer of last resort but it is best one for the Souhegan. They are choosing the areas in which to put it as to vegetation and existing buffer.

L. Horning said she grew up on a farm and knows how the bank can collapse very quickly.

C. Guida said there is an argument that rivers meander; but this is not a natural landscape.

K. Johnson asked for any other questions or comments.

There were no further comments or questions and K. Johnson closed the public portion of the hearing. He read a letter received from the Milford Conservation Commission dated April 18, 2012 addressed to the NH Department of Environmental Services in support of Mr. Trombly's proposed project.

K. Johnson asked the applicant to go through the criteria for a special exception in his application:

The undersigned hereby requests a special exception as specified in the Milford Zoning Ordinance, Article IV Section 6.02.6

Description of proposed use: The proposal is for bank stabilization and the restoration of the 50 ft. riparian buffer in three areas, each of which is less than 50 ft. and total 124 linear feet and involve the restoration of 1453 sq. ft. total of riverbank/buffer for the purposes of stabilizing and restoring the eroding bank and buffer damaged by several large storm damaged tree throws redirecting river waters into riverbank.

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

The proposed use is the same as the existing agricultural use which is permitted in the district. This is a restoration and enhancement project of damaged and degraded wetland.

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

There is no change in location or use, this is a restoration and enhancement project of a damaged and degraded wetland.

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

There is no change in use, this is a restoration and enhancement project of a damaged and degraded wetland, which will restore and enhance the riparian buffer in the project area.

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

This is a restoration project which will stabilize and restore the affected areas which will remove and/or minimize the existing hazard of a steep undercut, eroded bank immediately adjacent to and within the Souhegan River Trail.

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

There is no change in use, this is a restoration project which will stabilize the bank and restore the riparian buffer.

K. Johnson then read from Article VI, Section 6.02.6 which states that a Special Exception is required for A. Wetlands, and B. Buffers. He stated this project impacts both. He read through the evaluation criteria in Section 6.02.7:A and stated that they have testimony and letters that the work has been approved, the applicant has stated it is for repair and not changes, he is willing to accept the testimony of the Conservation Commission based on the site review and information from the USDA. Impact on fish and wildlife has been considered. Based on testimony and information in the application packet this project has taken into consideration impact on quantity and quality of surface and ground water. One of the reasons for this application is to protect it. Regarding potential to increase flooding and erosion or sediment, the purpose of this project is preventing that. Regarding the 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, he stated that based on the testimony and documentation it seems this is a repair project; and if everybody along the river took the same amount of care it would be a good thing. Finally, Criteria #7, the impact of the proposed project on the values and functions of the total wetland or wetland complex, he said that had been addressed by testimony and the application. Paragraph B states that the Town of Milford shall place emphasis in preserving peatland and marshes; K. Johnson stated this property is neither.

K. Johnson asked if there were any additional questions. There were none.

Discussion:

F. Seagroves had nothing further.

Z. Tripp said the application was very thorough in all sections and applicant gave detailed documentation.

L. Horning agreed. The applicant addressed extensively why they are seeking the Special Exception from the ordinance, so she had no further comments.

K. Johnson concurred.

K. Johnson moved to consideration of the requirements for a special exception, reading: "After reviewing the petition and hearing all of the evidence and taking into consideration the personal knowledge of the property in question, this Board of Adjustment member has determined the following findings of fact:"

Is the special exception allowed by the ordinance?

L. Horning – yes;

F. Seagroves – yes;

Z. Tripp – yes;

K. Johnson – yes.

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

Z. Tripp – yes;

L. Horning – yes;

F. Seagroves – yes;

K. Johnson – yes.

K. Johnson asked if there was a motion to approve the application.

Z. Tripp made the motion to approve Case # 2012-09.

L. Horning seconded the motion to approve Case #2012-09.

Final Vote:

F. Seagroves – yes;

Z. Tripp – yes;

L. Horning – yes;

K. Johnson – yes.

Case #2012-09 was approved by unanimous vote.

K. Johnson reminded the applicant of the 30 day appeal period.