

**Town of Milford
Zoning Board of Adjustment
April 6, 2017
Case #2017-07
Robert S. & Michele V. Moulton, et al
Special Exception**

Present: Michael Thornton, Vice Chair
Joan Dargie
Jason Plourde
Steven Bonczar
Tracy Steel, Alternate
Wade Scott Campbell (not voting)
Robin Lunn, Zoning Administrator

Absent: Kevin Johnson, Chair
Rob Costantino

Secretary: Peg Ouellette

Case #2017-07

Robert S. and Michele V. Moulton, et al, for property located at 231 Melendy Road, Milford, NH, Tax Map 52, Lot 4, in the Residence R District, are seeking a Special Exception of the Milford Zoning Ordinances Article VI, Section 6.02.6.A & B to allow the disturbance of 200 square feet of wetland and 3800 square feet of wetland buffer as a part of the reconstruction of an existing driveway to provide access to the proposed new residential lot.

Minutes Approved on May 4, 2017

Michael Thornton, Acting Chair, opened the meeting and introduced the Board members. He informed all of the procedures of the Board. The Board members agreed to table Approval of Minutes to the next regularly scheduled meeting, since there were one old case and four new cases on the agenda. Probably not enough time to consider all of them, since rules allow adjournment by 10 p.m. Any cases not heard would be tabled, with no additional notification to applicants or abutters.

M. Thornton read the notice of hearing into the record.

Applicant, Robert Moulton, and Robert Haight of Meridian Land Services, Inc. came forward. R. Moulton stated that other representatives of Melendy Country present: Olan Nieuwejaar, Don & Pauline Boggis, and his wife Michele.

R. Haight said the application was brought before the ZBA previously – variance for a lot with less than 40 ft. frontage. This special exception request was to allow upgrade and reconstruction of an existing drive. They went to Conservation Commission on Feb. 9th and received favorable support. Letter in

packet supporting disturbance of 200 ft. wetland and 3800 ft. buffer. Of the 3800 ft., 1600 was existing drive. Just resurfacing that. When they went to Conservation Commission because 200 ft. of the wetland disturbance, they applied to State to allow that disturbance. Because it was less than 3000 SF it was deemed to be an expedited review by the state. That becomes valid when the Conservation Commission Chair endorses it. They did that along with a letter. Applicants had application to the State for dredge and fill permit, thirty days pending. In order to be able to do construction after state approval they need to be able to disturb buffer and need a special exception. He referred to circles on the plan with arrowheads and numbers, which were associated with photos in the packet. Showed location of photographer and direction of the photo. Disturbing little more than if they used all existing drive. Tan area on plan touching adjoining property to the north. They put the drive to the south so that in Lot 47-51 drive will be 25 to 30 ft. further away from that lot. Also have filtration fence on that side to control any runoff from construction. Two plans. On other plan, second page, was sight distance. Standing in the road looking in and through the property. Adequate sight distance.

J. Plourde asked if it was the sight distance from the roadway or from a car in the driveway looking at oncoming cars?

R. Haight said measured from 10 ft. off edge of the pavement back in location of new proposed center and 200 ft. to the approaching lane.

J. Plourde asked about vegetation

R. Haight said they would have to remove a stone wall and take down a couple of trees.

J. Plourde said photo showed a lot of vegetation and this was a winding road. Good thing it wasn't a state road or they would require 400 ft. of sight distance. They are removing some of the stone wall and clearing some vegetation and this was for intersection sight distance and not to meet the stopping sight distance.

R. Haight agreed.

J. Plourde said for stopping sight distance they would have to be a vehicle on Melendy Rd. at height of 3 ½ ft looking toward a 2 ft object in the driveway. It looked like on the grading plan, you wouldn't be getting the required sight line.

R. Haight said that was closer to where the driver's eye is at the driveway. Pointed out where it would be lowered 1 ft. or 9 inches to get the 2 ft.

J. Plourde said no. The engineer was incorrectly identifying the beginning and ending points for stopping sight distance. Stopping sight distance is from driver's eye on the road looking toward a 2 ft. object at the driveway, and the intersection sight distance is from the driver's eye height at the driveway looking out to the driver's eye height of approaching vehicles on Melendy Rd. This stopping sight distance would not be achieved based on the plans presented due to the topography.

R. Haight agreed. However, this layout would meet the sight distance they needed in order to make the safe driveway.

J. Plourde said the town has a standard they follow. In accordance with AASHTO national standards, however, safe sight distance would be stopping sight distance. The minimum sight distance is the stopping sight distance and the desired would be intersection sight distance. They don't meet the stopping sight distance.

R. Haight said that wasn't a condition of this application.

S. Bonczar said this case was for impact to the wetlands.

J. Plourde said previously the sight lines were misrepresented and didn't want this to be continuously overlooked.

R. Haight said it was adequate grading to reach a safe stopping.

J. Plourde asked R. Lunn, even if the applicant was providing related to the sight distance, could the Zoning Board still make a decision on the wetland.

R. Lunn said the ZBA had no authority for this application about how the access was designed. They were talking about wetlands. Because it was the same application submitted to the Planning Bd. for site plan approval, where that authority rested.

J. Plourde wanted it to be confirmed that the incorrect information being presented had no bearing on ZBA's decision. R. Lunn said that was correct.

S. Bonczar said they were given a plan that pointed out where drive was going. Has lot been approved?

R. Haight said no.

S. Bonczar they were given a variance for the 50 ft. He wasn't on Bd. at the time.

R. Haight said that was in place. So now they can apply.

S. Bonczar was confused. Thought they were about the proposed lot, but they were talking about the reduced frontage.

R. Haight said there was a variance in place for that. Now in process and have submitted to Planning Bd for subdivision, but hadn't been heard yet.

S. Bonczar said it was cookie cutter set up.

R. Haight said original was about 45 acres in 1975. Six lots created out of that. Large remainder. Six lots held in separate ownership and remainder held in joint ownership by six owners of the lots. In 1995 they adjusted lot lines but didn't change number of lots.

S. Bonczar said he was good, then.

M. Thornton requested public comment in favor of the application. None. He asked for public comment against.

Diane S. McGovern of 223 Melendy Rd. came forward. She and her husband were abutters to the proposed drive. They moved here six years ago. Fortunate to have great neighbors and friendly town. Have a lovely home with a beautiful yard and fantastic wildlife. There was a vernal pool in back at crossroads of other existing stone culvert. Vernal pools that supports wood frogs, salamanders, turtles, etc. that come out in warm weather. They will be disturbed; many will diminish and possibly perish with disturbance of this pools which were protected by NH state law. At the Conservation Commission the Chairman suggested the Commission do a site walk. Other members didn't seem interested. Felt that was mistake, because without seeing it you couldn't know what you were disturbing and how it would affect this vernal pool. NH DES was contacted and this pool will be documented. Wings of this widened culvert will reduce the pool by half on one side. Also, taking down trees would affect air quality, along with diesel trucks doing site work. Her husband had COPD so air quality will force him to stay inside. They left a congested area in Nashua to come here so he wouldn't have to go on an oxygen tank. Questioned why this Country Association that wants to develop two house owned approx. 37 acres only wants to disturb this land.

Peter McGovern of 223 Melendy Rd. spoke. Their deck overlooks the wetland and beautiful habitat – pools of water and wildlife like red fox. He is a birder and enjoys seeing birds in his yard. His isn't mobile and can't drive. He would hate to see disruption of this habitat.

J. Plourde asked if vernal pools had been identified.

D. McGovern had the Conservation Comm come out and she submitted pictures and documentation to NH DES. In process of having DES people come out and have it formally documented.

J. Plourde asked if they were located approximately where the drive would be.

D. McGovern responded, exactly where the drive would be. It crossed a very narrow stone culvert.

There was a quarry there years ago and it was put there for wagons. Not safe for autos without widening it and putting those wings in. Now is perfect time to go and see it since Conservation Comm didn't go there.

M. Thornton asked for any other comment. None.

S. Bonczar asked if the vernal pools were delineated in the wetlands.

R. Haight said they were but drive was there, culvert was there. Disturbance will be on north side. He referred to a notation. Going to extend the headwall. Pictures 9 & 10 were the existing culvert and you could see existing headwall.

S. Bonczar said it didn't look any wider than what was there.

R. Haight said it wasn't. Will add to headwall going easterly and north with existing product from the quarry and extend it along north line to have drive grading stay. On south side, disturbing small amount. Not taking culvert out. Very minor. With there were vernal pools wasn't ascertainable at the time. When

photos were taken it was dry. Tends to be the case with pools. Whether it qualified as vernal pool, one requirement was to have 1 ½ ft of water that stays within it during the gestation period of the aquatic life. If the water dried up the egg masses die, so there would be no viable pool. Couldn't quantify if it was or wasn't a vernal pool because there was no water at the time of the photos. Conservation Comm was in agreement that they were doing a minor an adjustment to the size of the pond. Not digging it out. Adding in more granite in grade. Biggest adjustment was going east to Melendy Rd where they were moving the driveway away from the property line. That was where most activity would be. That was outside the buffer, so not asking permission.

S. Bonczar said they were dealing with the buffer.

R. Haight said predominance of the buffer already had a drive on it.

R. Moulton said there were four families of Melendy Country group that have lived out there since 1970. Agreed with Mrs. McGovern it was a beautiful spot. They will be donating remaining 30 acres to the town with conservation easement. Want to preserve it as conservation land. Having a small disturbance but in bigger picture they were trying to preserve a much larger slice, that would be sold and developed if they don't. They all want to maintain their property values.

D. McGovern said a major characteristic of a vernal pool was it didn't have water in it all the time. It dried up in summer. But it was essential, at the time the creatures that live in the mud can get out, that the water was undisturbed for egg laying. It was without question a vernal pool. Preserving rest of the land was remarkably generous. So many trees taken down several years ago. Lots of land exposed where a beautiful home could be built without disturbing wetland that was supposed to be protected. Much other space that association would develop and still give their gift to the town.

R. Haight said they spent two years putting this together. Looking at where to site the lots and make them in best location for everyone. Yes, there was open land behind his house – an open field. If this went through and they make this conservation land the rail trail abuts it. Bay State Forestry came in and did selective cutting done to make it a better forest. They had a forestry management plan in place which would stay in place. Town could benefit from that.

M. Thornton closed public comment.

J. Plourde said under the ordinance. Sec. 6.02.7 there were seven items listed for criteria for special exception. No. 1, need for the proposed project – he could understand; they need a driveway for the proposed home. No. 2 – he didn't hear any alternative designs to show the least impact to wetlands and buffers. No. 3 – didn't hear anything other than neighbors talking about the impact on plants or wildlife. No. 4 re quality and quantity of groundwater, erosion, etc. Certain things have not been provided that are listed within the ordinance.

S. Bonczar felt by looking at plan it was minimal impact. If there was no driveway and they were talking about a lot more than 200 ft.,

J. Plourde said they were also looking at the 3800 ft. of buffer.

S. Bonczar said that would get restored. Didn't see an issue. It was minimal impact. We'd all like not to disturb a single foot of wetland. Not feasible. People should have right to make use of their property if it falls within the ordinance.

M. Thornton asked J. Plourde about proposed use being similar to those in the area.

J. Plourde asked, if we are looking at the use as putting in a single family home, or the use as being the crossing of the wetlands and buffer

M. Thornton said crossing the wetland.

J. Plourde said, similar to those permitted in the district – no.

S. Bonczar – yes. There were plenty of places within this zone that cross over wetland – piece of pipe, or whatever.

J. Dargie agreed. There was already a crossing there. They were just upgrading what was already there.

T. Steel – yes

M. Thornton – yes

The specific site is an appropriate site for the proposed use:

T. Steel - yes; J. Dargie - yes; S. Bonczar - yes, where wetland impact to the existing structure; J. Plourde - - not knowing what alternatives there could be, couldn't say yes; M. Thornton - yes

4. The use as developed will not adversely affect the adjacent are:

J. Dargie - yes, it will not; S. Bonczar - yes, they were taking correct precautions to make sure minimal impact; J. Plourde - no, can't answer yes because the applicant hasn't talked about the impacts on plants and wildlife - it was significant amount of area; T. Steel - yes; M. Thornton - yes

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

T. Steel - yes, there will be no nuisance; J. Dargie - yes, there will be no nuisance; J. Plourde - yes, because not looking at location of drive and limited sight distance that Planning Bd. should definitely look at; S. Bonczar - yes; M. Thornton - yes.

6. Are adequate appropriate facilities provided for the proper operation of the proposed use?

J. Dargie - yes; T. Steel - yes; J. Plourde - yes; S. Bonczar - yes, he saw silt fences to minimize runoff; M. Thornton - concerned they keep disturbed area to the area stated, and they seemed determined to do so - yes.

Additional criteria:

1. Is the special exception allowed by the ordinance?

J. Plourde - yes; S. Bonczar - yes; J. Dargie - yes; T. Steel - yes; M. Thornton - yes

2. Are all the specific conditions present under this the special exception may be granted?

J. Dargie - yes; T. Steel - yes; J. Plourde - yes; S. Bonczar - yes; M. Thornton - yes

M. Thornton asked for a motion to approve or deny.

S. Bonczar made a motion to approve Case #2017-07

J. Dargie seconded.

Final Vote:

S. Bonczar - yes

J. Dargie - yes

T. Steel - yes

J. Plourde - no

M. Thornton - yes

Case # 2017-07 approved by 4 to 1 vote.