

**Town of Milford
Zoning Board of Adjustment Minutes
June 4, 2015
Case #2015-09
Little Nell Trust
Special Exception**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice-chair
Michael Thornton
Joan Dargie
Kevin Johnson

Excused: Len Harten, Alternate
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, Little Nell Trust, Owner of Map 43, Lot 55, Nashua St. in the Commercial district & Map 43 Lot 57, Capron Rd, in the Residence "B" district, is requesting a special exception from Article VI, Section 6.02.1.E to allow the disturbance of 265 square feet within jurisdictional wetlands and 5205 square feet associated wetland buffer areas for fire department apparatus access, municipal utility extensions to the proposed multi-family apartment buildings, and stormwater discharge.

Minutes Approved on July 2, 2015

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 of the Board; he then introduced the Board.

Z. Tripp suggested carrying over the same list of abutters from the previous case, in the interest of time. He asked if any new abutters were present since the previous case. There were none.

Ashley Scott, Attorney with Cronin, Bisson & Zalilnsky in Manchester, represented the applicant. She stated that this case was for the same parcel as the previous case, Lot 57, Capron Rd in the Residence "B" District, and it was the same project with two structures of three stories with Special Exception. This additional special exception being requested was temporary in nature relative to wetlands. It was needed to complete construction and needs to be minimal wetland impact for access road for emergency and construction vehicles. It will be replaced. Additionally there will be drainage into the wetlands. Conservation Commission has reviewed and discussed slight recommendations and accommodations to minimize impact. Otherwise, they had no concerns.

Z. Tripp said he would read that letter into the record later.

A. Scott said there would be no health and safety concerns, although the Fire Dept. wasn't consulted even though they were the ones requesting the access to be of the width and length it is.

Z. Tripp asked P. Colburn, Engineer from Keach-Nordstrom in Bedford who also appeared on behalf of the applicant, to highlight where the wetland impact is and walk through each of the buffer impacts.

P. Colburn said the plan was oriented with Nashua St. on top and Capron Rd runs north/south. Proposal is primarily situated in open field area on Lot 57. One wetland impact required for construction that is not subject of this case meeting. That, as well as the buffer impacts on each side of it, is for construction, for bringing utilities onto the property and fits the criteria for minimum impact expedited permit at NHDES. Per ordinance impact that meets state requirement doesn't require ZBA input. It requires the Conservation Commission to sign off on the permitting which was received on about May 14 and has been sent to the DES for permit and approval.

Z. Tripp said a portion of the application stated that those are covered under State, but the notice of hearing does request 255 SF of wetland. Does the application include wetland or not?

P. Colburn said it does not and not required to include wetland impact. That was confusion when the notice was written. He directed the Board to Sheet 2 which is a blowup of the area that is proposed Building A and surroundings. On the plan the proposed grading and drainage which include construction of an above ground stormwater management area. It is collected in catch basins and hard pipe and is piped down along Capron Rd and into a sediment flow bay area and then into a large retention and infiltration area. It is designed to include a bio-retention area planted with native species. Stormwater settling in that area will be integrated back into the groundwater table. First buffer impact is at outlet of that above ground retention. Water flows downhill, so discharge point of the retention point outside the wetland buffer, the outlet itself within the buffer is a 365 SF impact area.

Z. Tripp asked if it was true that any retention must have an outlet, always into a wetland area or could they outlet into a non-wetland area?

P. Colburn said it depended on the grade. In this case the lowest point in the flat area happened to be within the wetland buffer.

Z. Tripp said they are not out letting there because the buffer is present and therefore by definition they have to disturb the buffer, but because it is the most natural part of the slope.

P. Colburn said the more likely place for discharge is low spot. The area existing entirely as an open grass field which is periodically mowed and it's a kept field. These areas in their opinion should be considered temporary impact because after construction those areas will be loamed, seeded and re-established.

Z. Tripp asked if it would be grass.

P. Colburn said a small portion, maybe 5 or 6 ft wide by 5 ft. wide by 5 ft long. That is rock riprap. They have seen rock riprap over time is allowed to grow in and around to stabilize prevent erosion.

Z. Tripp asked if those rocks are inside or outside.

P. Colburn said primarily inside, but some outside.

K. Johnson said, going back a step, read what the application said "Accordingly the wetland and wetland buffer impacts associated with the utility crossing in order to bring sewer and water utilities to the proposed development do not require a Special Exception from the Board". However, a portion of the wetland buffer to the west of building 'A' will be impacted by the proposed development as it is required for the construction of an appropriate fire apparatus access road behind the proposed three-story building. A second wetland buffer impact is required for treated stormwater discharge" and "Both of these temporary wetland buffer impacts require a special exception. The temporary wetland impact area required is 265 square feet. The total wetland buffer impact area is 5,205 square feet. Mr. Colburn is saying the statement of the temporary wetland impact of 265 SF is not part of the temporary impact that requires a special exception.

P. Coburn said yes. He agreed it was confusing piece of the ordinance.

K. Johnson said it wasn't the ordinance; it was their application.

P. Colburn said there are three impact areas; one is the blue impact area which is the 265 SF of wetland impact. Logic would be if he was there for buffer area impact for fire apparatus and stormwater discharge, he would also be there for wetland impact and buffers associated with utility construction. But the ordinance states that the 265 ft of wetland impact is the subject of a minimum expedited impact application at the State and therefore impact on this plan outlined as #1 is not required to have a special exception. He finds that confusing.

Z. Tripp said, if he understood correctly, what they were there to approve or deny was impact on the left of the plan and on the very right. What is total of those two buffer areas?

P. Colburn said 1850 and 365.

Z. Tripp said considerably less than 5,235.

P. Colburn agreed.

Z. Tripp said 2,215 SF of buffer impact.

K. Johnson said it was stated it would be temporary impact, except for riprap.

P. Colburn said yes. That area will be reestablished. A second area moving west is west of Building A for construction of gravel access road halfway down the length of the building in the back. That is the fire apparatus access requested by Milford Fire Dept. The area slopes. To align and grade it there is a fill slope on the west side which goes into the buffer, identified as area in green, listed on plan as 1850 SF.

Z. Tripp asked if the actual access was not in the buffer, but the slope outside the access road is.

P. Colburn said that was correct. That fill slope, after construction, will be loamed, seeded and treated with erosion blankets to establish vegetation.

Z. Tripp asked where Eastern Trails gets sewer and water.

P. Colburn said it is served by water and sewer under Capron. According to Milford Public Works the sewer that serves Eastern Trails is private and it has a sag in the line. It is called an inverted siphon system. In order to get sewage out to Rt. 101A and under the sewer crossing it had to sag. It is the head of the elevation of Eastern Trail that pushes the sewage in a swale pipe. They are not allowed to tie into that. Part of the proposal is to connect Eastern Trail into the new sewer extension and abandon the siphon system under Capron Road.

Z. Tripp said that was his question. He assumed that was where the sewer was and they could just tie into that and avoid the wetland buffer. But that wetland buffer is not part of this application.

P. Colburn said Nashua St. as related to Capron Rd. has a dip. The sewer in Nashua St is shallow. In order to feed uses on the south side, they had to use those designs back in the day.

Z. Tripp asked, since they had future uses in the design, is the proposed retention area designed for these two buildings, or would it accommodate future expansion?

P. Colburn said it is designed for these two units and will act in common with future development. It will assist but in common with other ponds required as part of future development.

Z. Tripp asked if they moved Building A closer to B, could they reduce buffer impact, namely the fire access one. Would that help reduce retention basin buffer.

P. Colburn said it could potentially. He would also have to move closer to Capron Rd. He couldn't tell tonight from a grading standpoint.

Z. Tripp asked which impact it would be reduced.

P. Colburn said the buffer on the west for the construction of the apparatus access.

Z. Tripp said it wouldn't impact the buffer for retention basin?

P. Colburn said no, that is site with most favorable soil condition where they can infiltrate as much stormwater as possible.

F. Seagroves said they would probably lose parking space.

Z. Tripp asked the Board for any further questions. There were none. He opened the meeting for public comment. There were none. He closed the public comment portion of the meeting.

Z. Tripp read into the record a memo received from the Conservation Commission dated May 16, 2015. He then asked for any additional comments from the Board. There were none. He asked the applicant to read the application into the record.

A. Scott read the application as follows:

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

Red Oak proposes a multi-family development consisting of 60 units total served by municipal sewer and water and multi-family dwellings with municipal sewage and water systems are a permitted use within the Residence "B" Zoning District. In addition, the wetlands and wetland buffer impact relative to utility access is permitted pursuant to Milford Zoning Ordinance, Section 6.02.5(A)(1), (B)(1). The remaining wetland buffer impacts for which relief is sought address common development issues, namely, emergency vehicle access during construction and stormwater drainage. Both of the impacts are limited in scope and duration. More specifically, the impact areas are currently grassy fields and will be restored to grass following the construction. Given the minimal impact and eventual restoration of the impacted areas, the proposed uses are similar to those permitted under Section 6.20.5(B)(1).N.H. Admin. Rule 303.04(i), (o), (t).

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

The multi-family apartments are proposed in a location suited for the use. At the end of Capron Road, similar apartment units exist at Eastern Trails Apartments. The property is located in the Residence "B" District, where multi-family dwellings are a permitted use. The location is near jobs, retail, and services oriented businesses, making it an ideal location for affordable housing for Milford residents.

The site of the proposed wetland and wetland buffer impacts are also appropriate for the use. The single wetland crossing for utility access is situated at the narrowest point along the wetland thread. The buffer impacts for fire access and stormwater drainage should be considered temporary and are located in a buffer that exists as a grass field today. Upon completion of construction, the disturbed areas will be loamed and seeded with a native conservation seed mix, so as to reestablish grass growth matching existing conditions.

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

The development of multi-family apartment units is expected to complement the adjacent area, which consists of a mix of residential and commercial uses. The minimal impacts to wetlands and wetland buffers are not expected to cause any adverse impact on adjacent properties. The impact areas have been reduced to the extent practicable, and the impact areas which are the subject of this application are limited both in scope and duration, such that they should be considered temporary. The wetland buffer exists as a grass area today. Following completion of construction, the disturbed areas will be reestablished with grass growth, emulating existing conditions.

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

The required wetland and wetland buffer impacts associated with development proposed on Lot 57 are generally unrelated to vehicular and pedestrian movements around the site and therefore will not cause nuisance or serious hazard. Moreover, one of the wetland buffer impacts at issue here is to accommodate fire apparatus during construction and, therefore, actually enhances vehicular access for emergency purposes.

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

Regarding proposed development of multi-family apartment units on the subject property, appropriate facilities will be provided for their proper operation. As mentioned above, adequate parking accommodations are proposed in front of both buildings. Adequate access without dead end is provided at two curb cuts along Capron Road. Municipal utilities including sewer and water will serve both 30-unit buildings. Green space is abundant onsite, with nearby forest. Recreation area is accommodated in a large grass field between the proposed parking lots. The required wetland and wetland buffer impacts accommodate utility access, fire apparatus access, and proper stormwater discharge adjacent to existing wetlands, with the latter two only requiring relief. Therefore and due to their very purpose, required wetland and wetland buffer impacts promote and accommodate adequate and proper operation of proposed development onsite.

ATTACHMENTS:

The need for the proposed project:

Generally, the proposed project entails the construction of two buildings, totaling 60 rental apartments. The rental rate for the proposed units will be substantially lower than the median for the area, which will provide affordability to residents of Milford and the surrounding area. The site is properly zoned for the proposed use, and is situated in close proximity to jobs, the highway system, a complete variety of retail and service needs, and the downtown.

As noted above, the temporary wetlands impact for the proposed sewer construction is permitted under the Zoning Ordinance and is necessary to connect the proposed development to the municipal sewer. With respect to the wetland buffer impacts for which relief has been sought, the applicant has scaled back the proposed development. However, one wetland buffer impact which will be located west of Building "A" is needed to provide fire department access around the back of the structure. In short, one of the impacts is required for public safety purposes. The other wetland buffer impact involves a small area where the proposed stormwater management area discharges treated stormwater back into the wetland. Stormwater management is a requirement of all multi-family or non-residential developments.

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

Wetland and wetland buffer impacts have been minimized to the extent practicable. The permitted temporary wetland impact permits the construction of a gravity sewer line from the development to the sewer main under Route 101A. The location of the crossing is the narrowest point along the wetland thread. In addition, this wetland impact is considered temporary, as the area disturbed will be reestablished upon completion of construction.

The wetland buffer impacts which are the subject of this application are required for fire apparatus access behind building "A" and for stormwater discharge from the proposed above ground stormwater area. The fill slope required for construction of the apparatus lane behind building "A" is a 2:1 slope. The area disturbed will be reestablished to emulate existing conditions upon completion of construction. The outlet to the proposed stormwater pond will be treated with an outlet protection apron to prevent erosion within the buffer and adjacent wetland. The area surrounding the pipe and outlet protection will be reestablished following construction to emulate existing buffer condition.

3. The impact on plants, fish and wildlife:

According to the attached Wetland Functions and Values Assessment, prepared for the applicant by Schauer Environmental Consultants, LLC, the onsite wetlands have limited ability to pond water due to the sloping terrain and lack of sufficient depressions. The majority of the onsite wetlands, especially those areas proposed to be impacted, are not capable of supporting vernal pool habitat. The overall functional values of wetlands on the property are generally limited due to the lack of opportunity and outstanding characteristics. That said, careful consideration during the design of the proposed wetland crossing further limits any impact on plants and wildlife. The area of impact is reduced by situating the crossing at the narrowest point through the wetland thread. Disturbed areas will be stabilized using a conservation seed mix containing native plant species commonly found in this area.

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

The design, construction methods, and maintenance methods for the project, including those involving the wetland and wetland buffer impacts, have been or will be designed by the applicant's project engineers, Keach-Nordstrom Associates, Inc. In accordance with the provisions of the Town of Milford, the New Hampshire Department of Environmental Services, and generally accepted engineering practice, the 1-year, 2-year, 10-year, 25-year, and 50-year frequency storm events will be used in the various aspects of analysis and design of stormwater management considerations for this project. Stormwater treatment provisions will be designed to be fully functional during a 50-year return frequency storm. As an integral part of this project, general construction sequencing and erosion control practices have been implemented according the State of New Hampshire, Department of Environmental Services (NHDES) Best Management Practices as described in the Bew Hampshire Stormwater Manual. Through the various strategies described herein, the impact on the quantity and quality of surface and ground water resulting from the proposed project has been reduced to the extent practicable.

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

As an integral part of the engineering design of this site, an erosion and sedimentation central plan will be developed with the intent of limiting the potential for soil loss and associated receiving water quality degradation, both during and after the construction period. Traditional temporary erosion and sedimentation control devices and practices, such as siltation fencing, seeding, erosion control blankets, and erosion stone will be specified for us during the construction period. In preparation of these provision, reference will be made to the New Hampshire Stormwater Manual, Volume 3,: Erosion and Sediment Temporary Controls During Construction. Construction details for each temporary erosion control measure and practice specified will be added to the project plans. Together, these measures will limit the potential to cause or increase flooding, erosion, or sedimentation as a result of the subject project.

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:

The proposed impact area is very small, as is the overall impact to the wetland complex, which itself limited overall functional value due to the topography. If all parties abutting a portion of the affected wetland were permitted alterations equal to those proposed for this project, the total impact would not likely be detrimental to the surrounding area.

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

Attached to the application for Wetland Special exception is a formal Wetland Functions and Values Assessment, prepared by Schauer Environmental Consultants, LLC. The purpose of this document initially was to evaluate the functions and values associated with the wetlands at the two previously proposed wetland impact locations, and further the impact of the proposed crossings on those functions and values. Since the Functions and Values Assessment was drafted, the project proponent has greatly reduced the overall scope of the project. The applicant is no longer proposing permanent crossings of the existing wetland thread to provide access to developable uplands west of the open field area. Therefore, the only remaining wetland impact area is Impact Area #1 where the applicant is proposing a utility crossing for sewer access from NH Route 101A. Please refer to the attached document for further information.

K. Johnson referred to the statement that one of the wetland buffer impacts is to accommodate fire apparatus during construction. Is that fire apparatus road temporary?

P. Colburn said no, that is required during and after construction in case of fire.

K. Johnson asked if there would be a permanent road in there.

P. Colburn said that was correct.

A. Scott said the road itself does not impact the buffer.

J. Dargie said multiple times it was stated that wetland areas impacted will be reestablished back to current conditions. Who verifies that?

K. Johnson said that was his question and mentioned adding a condition to a grant.

J. Dargie and K. Johnson expressed their concern. K. Johnson said going back to NH court cases there have been different rulings as to what a grant constitutes.

A. Scott said if they make a representation in their application and it is basis of their approval, it was an implied condition.

K. Johnson said was implied condition, but another court ruling that to allow disturbance of 600 ft. of wetland and 5,205 ft of wetland buffer for Fire Dept. access, utilities, etc., that is the sole grant. Those were trial court rulings. It hasn't gone to Supreme Court for what fully constitutes a grant.

Z. Tripp was going to recommend that if the motion was to approve the case, that motion clearly state that approval of it would be that 2,215 SF of buffer impact per division one of the revision of the site plan.

K. Johnson would propose that they be temporary impact and restoration as a condition of the grant.

J. Dargie added, some verification of wetlands are restored.

K. Johnson felt that Dana MacAllister and crew would make sure of that if they make it a condition.

Z. Tripp questioned if it was implied in the application.

K. Johnson said that was his concern. He didn't want it implied; he wanted a specific condition of the grant.

Z. Tripp asked if there was anything in the drawings that states the specific conditions of those areas.

P. Colburn pointed out above the title block on Sheet 2 the wetland site is stamped block the legend and box that said "loam and seed all disturbed areas."

Z. Tripp said that was typical.

P. Colburn said typical note of theirs. When it comes to the site plan, the DES Alteration of Terrain Bureau requires a turf establishment schedule based on the location on the plan, ie. different seed mixtures on retention ponds vs. steep slopes vs. the rest of the lawn. Those two areas would indicate establishment of disturbed area.

J. Dargie asked if they could stabilize with gravel rather than seed and loam.

P. Colburn said only if permitted on the plan or as a field change as allowed by code enforcement.

J. Dargie asked if code enforcement would have to go back to look at it. There have been cases where things were done with rock and gravel rather than seed and loam and don't look the same.

P. Colburn said intent is to stabilize with turf. If the board wanted to stipulate based on that, they would be fine with that.

Z. Tripp, M. Thornton, and K. Johnson mentioned possible wording to the effect of a stipulation that 2,215 SF of disturbed buffer be restored with grass, native vegetation, or seeded with native conservation seed mix.

Z. Tripp said, if they approve, he had similar concerns. Any other questions? None.

Z. Tripp preceded to discussion of the wetlands criteria.

1. The need for the proposed project

K. Johnson – They have demonstrated need to impact wetland buffer to be able to complete the proposed project.

F. Seagroves – They have demonstrated they need this for safety, health and stormwater management.

J. Dargie agreed they demonstrated need.

M. Thornton – need has been demonstrated and made plain by the Fire Dept.

Z. Tripp – agreed there is need to temporarily impact two buffer locations for fire access and water retention.

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

M. Thornton – Think this is the plan with the alternative with least impact for two reasons. One, the Conservation Commission would have assured that. Two, it is the alternative with the least cost to the applicant.

J. Dargie – It is the least impact and also it is temporary for the most part.

K. Johnson – doesn't see where to meet requirements of access road, without entirely relocation the entire project, there could be any lower impact to wetland buffers.

F. Seagroves – yes, likes idea of access road. Remembered apartments houses in past on Powers St. many had a fire and Fire Dept. had problem getting equipment in there. With access road, the buffer will have to give away a little.

Z. Tripp – this is plan with least impact. Could see moving building A reducing impact but that access road is out of buffer, and impact is temporary. Actual impact would be minimal and could have impact to the water retention basin.

3. The impact on plants, fish and wildlife.

K. Johnson – yes, they have shown through their ecologists and other statements that there are no fish, minimal wildlife impact. Main impact would be on plants. Currently in a seeded field; will be reseeded with native species. That would significantly reduce impact on plants and wildlife.

F. Seagroves agreed. This is a field; they are putting apartments in – no fish, a few birds, etc. They will seed everything back. Least impact or no impact.

J. Dargie those aren't the report of Heritage Foundation that show no impact. She said project was four buildings of 128 units. Were they looking at same plans?

P. Colburn said when they went before the Planning Board it was for full build-out. 125 units or so. As mentioned, the project has been scaled back to 60. The overall outline of the property is same.

J. Dargie said no impact on wildlife.

M. Thornton said he thinks wildlife will be safe in the long and short term and it will be returned to the same condition as today.

Z. Tripp – agreed. The 2,215 SF of buffer impact will not impact on wildlife, and it will be reseeded with vegetation.

4. Impact on quantity and quality of surface and ground water.

J. Dargie – minimal. It will be put back to its original condition.

M. Thornton – agreed – minimal and temporary.

K. Johnson said, to clarify for the audience, the impact on quality and quantity of groundwater or surface water, they were considering only the portion of the buffer impact, not the entire project of the building and parking lot, because those are not impacting the buffer. Only concern here is the impact on wetlands and buffer in that 2,215 SF. In this case, he doesn't see it will have serious impact on quantity or quality of groundwater.

F. Seagroves – this is not a long term impact.

Z. Tripp – agreed with the Board. Impact of 2,215 SF of buffer will not impact quality or quantity of surface water assuming it is approved, they would replace vegetation as a condition of approval. And it is temporary and minimal

5. Potential to cause or increase flooding, erosion or sedimentation.

F. Seagroves – didn't see problem. It looks like they have taken care of those possibilities.

K. Johnson – the potential to cause flooding, erosion and sedimentation is only considered in that 2,215 SF, not entire project. Other issues will be addressed elsewhere in the planning process. Only concern is flooding and erosion and sedimentation of the wetlands or buffer and this is minimal impact.

M. Thornton – minimal and temporary impact.

J. Dargie – agreed.

Z. Tripp – agreed. Applicant testified they will use proper erosion control 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.

F. Seagroves – goes along with Conservation Commission that they see so problem. Cumulative impact is about abutters. They are allowed to do this, doesn't think it would be a big impact.

K. Johnson – all parties owning or abutting affected wetlands and buffer – according to the plans the applicant is sole owner of the adjacent wetland and wetland buffer. There are no abutters. Even if there were, the cumulative impact of these minor impacts would still be not a significant impact.

J. Dargie – agreed.

M. Thornton –have seen the cumulative impact will be limited to this impact. Even if the build out by applicant went ahead according to their plans, it is still a staged build-out and the Conservation Commission had no problem with plan as presented.

Z. Tripp agreed with board. Impact will be minimal. If everyone in that general area temporarily impacted buffers and restored in same proportion as this project he didn't think there would be a cumulative impact.

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

J. Dargie – because of the temporary impact, the impact of proposed project to the total wetland is minimal.

M. Thornton – minimal and temporary impact. Thinks that is best they are going to do there.

K. Johnson – agreed. Applicants have considered impact on the total function of the wetland area. It is minimal area of the entire ecosystem, and is temporary.

F. Seagroves – it is temporary.

Z. Tripp agreed – Doesn't think it will impact values and functions of total wetland. It is not wetland. It is buffer being disturbed during construction, and it is temporary.

Z. Tripp moved on to consideration of the special exception question as they apply to the 2.2.15 SF in consideration.

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

K. Johnson – yes, wetland impacts are permitted in this district when the specific conditions they discussed are met.

F. Seagroves – they are permitted.

J. Dargie – yes

M. Thornton – yes

Z. Tripp – impact to buffers is allowed by special exception.

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

M. Thornton – yes, Conservation Commission seemed to be adamant about giving their blessing.

J. Dargie – yes, it is an appropriate site.

K. Johnson – yes, for all the reasons stated in all of the considerations. This is minimal impact which met the goal.

F. Seagroves – yes, it is least impact and they will restore it.

Z. Tripp – it is appropriate location as already discussed with the least impact.

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

F. Seagroves – yes, it will not affect the area.

K. Johnson agreed, within the proposal, appropriate controls will be put in effect during the impact time frame and adjacent area will be protected.

M. Thornton – Barring an unforeseen 50-year event, during the time of construction will be moderate impact of the adjacent area.

J. Dargie – yes.

Z. Tripp – agreed, part of the previous criteria required that there be no adverse affect. Doesn't believe it will impact adjacent area because it is temporary.

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

J. Dargie – there will be no nuisance or serious hazard.

M. Thornton – not back there. Can't discuss anywhere else on the construction site, but in the area being discussed there will be no nuisance or serious hazard.

K. Johnson – can't foresee any nuisance or hazard to vehicles or pedestrians in the area impacted.

F. Seagroves – yes, what they are doing is eliminating seriously hazard to vehicles.

Z. Tripp agreed, impacting buffer and construction of aquifer and water retention pond shouldn't have impact to vehicles or pedestrians.

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

J. Dargie -.yes

M. Thornton – as long as it is being temporary used in the method it is going to be, then it is appropriate.

K. Johnson agrees, based on evidence presented, they are taking appropriate operations, proper impacting of these buffers.

F. Seagroves – yes

Z. Tripp agrees. They are using appropriate construction techniques and erosion control and will properly restore the buffers.

Discussion began regarding whether to vote on conditions and then criteria. It was determined that they should vote on conditions first, since if conditions were not there, it could change the way they vote.

K. Johnson moved a condition be added to the grant that specifies that the disturbed areas will be stabilized using a conservation seed mix containing native plants species commonly found in the area.

J. Dargie seconded.

J. Dargie asked if they should add that they actually verify it.

K. Johnson and Z. Tripp said that would be part of the permit process.

Vote on motion for condition:

K. Johnson – yes J. Dargie – yes M. Thornton – yes F. Seagroves – yes Z. Tripp –yes

K. Johnson asked about other conditions. One to specify 2,215 SF rather than 5,200 +/-.

Z. Tripp was going to recommend that be part of final motion to approve. Would also reference date on the plan?

Motion to include 2,125 SF buffer impact according to Rev 1 of the plan dated April 9, 2015.

A. Scott asked if it could be just included in the motion just approved.

K. Johnson said it couldn't.

Z. Tripp said motion would be approval of 2,215 SF of buffer impact per the plan Rev 1 dated April 9, 2015.

K. Johnson made motion

M. Thornton seconded.

Vote on motion for condition:

K. Johnson – yes M. Thornton – yes J. Dargie – yes F. Seagroves – yes Z. Tripp- yes

Z. Tripp asked for any further motions. There were none

Vote on criteria.

After reviewing the petition and after hearing all the evidence and taking into consideration personal knowledge of the property in question the Board of Adjustment member has determined the following finding of fact:

Is the exception allowed by the ordinance?

- M. Thornton – yes
- J. Dargie – yes
- F. Seagroves – yes
- K. Johnson – yes
- Z. Tripp – yes

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

- J. Dargie – yes
- F. Seagroves – yes
- K. Johnson – yes
- M. Thornton – yes
- Z. Tripp – yes

Motion to approve Case #2105-09 made by M. Thornton
K. Johnson seconded.

Final Vote:

- M. Thornton –yes**
- K. Johnson – yes**
- F. Seagroves – yes**
- J. Dargie – yes**
- Z. Tripp – yes**

Case #2015-09 was approved by 5-0 vote.

Z Tripp informed the applicant of approval and reminded applicant of the 30-day appeal period.