

**Town of Milford**  
**Zoning Board of Adjustment – APPROVED MINUTES**  
**JUNE 15, 2023**  
**Public Hearings**

**Case #2023-01 689 North Main Street, LLC and Salt Creek Properties, LLC, SPECIAL EXCEPTION**  
**Case #2023-02 689 North Main Street, LLC and Salt Creek Properties, LLC, VARIANCE**  
**Case #2023-07 Hitchiner Manufacturing Company, Inc., SPECIAL EXCEPTION**

**Present:** Andrea Kokko Chappell, Chair  
Joan Dargie, Vice Chair  
Michael Thornton, Member  
Tracy Steel, Member  
Dan Sadkowski, Member  
Rich Elliott, Alternate  
Lincoln Daley, Town Administrator  
Terrey Dolan, Director of Community Development  
David Freel, BOS Representative

Recording Clerk: Jane Hesketh

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**Meeting Agenda**

1. Call to Order
2. Public Hearing(s):
  - a. Case #2023-01** (Postponed from March 16, 2023) 689 North Main Street, LLC and Salt Creek Properties, LLC. for the property located at Tax Map 43, Lot 20-2 are seeking a Special Exception from the Milford Zoning Ordinance, Article VI, Sections 6.02.6.A and B to disturb approximately 2,299 square feet of wetlands area and 7,202 square feet of wetland buffer area to allow the construction gas station store, pump stations, access driveway and parking areas, and related storm water management structures for a property located in the Commercial and Limited Commercial Zoning Districts. (Request by applicant to postpone to 4/21/23, then to June 15th)
  - b. Case #2023-02** (Postponed from March 16, 2023) 689 North Main Street, LLC and Salt Creek Properties, LLC. for the property located at Tax Map 43, Lot 20-2 are seeking a Variance from Milford Zoning Ordinance, Article VI, Sections 6.01.3.B.7 to allow the retail sale of petroleum products in the Groundwater Protection District on a property located in the Commercial and Limited Commercial Zoning Districts. (Request by applicant to postpone to 4/21/23, then to June 15th)
  - c. Case #2023-07** Hitchiner Manufacturing Company, Inc. is seeking a Special Exception from the Milford Zoning Ordinance, Article VI, Sections 6.02.6.A & B to disturb approximately 4,123 square feet of the site's (2007- approved) total wetland buffer area. The overall 5.94-acre site was developed as the "Perry Field Condominiums". The property is located at 96 Old Wilton Road, Tax Map 7, Lot 20. This developed site is within the Town of Milford's "ICI-2" (Integrated Commercial-Industrial-2) Zoning District, and presently consists of five (5) total adjoining units totally 12,084 square feet. The new ownership wishes to modify and reduce the total wetland buffer area in several locations on-site to expand and improve the vehicular access surrounding the building so larger trucks may safely travel around the building complex footprint.
3. Meeting Minutes: Review and Approve Mtg. Minutes from April 20th
4. Other Business: a. Board of Adjustment – Chair / Vice Chair Determination
5. Next Meeting(s): July 6, 2023 & July 20, 2023

1 **MINUTES OF THE ZBA MEETING JUNE 15, 2023**

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4 **1. CALL TO ORDER**

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6 Chair Kokko Chappell opened the meeting by welcoming everyone and introducing herself. The Chair welcomed those  
7 attending in person and electronically.

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9 The Chair stated you may also attend this meeting in person at the Milford Town Hall, Board of Selectmen's Meeting Room.

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11 If you would like to participate in the public meeting, please call this number from home: +1 646-558-8656 and enter the  
12 Meeting ID: 851 6407 7601 and Password: 269952 or log in via [www.zoom.com](http://www.zoom.com) using the Meeting ID and Password  
13 previously stated.

14  
15 A digital copy of the meeting materials can be found on the Town website at: [https://www.milford.nh.gov/zoning-board-](https://www.milford.nh.gov/zoning-board-adjustment/agenda/zba-agenda)  
16 [adjustment/agenda/zba-agenda](https://www.milford.nh.gov/zoning-board-adjustment/agenda/zba-agenda). We will also be live streaming the meeting on Granite Town Media, Government Channel  
17 21: <http://gtm.milford.nh.gov/CablecastPublicSite/watch/2?channel=2>

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19 The Chair then went on to inform everyone about the procedures of the Board.

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21 Chair Kokko Chappell started the meeting with a roll call attendance by asking each member to state their name: via Zoom:  
22 J. Dargie present and alone in her car; at Milford Town Hall: M. Thornton present; R. Elliott present;  
23 D. Sadkowski present; T. Steel present; A. Kokko Chappell present.

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25 Chair Kokko Chappell continued by saying there are 3 cases to be heard, and explained the process of the case hearings for  
26 the applicant and the public. The Chair said a full agenda may not allow all cases to be heard and that at 10:00 p.m. the  
27 meeting will end. The Chair explained how the meeting would proceed for the cases that may not be heard in that they would  
28 be continued or tabled to another agreed upon meeting and the public notification process for a continued case.

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30 A. Kokko Chappell moved on to the cases to be heard.

31  
32 **2. PUBLIC HEARINGS**

33  
34 **a. Case #2023-01 (Postponed from March 16, 2023) 689 North Main Street, LLC and Salt Creek Properties, LLC.**  
35 **for the property located at Tax Map 43, Lot 20-2** are seeking a Special Exception from the Milford Zoning Ordinance,  
36 Article VI, Sections 6.02.6.A and B to disturb approximately 2,299 square feet of wetlands area and 7,202 square feet of  
37 wetland buffer area to allow the construction gas station store, pump stations, access driveway and parking areas, and  
38 related storm water management structures for a property located in the Commercial and Limited Commercial Zoning  
39 Districts. (Request by applicant to postpone to 4/21/23, then to June 15th)

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41 Matt Peterson Project Manager from Keach Nordstrom Associates stepped forward as a representative for the applicant. He  
42 briefly summarized the project location. Mr. Peterson stated also in attendance were his client Mr. Rashid and a  
43 representative for the client, Steve Marisol. M. Peterson explained the packet he handed out to those in attendance and  
44 board members. M. Peterson started by saying he wanted to provide town information regarding the parcel in question. Mr.  
45 Peterson explained he researched the Town's ground water protection map to determine how it was created and what the  
46 goal was for the protection of it. M. Peterson went on to say there is a portion of land located below route 101 and the route  
47 13 interchange that is labeled as a Level 1 Protection Area. This land does extend into the proposed location. M. Peterson  
48 referred to the Ground Water Protection Map showing what he just stated. M. Peterson explained this is considered a  
49 Ground Water Protection area because there are 2 wells located there. M. Peterson explained he researched the wells and  
50 determined they are private wells; one of the wells is inactive and belongs to Mr. Steve Marisol (Mr. Peterson pointed him  
51 out as sitting in back of him), and the other well is actively used for the Little Arrow Daycare. Both of these locations have  
52 access for other sources of water. Mr. Peterson presented some facts in regards to the gallon usage for public wells to show  
53 these private wells do not meet that usage. M. Peterson went on to review items in his packet (pages 16 and 17) with the  
54 next item being the United States Geological Services information showing soil composition for this wetland; the study  
55 dates back to 1985 and 1987. He then referred to pages 25 and 26 showing the studies done around the Souhegan River in  
56 1987. He held up a copy of an aerial map of the Town of Milford showing gas station locations in the town (this was  
57 included in the packet he distributed). He told the board about a Shell Gas Station he had an opportunity to view when he  
58 drove by on a rainy day. He told the board what he saw and that was the water runoff from this gas station went directly  
59 across the street into the Souhegan River.

60  
61 **MINUTES OF THE ZBA MEETING JUNE 15, 2023**

Mr. Peterson referred back to the map showing the wetland area that would be impacted. He emphasized the area is there for the protection of 2 private wells. He went on to say that given the fact this area is in a better location than most of the older gas stations in Milford, that without the protected area for these 2 wells, he feels it is in an ideal location.

M. Patterson wrapped up his presentation regarding his research into the creation of the Ground Water Protection map.

Town Administrator Lincoln Daley interjected with comments and questions. He stated procedurally the packet Mr. Peterson distributed needs to be made a part of the application record and board members will need time to digest the information. L. Daley then cited Ground Water Zoning Ordinance 6.01.1 A and read the ordinance into the record.

“A. Purpose: In the interest of public health, safety, and general welfare, the purpose of this Ordinance is to preserve, maintain, and protect from contamination existing and potential groundwater supply areas. This is to be accomplished by regulating land uses that could contribute pollutants to existing and/or planned public and/or private wells and/or ground water resources identified as being needed for present and/or future public water supply.”

Mr. Daley pointed out the ordinance does speak to private wells but agrees the information presented by Mr. Peterson is older which needs to be addressed. M. Peterson then expressed his views and interpretation of the ordinance presented by L. Daley and does not agree with the ordinance and its meaning.

Mr. Peterson continued with his presentation by referring to the packet the Board Members received prior to the meeting. He referred to the “Highway Methodology Workbook Supplement” which he made comments about. Specifically he cited the Evaluation Form Ratings to emphasize compliance. He stated this was presented to the Conservation Commission and their feeling is this wetland is valuable even though wetland scientists do not agree with this assessment. Mr. Peterson then stated he had a review from the Natural Heritage Bureau (part of the supplemental packet distributed at the meeting). The review from NHB stated their feelings in regards to the impact on wildlife which, he pointed out; the Conservation Commission was not in agreement with.

Chair Kokko Chappell to Mr. Peterson: can you clarify how the Evaluation Form was prepared. Mr. Peterson: it was prepared by wetland scientists out of his office.

Mr. Peterson continued with his presentation by citing the information from the Army Corps of Engineers (included in the supplemental packet).

His presentation continued by referencing the site plans in both the application packet and the supplemental packet. Mr. Peterson stated there is a modification to the plan. The original plan shows 2 diesel islands to the north; the modification on the site plan in the supplemental packet shows 1 diesel island. M. Peterson continued by reviewing the site plan drainage locations for runoff. He explained the soil composition of the drainage areas as well as the structures and how they function. His emphasis was on how this drainage system will be better than most if not all of what the town currently has and will be the most update system to prevent problems with runoff or leaks.

M. Peterson went on to review the Special Exception Criteria.

#### **Special Exception Criteria under 10.02.1:**

##### **a. Criteria: proposed use is similar to those permitted in the district**

Permits have been issued for other parcels in the district. This wetland and wetland buffer is an isolated pocket with little or no value to the surrounding wetland networks or wildlife because of its small runoff pocket wetland along Route 13.

##### **b. Criteria: specific site is in an appropriate location for the proposed use because**

The site is located at the interchange of two major state roads which the applicant believes makes this an appropriate location for the proposed use.

##### **c. Criteria: the use as developed will not adversely affect the adjacent area because**

Adjacent parcels are commercially zoned. Current AOT design standards will be required in the design and build of this site which will make it safe and not adversely affect the adjacent area.

**Special Exception Criteria under 10.02.1 (continued):**

**d. Criteria: no nuisance or serious hazard to vehicles or pedestrians**

Filling the existing wetland and buffer area on the site will ensure safe vehicle circulation to prevent a nuisance or serious hazard to vehicles or pedestrians. There is a need to fill the wetland and buffer area to provide the proper flow of vehicles and pedestrians.

**e. Criteria: adequate and appropriate facilities will be provided for proper operation of the proposed use**

Per Town and State requirements, the appropriate facilities will be provided for the proper operation of the proposed use.

**Wetland and Wetland Buffer Criteria under 6.02.06.2:**

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

The small wetland and buffer area needs to be filled to create site circulation for vehicle and truck movement and to allow for cleaner storm water management design to meet NHDES and AOT regulations.

**2. The plan is the least impact to the site.**

The wetland pocket along Route 13 has no connectivity to surrounding wetland complexes or buffers. Filling the wetland and buffer, and the installation of a storm water drainage design, will yield the least impact to surrounding wetland and buffers.

**3. The impact on plants, fish and wildlife.**

Per the Wetland Function-Value Evaluation form and information from the Natural Heritage Bureau, there are no records of threatened or endangered species in the vicinity of the project area. Therefore, this proposal will not impact plants, fish and wildlife in the area.

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

This site is required to obtain an NHDES Alteration of Terrain permit which reviews and ensures all storm water runoff will not impact the quantity or quality of surface and ground water in the project area. This information will be outlined in a full storm water drainage report.

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

The site will be designed and permitted to NHDES Alteration of Terrain standards which will ensure no potential for increased flooding, erosion or sedimentation by filling the wetland and buffer. The final design will ensure a greater protection to these concerns.

**6. The cumulative impact if all parties abutting this wetland or buffer were permitted to make equivalent alterations to the wetland and buffer proportional to the extent of their property rights.**

Boards have already dealt with the majority of cumulative impact by allowing abutters to impact the wetlands and buffers. It is felt the area is being designed in the right manner to allow development and protect the wetlands and buffers in the area. This wetland is an isolated PFO1B (Palustrine, Forested, Broad-leaved Deciduous, Saturated). There will be no impact to abutters as the wetland does not travel off the property.

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

Refer to the Wetland Function-Value Evaluation form for information related to the existing wetland which has low function and value according the USACE Highway Methodology.

Mr. Peterson concluded his presentation.

Chair Kokko Chappell asked for questions or comments.

Member Mike Thornton asked about criteria #2 under 6.02.06.2 in regards to what other alternatives had been examined.

M. Peterson responded by explaining when a site is researched there must be 2 access points for vehicles and pedestrians.

There is no way to get this site closer to Nathaniel Drive in order to allow for 2 access points that are sufficiently separated.

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Member Mike Thornton then referred to criteria #6 by asking for clarification. M. Peterson clarified with his explanation of how he viewed the criteria. He explained this site will only impact a small area of wetland and buffer. In regards to other undeveloped sites in the area, the wetland and buffer being impacted is only on the proposed site and does not extend to the undeveloped site nearby.

M. Thornton then asked about how the runoff from Nathaniel Drive will be diverted. Mr. Peterson referred to the schematic drawings in the packet to show how this will be done with curbing. Mr. Peterson reminded the board the state will be signing off on the design.

Member Dan Sadkowski asked about the underground water storage for drainage and if this will need to be emptied by pumping it out. M. Peterson explained the water storage will slowly drain out with a reducer at the end to decrease the volume of water being released at one time.

M. Thornton asked about the comment made on the site walk that the water will be treated. M. Peterson stated it will be treated in the under water storage before being released. M. Thornton then asked about how oil leaks and gasoline spills will be handled in the runoff; if it will be captured on the site and then treated biologically. M. Peterson explained there will be oil and gas separators in the catch basins put on the site; this is something new for the proposed plan.

L. Daley asked about DES approval which Mr. Peterson stated is required but has not been submitted yet. A. Kokko Chappell to M. Peterson: then this has to be submitted to DES. M. Peterson: yes and the Planning Board. L. Daley also mentioned that perhaps this should be a condition for approval. M. Thornton stated that this will be part of the AOT approval. Mr. Peterson brought up the fact that with approval, the maintenance plans (Operations and Maintenance Manual) will be submitted to the state and the state will conduct a yearly inspection of the facility and the maintenance records from the facility.

At this point in the meeting, Joan Dargie, Vice Chair was able to join the meeting at Milford Town Hall.

Town Administrator Daley asked about the drainage design and the surrounding soil. The Conservation Committee addressed this and indicated the water flow along route 13 moves quickly. Member Thornton added his concerns on that as well due to leakages which could be absorbed quickly into the surrounding soil due to its composition which is very permeable. L. Daley to M. Peterson: can you provide assurances that petroleum leakages will not runoff which could affect the aquifer. M. Peterson: he pointed out the property is surrounded mostly by ledge; he also pointed out there would probably not be a wetland there if there were problems with runoff affecting the aquifer. Mr. Peterson addressed the concerns for how the drainage will work by stating it will be state of the art equipment.

Steven Marisol of Salt Creek Properties stepped forward to the microphone to add information about the land. He stated he built the road and owns the property. He explained the type of soil in Milford Center and to Lordens Plaza is called hinckley which is coarse and contains a lot of gravel. S. Marisol explained this type of soil absorbs quickly and drains quickly. At the proposed site, the soil is finer and slower with absorption and drainage.

M. Peterson reiterated that if there is a spill, it will go to the catch basins first and everything is contained on site. M. Thornton to clarify; the catch basins then release where? M. Peterson: they release to a holding area that treats the water and releases it slowly.

Chair Kokko Chappell asked when the perk test was done. M. Peterson said in the spring 2023. It was confirmed there was no frost at the time.

Chair Kokko Chappell opened the meeting to the public.

David Freel stepped forward to the microphone. He expressed his feelings in regards to the Zone 1 classification of the wetland that is in question. He asked about the wells in the area and how much is being produced. His feeling about the wetland classification is that Zone 1 wetlands have been designated to not allow petroleum products. He went on to say that if this area is deemed to be unusable as a wetland, then it should be eliminated as a Zone 1 especially since petroleum products will be used there.

Mike Thornton added the wording for this states that petroleum products *may* not be used and asked for clarification on this wording. L. Daley read the specifications that were in question and it does specifically address retail sales of petroleum and

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the restrictions. Mr. Daley then said a variance is needed to allow the storage and sale of petroleum products in this zoning district. M. Thornton added that speaking to Mr. Freel's statement, the gas tanks will have alarms and M. Peterson confirmed this.

David Freel stepped forward to ask how this wetland was designated a Zone 1. L. Daley responded to this and added that perhaps this is a time to take a look at these areas to ensure the need and the zoning classifications are accurate. The question of how and why this was designated a zone 1 wetland continued to be discussed.

Steven Marisol stepped forward to address this topic. He said the Little Arrow Daycare needed to have an EPA number. He went on to explain this; an establishment that will have more than 25 people and is not on town water, must have an EPA number for their well. This area is designated Zone 1 because the well for Little Arrow Daycare is not a municipal well and not because of the soil. Debate continued on this with Mr. Freel and Mr. Marisol as well as Mr. Peterson.

Chair Kokko Chappell interjected by saying this discussion is addressing a variance and does not pertain to the case at hand which is a special exception. She asked for additional questions or comments that speak to the special exception. Hearing none, Chair closed the public portion of the meeting. There were no more questions or comments from the board, and the applicant had nothing further to add.

### **Deliberations:**

Chair Kokko Chappell then moved onto deliberations for the Special Exception criteria.

#### **Special Exception criteria under 10.02.1:**

##### **a. Criteria: proposed use is similar to those permitted in the district**

J. Dargie: this is a commercial business and along route 13 there are various places of commercial business

M. Thornton: there are no other gas stations in this area, but other gas stations are located in an overlay area

T. Steel: commercially zoned that is permitted with a special exception in regards to the wetland

D. Sadkowski: connected to 2 interstate roads

A. Kokko Chappell: it is allowed with a special exception, it is in a commercial district, there are other similar districts with ground water 1 gas stations.

##### **b. Criteria: specific site is in an appropriate location for the proposed use**

T. Steel: it is a commercial site and gas stations are allowed in commercially zoned districts

D. Sadkowski: agrees

J. Dargie: perfect location since it is on 2 major state roads which will not bring cars off the highway

M. Thornton: from a business perspective, it is in an ideal location but he cannot address how the location is appropriate hydrologically.

L. Daley to M. Thornton: is there more information you need or are you satisfied with the information presented.

M. Thornton: he feels only the state can answer the question about the hydrological impact then emphasized that it is an ideal business location but looking at the blue circles on the wetland map he is unsure.

A. Kokko Chappell: agrees that it is in perfect location for a business and the district is commercially zoned.

L. Daley to the board: the applicant presented the alternatives and how the runoff will be handled properly

J. Dargie: the water runoff will be managed correctly

L. Daley: correct

##### **c. Criteria: the use as developed will not adversely affect the adjacent area**

D. Sadkowski: it is commercially zoned on 2 major roadways; should not affect other properties in that area

T. Steel: based on what the applicant presented in regards to how water runoff will be handled, this will not affect the area since the catch basins will process and catch the runoff; based on all of what was shown, the safety measures should prevent an adverse effect to the adjacent areas.

M. Thornton: he addressed both item c and d; he stated that financially it will not adversely affect the area but will hydrologically. In addition he pointed out that increased traffic will create a situation that may need to be controlled with a traffic light which is part of the Planning Board process.



**Special Exception criteria under 10.02.1:**

J. Dargie: she also addressed both item c and d; she feels this site will improve other areas in the town by diverting traffic away from the center of town and the flow of traffic by Lordens Plaza, i.e. a better way of getting on and off the highway. It will not adversely affect the area that is proposed but improve it.

L. Daley interjected by saying the board spoke to points about traffic but he is not hearing about the impact to the wetland.

A. Kokko Chappell: the applicant presented how the runoff will be handled by being collected and transferred; therefore, not affecting the surrounding area if the plan operates as proposed.

J. Dargie: again traffic flow will be better and any spills will be localized vs. the Shell Station runoff pointed out by the applicant.

M. Thornton: going back to criteria b he has no way of accessing the hydrological impact

J. Dargie: addressing the wetland in the area; she happens to be an abutter to the property and has not seen much wildlife activity in that wetland area

M. Thornton: one thing we may want to make as a condition is what the applicant stated about the tunnel under the street for the wildlife access area; the applicant stated the wildlife must see daylight

J. Dargie: feels it should not be a condition

The point brought up by M. Thornton was discussed.

J. Dargie: again said she feels this was just an example and does not need to be a condition

L. Daley to the board: there has been information shown about this particular wetland site that the activity is low and then asked the board if this is something they wished to address.

Chair Kokko Chappell responded by explaining her review of the information and why she asked the applicant about the Valuation Form and how the information was obtained (from wetland scientists). She reminded the board there were two letters: one from the Natural Heritage Bureau and one from the Army Corps of Engineers. This data shows this is not a high functioning wetland area.

Member Thornton, reading from the Conservation Committee report, the wetland is only 5% of the proposed site.

**d. Criteria: no nuisance or serious hazard to vehicles or pedestrians due to the proposed use**

T. Steel: there will be entrances and exits; there may not be many pedestrians in that area because there are no sidewalks; no residential homes/driveways in the area; Nathaniel Drive is far out; she does not see how it would cause a hazard.

D. Sadkowski: being on a main road there should not be a concern about pedestrians (no sidewalks); he does not see a serious hazard

J. Dargie: refer to item c

M. Thornton: refer to item c

A. Kokko Chappell: she reminded the board the applicant presented information about the required driveways and how far apart they need to be; allowing this wetland to be filled should not cause a hazard to pedestrians or vehicles

L. Daley stated he heard from the applicant, in the presentation, that the plan had been changed with the elimination of one of the islands to allow for a better flow of traffic.

A. Kokko Chappell acknowledged this change for the reason stated by L. Daley and presented by the applicant.

**Special Exception criteria under 10.02.1:**

**e. Criteria: adequate and appropriate facilities will be provided for proper operation of the proposed use**

M. Thornton: seems like there will be plenty of equipment necessary to operate a gas station

J. Dargie: it will be built to State and Federal regulations

D. Sadkowski: there will be yearly inspections and an Operations Manual

T. Steel: drainage will be put in place to avoid improper runoff to the wetlands based on the proposal that was presented

M. Thornton cited information provided by the Conservation Commission (paragraphs 1-4) in regards to this wetland. There seems to be a difference in opinions about the quality of the soil. Chair reminded the board that this is part of the variance and what is now being addressed has to do with the wetlands.

A. Kokko Chappell: it was presented that there will be proper handling of the runoff to protect surrounding wetland; catch basins on site

**Wetland and Wetland Buffer Criteria under 6.02.06:**

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

M. Thornton: yes

J. Dargie: yes

T. Steel: yes

D. Sadkowski: yes

A. Kokko Chappell: yes

**2. The plan is the least impact to the site (wetlands, surface waters and associated buffers).**

T. Steel: initial response was no

D. Sadkowski: initial response was no

L. Daley asked the board to provide more background with their responses.

T. Steel: they are filling in a wetland which is a large impact

At this time Joan Dargie pointed out that the wetland is only 5% of the entire site. T. Steel agreed, however, she said the criteria states least impact to wetlands, surface waters and associated buffers and not the property itself.

A. Kokko Chappell: it is an isolated wetland so it does not go into any other properties and is a low functioning wetland

L. Daley: there is a 25 ft. buffer; the case at hand is about filling in the wetland which is a small wetland that is low functioning and isolated (only one piece of property); this case is about filling in this portion of wetland on the site to allow for a gas station/store. He heard from the applicant they have looked at alternatives and determined this is the best design. This application shows how the runoff will be managed to minimize impact to the surrounding wetlands.

L. Daley: this criteria is addressing the functionality of this particular wetland and it has been determined this is a low functioning area.

A. Kokko Chappell: the 2 required driveways will mean the wetland needs to be filled.

L. Daley: correct; the current design does affect the wetland and buffer

J. Dargie: if this project were to impact other wetlands and wildlife, then the answer to this criteria would be "no" but it is basically a low impact wetland

L. Daley pointed out that there is no connectivity between this wetland to other wetlands so minimal functionality.

J. Dargie to T. Steel: then getting rid of a wetland that does not impact any other wetlands (not connected) are you then ok with this?

T. Steel and D. Sadkowski stood by their initial responses of no.

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**Wetland and Wetland Buffer Criteria under 6.02.06:**

**2. The plan is the least impact to the site (wetlands, surface waters and associated buffers).**

M. Thornton: it is the least impactful to that wetland

J. Dargie: yes

A. Kokko Chappell: yes

**3. The impact on plants, fish and wildlife been addressed.**

M. Thornton: yes

D. Sadkowski: yes

T. Steel: yes

J. Dargie: yes

A. Kokko Chappell: yes

L. Daley to the board: in order to make the record complete, he provided advice that the responses should include the reasons for their responses.

M. Thornton: the plan as proposed did address the impact on plants, fish and wildlife as marginal as a wildlife habitat; in addition there are reports that backed up what the applicant said.

D. Sadkowski: no foliage will be removed; so will not affect plants

A. Kokko Chappell: going back to the reports presented by the applicant; there is little to no activity in this wetland area.

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

J. Dargie: yes; they explained how the surface waters will be managed

D. Sadkowski: agrees

T. Steel: it has been addressed

M. Thornton: has been addressed but it is not in line with what the Conservation Committee reported in their memo; it is in direct conflict.

A. Kokko Chappell to M. Thornton: do you agree or disagree?

M. Thornton: I am not qualified to answer the actual impact but the impact has been addressed and that is the question.

A. Kokko Chappell: the board was presented with a plan that shows 4 catch basins for the water that go beyond what is required; this plan will be reviewed by the state; therefore, she feels it has been addressed.

M. Thornton: yes they have addressed it and then let the state address the adequacy

A. Kokko Chappell: agrees with that comment; the project has to go to the Planning Board, then the State and they have to be the ones saying they are dealing with the impact correctly. As for what has been presented by the applicant, they have met their burden at this meeting and it has been addressed.

**5. The potential to cause or increase flooding, erosion or sedimentation been addressed.**

D. Sadkowski: yes; minimal impact of the existing buffer was presented with how this will be managed and not cause an increase to the wetland.

M. Thornton: yes; has been covered with the presentation; represented they will have the ability to handle this

T. Steel: based on what was presented and the documentation

J. Dargie: yes; agrees

A. Kokko Chappell: agrees with all the comments then added the Operations Manual will dictate how this will be managed in regards to sedimentation

**6. The cumulative impact if all parties abutting this wetland or buffer were permitted to make equivalent alterations to the wetland and buffer proportional to the extent of their property rights.**

D. Sadkowski: yes; the impact will be minimal

J. Dargie: yes because this wetland is on its own and does not connect to other wetlands

T. Steel: yes; it is an isolated wetland

M. Thornton: assessed as a very low impact wetland based on the distance to the aquifer.

A. Kokko Chappell: agrees with all the comments.

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2 **Wetland and Wetland Buffer Criteria under 6.02.06:**  
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5 **7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.**

6 J. Dargie: it has been addressed.

7 T. Steel: based on previous discussions, agrees this has been addressed.

8 M. Thornton: it only 5% of the site and of marginal value

9 D. Sadkowski: agrees in that it has been addressed

10 A. Kokko Chappell: agrees by going back to the low value and impact of the wetland.  
11

12 **8. Has a report from the Milford Conservation Commission been solicited.**

13 A. Kokko Chappell: yes  
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16 **Voting:**  
17

18 **Special Exception criteria under 10.02.1:**  
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20 **a. Criteria: proposed use is similar to those permitted in the district**

21 M. Thornton yes; T. Steel yes; D. Sadkowski yes; J. Dargie yes; Chair votes yes.  
22

23 **b. Criteria: specific site is in an appropriate location for the proposed use**

24 T. Steel yes; D. Sadkowski yes; J. Dargie yes; M. Thornton yes; Chair votes yes.  
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26 **c. Criteria: the use as developed will not adversely affect the adjacent area**

27 D. Sadkowski yes; J. Dargie yes; M. Thornton yes; T. Steel yes; Chair votes yes.  
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29 **d. Criteria: no nuisance or serious hazard to vehicles or pedestrians due to the proposed use**

30 J. Dargie yes; M. Thornton yes; T. Steel yes; D. Sadkowski yes; Chair votes yes.  
31

32 **e. Criteria: adequate and appropriate facilities will be provided for proper operation of the proposed use'**

33 M. Thornton yes; T. Steel yes; D. Sadkowski yes; J. Dargie yes; Chair votes yes.  
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36 **Wetland and Wetland Buffer Criteria under 6.02.06:**  
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38 **1. The need for the proposed project.**

39 M. Thornton yes; T. Steel yes; D. Sadkowski yes; J. Dargie yes; Chair votes yes.  
40

41 **2. The plan is the least impact to the site (wetlands, surface waters and associated buffers).**

42 T. Steel no; D. Sadkowski no; J. Dargie yes; M. Thornton yes; Chair votes yes.  
43

44 **3. The impact on plants, fish and wildlife.**

45 D. Sadkowski yes; J. Dargie yes; M. Thornton yes; T. Steel yes; Chair votes yes.  
46

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

48 J. Dargie yes; M. Thornton yes; T. Steel yes; D. Sadkowski yes; Chair votes yes.  
49

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

51 M. Thornton yes; T. Steel yes; D. Sadkowski yes; J. Dargie yes; Chair votes yes.  
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53 **6. The cumulative impact if all parties abutting this wetland or buffer were permitted to make equivalent**  
54 **alterations to the wetland and buffer proportional to the extent of their property rights.**

55 T. Steel yes; D. Sadkowski yes; J. Dargie yes; M. Thornton yes; Chair votes yes.  
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57 **7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.**

58 D. Sadkowski yes; J. Dargie yes; M. Thornton yes; T. Steel yes; Chair votes yes.  
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1 **MINUTES OF THE ZBA MEETING JUNE 15, 2023**

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5 **Is the Special Exception allowed by the Ordinance?**

6 M. Thornton yes; T. Steel yes; J. Dargie yes; D. Sadkowski yes; Chair votes yes.

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8 **Are all the specified conditions present under which the Special Exception may be granted?**

9 J. Dargie yes; D. Sadkowski yes; M. Thornton yes; T. Steel yes; Chair votes yes.

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11 L. Daley interjected regarding conditions for approval.

12 A. Kokko Chappell: Written approval required from DES for AOT and Wetland.

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14 M. Thornton asked if this would address a hydrological study.

15 L. Daley answered not necessarily.

16 M. Thornton stated his concerns about the hydrological impact to the area.

17 J. Dargie reminded everyone this will be addressed with the variance.

18  
19 A. Kokko Chappell asked for a motion to approve the condition of: ***“A written approval will be required from DES for AOT and Wetland”***. T. Steel made a motion to approve and J. Dargie seconded. All were in favor.

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22 A. Kokko Chappell asked if there is a motion to approve **Case #2023-01 689 North Main Street, LLC and Salt Creek Properties, LLC. for the property located at Tax Map 43, Lot 20-2** seeking a Special Exception from the Milford Zoning Ordinance, Article VI, Sections 6.02.6.A and B to disturb approximately 2,299 square feet of wetlands area and 7,202 square feet of wetland buffer area to allow the construction of gas station store, pump stations, access driveway and parking areas, and related storm water management structures for a property located in the Commercial and Limited Commercial Zoning Districts.

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29 J. Dargie made a motion to approve **Case #2023-01** and it was seconded by T. Steel.

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31 Chair Kokko Chappell stated a motion was made to approve **Case #2023-01**. Chair Kokko Chappell asked for a vote; all were in favor and the application approved. There is a 30 day appeal period that can be filed with the Zoning Board.

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34 At 9:05 committee took a break.

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36 Committee reconvened at 9:15. J. Dargie stated due to the late hour, there is a good possibility the next case may not be heard in its entirety. Therefore, after the Public Portion for this case, Mrs. Dargie stated the meeting will end and the case will be carried over to the next meeting.

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40 Chair moved to the next case to be heard.

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42 **b. Case #2023-02 (Postponed from March 16, 2023) 689 North Main Street, LLC and Salt Creek Properties, LLC. for the property located at Tax Map 43, Lot 20-2** are seeking a Variance from Milford Zoning Ordinance, Article VI, Sections 6.01.3.B.7 to allow the retail sale of petroleum products in the Groundwater Protection District on a property located in the Commercial and Limited Commercial Zoning Districts. (Request by applicant to postpone to 4/21/23, then to June 15th).

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48 Matt Peterson Project Manager from Keach Nordstrom Associates stepped forward as a representative for the applicant. He began by saying he wants to review some items beyond what was presented for the special exception. For the board, he held up the map showing the well radiuses (copy included in the applicant's packet of information). Mr. Peterson displayed the map of Milford's Groundwater Protection Area. He pointed out the map key in the upper right hand corner showing registered water users (town water) are using more than 20,000 gallons per day. He indicated the area of the two private wells (identified in the special exception presentation) and said in 2002 it was determined they were using over 20,000 gallons per day. He handed out an exhibit taken from the DES website showing the Milford wells using 20,000 gallons (this was not included in the applicant's package). He then emphasized the 2 private wells in question are not shown on this map.

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55 A. Kokko Chappell to M. Patterson: having just received this information tonight, please show the board where on this map it displays these 2 private wells as not producing 20,000 gallons. He then pointed this out to the Chair. He stated how to find this information on the DES website "enter Milford NH wells producing 20,000 gallons".

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61 **MINUTES OF THE ZBA MEETING JUNE 15, 2023**

For the board, he again held up the map showing well radiuses (copy included in the applicant's packet of information). Mr. Peterson used the displayed map of Milford's Groundwater Protection Area and pointed to the town's well radiuses. Mr. Peterson pointed to the site for the proposed gas station and stated it is in the furthest reaches for that area to protect the private wells.

M. Peterson then stated the proposed site is downstream of the town wells. He went on to say the proposed site will not affect the private wells; they are not producing 20,000 gallons well and should not be in a Level 1 Protection Area. He continued by saying he is requesting a variance because of these 2 wells. He emphasized the proposed area is not the area that should be protected. He then reminded the board about why wells need to be registered by the state; when a well is to service 25 users or more it needs to have an EPA number. This is why the 2 private wells in question were considered protected.

L. Daley to M. Peterson: you are then proposing these are public wells M. Peterson: no, they are private wells. L. Daley stated that everyone was trying to process the information just presented and asked M. Peterson to point out to him on the new exhibit what he was trying to show. L. Daley and M. Peterson conferred by searching the DES website. M. Peterson: Search on "water usage information". A. Kokko Chappell to summarize the information: the 2 wells are considered public in the sense that more than 25 people will be utilizing the well so it has to be registered with the state, but it is not public in the Town of Milford. M. Peterson emphasized the variance is based on the public interest and not private interest which is very clear at the state level.

Steve Marisol stepped forward to the microphone to further explain the status of the wells. He went into detail regarding well radiuses. He explained that when he leased the land to the daycare, they were required to submit an application to the state for an EPA number due to the fact that the well would service 25 or more people. Therefore, it is not about the radius.

J. Dargie: if the concern is that this could contaminate the private well, wasn't it pointed that the daycare will have access to a public well within the town?

Both S. Marisol and M. Peterson stepped forward to explain how the daycare will get their water once their private well is shutdown. They explained it will be taken from across the street from the same radius as an apartment complex in the area. S. Marisol stated it will take only 5 days to do this. He explained the water line and sewer are in place. He also pointed out that if the gas station were to contaminate the private well, it would be the liability of the gas station to fix hook up the daycare to town water.

M. Thornton: the properties in the area would then incur a cost by connecting to town water and sewer they do not have to pay for now, is that correct?

S. Marisol: there will be less cost with the public well than a private well.

M. Peterson pointed out the daycare was made aware that the public access was there at the time they spent a large sum of money to replace the filter on the private well, but they did not do the public hook up.

Director Dolan pointed out it is 669 ft. for the daycare connection to the public water supply.

A. Kokko Chappell interjected by saying she feels the meeting is getting a bit off track in regards to the application. Mike Peterson stepped forward to present the variance criteria. He read from his letter to the Zoning Board dated February 15, 2023.

#### **Variance Criteria:**

##### **1. This will not be contrary to the public interest.**

"Granting the variance will not be contrary to the public interest. More specifically, the requested variance will not unduly conflict with the basic purposes of the relevant zoning provisions and a new station being built to today's standards would neither alter the essential character of the area nor threaten public health, safety or welfare.

The location of this request at the interchange of Route 101 and Route 13 where you already have vehicles coming and going from this location to access travel routes to the north, south, east, and west would suggest this location is perfect to assist the general public. Also due to advances in permitting, construction and monitoring of any type of potential containment to the State of New Hampshire water supply these facilities pose a very minor risk to the ground waters of New Hampshire. I would suggest due to other issues facing the State that this type of use has shown to be a very safe and efficient way to service the public while protecting it at the same time with all the required station standards that are in place these days".

At that time, Mr. Peterson had the owner of the property, Mr. Rashid step forward to elaborate on the various state regulations and testing he has just learned is more intense than he was aware of.

Mr. Rashid explained he has been running a gas station in Lawrence, MA for the past 15 years. He pointed out the gas tanks are now made of a different material (double walled fiber tanks) vs. the older stations (steel) which are still in existence in Milford. The material is more durable in the new tanks and there are alarms. He explained the daily procedures are to take readings from the pumps and the tanks; these are then matched to determine if there are differences in order to detect leaks. He went to say the gas stations are now subject to monthly state inspections. The inspections are done by an outside firm which the owner pays for. There were no questions after his presentation.

**2. The spirit of the Ordinance is observed.**

“The applicant believes the spirit of the ordinance would be to protect the Groundwater of the State of NH from possible pollutants and in 2023 gas stations are designed, permitted, constructed and monitored to the highest of standards to protect all of the ground water in the state and not just Milford. With a proposed new state of the art facility, the applicant believes this variance would be in the spirit of the ordinance.”

**3. Substantial Justice is done.**

“Due to the location of this parcel at the interchange of two major State Routes and on the outer end of the protective well radius, substantial justice would be done for the current owner and the applicant to develop the parcel in a manner that serves the communities at the appropriate roadway interchanges.”

**4. Granting the variance would not diminish the value of surrounding properties.**

“The construction of a state of the art million dollar facility that is designed, permitted, constructed and monitored per current regulations would not diminish the value of surrounding properties and in reality this type of development usually increases the values of surrounding properties when located in an appropriate location like this.”

**5. Literal Enforcement of the provisions of the Ordinance would result in an unnecessary hardship because:**

**a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

Mr. Peterson reminded the board that the protected area is there only for the 2 private wells and is not a town water system. “The location of this parcel at the interchange of Route 101 and Route 13 distinguish it from other locations in Town that were allowed gas stations, and its location being on the outer limits of the protective radius also distinguishes it from other properties in town. Not allowing a state-of-the-art gas station at a location that sees the majority of commuter traffic pass by it again distinguishes it from other parcels in Town. This is why the applicant feels there is no substantial relationship between the general purposes of the ordinance and the specific violation being applied to the property for all variances being requested.”

**b. The proposed use is a reasonable one because:**

“The applicant believes a proposed state of the art gas station at the interchange of two major state routes in Milford is a reasonable one.”

M. Peterson finished his presentation and asked for questions/comments.

Chair Kokko Chappell reminded the board this case needs to be considered separately from the special exception case heard earlier in the meeting. Therefore, questions for this case should be addressed to get them into the record. She went on to say there were questions and discussions during the hearing on the special exception that were really part of the variance.

The meeting was first opened to the public.

Stepping forward was David Freil from 130 Stable Road, Milford. He stated he has no issue with the gas station being on the proposed lot. However, given the Ground Water Protection Map showing part of the lot is in a protected area (which was most likely incorrectly labeled as a protected area), the first order of business should be to change the map for this incorrectly labeled protected area. He feels it should be a contingency for approving the variance which could not be approved based on state regulations regarding petroleum storage in a ground water protected area. Therefore, having said all that, he went on to say if this in fact a true situation and these wells do not produce the 20,000 gallons, it should be fairly straightforward to have this area removed as a Level 1 ground water protected area. Again his advice to the board is to make this a condition.

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Mr. Marisol stepped forward to clarify the designation of public vs private for these 2 wells. He stated that when he first purchased the property in the 1980's the wells were designated as Community Non-public Water Supply.

L. Daley spoke up to address Mr. Freel's recommendation about making a condition. In addressing the Town Water Protection areas, he stated, making a change would require a Town Warrant Article for 2024. This would delay the processing of the variance.

J. Dargie asked if this could just be confirmed that it is incorrect.

Chris Costantino, via Zoom, spoke up. Chair Kokko Chappell to Chris Costantino we will first hear from Lincoln Daley in regards to Joan Dargie's question and then we will hear from you.

L. Daley responded to Joan Dargie's question by saying should the board decide to make this part of the approval it would delay the application. He then pointed out: what if it is then proven this information is incorrect in regards to the protected area for these wells. It will require detailed research on the part of the board to confirm the protected area was labeled incorrectly. The board should not make this a condition but make it part of the deliberation process.

J. Dargie to L. Daley: we can then ask for clarification on this L. Daley: if that is how the board wishes to proceed. He went on to add he just viewed on the DES Website that addresses 365 South Street being designated as public water area. That brought the entire issue into question. He feels it would be beneficial to research this information. There needs to be clarification on how the DES determines the designation public water vs. what Mr. Peterson presented.

Chair Kokko Chappell then moved the presentation to Chris Costantino.

Chris Costantino emphasized she was not speaking for the Conservation Commission but is a member of the Conservation Commission. She went on to say Mr. Marisol had stated something she recalled from a previous meeting an October 2002 Planning Board Meeting that accepted the Milford Ground Water Protection Map. She then referenced the town's municipal water code under "Surface and Ground Water Protection Section 5.28".

#### **5.28.010 Authority**

*The health ordinance codified in this chapter was recommended by the health officer and approved by the board of health of Milford under the authority granted in NH RSA 147:1, entitled "Local Regulations." (Ord. 9-20-99, § I)*

#### **5.28.020 Purpose**

*To provide for the prevention of groundwater pollution of the town's only remaining municipal source of drinking water and protection of other potential sources of drinking water. (Ord. 9-20-99, § II)*

#### **5.28.030 Inventory of potential contamination sources (PCSs)**

*An inventory of potential contamination sources that are located within the stratified drift aquifer and potential drainage to all surface waters was prepared prior to the adoption of the health ordinance codified in this chapter.*

She added her recollection for why this code was established in that it was shortly after the Super Fund site was discovered and one of the wells was lost. She emphasized it was started by the desire to prevent this from happening again and it was driven by the residents of Milford, sponsored by the Conservation Commission and presented to the Planning Board in 2002 where it was accepted (unfortunately she was unable to locate minutes for these meetings). In summary, town residents were concerned about the drinking water and were to trying to prevent any further negative impact.

Chair Kokko Chappell asked if there were any other comments from the public. Hearing none she closed this part of the meeting.

Joan Dargie asked if the board could get clarification on this. Her feelings were that it does not need to be approved by town vote, but just receive clarification that this area does not need to be in the Ground Water Protection area if the 2 private wells in question are not deemed to be public wells, and the sites are in fact 669 ft. from town water.

Chair Kokko Chappell re-opened the public portion of the meeting to allow Chris Costantino to make additional comments in regards to Joan Dargie's comments.

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Chris Costantino: based on the Municipal Code and what she can interpret from the code, she feels it has little to do with the existing wells in that area.

Joan Dargie: this could then signify some clarification

Lincoln Dailey: to the board he emphasized all exhibits distributed by the applicant at the meeting should be made a part of the application exhibits.

Chair Kokko Chappell closed the public portion of the meeting, again. Chair added, as L. Dailey pointed out, all exhibits presented as part of the special exception case will be added to the application.

Chair went on to say this application will be continued. With the continuation, there will need to be clarification of the Level 1 Ground Water Protection Area for wells producing less than 20,000 gallons per day specifically in regards to the Little Arrow Daycare site as well as the DES definition of a public water system.

Joan Dargie and Andrea Kokko Chappell brought up the type of soil in the proposed area that C. Costantino brought up, and the questions they have about the composition of the soil. Chair Chappell stated she has questions about this that have not been answered. Chair asked, since deliberations had not started, can she question the applicant now for clarification.

Lincoln Daley suggested the public portion of the meeting be re-opened again and then continued to the next meeting on July 6, 2023. Chair confirmed the case would be re-opened to the public at the next continued meeting. L. Daley responded in the affirmative.

Joan Dargie made a motion to continue **Case #2023-02: 689 North Main Street, LLC and Salt Creek Properties, LLC. for the property located at Tax Map 43, Lot 20-2** are seeking a Variance from Milford Zoning Ordinance, Article VI, Sections 6.01.3.B.7 to allow the retail sale of petroleum products in the Groundwater Protection District on a property located in the Commercial and Limited Commercial Zoning Districts to the meeting of July 6, 2023 and to have staff obtain further information on the Ground 1 Water Protection area.

At that time, Member Thornton interjected. He addressed the chair to request permission for a discussion which the Chair acknowledged. M. Thornton stated he had been in attendance at meetings of Water and Waste Water Commissioners; he feels Dale White and Jim Pouliot should be consulted to see if Milford has interest in rights to wells in the area. Pennichuck was obtained and 2 wells were recently recharged. J. Dargie stated this will be part of the staff's research.

Chair: there is motion on the table made by Member Dargie. Member Steel seconded. All were in favor.

Chair moved to the next case on the agenda.

**c. Case #2023-07 Hitchiner Manufacturing Company, Inc.** is seeking a Special Exception from the Milford Zoning Ordinance, Article VI, Sections 6.02.6.A & B to disturb approximately 4,123 square feet of the site's (2007- approved) total wetland buffer area. The overall 5.94-acre site was developed as the "Perry Field Condominiums". The **property is located at 96 Old Wilton Road, Tax Map 7, Lot 20**. This developed site is within the Town of Milford's "ICI-2" (Integrated Commercial-Industrial-2) Zoning District, and presently consists of five (5) total adjoining units totally 12,084 square feet. The new ownership wishes to modify and reduce the total wetland buffer area in several locations on-site to expand and improve the vehicular access surrounding the building so larger trucks may safely travel around the building complex footprint.

Joan Dargie made a motion to postpone this case to the next meeting or time and place certain. Chair acknowledged and M. Thornton seconded. All were in favor

### 3. MEETING MINUTES

4/20/2023:

In Attendance: A. Kokko Chappell, J. Dargie, M. Thornton, D. Sadkowski, T. Steel, T. Finan, T. Dolan, L. Daley

Chair asked for a motion to approve minutes of April 20, 2023.

J. Dargie made a motion to approve and M. Thornton seconded.

All were in favor.

### MINUTES OF THE ZBA MEETING JUNE 15, 2023

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**Motion to Adjourn**

Chair Kokko Chappell asked for a motion to adjourn. J. Dargie made a motion to adjourn and M. Thornton seconded. All Board Members were in agreement. Meeting adjourned.

<b>Motion to Approve:</b>	<hr/>
<b>Seconded:</b>	<hr/>
<b>Signed</b>	<hr/>
<b>Date:</b>	<hr/>