

Town of Milford
Zoning Board of Adjustment Minutes
February 15, 2007
Mitchell Brook
Case #3-07
Special Exception
Tabled from January 18, 2007

Present: Katherine Bauer, Vice Chairman
Bob Levenson
Fletcher Seagroves
Ron Pieper, Jr.
Rick Westergren, Alternate

Secretary: Kathryn Parenti

Mitchell Brook Development, LLC, together with the additional owners of a proposed 97 lot residential open space subdivision, located at Mile Slip and Mason Roads, Map 45, Lots 2, 3, 17 & 20 and Map 50, Lots 1 & 1-5, in the Residential "R" district; are requesting a special exception from Article VI, Section 6.026.B to impact 8,440 SF of wetlands and from Section 6.026.A to impact 35,915 SF of wetland buffer for the construction of new roads and one driveway.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

K. Bauer, acting chairman, read the notice of hearing into the record. She noted that Section 6.026.A should be for wetlands and Section 6.026.B should be for wetlands buffer. She then read the abutters list into the record. Douglas Bruce, 243 Mile Slip Road, Alfred Karnis, 686 Mason Road, Jay Heavisides, representing Meridian Land Services, John Tenhave and Attorney Andrew Prolman, representing Mitchell Brook Developers and Rod Dellafelice, Audrey Fraizer, Chris Constantino of the Conservation Commission were also present. She then read a letter from the Conservation Commission, dated February 9, 2007 that replaced the submitted letter from January 10, 2007, into the record. She stated that a letter from the Conservation Commission is required in all wetlands disturbance cases. She then asked if J. Heavisides was prepared to continue on with the application with impact "H" deleted from the plan.

J. Heavisides stated that he had talked with his client before the meeting and he felt they could continue on with the elimination of the driveway impact "H".

K. Bauer said that was the elimination of one driveway crossing.

R. Pieper said they were taking the one lot out of the plan.

J. Heavisides stated they would be moving the lot out of the original area and are moving it to another area on the plan.

B. Levenson reminded the board the plan before them is not a valid plan.

K. Bauer said that there were three other areas of concern noted by the Conservation Commission, the first being the wildlife habitat study.

J. Heavisides stated they had not added any more to the study and he would address all three items in his presentation.

K. Bauer inquired about the blasting study.

J. Heavisides said he would defer to Attorney Prolman.

K. Bauer asked the board, a fine line and the point has been made – if they take a lot off the site, then the site plan is no longer accurate.

B. Levenson asked if the lot is moved to another location, what else will happen at the new location; will wetlands be affected at the new site.

K. Bauer stated they would relocate it so it won't affect wetlands.

R. Pieper stated it was possible that the Conservation Commission had already reviewed the new location.

J. Heavisides stated that they had already talked about the possible location of the lot near a vernal pool but in the end, they moved the lot to protect the pool and created the wetland crossing. This vernal pool is the least valuable of the four vernal pools on the plan. In discussions with the Conservation Commission, they preferred to see the lot near the number four (4), the least valuable vernal pool versus having the wetlands crossing.

K. Bauer stated the vernal pool is a wetland, by definition and they would prefer to be near it.

J. Heavisides stated that it is on the back side of the lot, and it is part of the buffer on that lot. They would not have to cross any buffer to get to the lot.

R. Pieper asked for clarification of the definition of the word preference being used by the Conservation Commission. He asked if that preference is of various alternatives or are they advocating support for another location.

A. Fraizer stated their preference is for alternative locations. The Conservation Commission expects to see the plan again; it would have to be evaluated by the Conservation Commission and the applicant would have to fill out another dredge and fill application.

J. Heavisides stated that they were acting on what they were told. Once they had direction from all the boards, they could then make the required changes and resubmit to the Conservation Commission and the Wetlands Bureau.

A. Prolman said it has been his understanding that if they increased the amount of disturbance from the amount stated in the notice, they would have to come back before the board. If they decreased the request, they would not. An example was the application for the Stop N Shop Plaza sign; the requested height was 25 feet and it was reduced to 17 feet the night of the hearing; they could go forward that night. They can go forward with the reduction and elimination of "H".

K. Bauer stated she tended to agree. In this case, the elimination of crossing "H", the movement of the lot to a non-wetland impacted area and the moving of the lot reduces the amount of wetland buffer disturbance.

R. Westergren stated he was fine to proceed.

R. Pieper noted that they did not indicate where the lot was to be moved to; it may impact wetlands or buffers.

K. Bauer stated that if they did impact any wetlands or buffers, they would have to come back before the board. The driveway impact "H" is gone.

R. Pieper wanted it known for the record that they are voting for the removal of impact "H".

F. Seagroves stated that once impact "H" is gone, nothing else is being added in the wetlands, he was fine with that.

K. Bauer stated that part of the deal is in the record.

B. Levenson stated that if they are handed a plan, that plan was the one to go forward to the next level. If impact "H" is to be eliminated and the lot is moved, there is no indication from the Planning Board that they approve of the new location.

K. Bauer stated they are going before the Planning Board on Tuesday, February 20th. If they end up impacting wetlands, they would have to come back before the Zoning Board. If the Planning Board was not going to have any more input, it would be a different story.

J. Heavisides stated that they can move lots around with the Planning Board and it would not impact the Zoning Board. If "H" is eliminated, the new lot is one with no wetland impact.

K. Bauer stated the board was in agreement, four to one, to proceed. She asked if the applicant could incorporate the other questions from the Conservation Commission.

J. Heavisides handed out the wetland impact changes and the map change that showed the modification to impact "D" that resulted from their discussions with the Conservation Commission.

B. Levenson wondered if they should adjust the notice of hearing to note the reduction in impact amounts.

K. Bauer stated they would do that later on.

J. Heavisides stated the amount of impact would be decreased. The requested impacts are for a 97 lot open space subdivision and the density of the subdivision had been approved by the Planning Board. The final engineered plan had been submitted to the Planning Board and the Conservation Commission. Boynton Hill Road ends in a hammerhead and that is the first access point to the subdivision. A second access point is required and that would be through Mile Slip Road to the south. They are currently working on easements with the surrounding owners. The entire parcel is 271 acres; there are 12.5 acres of wetlands and in a subdivision of this size, impacts to the wetlands are unavoidable. The site has a transverse slope and they are limited to 6% road grade. He had placed the road to minimize the amount of cut and fill

and to avoid wetlands. Impacts “D,” “E” and “F” are three impacts in one area. “E” is where they have proposed a detention basin, “F” is a small impact from the fill slope of the road and “D” is the actual stream bed run off. The Conservation Commission requested an open bottom culvert that is eight (8) feet by two (2) feet wide that is set on concrete footings with a natural stream bed for wildlife. This is the same as is proposed at impact “C”. He originally designed a berm to run water across to direct the water into detention basins and thus maintain the stream bed. The Conservation Commission says that will not happen and it will ruin the stream bed. He redesigned a headwall without a pipe instead of the berm. The daily flow of water can flow down the stream bed and can be diverted into detention basins. This reduces the impact. Impact “D” is reduced to 2,270 square feet from 2,800 square feet and the associated buffer reduction is 6,660 square feet from 6,970 square feet. Impact “G” is for road grading. The road has been adjusted to avoid two (2) vernal pools, so that there is only 120 square feet of disturbance. Impact “H” has been eliminated.

K. Bauer asked if there were any questions at this point. There were none.

J. Heavisides continued by saying when they had gone to the Conservation Commission last year, they were asked to do a wildlife assessment for the vernal pools and to see if there was a habitat in the wetlands for endangered species. The study showed what the Commission was asking for but they did not create a map since it takes a long time to create something that detailed. They could set up traps and nets and see what is there; it all depends on the amount of detail that is really required. Whenever a development is created, there is impact on wildlife. They felt they had an adequate assessment of the wildlife there. Their scientist, who had dug all the test pits, had spent a lot of time on the site and traversed the entire site while doing his wetland mapping. There were no major signs of anything unique up there.

K. Bauer asked about the statement “*critical habitat for endangered or threatened species*” from the Conservation Commission letter.

Fraizer stated that the report they were to let them know if they found anything endangered; J. Heavisides stated there were none in his dredge and fill application. They wanted him to be more thorough because of the regional impact and the number of towns concerned. They wanted him to look at more than just water.

K. Bauer asked if they had been satisfied.

C. Constantino said they were not totally satisfied. The description of the land, “*exemplary natural communities*” (from the Conservation Commission letter) shows that it’s a very large piece of natural habitat that abuts other large ones on Mile Slip, in Wilton and in Mason, and it wasn’t addressed; the land very unique. The developer only looked at the edge and the Conservation Commission would like to see more detail by having them look at the habitat itself.

R. Dellafelice stated they did go to the state and wanted to know if there were any specifics to the site, any legality they can ask for, like a specific wildlife study. He was not sure if they could stop the development due to a flower.

K. Bauer stated the Conservation Commission’s detailed report is helpful.

D. Bruce, abutter, stated he knows the area very well. He has seen four bears, three moose, eighty turkeys, fisher cats, coyote, owls etc. on the site but none will be affected. He’s concerned about the bears but feels the others will adapt. There is nothing unique or out of the ordinary up there. There are some special and unique things but they are further down, close to the power lines.

J. Heavisides stated the site is surrounded by Conservation and swamp land. This site is the last bit of land not taken up by Conservation. He continued on by discussing the wetland impact on the nearly 280 acre site; 12.5 acres are wetlands and there is a total of only 6920 square feet of disturbance.

A. Fraizer thought they were specifically talking about wildlife, not just wetlands.

J. Heavisides read from the Conservation Commission letter: "...*the following factors have been considered in their design:*" He stated that the developers have done all that has been required of them, although it may not have been done as thoroughly as the Conservation Commission would like, but it has been done. There is not an analysis of impact but an assessment of what wildlife is there. They will be installing open bottom culverts, as were requested and have provided a report of the wildlife on the site.

R. Dellafelice stated that the site is a large unfragmented piece of land that is valuable to the wildlife there, without the roads.

J. Heavisides asked if other projects have had to do wildlife impact reports.

R. Dellafelice stated that this is a learning process for the Commission. Keene State had done a study a near Osgood Pond to see what the value of the land was. They have learned that large unfragmented parcels of land are valuable, as is this piece of property.

A. Prolman stated the applicant was here tonight for seven wetland crossings. They have already gone to the Conservation Commission for approval for the crossings and they appreciate the Commissions requests. The requested additional study will not affect the road layout. J. Heavisides has done a nice job to minimize impact and an additional study would not necessarily change what is before the board tonight.

R. Westergren asked if this development predates the current two-acre minimum in Residence "R".

J. Heavisides stated that they had gone through the design to determine the maximum density and the result was 97 lots. The lots are two acres and there were no waivers, meaning the road has a maximum slope of 6%.

B. Levenson stated that this was an open space development since it was over five lots.

J. Heavisides stated all the open space is included.

B. Levenson stated that D. Bruce did a very good survey of the wildlife there and felt that what wildlife is up there will survive the construction of the development.

D. Bruce stated that people have gone up to the site in previous years to log and have left a lot of trash up there. He had hauled a lot of it out. He felt the developers would leave the area in a better condition than it is currently in.

K. Bauer asked about blasting.

J. Heavisides stated the town currently has a blasting ordinance. Once they received approval for the 97 lots, they were granted a waiver by the Planning Board for the construction of the road at Mile Slip Road for an 8% grade to minimize the amount of cutting and blasting that would need to be done. The ledge is down six or seven feet and the road is set on the grade so there will not be as much blasting as you would think.

K. Bauer asked if the blasting would affect the water quality.

J. Heavisides stated it would depend on how deep you would have to go. The blaster has to get insurance and the Planning Board requires additional measures.

C. Constantino stated it was anecdotal in other towns, the loss of water, change in water quality when there is blasting.

R. Dellefelice referred to the Home Depot construction in Merrimack, how that affected the surrounding water quality. J. Heavisides stated that was an urban legend; the water quality was not affected by the blasting. The septic systems were close to failing and the blasting affected the systems, and thus affected the water.

B. Levenson wondered how anyone could know what blasting will do.

A. Prolman stated that it depends on the amount of blasting proposed. The town or the regulating body has to do a pre-blast survey; the blasting company has to go to each property owner and check each property. They can test the water before and after, check foundations before and after, take videos of basement walls. There could be a range of study that would probably be under the direction of K. Lynch, Building Inspector. The blasting ordinance came into effect with the construction of Stop N Shop. The town follows state regulations.

B. Levenson asked if that was part of plan review.

A. Prolman stated it was.

J. Tenhaven stated that the insurance companies for the blasting companies have control and set mandates for blasting.

K. Bauer asked if it specifically addresses water.

J. Tenhaven stated they can test certain items, both before and after blasting.

D. Bruce stated that, as an abutter, he's concerned with the quality of water. Changes could happen many years after the fact. Many of the neighbors, although they weren't present tonight, also had some concerns.

K. Bauer asked if he was reassured by the statements made tonight.

D. Bruce stated everything should be okay.

K. Bauer stated that this project has much less blasting than what you would normally expect. She then asked about storm water.

J. Heavisides stated they had a long discussion with the Conservation Commission regarding the drainage from the top of the hill. He spent a lot of time designing a drainage system that would address this. There are seven (7) detention basins to offset all of the runoff.

B. Levenson asked if the detention basins belonged to the lot owners.

J. Heavisides stated they are on open space lots; there would be drainage easements so the town can maintain them.

B. Levenson asked if there was a plan for DPW to clean them out.

C. Constantino stated there was no answer from the Department of Public Works as to whether or not DPW will maintain them.

J. Tenhaven stated in other towns, they are maintained by Public Works.

J. Heavisides continued by saying there are nine (9) treatment swales at the outfall of each detention basins which disperse water all around. The biggest concern was Mason Road at the sharp bend. There is an 8-inch culvert there. He had spoken with abutters, specifically the Novaks, who have seen water pond in their yard but the water currently does not go over the road. Bill Ruoff, Public Works Director, wants to put a larger culvert there because the water ponds there. That's the gauge he used to calculate the storm water. He didn't want the town to say the drainage won't work. He used the 50-year storm data and the town requires 20-year storm data. He tried to build in a safety factor and be conservative and over design the system.

K. Bauer stated she felt Meridian did an excellent job and it was obvious that J. Heavisides cares about what he is doing. She stated she trusts what he says. She then asked him to go

over the criteria for special exceptions and noted that numbers six (6) and seven (7) are not addressed by the Conservation Commission letter.

6. The cumulative impact that would result if all parties owning or abutting a Portion of the affected wetland, wetland complex and/or buffer are/were also Permitted alterations to the wetland and buffer proportional to the extent of Their property rights:

J. Heavisides stated that the project has a total of 271 acres including 12.5 acres of wetlands. Through careful placement of the proposed roads and house lots, the overall proposed wetland impact will be limited to 7,910 square feet (originally 8,440) or .18 acres.

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

J. Heavisides stated that no very poorly drained wetlands are being disturbed and the individual areas of impact are small. Impact "A" is 735 square feet, "B" is 805 square feet, "C" is 1,830 square feet, "D" is 2,270 square feet, "E" is 1,110 square feet, "F" is 50 square feet, "G" is 120 square feet and "H" is removed. This represents a 1.3% impact of the wetlands on site. If each area of impact is taken individually, each does not meet the 3000 square feet of impact that would require a special exception.

B. Levenson asked if this project falls under the growth management ordinance.

A. Prolman stated that it does. It was exempt from the interim growth management ordinance but according to Attorney Bill Drescher, it does fall under the growth management ordinance.

K. Bauer asked the applicant to go over the general conditions for a special exception.

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

J. Heavisides stated that the parcels are located within in the zoning district Residence "R", which permits the proposed development. A special exception allows wetland impacts, for road construction.

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

J. Heavisides stated that the wetland impacts would allow access to non-wetland areas, which will allow the development of a residential subdivision in a residential zone.

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

J. Heavisides replied that all wetland crossings are designed and would be constructed to prevent erosion and to protect the remaining wetlands.

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

J. Heavisides stated the wetland crossings have been designed and will be constructed to the current Town of Milford Subdivision Regulations and Road Specifications, and NHDES Wetlands Bureau and Alteration of Terrain permit regulations.

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

J. Heavisides stated the proposed wetland crossings have been reviewed and permitted by the NHDES Wetlands Bureau and Alteration of Terrain program.

K. Bauer asked if there were any comments.

R. Pieper asked about the impacts "A" through "G" and if they were the result of right of ways or from building lots.

J. Heavisides replied they were all results of right of ways and are not touching wetlands but they are touching the buffers.

R. Pieper asked if reducing the number of lots allow them to shift the road to lessen the impacts.

J. Heavisides stated that the road grade and wetlands dictate where the road goes. The roads are located one hundred (100) feet away from vernal pools and the road is at grade.

A. Karnis, abutter, stated that he agreed with D. Bruce, that things won't change much when this development goes in. He doesn't necessarily like it but it will happen. There is nothing to be concerned with.

D. Bruce stated that he is concerned that on lots 50/1-2 and 1-3, this will adversely affect the driveways and stone walls. With the changes on Mile Slip Road, it may change the drainage onto lot 1-3.

K. Bauer stated he should express his concerns to the Planning Board.

J. Heavisides stated on that lot, the driveway creates a low spot that causes water to pond in her yard. The road will be lower than her yard and there will be a culvert under the road. The proposed grading will eliminate the ponding problem. They proposed a sloping drainage easement on her lot and she was fine with that.

C. Constantino said the owner seems resigned to that.

K. Bauer closed the public portion of the hearing. She stated she would change the notice of hearing to reflect the corrections. Section 6.026.A for wetlands would now be 6920 feet and Section 6.026.B for wetlands buffer would be 34,100 square feet.

There was no additional discussion.

B. Levenson asked if the motion should include the removal of impact "H" and the changes to the numbers.

K. Bauer thanked the Conservation Commission members and abutters for their input. She then called for the vote.

1. Is the exception allowed by the ordinance?

R. Pieper – yes R. Westergren – yes F. Seagroves – yes B. Levenson – yes
K. Bauer – yes

2. Are the specified conditions present under which the exception may be granted?

R. Westergren – yes F. Seagroves – yes B. Levenson - yes R. Pieper – yes
K. Bauer – yes

K. Bauer asked for a motion.

B. Levenson made the motion to approve case #3-07, for the disturbance of 6,920 square feet of wetlands and 34,100 square feet of wetland buffer with the condition that impact "H" be removed.

F. Seagroves seconded the motion.

Final Vote:

F. Seagroves – yes B. Levenson – yes R. Pieper – yes R. Westergren – yes
K. Bauer – yes

Case 3#-07 was unanimously approved.

K. Bauer reminded the applicant of the 30-day appeal period and wished them luck.

Meeting was adjourned at 10:30 pm.