

**Zoning Board of Adjustment Public Hearing
Taylor Van Brocklin Building**

October 19, 2023,

7:00 PM

Members Present

Tom Tague, Chairman
Antoinette Cincotta, Vice Chairman
Mark Beauregard
David Bryan
Robert Gow, Alternate

Members Absent

Lloyd Condon

Public: Timothy Newcombe, Lisa Traeger, Doug Bersaw, Jeff Taylor, and Arlene Crowell

1. Meeting called to order/roll call:

Chairman Tague shared that he was new to the board and if there is a mistake, he'd like patience. He began by asking the applicant to read the first variance and go from there.

2. Public Hearing Map 201 Lot 37:

Map 201 Lot 37 owned by Newcombe Family Holdings LLC / Timothy Newcombe living at 492 Centre Street, Sullivan NH. The lot is located at 18 Winchester Road, Richmond, NH and consists of 1.2 acres. The applicant is asking for two variances. One variance is from Article 4 Residential District under Section 405 Lot Frontage and Yard Requirements, more specifically 405.2 Front Setback-Fifty (50) feet from the edge of the public right-of-way. The second request for a variance from Article 6 Wetland Conservation District, under 602 Purpose, more specifically 602.1. This application's asking for the installation of a septic system within Fifty (50) feet of a public right-of-way (Rt. 119, Winchester Road), and to be place within the 75-foot wetland setback under 601 General.

The applicant was asked by Chairman Tague to read his request to the Board.
Under Article 11: Board of Adjustment, section 1106 Variances.

Newcombe started with the Variance for Article 4: Residential District, section 405.2 Front Setback- From the edge of the public right-of-way.

1106.1-Granting the variance would not be contrary to the public interest:

It is within the public interest for this existing dwelling unit to have the inoperable septic system replaced so that waste can be disposed of in a sanitary manner.

1106.2-The use is not contrary to the spirit of the ordinance because:

Th system has been designed to come as close as possible to meeting the town ordinance while complying with the state ordinance.

1106.3-Granting the variance would do substantial justice because:

I have worked in good faith with the Town of Richmond to modify my state approved plan to satisfy the Zoning Compliance Officers requests.

1106.4-The proposed use would not diminish surrounding property values because:

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The proposed use will not diminish the surrounding property values because the system will be built back in the same location as the original system.

1106.5-Denial of the variance would result in unnecessary hardship to the owner because:

1106.5.1.1- that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

This is an existing dwelling unit with few options to locate a new septic system. If this variance is denied it would cost significant financial harm to my business.

1105.5.1.2- the proposed use is a reasonable one.

The proposed use is in full compliance with RSA 485-A:33 and a state approved septic permit has been issued.

1106.5.1.3- the zoning restriction as applied to the property interferes with the reasonable use of the property considering the unique setting of the property in its environment such that:

This zoning restrictions if applied would render an existing dwelling unit uninhabitable.

Chairman Tague asked if there was any problem with Newcombe reading the proposed variances consecutively? No member of the Zoning Board had any objection.

Newcombe continued with Article 6: Wetland Conservation District, section 601, more specifically 602 Purpose, under 602.1 concerning the 75-foot setback to Wetland Conservation District with poorly drained soils.

1106.1-Granting the variance would not be contrary to the public interest:

It is in the public interest for this existing dwelling unit to have the inoperable septic system replaced so that that waste can be disposed of in a sanitary manner.

1106.2-The use is not contrary to the spirit of the ordinance because:

The system has been designed to come as close as possible to meeting the ordinance. The existing lot and dwelling unit make it impossible to strictly comply with the ordinance.

1106.3-Granting the variance would do substantial justice because:

I have worked in good faith with the town of Richmond to modify my state approved plan to satisfy the Zoning Compliance Officer officers requests.

1106.4-The proposed use would not diminish surrounding property values because:

The proposed use would not diminish the surrounding property values because the system will be built back in the same footprint as the original system. Moreover, once the septic is installed the property will be sold increasing the property values of the surrounding properties.

1106.5-Denial of the variance would result in unnecessary hardship to the owner because:

1106.5.1.1- that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

This is an existing dwelling with few options to locate a new septic. If this variance is denied it would cause significant financial harm to my business.

1105.5.1.2- the proposed use is a reasonable one.

The proposed plan is in full compliance NH RSA 485-A:33 and an approved septic permit from the State of NH has been granted.

1106.5.1.3- the zoning restriction as applied to the property interferes with the reasonable use of the property considering the unique setting of the property in its environment such that:

The zoning restrictions if applied would render an existing dwelling unit uninhabitable.

Bob Gow seated as a full member for this hearing at 7:08 PM.

Chairman Tague opened the hearing up for any questions?

Vice Chairman Cincotta had some questions for the applicant.

Vice Chairman Cincotta requested for the floor to ask Newcombe some questions. Vice Chairman Cincotta referred to Article 10: Nonconforming uses under 1001 non-conforming lots (Lots of Record). Vice Chairman Cincotta asked if Newcome had any of the requests that the Zoning Compliance Officer asked for. Newcombe responded that two different versions of the land were submitted. Essentially, the Zoning Compliance officer wanted the leach field moved further out and away from the poorly drained soils. The house has not been occupied since November of 2022.

Chairman Tague asked how the Zoning Compliance Officer contacted the applicant. Contact was made with the applicant due to work being done on the back part of the foundation. Newcombe opened the back of the foundation so that the water could be drained from the foundation. At that time, it was determined that there were poorly drained soils and the applicant mentioned that the septic had failed. At that time the applicant shared the plan with the Zoning Compliance Officer. The question was asked if the Zoning Compliance Officer received compensation for the meeting. The applicant answered no.

Chairman Tague asked if there were any other questions for the applicant. Vice Chairman Cincotta asked for the floor. The first request from Article 405 is asking if it could be within 50 feet of the public right-of-way and it appears it's impossible to place the septic field anywhere else. Applicant responded that the back part of the lot is poorly drained soil, and the right-of-way is in the front creating two conflicting issues. There is also the well on the opposite side of the house adding another part to the contention. The first plan put the system essentially back where it was, and the Zoning Compliance Officer wanted to move the system closer to the road and further away from the poorly drained soils. Vice Chairman Cincotta asked if the system was put back in the same spot would it be functioning. Applicant responded yes, that was the original proposal, but the Zoning Compliance Officer wanted it moved closer to the right-of-way and further away from the poorly drained soils. Either way it would be functional since they have to build a raised system to get the proper drainage so it would be functional regardless of where it's located.

Chairman Tague asked if in the position it's in when it was first received you would still need a Variance? The applicant answered that the plan does not meet the town ordinances in either position.

Vice Chairman Cincotta asked if there was any reason why his applicant doesn't site to the Richmond Zoning Ordinances Article 10, Section 1001 Nonconforming Use? The applicant responded that he had never done a variance before. Vice Chairman Cincotta was looking under Article 10: Nonconforming Uses Section 1001 Nonconforming Lots (Lots of Record), more specifically 1003 Nonconforming Uses.

1003.1. Any use made nonconforming by the provisions of this Ordinance may continue in existence. Natural but limited expansions to the use are allowed. In judging whether the proposed change reflects a natural but limited expansion, the following shall be taken into consideration.

Vice Chairman Cincotta read each ordinance from Article 10 starting at 1003 Nonconforming Uses including 1003.1, 1003.2 and 1003.4 asking for the applicant to respond to each section.

1003.1.1 To what extent does the use reflect the nature and purpose of the existing use? Vice Chairman Cincotta asked what his response would be? The applicant responded that the footprint of the house hasn't changed so it would be the same. The original system wasn't changed.

1003.1.2 In the proposed use merely a different manner of utilizing the same use, or is it a

1003.1.3 use that is different in character nature, and kind? Applicant responded that yes, it's the same use

1103.1.4 Would this use have a substantially different impact on the neighborhood? Applicant's answer was none.

1103.2 No nonconforming use may be changed to another nonconforming use. Applicant said he didn't think so.

1003.3 If any nonconforming use ceases to operate or is abandoned by the owner owner/operator for one (1) year, any subsequent use of the property shall be in conformance with this Ordinance. Applicant said it was essentially a failing system and the applicant purchased it in November 2022 the system was failed, and it became in operatable in December of 2022.

Vice Chairman Cincotta mentioned we are in October, so it's been less than a year.

Chairman Tague asked for additional questions from the board with no response. He asked for questions from the public.

Bersaw asked how close it was to the road? It was determined it was not the road but to the right-of-way. The required amount to the right-of way is 50 feet. Bryan figured it was about 30 feet from the existing right-of-way. Bersaw asked what the distance was from the Wetland Conservation District? The distance needed is 75 feet the proposed distance is 37.45. Bryan interrupted the distance to be roughly 25 feet within the 75 feet setback to the Wetland Conservation District.

Lisa Traeger asked for the floor. She thinks she heard there were 3 separate designs. One the original place using the nonconforming use but with the same use and the exact same footprint. Or, to move it back into the wetlands away from the road. Or move it closer to the road. If it's grandfathered in as a nonconforming use and if it's been under a year and it stays in that footprint she doesn't understand where there is a variance needed because it is grandfathered in the exact same footprint. Several board members agreed with her.

Vice Chairman Cincotta clarified that it could potentially be considered grandfathered to the extent that it's considered a natural limited expansion of the use that is already allowed. So actually, our Zoning Compliance Officer when he changed it from the preexisting triggered this hearing.

Chairman Tague asked the applicant if there was a preferred location? The Zoning Compliance Officer seemed like he leveraged you to move the system out of being grandfathered in and creating the need to request two variances. The applicant responded that he didn't care he wanted it to be installed 3 months ago. His goal was to make everyone happy with the location of it. He said it makes no difference. He didn't mind revising the plan if everyone is happy with it.

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Jeff Taylor spoke to the board in place of Richard Drew who couldn't make it to the meeting. The concern of the Conservation Commission is when work is done in the Conservation District to protect the wetland from construction debris, siltation, erosion, and that sort of thing. Our concern and the normal procedure that we go through is that we usually do a site review for the Zoning Board of Adjustment for these kinds of projects. This usually goes under a special exception and not a variance. Why is this going under the variance? Vice Chairman Cincotta responded that had the applicant proceeded with replacing the septic as it was the applicant would not have needed a variance or a special exception. What has happened is our Zoning Compliance Officer in good faith believed that to protect the wetlands it would be beneficial to move it forward into the right-of-way and away from our Wetland Conservation District. That is the reason why he needed two variances. Jeff Taylor tended to agree with what the Zoning Compliance Office had to say in respect to the Wetlands

Arlene Crowell, abutter to the property. Crowell added that the house has been there since 1771. The septic system that just failed has been there for a long time. I say put in the septic system. If the applicant puts it back either way, it would be OK, and it's been OK for a long time. The new system will be much better than the one that failed.

The applicant added that essentially the system failed and there was a pipe that was running out into the wetlands. Whatever goes back in there will be a massive improvement.

Chairman Tague asked if there were any other questions? There was not a response from the board or the public. Chairman Tague continued that there are at least two options to vote on.

First would be to grant both variances. One won't mean anything without the other.

Or we would move forward with declining the variance and he utilizes grandfathering the system and put it right back where it was. Chairman Tague asked if there were any more options.

Beauregard suggested going with the recommendations that the Zoning Compliance Officer suggested being that you want to save the wetlands by moving it closer to the right-of-way. Chairman Tague asked if there were any issues with moving it closer to the right-of-way? Bryan added that the State was OK with it.

Chairman Tague read a letter from the Richmond Health Officer Carolann Rocheleau regarding the Newcombe Public Hearing, Sent to Susan Harrington, Town Administrator on October 18, 2023.

Mr. Tim Newcombe who is developing this property, listed the property at 18 Winchester Road as having an old, failed septic system in need of replacement. I needed to start a folder and gather all the info I could. I have that now- the receipt for draining of the old septic tank, by Bells Septic Company in December 2022, the new septic plan, designed by Stephen Pro of Keene, the NHDES installation approval of that plan, which is good until 11, December 2023 and the request for the variances necessary due to the location of the septic tank/installation, near wetlands, and frontage on Route 119. I cannot be at the public hearing on Thursday night since I will be in Lebanon. I did tell Mr. Newcombe that, I believe that he has covered all the requirements and as health officer I have no objections to the variance plans as presented.

Thanks,
Carol Ann

Chairman Tague told the applicant if he had grandfathered it in it would have been fine, it cost you more to do it this way but in the end with the approved variances it will be more environmentally friendly. Since you've gone that necessary step which you didn't have to as Vice Chairman Cincotta has pointed out you could have gone with the grandfather clause and just left it.

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Vice Chairman Cincotta move that we accept the variances as requested. Second by Bryan. Chairman Tague asked for any discussion.

Vice Cincotta spoke that the evidence has demonstrated that each and every one of the requirements for granting the variance.

1. Both are not contrary to the public interest.
2. Proposed use does not conflict with the explicit or the inexplicit purpose of the ordinance.
3. It doesn't alter the essential character of the neighborhood.

It doesn't threaten public health, safety and welfare otherwise or otherwise injure public rights.

It is in the public's interest to uphold the spirit of the ordinance.

Vice Chairman Cincotta thought that condition two has been found and the spirit of the ordinance has been observed. As we all noted this would have been grandfathered and essentially to the non-conforming use. The fact that this can be brought better into code.

3. Substantial justice is done to benefit to the applicant and should not out weight the general public. The general public has actually benefited from the two variances.
4. The value of the surrounding properties are not diminished by granting these two variances in fact the value will increase because now you have an upgraded property as opposed to a property that has a failed septic system. The Town benefits as the property value will increase and the tax base will increase.
5. The literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in two ways. First is to show that the special condition of the property that distinguished this from other properties in the area.

A. There is no fair or substantial relationship between the public purpose of the ordinance provision and a specific application of that property,

B. The proposed use is a reasonable one. Vice Chair Cincotta believes both of those two conditions have been satisfied by the two variances. This property is unusual it is a lot from the 1700's that has had a nonconforming use for a long time. Vice Chair Cincotta thinks that the ordinance as applied to this property would render it uninhabitable and that is not the purpose of the ordinance. This is clearly property that has a nonconforming use and will continue to have a nonconforming use but a better use that will be much more friendly to the Wetland Conservation District and more friendly to the people of the Town of Richmond.

Chairman Tague took exception to the end result is probably the same a safe and perfectly functioning septic system would have been installed. The only risk is that through the construction there is potential harm to the wetland district if it's not managed correctly, Vice Chairman Cincotta responded that it was a reasonable point.

Vice Chairman Cincotta finished by stating that all the conditions have been satisfied and would open it up to any other board members.

Chairman Tague opened the floor up to any other discussion with not response from the Board or the public.

Chairman Tague called for a vote.

All in favor. None opposed. Motion carries.

Chairman Tague told the applicant that both variances were accepted. Chairman Tague asked the applicant to provide feedback of your process working with the Planning Board and the Zoning Board and submit that to Susan Harrington confidentially if you'd like. Having feedback as to how well the Town entities serve the public is important.

The applicant agreed and would write on his experience with the Town. He works for the Town of Sullivan and expressed that the town has been very responsive with guidance and feedback throughout the whole entire process. The applicant felt that it was a very fair and transparent process.

Vice Chairman Cincotta mentioned the process of the Board to prepare a decision of order in detail and get the copy to him.

Applicant asked if he should hold off on construction. Chairman Tague said he would wait until the applicant received the official letter.

The applicant thanked the board.

Chairman Tague move on to the next order of business.

1. Minutes of September 21, 2023:

One change page 2. Under 4. Draft Amendments to Rules of Procedure. Should be Draft Amendments to **Applicant's Instructions.**

Motion to approve the minutes of September 21, 2023, as modified. Gow seconded. All in favor. None opposed. Motion carries.

2. Proposed Draft Applications:

Proposed copies were sent out to the board to review on September 17, 2023.

Vice Chairman Cincotta explained that similar to the Applicants Instruction she took the current form and incorporated all the recommendations from Appendix A. from the Zoning Board of Adjustment Handbook for Officials (updated 2022).

She redlined anything that was a proposed by the state and corrected the formatting.

Application for Special Exception:

Page 1. Top of page heading add: **Application for Special Exception Commercial or Light Industrial Uses.**

Third section down capitalize the **A** in Name of Applicant.

Fourth section down Under location of Property add the word and. (street, number, sub-division, **and** Lot number).

Fifth section down, pull sentence starting with: **Please select the applicable Exception from the Zoning Ordinances**

Sixth section down, pull **1105.2 through Recreational Uses.**

Seventh section down, APPLICATION FOR SPECIAL EXCEPTION, add (**Commercial or Light Industrial Uses**)

Eight section down, second line should read: **Zoning Ordinance Article 11, Section 1005.4 for commercial or light industrial uses.**

Lase section down pull: **1105.4 Commercial or Light Industrial Uses:**

Page 2. Add at the top of the page, **Explain how the proposal meets the special exception criteria as specified in Article 11, Section 1105.4 of the Zoning Ordinance**

Section 2, Add Criterion 1 (Section 1 1005.4.1). Second line down at end add, may not exceed **one third of the total acreage of the lot with a cap of 40,000 square feet.**

Section three, add, **Criterion 2 (Section 1105.4.2) – No noise, airborne particles, vibrations, lights, or other activities associated with the business shall pose a nuisance to abutting properties.**

Section four, add, **Criterion 3 (Section 1105.4.3) Pull the word Explain.**

Section five, add, **Criterion 4 (Section 1105.4.4) – The use may have one advertising sign at the entrance to the property and one sign either on the building or free standing, in accordance with Article 3, Section 313. Pull the word Explain.**

Section six, add, **Criterion 5 (Section 1105.4.5) -. Pull the word Explain.**

Page 3. First section add, **Criterion 6 (Section 1105.4.6) -. Pull the word Explain.**

Second section add, **Criterion 7 (Section 1105.4.7) - . Pull the word Explain.**

Third section Pull the entire section starting with 1106.1.4 though 1105.1.4.

Page 4, add, **PLEASE NOTE: The Zoning Board of Adjustment may impose reasonable fees upon an applicant, including but not limited to the expertise of notice, consultant services or investigative studies under RSA 676:4,I(g) or RSA 676,IV, or the implementation of conditions lawfully imposed as part of a conditional approval, subject to the provisions of NH RSA 673:16.**

Last line, add the word procedures. Remove process. Should read: See RSA Chapter 677 for more detail on rehearing and appeal **procedures**.

Motion made by Bryan to accept this form with the modifications that were discussed. Seconded by Beauregard. All in favor. None opposed. Motion carries.

Application for Variance:

Page 1,third section down capitalize the word Applicant

Sixth section down remove the word USE. And add Article 11 section 1106, Variances. Should read, **APPLICATION FOR A VARIANCE (Zoning Ordinance, Article 11, Section 1106, Variances)**

Seventh section down capitalize the word **Ordinance**.

Eighth section down, Add 1.Section, Public interest in bold, and the word because at the end. Should read.

1. Section 1106.1 – Granting the variance would not be contrary to the public interest because:

Ninth section down, Add, **2. Section 1106.2, if the variance was granted, the spirit of the ordinance would be observed because.** Remove, The use is not contrary to the spirit of the ordinance because:

Should read: **2. Section 1106.2 – If the variance were granted, the spirit of the ordinance would be observed because:**

Page 2, First paragraph, Add, **3. Section 1106.3 –** and add the words **substantial justice**. Sentence should read: **3. Section 1106.3 – Granting the variance would do substantial justice because:**

Second paragraph, add, **4.Section 1106.4 – If the variance were granted the values of the surrounding properties would not be diminished because.** Pull, The proposed use would not diminish surrounding property values because:

Third paragraph, add, **5. Section 1106.5 – Unnecessary Hardship. You must satisfy subsection A below OR B.**

- a. Section 1106.5.1 – Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:**
 - i. Section 1106.5.1.1 – 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:**

-and-
 - ii. Section 1106.5.1.2 - The proposed use is a reasonable one because:**
- b. Section 1106.5.1.3 – Explain how, if the criteria is subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish if rom other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and the variance is therefore necessary to enable a reasonable use of it.**

Add to the bottom of page add: **Applicant's Phone number** _____
Applicant's email _____

PLEASE NOTE: The Zoning Board of Adjustment may impose reasonable fees upon an applicant, including but not limited to the expertise of notice, consultant services or investigative studies under RSA 676:4,I(g) or REA 676,IV, or the implementation of conditions lawfully imposed as part of a conditional approval, subject to the provisions of NH RSA 673:16.

See **RSA Chapter 677** for more detail on rehearing and appeal **procedures**.

Motion made by Gow to accept the form with recommended changes. Seconded by Bryan. All in favor. None opposed. Motion carries.

Application for an Equitable Waiver of Dimensional Requirements.

Third section down capitalize Applicant.

Sixth section down, at end of sentence pull: (Zoning Ordinance 1107)

Eight section down, add, 1. Section and the words physical layout, mathematical or, and. Sentence should read:

1. Section 1107.6 – Does the request involve physical layout, mathematical or a dimensional requirements, and not use restrictions?

Ninth section add: If you answered “Yes” please complete the application. If you answered “No.” you cannot be granted and equitable waiver of dimensional requirements.

Tenth section, add: 2. Section 1107.5 – Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town.

-or-

Leave section 1107.1 as it was presented

-and_

Add the word **Section**, also add, **good faith error in measurement or calculation**. Sentence should read: **Section 1107.2 – How the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation.**

Add the word **Section 1107.3** and **or adversely affect**. Sentence should read: **Section 1107.3 – How the nonconformity does not constitute a nuisance nor diminish the value or interfere with the or adversely affect future uses of other property in the area.**

Add the word **Section 1107.4**, Sentence should begin with **Section 1107.4 – How the cost of correction far outweighs any public benefit to be gained.**

Remove **Section 1107.5** as this was addressed in the beginning of the revised application.

Remove from Remit to down to See **RSA Chapter 677** for more detail on rehearing and appeal procedures.

Add to bottom of last page:

PLEASE NOTE: The Zoning Board of Adjustment may impose reasonable fees upon an applicant, including but not limited to the expertise of notice, consultant services or investigative studies under RSA 676:4,I(g) or REA 676,IV, or the implementation of conditions lawfully imposed as part of a conditional approval, subject to the provisions of NH RSA 673:16.

See **RSA Chapter 677** for more detail on rehearing and appeal **procedures**.

Motion made by Bryan to approve the changes. Seconded by Beaugard. All in favor. None opposed. Motion carries.

3. Other:

1. Board Discussion Regarding Variance Process:

Chairman Tague was concerned about the application tonight. The Zoning Enforcement Officer gave instructions to the applicant that cost him \$2500.00 or more to draft new plans when he didn't need to.

Chairman Tague continued that he would have been fine to be grandfathered in. There is an issue with this it cost the applicant money and the applicant was nice about it and I left him an opening to discuss it further if he decided to, I let him know how he could do that.

Chairman Tague would like to see a review process of our Zoning Officers recommendations. This probably should come from the Selectmen and not the Zoning Board. Vice Chairman Cincotta explained that he is an employee of the Selectmen. Chairman Tague believed that the Zoning Board could make recommendations for the Selectmen of things that we may feel are not being handled right as being observed by our Board.

Chairman Tague continued that this is not the first time but the third time he has observed this. The last time concerned Chairman Tague's property when he went to the Selectmen to tell them that Tague's property isn't draining properly cause the culvert is blocked. Chairman Tague explained that there was no culvert there. The Compliance Office was convinced there was a culvert in place. Without discussing it with the Tague he told the Selectmen the culvert had to be replaced. There is a culvert now and the town installed it. It worked out to Tague's benefit but it cost the Town of Richmond \$3000.00 or more of work for them to install it. Chairman Tague was tine beneficiary of that but that didn't make it right. Chairman Tague felt he took action where he was wrong. This something we need to be careful of.

There is also a logging dispute across from Chairman Tague's home. There was never a posting of their permit to log that he has seen at the entrance. The bridge was not put up according to code and Chairman Tague believes you cannot put a bridge up that doesn't meet code temporary or not. Chairman Tague reference the new bridge on Tully Brook Road, and it meets code.

Dick Drew (Zoning Compliance Officer) lives two houses down from there so how does that happen?

Chairman Tague doesn't know what is going on, but something is wrong. Whether the Zoning Board makes this comment I'm telling you as a member of the board that I'm uncomfortable with what happened tonight. And it has happened in the past. The applicant tonight could take legal action against the town for that money because he was not given the right information from the Zoning Enforcement Officer. The Zoning Enforcement Officer was out of his purview to not give the applicant an alternative and let him know it would be better to go with the variance due to construction and everything. The problem Chairman Tague has is that there are five Zoning Board members present and Chairman Tague believes that they could come to the right decision by reading the regulations carefully rather than having one person without regulations in front of him relaying on whatever he wants to do to make that call. Chairman Tague would like to write a summary of tonight's meeting and resolve with a warning what events and discussions took place. Mr. Newcombe and our Zoning Officer ended up drafting all of the other plans. Chairman Tague admitted that he is not a 100% construction guy, but he does have some experience. He believes that any reparable company would take the proper measures to make sure

the construction work was done without compromise. It is their license if they harm the environment. Chairman Tague isn't comfortable with what he had to go through.

Chairman Tague opened the floor for Zoning Board discussion.

Beauregard asked for the floor and suggested that this might be something that Chairman Tague may want to speak to the Zoning Compliance Officer one on one. This would be better rather than putting the entire board in there. Chairman Tague asked how Beauregard felt about it? Beauregard said from his experience that the Zoning Compliance Officer has and that our water is very valuable he would agree with what the Zoning Compliance Officer said to move the system closer to the road to save the wetlands. The property itself is small you can't really move a stream. And Beauregard would follow with what Richard has suggested. He felt it was a better idea to have the system away from the water.

Chairman Tague said he didn't have a problem with that other than is the right-of-way causing issues with that. Chairman Tague said his concern was not the recommendation cause in the end we approved it and it was fine. The applicant had a choice to just grandfather it in or apply for the variances and doing a more careful job with the construction it would appear from the conservation assessment that there was no benefit to where it was going to be one way or the other. It was actually during the construction and any reputable company would not put the environment at risk.

The issue Chairman Tague has is with the Zoning Enforcement Officers action is that Chairman Tague doesn't know if the Zoning Enforcement Officer leveraged the applicant and told him he had to do this. That is a careful question to ask. There are legal issues with this the applicant could come back and say I spent \$3700.00 to do this and it cost me 2 months of time to get another surveyor out the applicant would now have damages from the town. Lost time and occupancy and he was going to rent the property out at \$1000.00 per month it could end up costing \$8,000.00. It likely cost him \$8,000.00 for what Dick had him do. Was Dick careful enough to tell the applicant you don't have to do this it's grandfathered in. This is the part I don't know, and that point should have been made very carefully. Chairman Tague would argue it's important enough so that he should not be making those recommendations verbally.

Vice Chairman Cincotta wasn't sure if it was a recommendation. She asked if the board got the sense that he was making a recommendation, or did you get the sense that the Zoning Compliance Officer said to make this comply with our current Zoning Ordinances you need to do the following or you should do the following. It sounds like he wanted to make it comply more with the current Zoning Ordinances. So, the applicant did that he changed his plans and then proceeded with the two variances. That's what is sounded like to Vice Chairman Cincotta. It wasn't a recommendation. Chairman Tague continued that if you have a Zoning Compliance Officer come onto your property and claims he has the authority when he doesn't. He makes recommendations to the Board of Selectmen. Chairman Tague's feeling was that the action probably needs to be modified. The reason is that we are left open as a town. The applicant could charge a lot more than the \$8000.00 for aggravation and everything else, he could sue the town for \$20,000.00 and Chairman Tague would guarantee that the town would end up settling that case. If the applicant was told that he had to do this.

Chairman Tague continued I've interacted twice with Dick Drew on these issues, he does not ask and when Chairman Tague tried to point out to him carefully that I probed down with a rod and there is no culvert under there he didn't care. Zoning Compliance Officer was not asking he was telling. Chairman Tague was bringing this to the concern of the Zoning Board that I've had two interactions with him now and he didn't take the right path. This is number three where I'm pretty sure the way this came across that I need to get these two variances and I'll do that. Vice Chairman Cincotta said that the applicant needed to change his plans is what the applicant told us. Bryan agreed that he has to have new plans drawn up. Chairman Tague said he had to have it surveyed again. He had to redraw the plans and he is losing two months' rent on a two-month delay. Vice Chairman Cincotta said it was a three-month delay. Gow asked it if was proper for him to ask if he was clear that he knew he didn't have to do that? Vice Chairman Cincotta answered that the applicant knew nothing about it when he was asked. Beauregard said that part of the conversation was never brought up that the system could go in the same spot. This is a suggesting that maybe it should have been thrown out? Chairman Tague replied that Dick may have strong armed this guy to do what he thought was right rather than what the law allows. Dick should

THESE MINUTES MAY BE APPROVED AND/OR AMENDED AT THE FOLLOWING MEETING

have told him this house has been here since 1771 and you're good you can just put it right back where it was, but it would be better to do it this way. The applicant probably would have been agreeable to that but that's not what he could take to court is that he said she said that I had to do this. The applicant is out 3 months' rent and additional costs and the aggravation for the run around and he could get \$20,000.00 right there and the town would be in the wrong by allowing a loose cannon to do this. Bryan added this is not uncommon when you go before a town. Just tell me what to do and I'll do it. Bryan added that as far as how to speak to Dick, he felt it really felt that the Selectmen should do it as a board opposed to a neighbor doing it to a neighbor. Beauregard mentioned that this sounded like a conflict between the two of you and not a board issue. Chairman Tague felt he and Dick get along well but he had concerns that it didn't hurt or help Chairman Tague to have as culvert put in, but it shouldn't have been at the Town's expense in his opinion. Beauregard suggested that if you have the Selectmen talk to Richard you should also be in the presence, that way he gets it firsthand from you. Chairman Tague said that out of all of this he just wants the right thing to be done and in his opinion that is the number one function of this board. The applicant ended up spending time and money where he didn't have to. The result since he did spend the time and money was the variances, but he didn't need to do them, and Chairman Tague feels he would not have done it and it would have saved him 3 months and he would have gotten the septic system and any reputable construction company would be fine environmentally. It would be hard for him to convince me that would not have happened. Vice Chairman Cincotta included that her point is the board did have the presence of a Selectman today Doug Bersaw was here during the course of that hearing and he knows what was said, We could send the Selectmen a copy of our Notice of Decision which really should go through the fact that he really could have complied with the non-conforming use and he could have but he didn't go in that direction which made the granting of the variance right a lot easier. He could have had it granted without it. He didn't need it. Chairman Tague agreed that if he had not spent that money, we would have just grandfathered it in and we would have been done.

Motion made by Beauregard to adjourn.

Chairman Tague asked if it was OK, he will send the meeting minutes to the Board of Selectmen and Chairman Tague will include his personal concerns. Vice Chairman Cincotta felt that was reasonable. Chairman Tague planned to speak to the board as a whole. Beauregard clarified that Chairman Tague was going to add a letter of his own for the Selectmen. Chairman Tague replied yes unless you want to pass it around for the Board's signatures. Beauregard replied to no. Chairman Tague agreed to send it off privately. Bryan added that this is for the Town's benefit and for Dick's benefit you don't want him to get into trouble either. Chairman Tague agreed that the town would want to be covered but Dick could be sued for the \$20,000.00. Chairman Tague said he would argue that the town didn't do this Dick did this and he put himself on the line and the money would come out of his pocket.

Cincotta seconded the motion to adjourn. All in favor. None opposed. Motion carries.
Meeting adjourned at 8:27 PM

Respectfully Submitted

Kandace Mattson