

**PUBLIC HEARING & BUSINESS MEETING  
DRAFT**

**A. CALL TO ORDER:** The Chairman called the meeting to order at 7:05 p.m.

**B. ROLL CALL**

**Members:** J. DeLeire, Chairman; S. Bryant, Vice Chairman; L. Job; M. Call; S. Almeida

**Non-Members:** M. Sikorski, Building Inspector; L. Jordan, Town Secretary

**Alternate Member(s):** A. Dittami

**C. PUBLIC HEARING:**

**Case #20-02:** Application from **NM Cook Development LLC** for a variance to the terms of Article III, Section 8.5 and asks that said terms be waived to permit a 10-foot setback in Zone BUS at property located at 19 Lafayette Road (Map 7, Lot 68).

H. Boyd of Millennium Engineering appeared on behalf of N. M. Cook Development, LLC along with R. Orvis, Farmington, wetlands scientist to present. M. Cook was also present. H. Boyd is the surveyor and the engineer of record. The plan being discussed tonight was approved at the February 2020 Planning Board meeting.

R. Orvis is here tonight to present his thoughts as to why part of the neighboring property contains a manmade wetland, resulting from a leaking septic tank from the motel, that drains into the actual wetland. Randy looked at the site in mid-2019, and posted that it was a manmade wetland. He then re-surveyed it in October 2019. He feels the marsh itself further downhill is a true wetland.

In February, this site plan was approved by Planning Board. The Planning Board accepted proposal and conditions resulted in a design that has additional costs above that of a traditional building. The building footprint required to accommodate the wetland setback limited retail square footage on the first floor. Retail space now necessary on the second floor triggered the inclusion of ADA access (elevator) which significantly increased construction cost. This design turned out to be problematic, expensive and elaborate. M. Cook is seeking relief from the wetlands ordinance to enlarge the footprint of the building and keep all retail areas on the first floor. This is much less expensive and more functionally practical. M. Cook feels it is safer, simpler and more accessible.

Considering pros and cons, the alleged man-made wetlands, etc., M. Cook feels a variance is in order rather than starting over with a new proposal at the Planning Board. He seeks relief from the 75-foot wetland set back requirement or a 45-foot setback from what he claims is a man-made wetland. He has a drainage mitigation plan to make sure his site does not contribute run-off to the alleged man-made wetland. The curbing around the parking lot will direct water away from the wetlands and into the other direction.

The Chairman opened discussion to the Board and says the Zoning Board of Adjustment is strict, and offers relief usually when there is not another reasonable plan. In this case, this is preferable to go

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back to the drawing board at the Planning Board. Excess cost is hard for the Zoning Board of Adjustment to justify.

Vice Chair S. Bryant feels skeptical of granting relief from the ordinance. He also asked as to if the application is complete. Cook clarified he is seeking a 45-foot setback from the “wetland”. The Secretary pulled the original ZBA application. The application reads:

“The undersigned requests a Variance to the terms of Article III, Section 8.5, and asks that terms be waived to permit a 10-foot setback in Zone BUS.”

H. Boyd spoke further about the wetland and the intent of the ordinance.

The Secretary brought to the Chairman and Vice Chairman the original application to show language used, and discussion was held to clarify what the applicant intended. Cook indicated he meant to apply to have his plan 45 feet from the wetlands and that he miswrote by asking for 10 feet.

This was followed by an extensive conversation regarding wetlands. Contiguous to saltwater is the issue, as it requires 75 feet rather than 10. The Building Inspector wanted to clarify who determined the wetlands are contiguous. In November 2019, when R. Orvis surveyed it, he saw contiguous, all the way down, and the leaking septic system. M. Cook, H. Boyd feels if the septic system had been properly maintained there would not be an issue with the alleged man-made wetland being contiguous to the salt marsh. At peak use, the septic system leaks about 10 gallons/minute.

Alternate member A. Dittami stated that if it was not contiguous, a variance would not be needed to the ordinance, but contiguous, there is a 75-foot requirement. He took issue with the “10-foot” application wording along with other members. M. Cook clarified that he is seeking a 45-foot distance as relief and used incorrect wording in his original application.

The Chairman shifted focus to the question concerning if the wetland contiguity was caused by the septic system at the hotel. Randy Orvis, Wetland Scientist, Farmington, spoke to his professional opinion on this matter.

R. Orvis was hired by N.M. Cook in mid-2019 to conduct preliminary wetland research on the property. He returned for another review in the fall, and at that time classified the wetlands in November 2019. At that time, he observed a full blow out of the side of the mounded septic system from the hotel. R. Orvis also designs septic systems and is an expert on this. He said if the hydrology from the septic tank is eliminated, within a few years the wetland will dry up. Then, the distance will be around 150 feet from the site. The Building Inspector who also serves as the Health Officer for the Town and N. M. Cook Development party then discussed the history of the discovery of this wetland in detail for the Board. The Building Inspector/ Health Officer said that he recently inspected the site, but during COVID-19 the system was not at full capacity so he did not observe the same flow that R. Orvis alleges from November 2019. He also pointed out there is no documentation from when this was witnessed in November 2019, and asked why the applicant did not bring it to his attention at that time.

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A. Dittami asked R. Orvis if he had a NH wetlands license and, if so, for how long did he have it, to which he replied affirmatively and since 1999. A. Dittami also asked what testing has he done to determine hydraulic conditions of that soil.

The Chairman asked R. Orvis his opinion on how long did it take for the septic overflow to create those wetlands, to which he responded two to three years. The Building Inspector pointed out that according to plans, even 15 years ago there are documented wetlands. He feels the crux of the matter is to identify when this wetland first appeared.

The Chairman feels the applicant needs to offer more evidence to justify the variance. The hotel septic as alleged is a health issue and will force them to move forward to solve that issue independently. Additionally, the Building Inspector would look into when was the septic system installed, as that information seemed difficult to find.

After discussion, the Board reached a consensus that they would like to see hard data based on a scientific analysis that this was created by manmade conditions, and if there is data to prove it will dry up if the septic system is repaired.

The Chairman informed M. Cook in light of this, that the Board could continue the matter to the next meeting, and you should have that good evidence, it would help. He suggests continuing to July agenda. M. Cook and H. Boyd asked more questions, and responded that they request the continuance.

A. Dittami suggests that the Board authorizes hiring of a wetland soil scientist to participate in the investigation. Applicant is responsible for the cost. Town determines. Information is at [www.NH.gov](http://www.NH.gov).

**MOTION:** To allow the applicant to have an opportunity to submit any and all additional information that the applicant or the applicant's experts deem appropriate to advance the applicant's position. The applicant would be expected to submit that information to the Zoning Board of Adjustment no later than at the next meeting.

**MOTION:** S. Bryant

**SECOND:** M. Call

**4 IN FAVOR, 1 ABSTENTION, PASSES.**

The Chair opened the meeting to Public Comment.

Pam Miller, Village of Pelton Farms, abutter, is concerned about the septic tank pollution from the hotel.

The Secretary inquired as if there were any remote public comments submitted through Cisco Webex, and there were none.

The Chairman closed public comment.

**MOTION:** To continue this matter to the July 23, 2020 meeting.

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**MOTION:** J. DeLeire

**SECOND:** L. Job

**UNANIMOUS**

**D. REVIEW AND APPROVAL OF PREVIOUS MEETING MINUTES (5/28/2020)**

The Board amended the previous meeting minutes from May 28, 2020 on page four by removing part of Section G as follows:

~~**DISCUSSION:** A. Dittami informed the Zoning Board of Adjustment that he was approached by the Planning Board Chair to consider inter-membership of the two Boards.~~

**MOTION:** To delete part of section G from the previous minutes.

**MOTION:** J. DeLeire

**SECOND:** S. Bryant

**UNANIMOUS**

**MOTION:** To approve the minutes as amended.

**MOTION:** J. DeLeire

**SECOND:** L. Job

**UNANIMOUS**

**E. OTHER BUSINESS**

No other business was discussed at this time.

**F. COMMUNICATIONS TO BOARD MEMBERS**

No communications were made to board members at this time.

**G. ADJOURN**

**MOTION:** To adjourn the meeting at 8:42 p.m.

*The next meeting of the Zoning Board of Adjustment is scheduled for Thursday, July 23, 2020*