

**ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING for –
McLaughlin Family Limited Partnership, M-31 L-104
April 18, 2005**

**APPROVED W/CORRECTIONS 5/16/05
1ST DRAFT**

The meeting was called to order at 6:00p.m. by Chairperson Marsha Lavallee-Huntoon. Those attending were:

REGULAR		ALTERNATES		OTHERS	
Marsha Lavallee-Huntoon, Chair	X	Marge Cutter	X	Paul Morrill	
George Frothingham, Vice Chair	X	Ann Gehring	X	Dianne Bishop	
Cecile Arnone	X	Barbara Marsh			
Annie Robbins,		Robert Moholland	X		
Maggie Kennedy	X	Paul Winckler	X		

Others attending included:

Steve McDonough, Code Dept.	Charles McLaughlin	Nathan Fogg
Pamela Judge	Pauline Hill	Carolyn Platt
Kimberly Cameron	Jeff Parent	Brian Datson

NOTE: Ms. Bishop was unable to attend this meeting; the minutes were taken by Ms. Gehring and turned over to Ms. Bishop for transcription.

ROLL CALL – DESIGNATION OF ALTERNATES –

Marge Cutter was seated for Annie Robbins; at the previous hearing, Cecille Arnone recused herself and Bob Moholland was seated in her place, so he continued in his seat at this meeting.

George Frothingham disclosed a holding of a mortgage for another piece of property owned by Mr. McLaughlin. He commented that he didn't believe it would affect his judgment, and per the Chair he remained seated.

**PUBLIC HEARING – Case 2005-1
McLaughlin Family Limited Partnership, M-31, Lot 104
Variance – 2.04.C.3 – street setback and 4.02.D – wetland setback**

Ms. Lavallee-Huntoon explained what a variance is and why people need a variance.

Ms. Lavallee-Huntoon reported she had a couple of concerns going over this application and Mr. McLaughlin had answered them. Mr. McLaughlin submitted his application approximately one (1) month ago, which was continued to this date because it wasn't complete. A new (amended?) application was received; Ms. Lavallee-Huntoon compared both applications and found a number of differences. Mr. McLaughlin opted for the Board to consider the new (amended) application. Mr. Fogg, representative from Land Tech, spoke on behalf of Mr. McLaughlin. He explained that it is the applicant's desire to place a 26 x 42 foot building on the lot of the corner of Forest St. and Gary Rd. The size of the building creates the required living space of 1100 sq. ft – this is 1104 sq. ft. In order to place the building on the property, relief is needed from the front set back from 10 ft to 5 ft and relief from the wetland setback from 30 ft to 1 ½ ft. The alternative is to request a wetland permit to fill wetlands on the property, this variance application approach is their preferred choice.

There are a couple of drainage easements that were brought in to question in the previous application – map 31, lot 195, culvert from that lot to lot 105 across Gary Rd. There is no effect on these existing drainage easements. The lot would be serviced by town water and sewer.

Ms. Lavallee-Huntoon asked Mr. McLaughlin to confirm that the house is an 1100 sq. ft. house – Mr. McLaughlin stated that this is “on the first floor.” Ms. Lavallee-Huntoon asked Mr. McLaughlin how long he had owned the lot – he replied that he owned it approximately 8-9 months. Ms. Lavallee-Huntoon commented that he knew when he bought the lot that there was a wetland area and he knew what the setback and zoning ordinances were. He replied that he did. Ms. Lavallee-Huntoon commented that she didn’t understand why something wasn’t written into the P&S agreement about subject to being able to get a building permit.

Ms. Lavallee-Huntoon asked where he planned to park cars? He answered that they could be parked on both sides. Ms. Lavallee-Huntoon also asked if he planned on putting in a full basement. He answered in the positive.

Ms. Lavallee-Huntoon concerned about how busy the area is. It is the main way in and out to the school, buses go in and out all the time, students walk to and from school – Ms. Lavallee-Huntoon is really concerned with only a 5 ft setback, doesn’t think it’s safe. Also concerned about it being build that close to wetlands. She asked if he had considered other options. She commented that he could put in a smaller foundation for a two-story house and still get the 1100 sq. ft.

Mr. Moholland asked how much water flows through the small (15”) culverts? Mr. Fogg hasn’t taken a look at it during the dry season – there is standing water there at times of the year. Mr. Moholland’s concern is that being that close to the wetland and how much water flows (snowfall/melt, rainfall, etc.) – what is the possibility of the basement flooding.

Mr. Winckler commented that there seems to be room on the lot to put the building at a different angle or a smaller house. Mr. Fogg responded that this positioning of the house requires the least amount of reduction of setback. Nothing will ever require no reduction because the 30 ft wetlands virtually eliminates all the 100 sq. ft or less or area on that lot. This size building is very similar to other homes in the area. Ms. Lavallee-Huntoon commented that a two-story cape or colonial with a smaller foundation would be an option with reasonable setback from the street and not nearly the impact on the wetlands that the proposed two-story house presents.

Mr. Winckler asked if Mr. McLaughlin was aware of the boundaries of the wetlands when he purchased the property. He replied that he was not. He was aware of the wetlands but not the boundaries of the wetlands. He also commented that up until a short period of time ago the setback from the wetlands in this town was never an issue. Ms. Lavallee-Huntoon replied that we’re going by the current zoning laws. He commented that the PB and so forth never addressed the setback for a long time as far as the wetlands is concerned. Ms. Lavallee-Huntoon replied that it is an issue now and has been for a while.

GF asked Mr. McLaughlin is this would be a two-family home or a single home; Mr. McLaughlin replied it is a single family home.

Ms. Kennedy commented that she got the impression that the whole house would be 1100 sq. ft. but it surprised to see that the 1100 sq. ft is only on the first floor; also the setback from the wetland is 1 ½ ft and there’s no way it will go undisturbed in the construction of the house. Mr. McLaughlin commented that he could certainly keep the house at 1100 sq. ft; Ms. Lavallee-Huntoon asked if that he could cut the foundation size in half, he replied that he could or go with a ranch style home – Ms. Lavallee-Huntoon thinks a ranch style home would not keep with the setting of the neighborhood.

Ms. Kennedy asked where the owner/inhabitants would park. Mr. McLaughlin offered that he would like to put a two-car driveway on the left.

The meeting was then opened up to the public. Ms. Lavallee-Huntoon asked for comments from anyone who wished to speak in favor of this application. There was no one.

Ms. Lavallee-Huntoon then asked for anyone who wished to speak in opposition to this application.

Ms. Platt commented that she owns the abutting property, there is a culvert going into the swamp/wetland; there is quite a bit of water there during the wet season; she has a sump pump in the cellar and it runs constantly; she has seen a For Sale sign lying on the ground on that lot which indicates ‘waterfront’; she feels that he is infringing on her lot 103 and she has to hire a surveyor to establish a lot line; she called him last year and asked about buying the property – he told her what he paid for it, she was willing to pay that amount, he declined and said he was going to build on it; she did not, and does not, consider it a buildable lot.

Ms. Hill has lived in this area since 1938; one of her concerns is the traffic going and coming to the school on the same road; she commented that at one time she had an opportunity to buy that lot, but her husband said he would never build on a wetland, it would change the flow of the water.

Ms. Cameron commented she has been there for seven years; her concern is about property values as well as the safety concerns of children who ride their bikes in the area; she commented that even a slight change can result in major changes.

Mr. Parent questioned: if the variance is granted, does that mean that none of the wetlands would be filled in? Is it the hope that none of the wetlands would be filled in? If that is not the case and some of the wetlands will be filled in, how will that affect the surrounding properties? Ms. Lavalley-Huntoon replied that if Mr. McLaughlin wanted to fill in the wetland, he would have to fill out another application and go through the process.

Ms. Judge, who had previously sent in a letter in the event she was unable to attend the meeting, read the letter she had sent. Her concern is regarding a public safety hazard. There is no sidewalk in this area, children must walk in the street to and from school. Currently there is adequate visibility for drivers to see pedestrians; a house would obstruct that visibility. She urged the board to require that the setbacks remain according to the present code. She also commented about a water issue – over the years the road has been built up, there is water in some of the basements in the area in the spring due to the town's raising the elevation of the road resulting in a change in the way the water flows.

Ms. Platt made an additional comment that at the time the sewerage was put in there was water 13 ft down in the ground coming off Rt. 109 into the swamp.

Ms. Hill added a comment that a neighbor who used to rake leaves in the town used to dump them in the swamp/wetland; a few years ago the state advised the neighbor that they could no longer put anything in the wetland.

Mr. Datson expressed his concern about the wetland area. From his experience, any developer or realtor goes into a property with open eyes and can't go into a property and claim an unnecessary hardship.

Ms. Lavalley-Huntoon read a letter from Carolyn Pratt.

Mr. Moholland, regarding the school and the traffic, having been a bus driver he can attest to the traffic in the mornings and afternoons – he agrees there is a lot of traffic.

Ms. Cutter asked if the edge of the setback is going to be about 15 ft from the edge of the pavement and the setback in the back is only 1 ½ ft from the wetlands.

Ms. Lavalley-Huntoon then closed the public hearing.

Mr. Fogg asked to make a statement. He commented that since this is a two-story building, they would be willing to shrink the footprint, not require the front setback relief and have the wetland setback to 4 ft. with a 20 x 30 ft footprint would be about 600 sq. ft. per floor which would meet the zoning requirement of 1100 sq. ft.

Ms. Lavalley-Huntoon answered that what the board is voting on is what was asked for. If they are going to change the size of the house, the footprint, and relocate it, then it would appear that they should re-do the application – seems like too many changes for the board to vote on at this point.

Mr. Fogg felt that this is an unreasonable position, the board should try to work with the applicants; they are trying to bring forth an option that would shrink the house to 20 x 30' and would not *require* a front setback relief and would be only 4' from the wetland.

Ms. Lavallee-Huntoon asked if they are willing to comply with the setback and do not to consider a variance for the setback to the road; Mr. Fogg agreed. Ms. Lavallee-Huntoon asked if they then would choose to waive that part and the only *thing* the board is then considering is the wetland setback.

Mr. McDonough interjected that this is not what is before the board right now. He added that it would require a new application.

Mr. Fogg responded that they would stay with this current application as presented.

The first round of voting was on the street setback only -

Criteria 1: *The proposed use would not diminish surrounding property values because:* (applicant's response) – reducing the front setback to 5 feet and the wetland setback to 1.5 feet would allow a conforming structure to be constructed on this existing building lot, which is similar to other properties and uses in the area.

Ms. Lavallee-Huntoon expressed her concern with the safety factor with that little setback and the traffic in the area.

MOTION: To deny that the requirements of Criteria 1 have been met due to safety issues
 Made by: Maggie Kennedy
 Seconded by: Bob Moholland
 Discussion: none
 Vote: passed unanimously

Criteria 2: *Granting the Variance would not be contrary to the public interest because:* (applicant's response) – allowing a structure to be constructed on the property is a permitted use and is well within the intent of the zoning ordinance. No interest of the public is being affected by this variance. Public water and sewer is available on this property and therefore the public waters will not be affected by allowing a building on this site.

Ms. Lavallee-Huntoon again expressed that her issue is not with the structure being constructed there, it is with the impact on the road and the impact on the wetland.

MOTION: To deny that the requirements of Criteria 2 have been met due to the safety issues.
 Made by: George Frothingham
 Seconded by: Maggie Kennedy
 Vote: passed unanimously

Criteria 3: *Denial of the Variance would result in unnecessary hardship to the owner because:*

- a) ***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:*** (applicant's response) – allowing one structure on the property is a permitted and reasonable use of the property. Allowing this use requires the granting of a variance. This parcel and the surrounding properties were created well prior to the Wakefield Zoning Ordinance, without thought given to how future state and town rules would affect the property. No reasonable building or use could be placed on the property that meets the zoning setbacks.

Ms. Lavallee-Huntoon referred to the 'hardship' factor – she commented that Mr. McLaughlin knew when he purchased the property that there were excessive wetlands there, he knew what the setback requirements were, she doesn't feel it is unnecessary hardship when there is a possibility that something else could be presented that would better conform and fit in. – she feels there are other options.

MOTION: to deny that the requirements of Criteria 3.a) have been met
 Made by: Bob Moholland
 Seconded by: Marge Cutter
 Discussion: none
 Vote: passed unanimously

- b) ***That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:*** (applicant's response) – the general purpose of the zoning is to protect the public interest. The change of setback distance required to place the building on the property does not cause an effect beyond the property lines, nor does it affect the public interest.

Ms. Lavallee-Huntoon again expressed her concern about the 5 ft. setback regarding the safety issue.

MOTION: to deny that the requirements of Criteria 3.b) have been met.
Made by: Maggie Kennedy
Seconded by: George Frothingham
Discussion: None
Vote: passes unanimously

- c) ***The Variance would not injure the public or private rights of others since:*** (applicant's response) – the proposed reduction in setback does not affect the public's use of the public ways that are adjacent to the property.

Ms. Lavallee-Huntoon repeated her safety concerns.

MOTION: to deny that the requirements of Criteria 3.c) have been met.
Made by: Marge Cutter
Seconded by: Maggie Kennedy
Discussion: None
Vote: passed unanimously

Criteria 4: Granting the Variance would do substantial justice because: (applicant's response) – allowing the property owner to construct a building on the property is well within the allowed use and intent of the zoning ordinance. This variance is not for the convenience of the property owner, but a necessity to the property owner to enjoy their property. This variance also allows for the avoidance of a permanent impact to the adjacent wetland.

Ms. Lavallee-Huntoon again expressed her safety concerns.

MOTION: to deny that the requirements of Criteria 4 have been met.
Made by: George Frothingham
Seconded by: Marge Cutter
Discussion: None
Vote: passed unanimously

Criteria 5: The use is not contrary to the spirit of the ordinance because: (applicant's response) – granting of this variance will allow the construction of a building, which is a permitted use and does not go against the spirit of the zoning ordinance. The lot has been in existence, taxed, and assumed to be a building lot since its creation.

Ms. Lavallee-Huntoon commented that we are now going by the current zoning laws, not what it had been in past history; again, not the idea of a building in terms of the spirit of the ordinance, it's about the safety issued with the street; she thinks there are other alternatives which could be done.

MOTION: to deny that the requirements of Criteria 5 have been met.
Made by: George Frothingham
Seconded by: Marge Cutter
Discussion: None
Vote: passed unanimously

MOTION: to **DENY** the Variance for the 5 foot street setback, Wakefield Zoning Ordinance 2.04.C.3 – street setback, for the reasons discussed above, to McLaughlin Family Limited Partnership, Map 31, Lot 104
Made by: Maggie Kennedy
Seconded by: Marge Cutter
Vote: passed unanimously

The second round of voting was on the wetland setback only -

Criteria 1: The proposed use would not diminish surrounding property values because: (applicant’s response – same as above).

Ms. Lavallee-Huntoon expressed concerns about it that close to the wetland and the impact on the wetlands and on the surrounding properties.

MOTION: to deny that the requirements of Criteria 1, regarding the 1 ½ ft. setback, have been met.
Made by: Bob Moholland
Seconded by: Maggie Kennedy
Discussion: none
Vote: passed unanimously

Criteria 2: Granting the Variance would not be contrary to the public interest because: (applicant’s response – same as above).

Ms. Lavallee-Huntoon again expressed concerns about building that close to the wetlands, how it would affect surrounding properties.

MOTION: to deny that the requirements of Criteria 2 have been met.
Made by: Marge Cutter
Seconded by: Maggie Kennedy
Discussion: None
Vote: passed unanimously

Criteria 3: Denial of the Variance would result in unnecessary hardship to the owner because:

- a) **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:** (applicant’s response – same as above).

Ms. Lavallee-Huntoon again commented that she doesn’t feel there is an unnecessary hardship; Mr. McLaughlin knew prior to purchasing the property that there were extensive wetland there, knew the setbacks; talking about zoning ordinances as they stand now; there are other alternatives available.

MOTION: to deny that the requirements of Criteria 3:a) have been met.
Made by: George Frothingham
Seconded by: Bob Moholland
Discussion: None
Vote: passed unanimously

b) *That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:* (applicant's response – same as above).

Ms. Lavallee-Huntoon commented that, according to comments from the abutters, a lot of lots drain there and there is definitely wetlands there and it does affect the public interest.

MOTION: to deny that the requirements of Criteria 3:b) have been met.
 Made by: Maggie Kennedy
 Seconded by: Marge Cutter
 Discussion: None
 Vote: passed unanimously

c) *The Variance would not injure the public or private rights of others since:* (applicant's response – same as above).

Ms. Lavallee-Huntoon again expressed her concerns that this drainage would affect the others and how a building that close to it would affect the wetlands.

MOTION: to deny that the requirements of Criteria 3:c) have been met
 Made by: George Frothingham
 Seconded by: Maggie Kennedy
 Discussion: Ms. Kennedy questioned how they can build anything as far as the wetlands are concerned on that piece of property.
 Vote: passed unanimously

Criteria 4: Granting the Variance would do substantial justice because: (applicant's response – same as above).

Ms. Lavallee-Huntoon repeated that she does not object to the building, only that it is that close to the wetland and how it will affect everything.

MOTION: to deny that the requirements of Criteria 4 have been met
 Made by: George Frothingham
 Seconded by: Maggie Kennedy
 Discussion: None
 Vote: passed unanimously

Criteria 5: The use is not contrary to the spirit of the ordinance because: (applicant's response – same as above).

MOTION: to deny that the requirements of Criteria 5 have been et
 Made by: Bob Moholland
 Seconded by: George Frothingham
 Discussion: None
 Vote: passed unanimously

MOTION: to **DENY** the Variance for the 5 foot street setback, Wakefield Zoning Ordinance 4.02.D – Wetland setback, for the reasons discussed above, to McLaughlin Family Limited Partnership, Map 31, Lot 104
 Made by: George Frothingham
 Seconded by: Marge Cutter
 Vote: passed unanimously

APPROVAL OF MINUTES

It was agreed that the approval of previous minutes would be handled next month.

Ms. Lavalley-Huntoon thanked all who attended and offered discussions.

NEW BUSINESS

There was some discussion about the time schedule for meetings and site walks. It was agreed that meetings would now be held at 6:30 p.m. with site walks scheduled for 6:00 p.m. on the same day(s).

Ms. Lavalley-Huntoon advised the board that we have recently received five (5) applications. They are not yet complete so hearings are not able to be scheduled right now. The board will be notified when they are complete and hearings and site walks to be held. It was again noted that hearings will be scheduled for within 30 days after we received COMPLETED applications.

There was also discussion as to how many hearings could be held at any one meeting, and the consensus was that we could hear two (2) applications per meeting. Ms. Lavalley-Huntoon will be meeting with Ms. Bishop and Mr. Frothingham on Wednesday to review the open applications; she also asked for dates in May when members would not be able to attend.

MOTION: to adjourn the meeting at 7:35 p.m.
Made by: Maggie Kennedy
Seconded by: George Frothingham
Vote: passed unanimously

Respectfully transcribed and submitted by

Dianne Bishop, ZBA Secretary