

**TOWN OF SEABROOK
BOARD OF ADJUSTMENT
June 27, 2007**

Members Present: Mike Lowry, Teresa Rowe, Dr. Peter Fowler, Dr. Robert Lebold, Henry Therriault and Robin Fales

Others Present: Building Inspector Paul Garand and Secretary Jo-Anne Page

Dr. Fowler called the meeting to order at 7PM and a roll call of the members was taken.

Dr. Fowler read a letter of resignation from Howard Page.

Motion: Dr. Fowler Accept letter of resignation from H. Page and nominate T. Rowe for
Second: Dr. Lebold Vice-Chairman and M. Lowry for Clerk
Yes: Unanimous

ZBA accepts resignation of H. Page and the new slate of officers are T. Rowe, Vice-Chair and M. Lowry, Clerk.

OLD BUSINESS:

Minutes of May 23, 2007 Meeting

Motion: H. Therriault Accept minutes of May 23, 2007 meeting as presented
Second: Dr. Lebold
Yes: H. Therriault, Dr. Lebold, T. Rowe, R. Fales and Dr. Fowler
Abstain: M. Lowry

Minutes of May 23, 2007 accepted as presented.

Dr. Fowler explained the procedure for the meeting.

T. Rowe read the legal notice for the meeting.

NEW BUSINESS:

Motion: Dr. Fowler Take cases out of order and hear 2007-15, 2007-18, 2007-17 & 2007-16
Second: T. Rowe
Yes: Unanimous

Cases will be heard in the following order: 2007-15, 2007-18, 2007-17 & 2007-16.

Case #2007-15 CBAN, LLC, 8 London Lane, Map 5, Lot 8, Sequence 50 for Variance to Article XV, Paragraph D to Permit More Than 50% Of Shrubs, Trees or Saplings To Be Removed From Wetlands in Zone 3

Dr. Fowler read a letter from the applicant for continuance to the July 25, 2007 meeting.

Motion: Dr. Fowler Continue this case to July 25, 2007 at the request of the applicant
Second: Dr. Lebold
Yes: Unanimous

Case #2007-15 is continued to July 25, 2007 at the request of the applicant.

Case #2007-18 Sharon Melanson, 215 South Main Street, Map 16, Lot 12 for Variance to Article VI, Table 2, Paragraph 3 to Permit a Lot With Less Than The Required Frontage in Zone 2R

Henry Boyd, Millennium Engineering, appeared on behalf of this application. He stated that the applicant was asking for less than the required road frontage on one lot. He pointed out that the width and dept of the lots were in conformance.

Dr. Lebold asked if there would be two lots plus the applicant's house. He also asked if there might be a duplex on lot 2 and an additional house on lot one for a total of four living units.

H. Boyd said that there would be two lots and her house would be on lot one. He said that was correct.

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H. Therriault questioned the acreage of the property involved.

H. Boyd stated that the town records showed 2.5 acres, however after a survey of the property, it was determined that there was 1.83 acres.

Dr. Fowler asked if they had looked at putting fewer houses on this property due to the frontage issue. He pointed out that the second proposal shows three single-family homes.

H. Boyd said that the lot would support the proposed number of house that there are no wetlands issues and frontage is the only issue. He said that was correct.

Michael Russell, 216 South Main Street, stated that he had upgraded his property and was worried about what this proposal would do to it. He said that the neighborhood is very congested already and feels that the neighborhood has improved over the past three years.

Dr. Fowler said that the zoning issue of road frontage was the only issue before the board at this time.

H. Boyd stated that the reason this application was here was due to the property taxes and that the applicant wanted to remain in her home in town. He said that any new structures would be at least 150 or more feet from the road.

Dr. Fowler stated that if there were no more questions or concerns, it was time to vote on the application.

	M. Lowry	T. Rowe	Dr. Fowler	Dr. Lebold	R. Fales
1	Yes	Yes	Yes	Yes	Yes
2 A/B/C	Yes	Yes	Yes	Yes	Yes
3	Yes	Yes	Yes	Yes	Yes
4	Yes	Yes	Yes	Yes	Yes
5	Yes	Yes	Yes	Yes	Yes

Motion: Dr. Lebold Grant Variance for frontage for 100 feet for lot 1 and 68 feet for lot 2, both lots
 Second: T. Rowe will have no more than three single-family dwellings combined and no mobile
 Yes: Unanimous homes placed there and that only modular homes or better be placed there.

Request for Variance at 215 South Main Street is granted.

M. Lowry stepped down from the Case #2007-17 & 2007-16.

Case #2007-17 Sam's Real Estate Business Trust, 13 Batchelder Road, Map 5, Lot 14, Sequence 5 for Variance to Article V, and XIV, Table 1 to Permit a Fueling Station in Zone 3

Case #2007-16 Sam's Real Estate Business Trust, 13 Batchelder Road, Map 5, Lot 14, Sequence 5 for Variance to Article V, Table 1 to Permit a Fueling Station in Zone 3

Henry Boyd, Millennium Engineering, stated that he and a number of other representatives from Sam's Club were in attendance to make the presentation for this application. H. Boyd stated that he had originally worked on this property and he explained what had been done with this property to date.

Rob Schulla, Engineer Core States, stated the following:

- This will be on the rear of the property near the automotive area
- There will be 12 fueling stations (6 spots) and a kiosk
- Fuel will be stored underground
- This area will be gas sales only
- This will be for Sam's Club Members only
- It will be set up for one direction only for the flow of traffic
- The original proposal a few years ago brought up environmental concerns and this project was moved 200 hundred feet from any wetlands area
- This will be a state of the art facility
- This proposal meets & exceeds federal regulations
- The underground tanks will be double walled fiberglass
- The system will be continuously monitored
- There will be a triple wall piping system
- Many areas for visual inspection of the system
- Spill containment system

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Concrete area around fuel pumps

Safety valves in place at the ground near the pumps and hoses
Emergency shut-offs outside and inside the kiosk for the attendant
Overhead canopy
Continuous curb around site
Special training for pumps and the area for all persons involved

H. Therriault stated that this sounds good, but what about automobiles drippings onto the concrete and snow blowing. He asked if the system was heated. He also asked about winter storm problems and such at the pumps.

R. Schulla stated that this would be like any other parking lot drainage and would still flow to catch basins for pollution control. He advised that everything would go into the catch basins. He advised that the additive MBTE is no longer an issue due to regulations.

Dr. Fowler asked about other contaminants.
R. Schulla said he was not familiar with them.

Dr. Lebold asked about monitoring equipment.

R. Schulla said that there would be monitoring equipment in the kiosk and club. He pointed out that the kiosk would be manned during the hours the club is open.

Susan Dupres, Devine, Milimett Law Office, spoke on behalf of this application. She stated that following:

They do have an appreciation for the environmental concerns
They have respect for the environment
They had asked members to sign a petition if they were in favor of this proposal . (See attached Exhibit A)
Sam's Club business has changed over the years
Of the 585 Sam's Clubs in the US – 400 have fueling stations

Dr. Fowler stated that this was an expansion of a pre-existing use and that the Planning Board has rules and regulations for this. He questioned the pre-existing use. He said this would be a separate and different use. He also pointed out that given the size of the warehouse, it could be used for a factory.

S. Dupres said that they had filed two applications for the ability to sell gasoline. She said that there were already wholesale and automotive sales there. She said she understood the feeling about the different uses but today wholesale clubs have fueling stations. She stated that she did not believe the intent of the change in the ordinance in 2000 was to make this land a factory.

S. Dupres then covered the criteria for granting a variance. (See attached Exhibit B)

Dr. Fowler asked if what was there now was unreasonable. He asked about the hardship. He asked if the signatures on the petition were from members.

S. Dupres said it was not. She said the hardship was the ability to utilize the entire parcel of property. She stated that the petition had been signed by members only.

P. Garand asked about the parking requirements.

S. Dupres said that it was already overbuilt for parking.

P. Garand stated that the town required a certain number of square footage for retail and parking spaces. He said this would compromise town drinking water. He pointed out that this is a wellhead protection area. He asked that the board be given something depicting the number and size of tanks and where the wetlands are. He wanted to know how much impact any contaminants may have. He also stated that the even though the lot is large there are wetlands and conservation areas that need to be looked at.

S. Dupres stated she had a letter from Sue Foote, Conservation Commission regarding the wetlands and conservation.

Dr. Fowler stated that S. Foote was not present to defend the letter and things have changed.

Dr. Lebold asked if there were gas pumps at the first 100 Sam's Clubs at this time.

S. Dupres stated she did not know.

Lloyd Chapin, 3 Old New Boston Road, stated he was with an environmental committee in Seabrook. He asked that Al Norman be allowed to speak on the group's behalf.

Al Norman, Greenfield, MA stated that the problems on this site were the same as what had been discussed in 2002. He said that the town does not need to meet the business plan of Sam's Club. He pointed out that this variance would benefit the members only and not the entire town.

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Dr. Fowler asked about A. Norman's credentials.

A. Norman gave the board a copy of his bio and his arguments against the granting of this variance. (See attached Exhibit C)

A. Norman pointed out the following:

- This is a zone meant for high wage jobs
- They cannot promise there will not be any environmental issues
- Burden of proof is on the applicant and it has not been met
- There would be 1,400 tanker trucks for fuel coming to that location yearly

Gardner Warr, 9 Forest Road, Center Barnstead, NH, Wilcox & Barton added the following:

- There will still be some releases of gasoline no matter what systems is in place
- MBTE was used to help oxygenate gasoline
- Everything in gasoline acts the same way
- The make up of gasoline has changed somewhat over the years
- There will always be some difficulties

H. Therriault asked what was currently in gasoline.

G. Warr stated there was benzene and ethanol. He said that it's not a big spill that needed to be worried about, it was the little things over the years.

Frank Pallazo, Folly Mill Road, stated that this was a zoning problem. He wanted to know what advantage it would be to Seabrook to grant this request. He said he sees this as a detriment to the town and that big business is hurting small business. He stated that Sam's Clubs and their representatives asked for a meeting with Al Weare and himself and some others to get some help with the Board of Adjustment. He asked that the board look at the best interest of Seabrook and small businesses.

Attorney Mary Ganz, on behalf of Carmel O'Brien, presented a petition that had been signed against Sam's Club having a gas station. She stated that this request is no different from the 2002 request with the exception of the location. She covered the criteria for not granting this request. (See attached Exhibit D).

Abuhl Khan, 3 Greenleaf Drive, owner of Richdale Store stated that gas pumps at Sam's Club would put a hardship on him. He wanted to know if they were thinking of the little guy. He also advised that a traffic study should be submitted for this project and that the entry road to Sam's Club was very narrow and windy.

Dr. Fowler stated that he had not thought of traffic impact yet.

Dr. Lebold asked if Sam's Club could open on Route 1 where the Mobil station had closed.

P. Garand stated they could.

Attorney Craig Salomon appeared on behalf of Cimarron Realty Trust. He also pointed out that this is the same request as in 2002 from Sam's Club. He said that you couldn't ask for the same thing again. He pointed out that there is case law on this. He said his client is concerned with the safety for the school children with the added traffic. He said that this request is not in the public interest and that alarms will have impact on public services. He said that the wetlands are the most unique thing on the property and they should not be impacted. He also stated this use is not permitted in this zone.

Paul O'Connell, NE Service Station & Auto Repair Association, said that this could hurt dozens of small businesses in the area and that competition is healthy.

Charles Mabardy, Sunoco Lafayette Road, stated that he employees 35 people and gas pumps at Sam's Club would hurt his business.

Mike Lowry, Sunoco Lafayette Road, stated that storm water treatment needs to be looked at and traffic issued need to be addressed. He also said that water and wellhead protection need to be looked at.

P. Garand pointed out that there is already one large project on the table and that Sam's Club is not part of that traffic study.

Eric Neburg, 14 Rocks Road, said that he felt the traffic needed to be addressed.

Dr. Fowler pointed out that there were a number of issues that needed to be addressed before any vote could be taken on these applications.

S. Dupres agreed and felt it might be better to continue to the next meeting.

The list of issues that need more information is:

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Traffic study across the bridge
Gasoline and their contaminants effect on groundwater

Original site plan
Aquifers and wellheads
Intent to put in gas pumps at time of purchase of property for Sam's Club
Parking spaces required for retail
Hours of operation
Fisher/Dole time frame

Motion: Dr. Fowler Continue this matter to July 25, 2007
Second: Dr. Lebold
Yes: Unanimous

Case #2007-16 & 2007-17 are continued to July 25, 2007.

Request for Rehearing Case #2007-14

Dr. Fowler read a letter from Patricia Starr, 8 Timber Court requesting a rehearing on Case #2007-14.

Motion: Dr. Fowler Deny request for rehearing as 17 feet was not the decision made
Second: Dr. Lebold
Yes: Unanimous

Request for rehearing in Case #2007-14 is denied.

Motion: Dr. Fowler Adjourn
Second: T. Rowe
Yes: Unanimous

Meeting adjourned at 9:25PM.

Dr. Peter Fowler
Board of Adjustment Chairman

DATED: _____