



Little Harbor Road and Lot 2 having 287,292 ± s.f. and 151.38 feet of continuous street frontage on Little Harbor Road, and lying in a zone where a minimum lot area of 1 acre and 150' of continuous street frontage is required. Said property is shown on Assessor Plan 204 as Lot 5 and lies within a Single Residence A district. **(This matter was tabled at the September 23, 2004 Planning Board Meeting)**

Mr. Will made a motion to take the petition off of the table. Mr. Sullivan seconded. The motion passed unanimously.

Mr. Holden indicated this application was subject to on-going negotiations with the City and the new application will likely be different. He would recommend that this matter be tabled to a time indefinite so that when the new plan is submitted they can conduct a new public hearing on it.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech, speaking on behalf of the applicant, agreed with Mr. Holden.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Will made a motion to **table** this matter indefinitely. Mr. Sullivan seconded. The motion passed unanimously.

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C.) The application of **Brian D'Amour, Owner**, for property located at **107 Pearson Street** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to allow the construction of an above ground swimming pool behind a single-family home within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 232 as Lot 101 and lies within a Single Residence B district.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech spoke on behalf of Mr. & Mrs. D'Amour. Also present was Ian Trefrey, of NH Soil Consultants. This matter went before the Conservation Commission and it was not recommended by a 4-3 vote. Attorney Pelech indicated this was an unfortunate situation where the landowners' parents, as a wedding gift, purchased for them an above ground pool and handled all of the arrangements with the pool company. It is not a pool that can be put up and taken down every season but rather is a substantial investment of close to \$10,000. It was constructed on the site while the D'Amours were on their honeymoon. The parents were not aware that the D'Amours had spoken to Peter Britz, City Environmental Planner, about the fact that they would need a Conditional Use Permit. The pool is 51.5' from the wetlands, so there is a substantial 50' lawn pre-jurisdictional buffer. The area between the pool and the wetlands is a well manicured and landscaped lawn. One of the concerns was how this pool would be drained in the winter. Mr. Trefry and Mr. Britz have worked out a plan that it could only be drained into the City sewerage system so that it will not be drained into the surrounding land and into the wetlands. Mr. Trefry has done an evaluation of the entire situation. They feel that the impact on the wetland is minimal or non-existent. There is not adequate area to relocate the pool to any other spot. This is an extreme case of hardship and was not done with any intent of malice. There are other pools in the area which are closer to the wetlands but were installed pre-jurisdictional. Attorney Pelech turned the hearing over to Mr. Trefry.

Ian Trefry, of NH Soil Consultants, indicated that he did an assessment on the property. The wetland is about 3 acres in size. One side flows out under Islington Street and the other flows out under Essex Street. It is a moderate quality wetland. It is his opinion that there is adequate buffer

to effectively filter out any pollutants that may splash over the pool edge. They recommended that the pool be pumped into the house drain. The D'Amours have offered to plant vegetation around the pool area to further enhance the buffer capacity.

Mr. Trefry indicated that their assessment was based on thirteen functions/values and their conclusion found 6 of the 13 function. Mr. Trefry reviewed these functions with the Board.

Mr. Will asked how many gallons the pool held?

Mr. Trefry was unsure.

Mr. Will explained his concern. If there is a leak in the pool, the water would go into the ground. He is concerned about the chlorine and what damage that would do.

Mr. Trefry indicated that if that were to happen the chlorine would evaporate fairly quickly and the chances of contaminating the wetland from that impact would be highly unlikely. He felt there was an adequate buffer.

Mr. Coker disagreed with Mr. Trefry's observation. He used to own a pool and when he drained his pool he burned a fairly large strip of grass. He also wanted to clarify his certifications.

Mr. Trefry indicated that he was a Wetland Scientist Apprentice and he was not independently certified but all of his work was supervised by a Certified Wetland Scientist.

Mr. Coker asked if there was an approval stamp on the plans?

Mr. Trefry indicated that the plans had a certified wetland stamp on it.

Chairman Smith asked if there was an alternative to using chlorine in pools?

Attorney Pelech indicated that they use Bromine now. He indicated that he has a 33,000 gallon pool that he drains right onto his lawn every year and it has never even turned the grass yellow. He has had his pool for 18 years and he drains it once or twice every year onto his lawn and he has never had a problem. However, to answer his question, Bromine is the alternative but he doesn't know what the effect it would have on the land.

Mr. Sullivan confirmed that Bromine doesn't break down as quickly as chlorine does and they both evaporate into the air very quickly. He used to take care of the pool at the Comfort Inn and tested the water twice a day and it was surprising how fast the chlorine or bromine would dissipate into the air.

Deputy City Manager Hayden asked about the grading and fill during the pool construction.

Attorney Pelech indicated there was some leveling done. What grading was done and what materials were removed are now on the perimeter and they were going to use that material for creating a shrub berm to enhance the buffer.

Deputy City Manager Hayden indicated they were concerned about impermeable surfaces being created and asked what the square footage of the pool and decking around the pool were?

Mr. Trefry indicated that the total square footage, including the berm around the pool, is just over 1,000 square feet. There is a concrete retaining wall behind the pool with crushed stone under the pool.

Mr. Coker wanted to be clear on the sequence of events, starting from when this pool became an idea in someone's head and how the pool was installed without a Conditional Use Permit.

Mrs. D'Amour indicated that they received the pool as a wedding present from her parents. They went to City Hall to get a permit and there was some friction about what the wetland standards were. The last time she went and talked to them she was told that it was fine and could be put up on a deck. While they were gone, her parents had the pool installed without their knowledge.

Mr. Coker asked if this was actually done without their knowledge?

Mrs. D'Amour indicated that was correct.

Mr. Coker thought there was an obligation for the construction company to obtain all permits before they start work. He asked if that was a safe assumption?

Attorney Pelech indicated that it depended on the agreement between the contractor and the homeowner, and either can be responsible for getting the permit.

Mrs. D'Amour indicated that they had agreed with the contractor to get the permit. The last time she was in City Hall, she was told by the woman at the Inspection Department that they would be able to install the pool on a deck.

Peter Britz, City Environmental Planner, confirmed that the ordinance allows for structures to be supported to allow the natural flow of water underneath. They had advised the D'Amours that they would be able to construct the pool in that manner without the necessity of a Conditional Use Permit.

Mr. Holden felt it would be helpful if Mr. Britz explained what the importance is and what the applicant has agreed to by putting the water into the City sewer system.

Mr. Britz indicated that if someone outlets their pool water right onto the grass, the EPA considers it a pointsource pollution. You are supposed to take the pool water and put it into a City treatment system of some sort. In the case of this pool which will have chlorine in it, the best way to drain it is into the City sewer system. That is also what Public Works has recommended in this case.

Chairman Smith indicated that this should be a stipulation of approval.

Mr. Will referred to the Departmental Memorandum which gave the Board three options with this petition, one of which was to move the pool. He asked what the expense would be to do that?

Attorney Pelech indicated that the cost of moving the pool would be substantial and there is no place to move it so that it is out of the buffer. The only movement that would be possible would be closer to the house but they would still be close to 70' from the buffer. Mr. Pelech also indicated that he didn't realize he was a pointsource for pollution and, in the future, he will drain his pool into his sewer system.

Mr. Holden indicated that the Department was prepared to indicate that there were a lot of pluses in what is a tough situation. The important thing is to get the pool water into a sewer. He suggested that, if the Board voted in a favorable manner, they consider putting a condition that insures that future owners of the property would be aware of this obligation. Also, DPW could be contacted to make sure that the pool is being drained according to their standards.

Chairman Smith agreed that something should be recorded at the Registry of Deeds.

The Chair asked if there was anyone else from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Councilor Ferrini made a motion to approve with stipulations. Mr. Will seconded for the purpose of discussion but indicated he would be voting against it.

Mr. Coker indicated that he would not be voting to approve the petition. He was concerned about Mr. Trefry's qualifications to certify the attributes of the wetlands. Also, he felt the City had rules and regulations that needed to be followed and it is the responsibility of the applicant to notify that construction company that they don't have the permits yet. He felt the error was on the applicants part. The purpose of the buffer zone is to reduce sedimentation, etc. and to provide a vegetative cover, etc. He could not support the application.

Mr. Will moved to table the application to work with the applicants to minimize the impact on the wetlands. The applicant is to demonstrate that their proposal is the alternative with the least adverse impact to the environment. Through this process they have found that if the pool was moved closer to the house they could have the back door of the house lead right onto the pool. He didn't believe denial was proper and that tabling this would allow them to move further from the wetlands. He understands this would be inconvenient but he feel the regulations are clear.

There was no second Mr. Will's motion.

Councilor Ferrini asked Mr. Holden how they view the nature of the certification of the Mr. Trefry's apprentice status.

Mr. Britz stated that the ordinance says that there be an independent scientist unless there is less than 50% disturbed upland. They have held in the past that a lawn or yard would be considered disturbed upland unless it is a case where is was important to bring in an independent wetland scientist who would review the findings of this wetland scientist and they would either agree or disagree with the representation of the applicant's wetland scientist.

Councilor Ferrini asked what the nature of the certification that has been submitted this evening?

Mr. Britz indicated that New Hampshire has a certified wetland scientist program and in order to become a wetland scientist you have to be an apprentice for a year. Obviously, someone oversaw Mr. Trefry's plans and oversaw his work so Mr. Britz did not have a problem with the certification stamp.

Mr. Holden confirmed that there were no concerns regarding the stamp on the report from NH Soil Consultants.

Mr. Sullivan indicated he would be voting for the approval because a few years ago this Board allowed a large house to be constructed on the other side of this house on Islington Street. At that time, Mr. Sullivan fought to not allow that construction as it was right on the edge of the wetland and was concerned that it would set some sort of a precedence with that watershed area.

Deputy City Manager Hayden felt this was obviously an unfortunate situation and her concern was the same as the Conservation Commission which was the incremental encroachment within the buffer area. If this was coming before them prior to construction, the discussion would be much different. She felt the Conservation Commission's concern is a valid one and this is coming before the Board without their positive support. However, having said that, Deputy City Manager asked if

they were to table this, were there measures in addition to how this pool water is discharged that could be looked at that would have less impact on the wetlands, such as improved vegetation. There was mention of adding vegetation but she didn't see that on the plan.

Mr. Britz agreed that it's unfortunate that this is coming to them after the fact. His concern in trying to relocate the pool would be that it would create more disturbance and erosion to the wetland would be increased. There could be some plantings in the area behind the pool to make it more of a natural area.

Attorney Pelech indicated that Mr. Trefry has indicated that another mitigation method to enhance the buffer would be plantings.

Mr. Trefry suggested adding more vegetation as a natural protective barrier to the wetland by not just planting around the pool but around the edge of the wetlands.

Deputy City Manger Hayden suggested that this be added as a stipulation.

Councilor Ferrini was agreeable to adding that stipulation to his motion.

Deputy City Manager Hayden did not want to send the message to the community that it's okay to do "whatever" in the buffer zone and tell the City later.

Mr. Will asked Mrs. D'Amour who actually made the arrangements and scheduled the pool installation?

Mrs. D'Amour indicted her husband.

Mr. Will asked if he had set the time and date for the installation?

Mrs. D'Amour indicated that they did not have a firm date.

Mr. Will had a serious problem with setting the precedent of building first and asking for approval later. He did not feel that this application should be denied because of a simple mistake but, by the same token, if the Board were to approve it with conditions that would make it better than the way it was originally presented, he felt that was not following the regulations. If there was a tabling motion he would have every faith with the staff that they would be able to present a new plan to the Board, including moving the pool. However, in the absence of a tabling motion he was forced to vote to deny the motion.

Mr. Coker felt the point about the certified wetland scientist was very well taken so he withdrew his objection on that point. He indicated he would still be voting against the proposal for his other reasons.

Mr. Holden added that the Department did work with the applicant and if the Department felt that someone had done something to go around the Planning and Inspection Departments, then they would have a firm recommendation that the request should be denied and that they should go to Court. In this case, the applicant met with the City in good faith, the parents did things in good faith and there was no intentional ill-will. When they think someone is trying to avoid the ordinance, they would be the first to call it out.

Mr. Ricci asked for a continuous 6" berm across the back to help with a spill, 5' – 10' back from the pool.

Mr. Will felt there were a lot of individual concerns with the Board and again moved to table to allow the applicant to work with the department.

Deputy City Manager Hayden seconded the motion.

The motion to table failed.

Chairman Smith felt this was a hardship with the unique point that the applicant was working with the department and while they were away their parents tried to help out by having the pool installed. They would not be setting a precedent if this was approved. This Board has been very strong against anyone who builds first and appears before them.

The motion to approve with the following stipulations passed with Mr Will and Mr. Coker voting in the negative.

- 1) That the water from the pool be pumped into the City sewer system;
- 2) That there be a filing in the Registry of Deeds indicating that this obligation exists;
- 3) That the DPW be notified to work with the applicants to come up with a permanent or practical connection to the sewer system;
- 4) That a silt fence be installed at the hill of the slope;
- 5) That vegetation be added as a natural barrier to the wetland by planting shrubs and emergent vegetation;
- 6) That a continuous 6" berm be installed across the back, to be located 5' - 10' back from the pool.

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D.) The application of **Engel Family Trust, Owner, and API of New Hampshire, Applicant**, for property located at **50 Campus Drive**, wherein site plan approval is requested to construct a 108.4' x 111', 12,032 ± s.f. 1-story addition to an existing structure, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 267 as Lot 23 and lies within an Industrial district.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech requested that this matter be tabled as a result of a meeting with David Holden and Peter Britz and the wetland scientist. They walked the site and the issue is whether or not a man-made drainage structure exists on the property. Mark West is in the process of putting together a report for Mr. Britz. They would request that this be tabled until next month.

**DISCUSSION AND DECISION OF THE BOARD:**

Councilor Ferrini abstained from voting.

Deputy City Manager Hayden made a motion to table this matter to the next regularly scheduled meeting. Mr. Will seconded.

The motion to table passed unanimously.

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**II. CITY COUNCIL REFERRALS/REQUESTS**

A.) City Council Referral: Proposed Changes to the City’s Zoning Map;

Mr. Holden indicated that this was a referral from the City Council. A memorandum and exhibits were handed out to the Board and these were considered as part of their work session on the Land Use Map. The Department is recommending that they report back to the City Council that, as these are already part of the Master Plan planning process, they will keep their options open and the Council will receive an official report in the draft Master Plan.

Attorney Pelech indicated that his only concern was that they be given ample opportunity during the Master Plan Public Hearing Public Hearings to address these particular areas on the Zoning Map. He will make his comments at that point in time.

Councilor Ferrini indicated he would recuse himself.

Deputy City Manager Hayden made a motion that the Board hold off on an official report back to the City Council until they complete the Master Plan Process. They have already looked at these two properties and she felt they should complete their review on all of the others to look at future land use and make their report at the completion of the Master Plan. Mr. Will seconded the motion

The motion passed unanimously.

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B.) City Council Referral: Request to accept Moffat Street as a City Street;

Attorney Pelech requested that this matter be tabled. Everything is fine and it is all built. The only hold up is they are waiting for an as-built plan from John Chagnon to be submitted to Eric Weinrieb, the City engineer. They should be ready for the November meeting.

Councilor Ferrini indicated he would recuse himself from future review.

A motion to table was made and seconded. The motion passed unanimously.

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**III. AMENDED SITE PLAN REVIEW**

1) 871 Islington Street

**SPEAKING TO THE AMENDMENTS:**

Attorney Bernard Pelech described the following amendments to the previously approved Site Plans:

- A.) The handicap ramp shall be eliminated because the handicapped parking spaces were moved and are now closer to the elevator;
- B.) The open front entryway shall be enclosed on three sides with a glass enclosure;
- C.) The motorcycle pad shall be relocated and will be closer to the front entryway;
- D.) That the sidewalk shall be extended all the way to the parking spaces;



E.) That a portion of curb shall be removed so that water would flow into your stormdrain (this was a request from the abutter);

**DECISION OF THE BOARD:**

Deputy City Manager Hayden made a motion to approve with the following stipulations. Mr. Savramis seconded.

The motion passed unanimously with the following stipulations:

- 1) That the ADA curb cut and ramp shall be all concrete;
- 2) That granite curb stops shall be placed at the end of all parking spaces where the curb is being removed.

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**IV. ADJOURNMENT**

A motion to adjourn at 8:10 pm was made and seconded and passed unanimously.  
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Respectfully submitted,

Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on January 20, 2005.