

A

Town of Bedford
February 18, 2020
Zoning Board of Adjustment
Minutes

regular meeting of the Bedford Zoning Board was held on Tuesday, February 18, 2020 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH.

Present: John Morin (Chair), Kevin Duhaime (Vice Chair), Melissa Stevens, David Gilbert (alternate member), Neal Casale (alternate member), Karin Elmer (Planner 1)

Absent: Sharon Stirling, Len Green (alternate member)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. He indicated that Neal Casale and David Gilbert would be voting members this evening.

1. **Approval of Minutes:** January 21, 2020

MOTION by Mr. Casale to approve the minutes of the January 21, 2020 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Gilbert duly seconded the motion. 1 abstention: Ms. Stevens. Vote taken - all others in favor. Motion carried

2. **Applications:**

Chairman Morin reviewed the rules of procedure for the meeting. He swore in those present who might testify during the evening's meeting.

Chairman Morin confirmed with Ms. Elmer that the address of the property in question is 7 Commerce Drive (and not 7 Commerce Park Drive) as formerly posted. Ms. Elmer indicated it would present an issue for posting purposes.

1. **Lyophilization Services of N.E., Inc** – Request for a variance from Article IV, Section 275-28 to build an addition 8.23 feet from the edge of a wetland where 50 feet is required at 7 Commerce Dr., Lot 24-99-4, Zoned PZ.

Background: The property is located at 7 Commerce Drive in the Performance Zone. In 1999, the facility was approved to be built in three phases. Phase 1 was constructed in 1999 and Phase II was completed in 2002. In 2006, the Zoning Board approved a variance for 2,037 square feet of wetland fill associated with Phase III. The fill was never done and the permit expired. In 2018, it was discovered that the wetland area had expanded and the ZBA granted another variance for the filling of 6,461 sq. ft. of wetland resulting in a new setback of 43.35 feet. (Plan attached).

This current proposal is for an expanded Phase III, with a larger building than was originally approved. (Plan attached).

Proposal: This is a variance request for the construction of an addition to the Lyophilization Services building, shown as Phase III on the plan. The original Phase III expansion was envisioned to be the same size as the Phase I & II sections of the building, with expanded parking located in the rear of the building. This proposal is for a larger addition that encompasses the rear parking area, which results in an 8.23 ft. building setback from the edge of the wetlands where 50 ft. is required. All stormwater treatment will have to meet the town's new Stormwater and Land Disturbance Management Regulations as administered by the Department of Public Works. There will be no additional wetland filled for this project. The Conservation Commission reviewed this application at their January meeting. The Commission did not support the application as presented.

Jeff Kevan of T.F. Moran (the civil engineering firm/surveyor working on the project) and Damon Abernathy of Lyophilization Services of N.E., Inc (L.S.N.E.) (representing the owner) introduced themselves.

Mr. Kevan said that L.S.N.E. is a contract manufacturing company of pharmaceutical products with several locations in the area, operating out of 7 Commerce Drive. This project was originally approved in 1999 with three units approved for building. One was built in 1999, a second was built in 2002. Mr. Kevan stated in 2006 we came back looking to add some additional parking, and the wetlands had changed, so they submitted a wetland permit for roughly 2,000 square feet and received a variance and a permit, but additional work was never done and the project did not move forward.

In 2018 L.S.N.E. wanted to move forward with the third unit that had been previously approved. Mr. Kevan feels that L.S.N.E. had been approved, and therefore vested; however, the wetlands have since changed. They had to get permits for wetlands and any modifications to uses within the building. In 2018 the Zoning Board of Adjustment granted approval for 6,461 square feet of wetlands fill. In an aerial photograph he showed where stormwater runoff had been discharged into a corner of the property resulting in the wetlands lines around the area moving and creeping. There are a couple of points that have increased requiring them to get a permit.

The building they were previously approved to build had space for loading and paving in the back and L.S.N.E. could still build the loading area with paving today, but as L.S.N.E. reevaluated their needs, they decided they would be better served having two light assembly manufacturing lines in this building instead - which would require them to extend the building back to where the back edge of pavement was originally approved. They want to eliminate the loading and paved space and put up an extension to the building instead. The extended building would allow for manufacturing equipment and office space associated with those functions in the building. A 50-foot setback from the wetlands is required for buildings (but not pavement or fill), so they went before the Conservation Commission for a variance. He questions the requirement for that setback because asphalt would create more pollutants coming off of it from stormwater. His understanding is that the ordinance was to require room in order to get in and execute the construction of the building and not impact wetlands adjacent to it. Mr. Kevan said they have been working with Harvey Construction who have assured them that they can construct this building. There is a pinch point of 8.3

feet from the wetland. The wetland juts in and out, but if you were going to take an average of the wetland it would be 19 feet setback from the building itself. There is that 8.3-foot pinch point at one area where the wetland juts in, thus creating the issue. They had gained previous approval for encroachment on the wetlands for the side of the building. The side of the building is within 25-26 feet of the wetland. The current proposal would not increase impervious surfaces and would actually decrease impervious surface. The elimination of the pavement would improve stormwater quality and there would be no trucks dripping oil. L.S.N.E. would like to expand their building so they can get full use and put in two production lines.

Mr. Kevan indicated that the Conservation Commission recommended against this because they felt the Town of Bedford has an ordinance of 50-feet from a wetland that they must uphold. Mr. Kevan feels the intent of the ordinance can be met by putting up silk and orange construction fencing to keep the contractor from encroaching or impacting the wetland area any more than is allowed "as-is" today with the approval to pave there. Work has been done to fill the wetlands, but pavement has not been put in.

Chairman Morin noted that a silk screen had been discussed to prevent anything from going through and asked if that would be put up while the filling was being done. Mr. Kevan indicated that is correct. Chairman Morin indicated that he went by the site on Saturday and found nothing there. Mr. Kevan said that he believes for erosion measures they put in silt sock (not silk fence) for the work that has been done to date. Chairman Morin said he did not see anything on the back of that hill except for open standing water. Mr. Kevan indicated he has not been out to the site in order to tell him if he is right or wrong.

Q: Mr. Casale asked if there would be loading docks where the proposed addition would be.

A: Mr. Kevan said that is incorrect. The pavement and loading area would be eliminated. Loading will take place at the current loading spaces on Unit 2 and materials will be brought in through the building itself.

Mr. Casale said this isn't the first time the Zoning Board has been held hostage by someone trying to say that they are allowed to put down pavement.

Mr. Kevan said he is not trying to hold the Zoning Board hostage, but his only options forward is to build as approved, or ask for relief in order to put the addition to the building in.

Q. Mr. Casale understands what he is saying but noted that they are not the first people to come in and say, "Look we are approved to pave up to the wetlands, but this is a better alternative." He questioned why the paved area was needed in the first place if they were able to do loading from the other side (Unit 2).

A. Mr. Kevan said in 1999 it was set up as 3 separate units that could have gone to 3 separate owners. L.S.N.E. knew that they wanted to use the area for processes, but the processes were not specific at that time. As the processing needs solidified they realized they could eliminate the loading area, but they would need a longer building in order to get needed equipment in for the process.

Q. If this were to be denied Mr. Casale asked if it would then negate the necessity for pavement in that same area because there is an alternative loading area to bring the goods in and out.

A. Mr. Kevan said it does, but they still have the right to put the asphalt down. What they are saying is: Building vs. Asphalt. They understand the need for area in order to construct a building, and that it will make it a little bit harder for Harvey Construction to put up a building because they have less space around the perimeter of the wetlands but Harvey Construction has indicated they can work within the area to make it happen. As far as water quality and buffer to the wetlands he thinks all the values and intent of the ordinance can be met.

Q. Mr. Casale asked if the proposed building would be on slab or have a basement.

A. Mr. Kevan said the building addition would be on slab.

Mr. Kevan said that the Conservation Commission had asked them if they could shorten the building and still make the site work. He discussed it with L.S.N.E. and the response was that all of the planned functions could not be performed in a shortened building because there would be less space and floor area. They would have to load the product on box trucks to be taken to another facility or site in order to do production, inspection, packaging and labeling. They cannot make the building smaller and perform the intended functions. The mechanical functions and offices would have to be moved to another site and they would not have the same office space they would have under the current proposal and office personnel would have to be located elsewhere or drive between one of their 3-4 other sites in the area costing them more money and putting additional traffic on the surrounding roadways.

Q. Mr. Casale asked how that differs with what they currently have. He noted that they apparently have 4 manufacturing sites, but he only sees 3 on the summary and does not see the 4th site on Harvey Road.

A. Mr. Abernathy stated that the 4th manufacturing site on Harvey Road has not been completed yet, so it was not included in the summary.

Q. Mr. Casale asked if they were constructing a new building on Harvey Road.

A. Mr. Abernathy said that is correct.

Q. Mr. Casale said there was an alternative there on Harvey Road and wondered how they are already juggling production since they don't currently have everything under one roof.

A. Mr. Abernathy explained that each one of their construction lines is a self-contained unit. The unit currently being constructed at Harvey Road will have all of its construction capabilities contained to Harvey Road. There are support staff used universally across all of their sites. IT and HR are centrally located and farmed out to each of the locations, but the manufacturing buildings are typically set up to run independently so they don't have to have material and people transfer back and forth.

Q. Mr. Casale asked for confirmation that there are people travelling between the buildings (IT, HR, etc.)

A. Mr. Abernathy said that is correct, but their travel would be reduced and their location limited to the 7 Commerce Drive building, and production personnel would stay at the building they are assigned to. Mr. Kevan added that there would be new production lines at

7 Commerce Drive and not any production that is currently happening elsewhere within their facilities.

Q. It seems to Mr. Casale that they still would be juggling personnel between the 4 buildings.

A. Mr. Kevan said that there are some people, such as IT, who would travel to all 4 facilities; but if the building on 7 Commerce Drive were shortened the travel would be increased because people could not be located at this location and would have to be elsewhere and come in and out of the facility to oversee production and do their jobs. The tail end of the process (packaging and labeling) would have to be done someplace else.

Q. Ms. Stevens asked if they could expand the building in any other way in order to get that needed length and reconfigure the building in some other way so they are not encroaching on the wetlands.

A. Mr. Kevan said if they shifted expansion to any of the other units they would be taking out the loading and shipping/receiving processes that occur at both of those bays. For example, if it were moved to the middle unit there would only be half of the shipping/receiving possibilities that we have today. The answer would be, "No."

Q. Ms. Stevens said that they would be reconfiguring the entire building; however, and they would still be gaining the same amount of space, so she doesn't understand how they would be losing any space or function to the building.

A. Mr. Kevan called her attention to the existing asphalt area that exists today which is used so tractor trailer trucks can get in to ship and receive out of 2 bay doors on one unit, and one bay door on another unit. If the building is reconfigured to occupy any of the space that is currently paved the shipping/receiving capability is reduced.

Q. Ms. Stevens asked if shipping/receiving could ONLY occur at that location, and not be moved to any other location or portion of the building?

A. Mr. Kevan said there is no other area down the side or front of the building for shipping/receiving. If he moved the configuration of the building to where the pavement is currently, then they would not have access to the third area of the building on the side because the building would block it. You would not be able to get a tractor trailer in and it would not be able to circulate and park if a building occupied the currently paved area.

Q. Ms. Stevens asked if they could reconfigure the pavement and parking so the tractor trailers could get from a different direction than they currently do.

A. Mr. Kevan said the area to be constructed on (whether it be building or paved area) is the same area that was approved in 1999, 2006, and last year.

Q. Ms. Stevens felt that Mr. Kevan may not be understanding her and asked instead of a truck entering and going to the right; could they reconfigure the building and pavement so that trucks could come in at the front of the building entrance on Commerce Drive and then go to the left along the front of the building and then turn up along the back side of the building instead?

A. Mr. Kevan said that tractor trailer trucks currently could not go through the parking lot along the front of the building because it would be a safety issue and having enough space for the truck to turn up the back side of the building would require further paving which would be more impact the wetland on that side.

Q. Mr. Gilbert stated that it looks like you would just be trading impact on one wetland, to impacting the wetland on the other side.

A. Mr. Kevan agreed.

Q. Mr. Duhaime asked if they could take the block, push it over to the far-right building and just swap out where loading occurs. It seems that square footage-wise it would be comparable. He asked if this solution had been looked at.

A. Mr. Kevan said that you could move the extension of the building to occur to the far right over the paved area instead, but there is stormwater that comes across the front of the site and down the back side of the building. A driveway would have to be created entering on the back side of the building impacting wetlands in order to accomplish that. It would just be impacting more wetlands.

Q. Mr. Casale asked what Mr. Kevan means by “impacts”.

A. Mr. Kevan said he would have to fill the finger of wetlands on the upper region of the back side of the building, and the wetlands along where the expanded building is proposed so that a tractor trailer truck could pull in, back up and pull out (which requires broad space for the truck to swing around)

Q. Ms. Stevens asked if he'd already been approved to put pavement there, though.

A. Mr. Kevan said he is approved to put pavement to the area where the expanded building is proposed, but he is not approved to put pavement along the back side of the building.

Q. Ms. Stevens asked if there was already a paved parking lot on the back side of the building.

A. Mr. Kevan said there is already a paved parking lot on the back side of the building, but it is only maneuverable by a car. In order for a tractor trailer truck to swing through that area more paved area would be needed to get down the back side of the building and to the area where the expanded building is proposed.

Q. Ms. Stevens asked if they have even tried to reconfigure the building, and has it even been brought up as an option?

A. Mr. Kevan said they have not looked to see if it made sense to move the unit over because they would have to reconfigure all of the uses within the building and they would never bring tractor trailer trucks through the parking area in the front of the building because it would be a safety issue for people parking there. There would have to be a new driveway put in the front for the trucks and it would impact wetlands in the front and then the trucks would have to go through the parking area on the back side of the building which is also a safety issue for those parking there. You want to separate your truck traffic and delivery and shipping from your parking areas.

Q. If this is not approved, you are saying that you could pave all the way to the wetland where the back of the proposed building would be, so Mr. Casale asked if employee parking could be moved to that area instead, so that the trucks could then go in through the front and back side where employee parking is currently located.

A. Ms. Elmer said that she doesn't think the Planning Board would allow them to do that because they have strict aesthetic guidelines. Mr. Kevan stated that their proposed plan is the one of least wetland impact and to protect the intent of the ordinance and not have construction encroaching into the wetland during building. He said that normally any setback from wetlands would also have be concerned with maintaining a buffer and preserving water quality, flood storage, etc.

Mr. Kevan reviewed the criteria for the variance.

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

Mr. Kevan stated that granting the variance would not be contrary to the public interest because no public or private rights will be by affected by allowing the requested variance to allow the building to be constructed where pavement had been previously approved

(1) Whether granting the variance would alter the essential character of the locality:

Mr. Kevan stated that granting the variance would not alter the essential character of the locality because this building and layout will slightly decrease and not increase any impervious coverage.

(2) Whether granting the variance would threaten public health, safety or welfare:

Mr. Kevan said that granting the variance would not threaten public health, safety or welfare and will improve water quality because there is less pavement and fewer vehicles dripping pollutants from parking lots and less pollutants from de-icing agents.

2. The spirit of the ordinance is observed because:

Mr. Kevan stated that the spirit of the ordinance is observed because granting the variance will not contribute to any additional pollutants. A stormwater management system has been implemented as part of the previously approved application. With a building there would be less pollutants coming off the surface and the stormwater system would provide the necessary treatment. There are no new impacts to wetlands. We have talked to the contractor who has agreed they could work within that area if we need to put up orange construction fence or some other barrier that would give the Town a level of comfort. The change will not have any effect on those wetlands as far as flood storage or flood protection. These wetlands are on the fringe, so if you went further out away from the property to the north the wetlands there have fairly good value. The wetlands in the area we are discussing are those that have meandered, grown and shrunk over the years depending on the stormwater coming off of Commerce Drive and this site. The wetlands have kind of developed, and the line has moved. These are very low functioning value wetlands as far as wildlife habitat, flood storage and stormwater goes. They provide very few functions and values as far as wetlands go; therefore, these wetlands are not unique and they don't provide any significant wildlife habitat or fish habitat. There will be no expense to the town as a result of granting the variance and there will be no aesthetic change or aesthetic impact to neighboring properties. We feel the spirit of the ordinance is maintained by protecting and maintaining a barrier to make sure construction stays

within the area. We feel we are meeting the intent of the ordinance and the wetlands will be preserved.

3. Granting the variance would do substantial justice because:

Mr. Kevan said granting the variance would do substantial justice because loss to the applicant by denying the variance would exceed any gain to the general public. If this is denied there really is no gain to the general public because whether the back area is a paved surface or a building – there really is no benefit either way to the public. Loss to the public would be because it would prevent a portion of previously approved project from being constructed and there would be an adverse impact to the public based on a reduction in town taxes if the building is smaller, as well as the availability of jobs remaining in Bedford rather than somewhere else. Substantial justice would be done because granting the variance would allow the applicant to construct to the full extent on this site and allow him full function to perform his business as he is proposing it.

4. The values of the surrounding properties will not be diminished for the following reasons:

Mr. Kevan said the values of the surrounding properties will not be diminished because there would be no diminishment of surrounding properties whether this back area is paved or whether building as we've talked about. We feel that basically we are not altering the essential character of the property or the neighborhood.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area because:

Mr. Kevan stated that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship it would prohibit the applicant from building it in this back area and having full use of the site. It is a 3-phase project that was approved in 1999. Wetlands have varied over the years when these units have gone to be constructed and the value of these wetlands is very limited, so we feel that by allowing the applicant to have full build out of the property then they would have full use as far as their operation, keeping it on-site, and not having to break it up among other facilities goes.

(A) Denial of the variance would result in unnecessary hardship because

(i) 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:

Mr. Kevan said that denial of the variance would result in unnecessary hardship because 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 general public purpose is to preserve wetlands for the construction of the building. We've stated we will work within the constraints of the wetland in the back and not impact the wetlands during our construction.

(ii) The proposed use is a reasonable one because:

Mr. Kevan said the proposed use is a reasonable one because it allows the full use of the site and again, they would maintain and preserve the 8.3-foot pinch point – but the average separation from wetlands in the back is about 19 feet.

Based on this, Mr. Kevan feels they have met the five criteria and would be happy to answer any other questions the board may have.

Q. Mr. Casale said that Mr. Abernathy has said that basically the 4 properties he has are individual units, correct?

A. “For the manufacturing, yes” Mr. Abernathy answered.

Q. Mr. Casale asked if there is any reason they cannot take what they are doing in this building and move it because you don’t seem to have an aversion to being in other buildings. Is there any reason that this cannot be swapped out to another location which is bigger and more accommodates your needs and having something else in this place if you still have a lease at this building?

A. Mr. Abernathy said they’ve evaluated that. The other buildings they’ve taken over in the area such as 29 Commerce are not suitable for manufacturing because the infrastructure of the building cannot support it. The equipment we have to put in really has to be supported by a building that was designed to house that equipment whether it be loads of the equipment, flatness, anti-vibration, or just security (as we are making pharmaceutical drug products). It really has to be an existing building that meets those needs, or a greenfield building. He said right now given our portfolio of buildings this is the best option for us.

Q. Chairman Morin looked over the letter quickly and noted they said this met the Conservation Commission’s answers to their reduction of the building. Mr. Kevan said that they were trying to respond to the Conservation Commission’s questions. They didn’t get into a size reduction, but Chairman Morin is wondering if something can be done – he’s not saying all the way out of that buffer, but somewhere in the middle – because 8.3 feet is awfully close.

A. Mr. Kevan indicated they’ve discussed whether taking another 10-feet off would be acceptable and they are willing to entertain that. Again, it will always have some impact to the functioning of the building, but we are willing to discuss that if the board feels that is what it would take to move forward.

Q. Mr. Duhaime asked if there is a possibility to shift it closer to the road by 10-feet or something; or are they too close to the front setbacks?

A. Mr. Kevan said there is drainage and other functions occurring, but he hasn’t looked to see if he can move it up – but it would only be a few feet because right now the area is being utilized by stormwater management. As part of this project it was required to get pedestrian activity from the building to the street and they’ve talked about having some type of sidewalk for pedestrians, but currently the area is fully used so you would have to start pulling the driveway and parking away and they would have to see how and if they could accommodate that drainage in the front because it comes in, around and works itself away down the back side of the property.

Q. Chairman Morin asked if their plan is to go with Phase 3C which is the side parking lot. He asked whether or not that is being done.

A. Mr. Kevan said, “Yes, that is being done.” He showed on the plans where they are putting in a path with a culvert and a swale that discharges to the side. All the water comes from the side and gets to the wetland down along the property.

Q. Chairman Morin asked how many employees are in the two existing buildings there?

A. Mr. Abernathy said there are about 50-60 employees.

Q. Chairman Morin asked how many additional employees they are looking to add there.

A. Mr. Abernathy said that 30-40 employees had been allocated. There are 120 spots on the site.

Chairman Morin opened the floor for any questions or comments from the public.

James Drake of 43 Christmas Tree Circle sits on the Conservation Commission but was not present for the January 28, 2020 meeting with Mr. Kevan where a vote was held. Mr. Drake mentioned a couple of things to note: The Conservation Commission does not approve pavement within a setback. It is just approved because it is allowed. He stated what the Conservation Commission did approve was 2 or 3 shots at filling in wetlands to the tune of 8,000 – 9,000 on the site.

Mr. Kevan interjected it was 6,400; but Mr. Drake said that was not in 1999, they’ve filled in more wetlands. Chairman Morin indicated he would not have any debate going on.

Mr. Drake said he thinks there 2 or 3 different times they’ve come in front of the Conservation Commission asking for a dredge and fill that was approved. In 2018 the Conservation Commission approved a dredge and fill for 6,400 feet where the Phase 3C parking (to the left of the building which almost covers the entire length of the proposed building). At that time, they requested that the entire Phase 3 building go to a storm tech treatment system so that roof drainage goes to storm tech. He said they could not disapprove or provide comment on the parking area and the pavement within their regulations; but back in 2018 they did allow for an 8-foot encroachment into the 50-foot setback on the corner of that building. What they are requesting now is a 42-foot encroachment into the 50-foot setback. The supposition that is being proposed here is that, “Well, if we had built the parking lot before, then building a building on top of that would be better water quality than it would have been today; however, he said if you go back and look at their plans they were supposed to put in storm tech treatment for all of their paved areas *and* the building itself. So, technically speaking – it is a wash.” Mr. Drake said that he just heard testimony that they do not want to bring a trailer in front of the building because of parking. He urged people to take a look because they have parking on the side of the building that is to the same width and travel lanes; so therefore, you could bring a tractor trailer on either side of this building.

Mr. Drake feels this is a slippery slope and that we can’t have people coming in here and saying, “Well look I’m going to pave it one year and two years later I am going to tell you that if I build a building on top of it, it’s going to be better.” We have regulations, for better or worse and if the regulations state for some reason that someone is surmising that if we set a 50-foot setback on the wetland years ago because we wanted to allow a construction area around a building, but for some reason we decided that is o.k. for parking lots – it’s basically calling everybody pretty stupid back then because we said why would they allow parking lots, but not a structure? It’s

because they thought disturbance to the land would cause more pollutants during that temporary construction period than the long-term parking lot. He stated that the Conservation Commission still has not figured out the history of this and why they did what they did, but he thinks we are working toward some type of solution in the interim, but he would suggest that you probably shouldn't approve a building like this with such a vast encroachment to the setback. The vote on the Conservation Commission after some discussion was 1-1-4 (One vote for it; one abstention; and four against it); however, there was no vote after that when it was clear that they probably would have had a majority to vote against it – but he is not sure why that happened because he wasn't there.

The only other thing he would say is if they have business activities in a manufacturing space (especially IT, because it would seem to him that IT operates remotely and fixes everything remotely) – he is not sure why they have to be in this building. If IT was mentioned as a necessary function that has to be in this building – he suggests this would be a very important question to ask because he has never really heard of that in this day and age.

Chairman Morin swore in another member of public who had arrived after the swearing in at the outset of the meeting. That person introduced himself as William Carter of 100 New Boston Rd. another member of the Conservation Commission who was not able to make the January 28, 2020 meeting but livestreamed it and watched the whole meeting. Mr. Carter stated he is in favor of what the applicant would like to do; unfortunately, not being at the meeting he was not able to give his view of this. He believes if the Conservation Commission had asked the applicant to do a proper storm drain catching the water coming off this building we could really keep that wetland as strong as possible. There are many techniques.

He has not followed this all the way back to 1999, but it looks as though this area has been disturbed at least 2 or 3 times. Conservation has many different minds, as Mr. Drake has said, but when Mr. Carter looks at this project allowing a reputable company that has been in this town for many, many years to continue to keep this town growing and to bring jobs in and having them do the proper drainage and making sure it is all caught before it heads off – if he was sitting on the Conservation Commission meeting that night (unfortunately he was 8-hours away at work) he would have come up with a proposal that probably would have passed through here. He stated again he is in favor of what this applicant is doing.

James Drake, 43 Christmas Tree Circle stepped up to the microphone again to respond to what Mr. Carter just said. He thinks that Mr. Carter has a point and that this should be remanded back to the Conservation Commission so that they can discuss it, because they did ask for alternative. The applicant has offered an alternative assessment to make the building smaller. He hates to delay things, but he didn't see a discussion of alternatives during the presentation, and that is usually what the Conservation Commission asks applicants to do. What we are hearing here is that there is potentially some room to maneuver, and maybe that would have changed the vote. He believes it warrants a hearing with the Conservation Commission.

There were questions from the Zoning Board on the Conservation Commission's vote, so they referred to the minutes and noted that the vote was 2-4 (Two in favor, and 4 opposed).

Mr. Kevan said this wasn't something L.S.N.E. had planned. As their business developed and they got contracts they worked to address them and accommodate them in their current facilities. If they have to create new – then they create new. He said they are building a facility on Harvey Road that will house some other operations. They have these two units, with a 3rd that has been approved and as they started laying out the equipment necessary to do these two processes that is

the reason the building got larger. Once they laid out the necessary equipment they were able to surmise the size of the building needed. If part of the approval is that we provide additional stormwater treatment for the roof, they are happy to work with the planning staff to accommodate that through the Planning Board process.

Q. Chairman Morin asked if they would be willing to look at some type of reduction. He did read through the Conservation Commission meeting minutes and watched that meeting and he knows 2 or 3 members of the board asked about options and there was pretty much no answer back to that – only that this was the way it had to be. So, is there any opportunity to shorten the building or doing something to create some more distance than 8.3-feet.

A. Mr. Kevan's answer that night was that they would have to go back and look at the operation for what, if anything, could move or shift on the production line. He was unable to answer the question that night with a specific distance. No specific suggestion about taking, for example, 10-feet off the building was offered. If we start taking 20-25-feet off the building Mr. Kevan think that makes them question whether the operation should be there. They could discuss this, if the Zoning Board feels taking another 5-10-feet off the building in addition to the 8.3 feet from the setback would make a difference. He indicated they are willing to discuss that.

Chairman Morin asked the board for their thoughts. Mr. Casale doesn't think it has been fully entertained if there isn't another configuration that could be done. Aside from just reducing it, he is interested in whether there is some other alternative to configure it. It doesn't seem like there has been an attempt to do that.

Mr. Abernathy understands that the board and Mr. Kevan may not fully understand the equipment they deal with, but it is a very linear processing line that needs a certain amount of linear feet to begin. They start with empty vials from the warehouse on one end; they go through a washing machine – and it is 80-feet linear; it then goes through a process on a conveyor belt; goes into a separate section to get sterilized; then goes through a separate section to be filled with product; and a separate section to get capped. The way that these machines are built is linear, so angling the building or adding capacity to the building in another area really wouldn't serve our purposes. That is why the building is laid out the way it is in a linear fashion. To Mr. Kevan's point, Mr. Abernathy feels they could look at taking some portion off the building but there is going to be a point where it will not be feasible. They have to go back to their design and engineering team to look at it in order to see what is feasible.

Mr. Casale explained that he is responding in this manner because when alternatives were brought up Mr. Kevan stated that you hadn't looked at it yet in some cases.

Mr. Kevan said they have not sat down and drawn it out, but if you think they are going to take this operation and move it into this linear building, they would have to look at what wetlands are in the back and how much they would be encroaching on the setback there and if they have to get a truck around on that side he can tell you that they will be impacting more wetland. There is no way to get a road around this side. If you take the linear process and say you are going to place it in the middle, then the loading area and shipping/receiving is broken up which cannot happen. Although it hasn't been drawn up, he can tell the board that these options would create more impact than what they are proposing now.

Q. Chairman Morin asked the length of the original buildings.

A. Mr. Kevan does not have the distance on the original approval, but they are expanding it 108 feet.

Q. Chairman Morin confirmed that they said it would not just be manufacturing space, but also office space.

A. Mr. Abernathy said that is correct. The office space would support the manufacturing. The 2-Bays occupied on the right are fully-functioning, so logistically it is almost impossible for them to say that they are going to move the operation to one of the other bays because that process would have to be taken down for an indefinite amount of time and they support L.S.N.E's other business operations. The manufacturing line is two-stories and takes up a certain amount of linear feet and the back of the building is for packaging/labeling and the second story is for offices, so if they shorten the building and reduce the footprint of the building we would most likely lose the offices if we want to keep the manufacturing in that area; and that is where we speak to people travelling back and forth. Mr. Abernathy said IT would not be a group housed in this building, they are remote. What he mentioned before is that they are a group that supports all of their buildings. It is impractical to have manufacturing, supervisors, and manufacturing personnel housed in a building that is not where they do their manufacturing. It is perfectly feasible for HR and IT to be in another building, but it is not feasible for manufacturing; so that is where the reduction in office space and linear feet would really impact the business and put more people on the road, as Mr. Kevan mentioned previously.

Q. Mr. Gilbert asked if they had to reduce their footprint, at what point does it become a hazard to their employees through the whole line?

A. Mr. Abernathy stated that they could not go beyond a certain point. The impact is really going to be to the secondary activities. When they are loading pallets 200 vials at a time, pallets of material have to go somewhere else in order to have a secondary process. That is tough logistically complicated and adds more workforce to us and is a risk to the product. You don't want to be shipping in transit while it's in whip – it's more money. You would rather have it in a final packed state where it is stable and that is when you can ship it out.

Chairman Morin asked, "What is the favor of the board?"

Ms. Stevens would like to see other options brought to us since we don't know what the wetlands look like on the other side of the building. She knows we are not supposed to compare; but we ask folks who come in with pools if there is a way they can reconfigure or where it is located on their property and she just doesn't see how this is any different. Understanding that they need the space for this new phase they want to go into she completely understands and sympathizes with that, but she doesn't feel comfortable at this point in time saying that this is the place where it has to go since we don't really know for sure that it is not an option to move that space over to the other side of the building.

Mr. Gilbert feels this is the only space they can go to without impacting other wetlands (either on the front or to the side/on the left. His other comment is: If they can take a look at the length/footage needed and if that could come down it would be great; but also, isn't it all about the stormwater drainage? It's all about stormwater drainage, so he would like to see them go back to the Conservation Commission and work on that issue to see if it can be run where we want it to so that it doesn't impact the wetlands as much. He thinks the configuration they have right now, is pretty much what they have to go with, though. He thinks the issue is stormwater drainage.

Ms. Elmer wants to be careful not to hinge the stormwater drainage all on the Conservation Commission because there is a process within the Town. There are stormwater permits that are required through the Department of Public Works (D.P.W.); the stormwater is reviewed by the Planning Board through a third-party engineer. So, she doesn't want it said that whatever the Conservation Commission says will be followed because they do not have the final say. They are advisory only. All their comments do get passed on to the Planning Board and D.P.W. for the stormwater regulations; but there are certain parameters they have to follow to meet those standards. Mr. Gilbert said he understands and is with her on whatever way it has to be in order to make sure it is done right.

In follow-up to those comments Mr. Kevan stated they have been through those processes. The stormwater system has been approved through the Planning Board and they did get the new stormwater town permit through Public Works before the work was started.

Q. Chairman Morin asked what exactly was approved.

A. Mr. Kevan indicated whatever is shown on the plans other than the building extended over the pavement has been approved. Mr. Kevan is not trying to play, because it is a fact that on a building with a flat roof the pollutants that fall off of it is what comes out of the sky in the rain. A paved surface in the back will have drippings and salt used to treat it. The system was designed to accommodate the pavement, so going to a building would have less pollutants and less treatment necessary. If part of the conditions are to work with Planning to provide additional stormwater treatment for the roof area, we are happy to do that.

Mr. Duhaime echoes that he would like to see what they could do with the overall length and the maximum they are willing to give up. Chairman Morin stated he feels the same way.

Mr. Kevan stated that everything has timing, so they would like to get this building built in time for a certain contract and for equipment to come in. Mr. Kevan and Mr. Abernathy discussed it and would be willing to say that they would take an additional 10-feet off the back of the building and that we would work with staff to provide some additional treatment of the stormwater coming off the roof of the addition.

Q. Mr. Casale asked the length of the addition.

A. Mr. Kevan said the back expansion is 108-feet; so, it would go down to 98-feet.

Chairman Morin clarified that it would change the motion to read: "the variance from Article IV, Section 275-28 to build an addition 18.23 feet from the edge of a wetland where 50 feet is required at 7 Commerce Park Dr., Lot 24-99-4, Zoned PZ."

Mr. Casale noted that 10-feet is only like one office. Mr. Abernathy said that they just cannot commit to do anything further right now without doing a full design review of the interior. Mr. Kevan said especially not with a width of 83-feet because it would be taking 830 square feet off the building for two-stories, so it would be a loss of about 1,600 square feet.

Chairman Morin asked Ms. Stevens if she still feels the same way about seeing other options. She said she does. Mr. Casale feels the same as her because he thinks there are too many unanswered questions to start bargaining and taking feet off.

Chairman Morin asked if Mr. Kevan and Mr. Abernathy would be willing to table until next month so they can really look at the numbers, the size, and everything else and come back with answers to the concerns raised here tonight. He said if they do not want to, it is fine, and the Zoning Board can go into deliberations, but he wanted to give them the opportunity to discuss it first.

Mr. Kevan indicated they can table and look at things, but he is unclear how the shortening of the building would change any of their responses to the five criteria because he believes they have met those.

Personally, Chairman Morin does not feel they have met them. He is having a hard time believing that Harvey Construction can move in an 8-foot section with a piece of heavy equipment to work the back of that building.

Mr. Kevan they would have to construct from the inside-out. He hears what Chairman Morin is saying; however, and they will ask that this be continued so that they may come back and present to the board.

Chairman Morin noted the next meeting is March 17th, and this will serve as public notice for the public and no new letters will go out concerning this.

3. New Business

As mentioned above, the next meeting will take place on March 17, 2020.

4. Adjournment

Motion by Mr. Gilbert to adjourn the meeting at 8:12 p.m. Ms. Stevens duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted,
Tiffany Lewis