



Meeting Minutes
Zoning Board of Adjustment (ZBA)
November 30, 2022, at 7:00 P.M.

(Approved at the December 21, 2022, meeting.)

1. CALL TO ORDER

T. Hardekopf called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members Present: Tracy Hardekopf, George Bailey, Cheryl Huckins, Paul Thibodeau

Members Absent: Andre Laprade

Staff Present: Town Planner: Vanessa Price, Zoning Administrator: John Huckins, Town Attorney
Walter Mitchell

4. PUBLIC HEARINGS

- A. [227-22-1-GR-22-SpecExcept \(Owner: Laura Lane Properties Inc.\)](#) Request by applicant for a special exception from article 4, Section 4.1.2 Lot Frontage for a new driveway for access on Stagecoach Road where the original access was Parker Mountain Road (aka Route 126) in the General Residential Zoning District.

T. Hardekopf gave a brief description of the application.

T. Hardekopf stated to the applicant (Jim Griffin) zoning board consists of five members. We're short one tonight. You have the right as an applicant to wait, reschedule till there are five members present or to have your decision made by the four that are seated.

Mr. Griffin acknowledged that was OK.

W. Mitchell stated to Mr. Griffin as long as you understand that it takes 3 voting members get to get your approval.

Mr. Griffin acknowledged that was OK.

T. Hardekopf asked the applicant to proceed with describing his case.

Mr. Griffin described the steep slope going up the driveway with ledges and the line-of-sight issues for a driveway off 126. Stagecoach is flatter of a surface road with a slower MPH and a backroad. Proposing driveway off of Stagecoach, the applicant stated that he has a right of access through the adjacent property for a driveway.

P. Thibodeau stated that the site plan was done by a surveyor.

C. Huckins that the five criteria for the special exception need to be read into record.

V. Price asked the applicant to read the five criteria for the special exception.

Mr. Griffin read the criteria into the record.

PART V – If this is a JUSTIFICATION FOR SPECIAL EXCEPTION

Please provide evidence that the requested Special Exception complies by addressing the issues below.

- ☐ 1. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas, or other access ways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or unsightly outdoor storage of equipment, vehicles, or other materials.

No detriment to area near by houses

- ☐ 2. No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.

N/A

- ☐ 3. No creation of a traffic safety hazard or substantial traffic congestion will result in the vicinity of the proposed development.

will eliminate Potential Safety hazard.

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OFFICE

- ☐ 4. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection, and schools.

N/A

- ☐ 5. The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site that would result in the loss of significant habitat or flood control protection.

will not have any adverse effects. There will be a culvert added at start of Driveway

T. Hardekopf addressed the board for any other questions, comments or concerns from the board.

T. Hardekopf opened up public comment for anyone here to speak in opposition or make public comment to this special exception.

Citizen comment from Stephen Jeffery frontage on the road. Is he using that frontage for access or is he using another road.

T. Hardekopf confirmed he has the right to use either one based on his deed.

John Huckins addressed Stephen Jeffery to answer your question completely. He does not have frontage on the road. That's why he's here asking for relief for that special exception.

Stephen Jeffery inquired 744:41 requires that have frontage, which provides the access to the company. It's the reason for the special exception and you can override the table.

John Huckins addressed 674:41 He does have frontage and he he has access directly to a class like that. Better Rd, so 675:41 doesn't apply to this one either because this lot was approved by a subdivision. So therefore a 675:41 only applies to private roads or something that wasn't approved by the planning board. If you read it.

T. Hardekopf thanked for the feedback and asked: "Would anyone like to make a motion?"

C. Huckins make a motion that we grant this special exception. And my reasoning is 126 is a very busy Rd., the less curb cuts the better, the steep grade than 126. Stagecoach is a more mellow road with speed limit of 30 MPH, flatter and no impact to the wetlands. It makes since as the safer option.

T. Hardekopf inquired that notification was sent to the abutters.

V. Price stated Yes.

T. Hardekopf seconded the motion made by C. Huckins.

T. Hardekopf requested a roll call vote if there are no other questions, comments or concerns.

A motion was made by C. Huckins and seconded by T. Hardekopf to grant the grant the special exception.

Vote 4/0

Roll Call:

Paul Thibodeau-Aye

Cheryl Huckins-Aye

George Bailey- Aye

Tracy Hardekopf-Aye

T. Hardekopf addressed Mr. Griffin given the number of fatalities, we've experimented in this area over the past few months, I appreciate you taking a second look at what would be safe.

B. 224-65-GR-22-ZBA-Appeal (Owner: DE Ayer Industrial Service & Supply Inc.)

Request by applicant to appeal under 15.1.2 (1) to appeal the Code Enforcement the decision on Article 9 Section 9.5 (3) no structures are allowed in the wetland buffer located on Castlerock Road on a 0.59-acre lot in the General Residential Zoning District.

T. Hardekopf gave a brief description of the application.

C. Huckins recused herself from the case and sat in the audience.

T. Hardekopf stated to the applicant (Dan Ayer) zoning board consists of three members tonight and have the right as an applicant to wait, reschedule till there are five members present or to have your decision made by the four that are seated.

Mr. Ayers stated he felt comfortable with that. He passed out new material relating to his case.

T. Hardekopf stated to going to take 3 minutes and review that material. She addressed Mr. Ayer Review of your application and here was a discussion with our legal representation in the town.

You're relying on 674.39, a statute that does not apply to this particular lot, and you have the right to have this sort of viewed by planning board first before approaching the ZBA with this material. Would you like to share?

W. Mitchell addressed Mr. Ayers that they will hear the appeal first.

That statute 674:39 only applies to lots that have been approved by the Planning board.

From what I could find in subject to correction, if you do you think it was approved by the Planning Board, but there's no indication of planning board approved this lot recognition.

Mr. Ayers addressed W. Mitchell to thank you for your opinion, because the town sold me them once. With conditions inside. So, we're going to court on this matter.

W. Mitchell questioned Mr. Ayers: "What?"

Mr. Ayers stated: I've had enough. I made a good faith through my head. That show opinion I respected. I would renew my permit, and I was there, and it changed the personal persecution I feel, and individual has packed. And they were not hear my side of the story. And then if your opinion on 674. I don't have vesting rights, the Town sold me unapproved lots.

W. Mitchell responded to Mr. Ayers that the board doesn't have any authority to and is not bound by whatever the selectman has done. Please correct me if I'm wrong. You're in this appeal. The administrative appeal. You're relying on 674:39.

Mr. Ayers replied on one of the things.

T. Hardekopf questioned Mr. Ayers but there's more depth to what you're applying for.

Mr. Ayers stated Yeah.

W. Mitchell questioned Mr. Ayers that there were other arguments that you want to make in appeal to Mr. Huckins decision, just so we understand 670:49 then the first line, Says every subdivision plat approved by the planning board, and And so with this this lot, this subdivision was not approved by the Planning board because before planning board rules and so it According to the terms of this legislation, this statute doesn't apply.

Mr. Ayers thanked W. Mitchell but could not you get you in my depth research. He stated he spent a lot of money researching this and attained state permits. We reviewed Heavy Ave and stuff, and I took care of all the thing. I hide it and get financial finish some previous selectboard previous plan board members who are words on the planning board back in the 70s. So, this was great. It's recorded and stuff in the town. You know all this multiple times, the town approved 3 hours up there and so and it is illegal, that subdivision Elevate says it's never been appealed.

T. Hardekopf asked Mr. Ayers to please read his justification for appeal. Let's go through the steps of that because it is now my understanding that we would not like to table. This would like to proceed exactly.

Mr. Ayers so all my appeal. I'll give you a standard vesting of ours that you are doing this time just for the municipality for review. First of all, and for this application he and other staff members said I had to go before the Planning Board. Maybe other ones might, my case right here I believe should be at the ZBA. This is about ordinance.

T. Hardekopf asked Mr. Ayers if he can state facts and history for us, that is most helpful. And if we can do it in a way that you're speaking as non-emotionally charged as possible, it will. It will help us digest the material.

Mr. Ayers went in for a building permit for the barn. The building inspector said I had to have a survey for the parcel since it was .59 acre. He contacted the surveyor and had him send to the survey to the Town. Then I became sick. He thought he did file the building permit even though he didn't follow through with the surveyor. He went into renew the building permit and was told he couldn't because of the Ordinance change.

T. Hardekopf asked Mr. Ayers if he could provide a timeline.

Mr. Ayers stated it started back in 2020. And he was able to provide proof he made the criteria from 2020.

T. Hardekopf addressing Mr. Ayers, as I'm understanding it, you thought that you held a permit to build on the property.

Mr. Ayers stated yes and the proper channels in 2020.

P. Thibodeau questioned Mr. Ayers that he put an application in for the permit, but you never got it.

Mr. Ayers stated yes but it wasn't finished because I needed that surveying.

T. Hardekopf asked for the Zoning Administrator to speak in reference to this issue.

J. Huckins responded it was December 2020. Mr. Ayers did apply for a permit. John contacted Laura, Town Attorney about the permit issue. Her comment was, if you would have issued the permit then, it would have expired before this one. Because of the zoning change, he was no longer exempt from the wetland buffers for being a lot pre-2001.

T. Hardekopf asked J. Huckins when did the zoning change?

J. Huckins stated this past March.

T. Hardekopf deliberated with W. Mitchell.

T. Hardekopf addressed the board with anyone have questions, comments, concerns for the applicant.

P. Thibodeau questioned Mr. Ayers that code enforcement was looking for a document signed by the selectboard.

Mr. Ayers said that he thought staff had it, but he had his plot plan with all the setbacks.

J. Huckins stated by our zoning, if it's less than an acre you need a certified plot plan before I can give them a building permit.

P. Thibodeau acknowledged the comment from J. Huckins. He asked J. Huckins if My. Ayers submitted when he came for the permit in 2020.

J. Huckins stated yes, he did supply it.

P. Thibodeau asked prior to March of this year?

J. Huckins said yes, prior to March. But what happened is, even if we were to issue the permit is permit would have expired is I had a conversation with Laura. I wanted to make sure that I was on, she said that would have expired. So, I'd be issuing a new permit where a building would be going in the buffer. So therefore, zoning doesn't allow that because of the zoning change. So, I could not use from the permit unless he got relieved from the planning board with a 9.6 to put his building in the buffer.

T. Hardekopf asked J. Huckins if the timing of this been different, this applicant would have had the permit approved.

J. Huckins stated correct, it's the zoning change that created the issues.

T. Hardekopf asked P. Thibodeau if his questions were answered.

P. Thibodeau asked to J. Huckins that Mr. Ayers went in and applied for a building permit in December '20 and needed to provide some information for that application. He went out that the survey, which is what you're going to provide and, got that before November 2021.

J. Huckins confirmed that Dan did submit the information, however they were waiting for the back from the selectman, but in that transition on the process and because of the COVID and because of that transfer on responsibilities. However, My. Ayers, because of getting sick, he didn't follow through because he wasn't well enough to follow through. He would have to come in and apply for a new permit because it had expired. And I have no authority to give him a permit. If the building's going to be in the wetland buffer, because zoning doesn't allow it in the wetland buffer.

Mr. Ayers addressed the Board members, two of you were members on the at the time?

T. Hardekopf stated that was correct.

Mr. Ayers stated that properties were done at public auction. Everything was very apparent on the conditions set forth on the properties. If I had pulled a building permit, I could get a continuance on the building permit because of health reasons. The Town allows that.

J. Huckins asked Mr. Ayers where that it is in writing? I don't know anything that allows for that.

My Ayers asked if he has given extensions on building permits.

J. Huckins stated yes, he does give extensions on building permits.

T. Hardekopf stated to take control of the meeting and directed questions at Mr. Ayer. What we have before us is we understanding that you had that you had been issued the permit. The understanding that we were waiting on one piece of paper, but you are understanding was that the town held the broad agreement, correct?

Mr. Ayers stated yes.

T. Hardekopf stated to Mr. Ayers, that it was filed somewhere to be reviewed by the team. My understanding you would have issued this permit. Except somewhere in the process, the wetland buffer zoning chair, and that's 2020.

J. Huckins replied that in 2020 or the 20 early 2021, I would have issued the permit. There's no doubt. He he met all the qualifications.

T. Hardekopf stated to J. Huckins that was helpful to explain the process. She further commented the one other comment that I have heard in testified at this meeting was that we had interruption and transition as a town in our processes as we were transferring to a more technologically forward capabilities are that the best way for me to maybe describe that.

J. Huckins further explained if you look at the 9.6, which is the special permit, that is Dan meets every single one of those criteria. I think if he went to the planning board, those Those have a different type of requirement than you have here, so you just read through them. If you answer yes to those questions, they have to grant him the permit. Dan meets yes on every single one of those permits, and like the last three questions, is really about the quality of work and the erosion control and all the other stuff. I've seen Dan's work for years, dance very meticulous about making sure he has every single bit of those details. But he needs the special permit that I can't give him. That's what the issue is.

T. Hardekopf acknowledged J. Huckins comments.

Mr. Ayers addressed the board that he doesn't care about your vote is. I believe my issue is here. If you look at my state permit, all these other lots affected by it, and I followed everything with my state permissions up and there's endangered turtles out there.

T. Hardekopf deliberated with W. Mitchell.

T. Hardekopf addressed Mr. Ayer I just want to ask one more time, do you want to proceed in front of the planning board, or do you want to continue in front of the zoning force adjustment and do whatever you want? I need a yes or no.

Mr. Ayers responded: No, I'm here for appeal.

T. Hardekopf open public comment for or against the appeal?

Stephen Jeffery came to speak for the appeal. He passed out information that is also if the variance is to be heard. Started to discuss reference 9.5.

G. Bailey addressed Madam Chair asked the and this gentleman to speak in favor of yes and. I believe this is bringing a form of a case and plus I mean that he's in favor to raise it and this information is nice to have, but I think that there should be a question that you put forward to our attorneys, not extra testimony.

T. Hardekopf asked if Mr. Jeffery's was an abutter?

Mr. Jeffery's stated no he wasn't.

T. Hardekopf asked Mr. Jeffery in reference to this case in 2020 does he want to give a testimony?

Mr. Jeffery's stated he did.

T. Hardekopf asked Mr. Jeffery what he know to testify on the lots?

Mr. Jeffery answered he was aware when the when the town sold on OK, and I've seen the site.

T. Hardekopf asked Mr. Jeffery you before you speak to allow us to just read through this and then if there's further testimony, you feel you need to give them if it's not covered in here.

Board reviewed material for several minutes.

Mr. Jeffery addressed the board that I've got tax map from the 80s that shows me supervision. I thought the planning board which showed up around 72.

J. Huckins stated that this was recorded in 1970. It was back when you drew lines on a piece of paper, and you recorded at the registry of deeds. And we got the plan and that's what they're trying has approved by select. No, it wasn't approved by anybody. I was just back before there was zoning.

T. Hardekopf asked Mr. Jeffery if there was anything he wanted to add.

Mr. Jeffery added that Article 5 mentions wetland buffers.

T. Hardekopf thanked him for the comments.

P. Thibodeau said he read the purchasing sales turned into an agreement with select, it states clearly that if he brings the road up to buildable standards. That he will be issued a building permit. That's in his purchase and sales agreement. That's the contract he went by when we bought this. If the select board would have said, well, wait, unless rules change between now and then and then just prove that.

T. Hardekopf stated that was her recollection as well.

P. Thibodeau said it has no bearing on this. He went further on to state that They promised him in this purchase and sales agreement that if he buys this land and brings that road up. Issued without substantial work to the world, they will not issue a building permit without substantial work to the road. And he did the work to the road right. And then it goes on to say that condition of several Castle Rock Rovers, your private in need of repair, the Celcom days of properties subject to the condition that prior to the issuance of any building permits etcetera, etcetera other it was laid out below.

T. Hardekopf stated agreement.

P. Thibodeau made a motion that we grant the administrative appeal, based on the purchase and sale agreement that he has with the selectman at the time.

T. Hardekopf seconded the motion. And asked the board if there was any other comments or questions?

A motion was made by P. Thibodeau and seconded by T. Hardekopf to grant the administrative appeal. Vote 3/0

Roll Call:

Paul Thibodeau-Aye

George Bailey- Aye
Tracy Hardekopf-Aye

J. Huckins addressed the board for clarification: Is that for all his lots out there all exempt from the zoning changes for this?

P. Thibodeau stated that's for this purchase and sales agreement.

T. Hardekopf stated that for this paperwork submitted for this lot and we have just approved an administrative appeal exception or overturning. For this one lot. We don't have a right for a blanket.

P. Thibodeau stated If you would have come back here and say, here's another lot in this purchase and sales agreement and I'm here for the same reason, I would support it.

Mr. Ayers said at my expense then.

T. Hardekopf stated to Mr. Ayers, based on what you filed before the zoning board, we have the right to deal with this one law and we have one law, one building permit to one law, not for all lots.

J. Huckins said further lots coming in he has no choice but to deny it because it doesn't meet zoning. You just granted the administrative appeal no variance will be heard.

- C. [224-65-GR-22-ZBA-Var \(Owner: DE Ayer Industrial Service & Supply Inc.\)](#)
Request by applicant to for a variance from Article 9.5(3) Wetland buffer area required where the majority of the structure would be in the wetland buffer on Castlerock Road in the General Residential Zoning District.

T. Hardekopf stated that based on the prior administrative appeal, the request by the applicant for a variance for wetland buffer area where the majority of the structure would be in the wetland buffer on Castle Rock Rd. In the general residential zoning district, is no longer required and therefore we will not be hearing that case tonight because the rest of the board agree with that decision.

T. Hardekopf asked for Roll Call vote to close out the variance request.

Vote 3/0

Roll Call:

Paul Thibodeau-Aye

George Bailey- Aye

Tracy Hardekopf-Aye

5. ACTION ITEM REQUEST TO APPEAL THE DECISION

- A. Five (5) abutting residents requests a rehearing of the Zoning Board of Adjustment's September 21, 2022, decision to grant a variance and special Exception in the following cases:

[234-25.1-V-22-Var \(Owner: TSB Construction, LLC\)](#) Request by applicant for a variance from Article 4, Section 4.1.1 Table 2 Dimensional Standards to allow frontage of 150' (+/-) where 200 feet is required on a 9.44-acre lot for a 3-lot subdivision off Franklin Pierce Highway (aka: Route 9) in the Village District. BY: Christopher Berry, Berry Surveying & Engineering; 335 Second Crown Point Road; Barrington, NH 03825.
[234-25.1-V-22-SpecEx \(Owner: TSB Construction, LLC\)](#) Request by applicant for a Special Exception from Article 4, Section 4.1.2 to allow a driveway not on the proposed frontage for a 3-lot subdivision on 9.44-acre lot (Map 234, Lot 25.1) off Franklin Pierce Highway (aka: Route 9) in the Village District. BY: Christopher Berry, Berry Surveying & Engineering; 335 Second Crown Point Road; Barrington, NH 03825.

*Please note: No public input will be taken on this request. If the request is granted, a public hearing will be scheduled at a later date.

C. Huckins returned to board as an acting board member.

T. Hardekopf gave a brief description of the request for a rehearing.

P. Thibodeau recused himself from the case.

T. Hardekopf addressed the board that she didn't see any new information. Furthermore, she asked the board if there was information or knowledge you have that would lead you to want to make a motion to rehear these cases.

C. Huckins stated she remember this really well and thought we'd made a very good decision on this.

G. Bailey stated he felt the same way. There was no new additional information provided.

Consensus of the board that the board wanted to not rehear the case.

T. Hardekopf asked for Roll Call vote to close out the request for a rehearing.

Vote 0/3

Roll Call:

Cheryl Huckins-No

George Bailey- No

Tracy Hardekopf-No

T. Hardekopf stated No, we need not be rehearing those cases.

6. REVIEW AND APPROVAL OF MINUTES

A. Review and approve minutes of the October 19, 2022, meeting.

P. Thibodeau recused himself from the approval of meeting minutes.

A motion was made by C. Huckins and seconded by G. Bailey to approve the minutes of October 19, 2022, as written. The motion passed unanimously.

Roll Call:

C. Huckins-Aye

G. Bailey-Aye

T. Hardekopf-Aye

P. Thibodeau returned to the board as an acting member.

7. OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD

V. Price explained to the Board and audience that there would be a Master Plan Community Forum on Saturday December 10, 2022, that would start at 9:00 a.m. until noon. V. Price explained that this was for the updates to Land Use and Transportation Chapters. V. Price explained that this would be held at the ECLC. Additionally discussed that there was over a 600-person response turnout from the Master Plan Survey.

8. ADJOURN

Adjourn the Zoning Board of Adjustment (ZBA) Meeting. Next ZBA meeting date is December 21, 2022, at 7:00 P.M.

A motion was made by P. Thibodeau and seconded by C. Huckins adjourn the meeting at 7:58 p.m. The motion passed unanimously.

Roll Call:

P. Thibodeau-Aye

C. Huckins-Aye

G. Bailey-Aye

T. Hardekopf-Aye