Case 261-39-GR-20-ZBA Appeal

Stephen Jeffery
128 France Rd.
Barrington, NH 03825

May 6, 2020

Karen Forbes, Chair
Barrington Zoning Board of Adjustment
Barrington, NH 03825

Dear Chairman Forbes,

This letter is in response to case number 261-39-GR-20-ZBA Appeal pursuant to RSA 674:34. I am opposed to the issuance of any building permits by the Town of Barrington on the island in Mendoms Pond, map 261 lot 39, owned by Richard Kelsey and Mary Otiato. I am opposed to the Barrington ZBA overturning John Huckins denial of a building permit or providing any relief that might allow construction on the island. The island has no road frontage as required by RSA 674:41. I request this document be included in the minutes of this hearing.

No zoning ordinance may waive the frontage requirements in the statute... However, there is one loophole in this area. Under RSA 674:41,II-a, the legislative body may vote to except any lot, including island lots for islands served exclusively by boats, from the frontage requirements of the statute.
NHMA Law Lecture #2, by Attorney Matthew R. Serge, Upton & Hatfield, LLP and Attorney C. Christine Fillmore, Fall 2011

RA 674:41 prohibits the issuance of building permits.
And attorneys Dietz and Kennedy — as well as New York attorney Brooks Banker, have been arguing the Supreme Court has interpreted that statute to mean that no building permit can be issued for any lot in New Hampshire that is not served by a proper street. *From Laconia Daily Sun 11-17-2005*

RSA 674:41 II-a provides the only allowable exception for islands served exclusively by boats from the law, which requires an affirmative vote by the legislative body. The Town of Barrington has not voted to allow construction on islands.

I submit the following case in Meredith that affirms the issuance of building permits on islands requires an affirmative vote by the legislative body.
To summarize the case which lasted over several years:
Henmore, the developer, obtained a subdivision approval and building permits for two seasonal homes on Bryant Island.
Shoreline owners appealed and prevailed in court and the court overturned all previous approvals and permits.
Starting over:
The ZBA granted a variance to road frontage.

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The PB granted approval with many conditions and submitted the statutorily required zoning amendment to the voters.
The statutorily required zoning amendment was voted down at town meeting in March 2008.
To date no seasonal homes were built on the Island because Meredith legislative body did not approve this allowance.

Late last month, Justice Larry M. Smukler ruled... that town building inspector Bill Edney should not have issued the company a building permit. *Laconia Daily Sun 2-11-2007*

In rescinding the building permit, Smukler said the developer should have appealed to the zoning for an exception to the road frontage rule. *blewiscitizen.com 1-30-2007*
https://www.fosters.com/article/20070130/GJNEWS02/101300211

"Henmore did not seek any such exception and because the town has not legislatively created an exception from island lots from the street requirements, the building inspector's conditional approval of Henmore's building permit application was erroneous," Judge Smukler ruled. *See Fosters & blewis.com & Bryant Island, Meredith, NH*

Meredith Town Vote 3-11-2008
Text of the amendment No. 1 (Proposed by the Planning Board) To except Island Lots from RSA 674:41
Amend Article III, General Provisions, by inserting the following new paragraph:
W. Certain Island Lots Excepted from RSA 674:41
Pursuant to RSA 674:41, II-a, all lots on islands served exclusively by boats are hereby excepted from the requirements of 674:41, I and II as the same may be amended from time to time.
... Voters defeated – 509 to 540 – a proposal from the planning board pertaining to island building lots... *Laconia Citizen*

Also, see: Town of Wolfeboro did vote, March 2012, in favor of allowing building permits to be issued on islands. Article 2 - 857 yes and 424 no
Town of Wolfeboro
§ 175-42.1**Building permit requirement for island lots.**
[Added 3-13-2012 ATM by Art. 2]
In accordance with RSA 674:41, II-a, island lots for islands served exclusively by boats are exempt from the compliance with RSA 674:41.

I am also providing the below information to the Barrington ZBA, as I believe the information previously provided to the ZBA conflicts with the facts, specifically the existence of a wood stove and gas cook stove in the Mendoms Island house.

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Real estate listing from about 2014.
Once in a life opportunity to own 2 PRIVATE ISLANDS situated on Mendums Pond. Island #1: Seasonal Fieldstone cabin on the 1.4 acre island, a stone fireplace, wood stove, gas cook stove, enclosed porch. Nice outdoor privy, dug well with pitcher hand pump. Outdoor fireplace, 50 foot dock. Island #2: 4.1 acres with tent platform, nice coves and beaches, just 120 feet from island #1. Both islands are heavily wooded, and truly pristine and private! Pond is airplane accessible. Island access is currently written permission by the state of NH DES across state owned right of way, gated and private for island owner's use only. Mendums Pond is 265 acres, and averages 25 to 45 feet deep.

I also believe John Huckins mislead the ZBA by declaring that a "camp" is permitted by RSA 674:41. Huckins cites A Hard Road to Travel (p116-119) to justify construction on islands. The document text he cites provides an example of construction on a lot whose only frontage is a private roadway not shown on any plan approved by the planning board. The text states that although the ZBA might possibly find all the four exception standards be met for an agricultural shed or a primitive hunting camp, they may virtually never be met for a year-round house. This example is about the distinction between unapproved private roads and public roads and does not pertain to lots with no street frontage or island construction permits.

The entire document, "A Hard Road to Travel" does not include any reference to islands or analysis of how the law RSA 674:41 applies to islands. The document does explain how "grandfathering" does not provide an exemption to the law. The law applies to all building permits and does not exclude seasonal dwellings.

The owner, Richard Kelsey, did acknowledge he had no deeded access to the islands.

The Supreme Court has observed that "[t]he evident purpose of [the frontage] requirement is to insure that a dwelling may be reached by the fire department, police department, and other agencies charged with the responsibility of protecting the public peace, safety and welfare." *Sanderson v. Candia*, 146 N.H. 598, 600 (2001).

Respectfully submitted,

Stephen Jeffery

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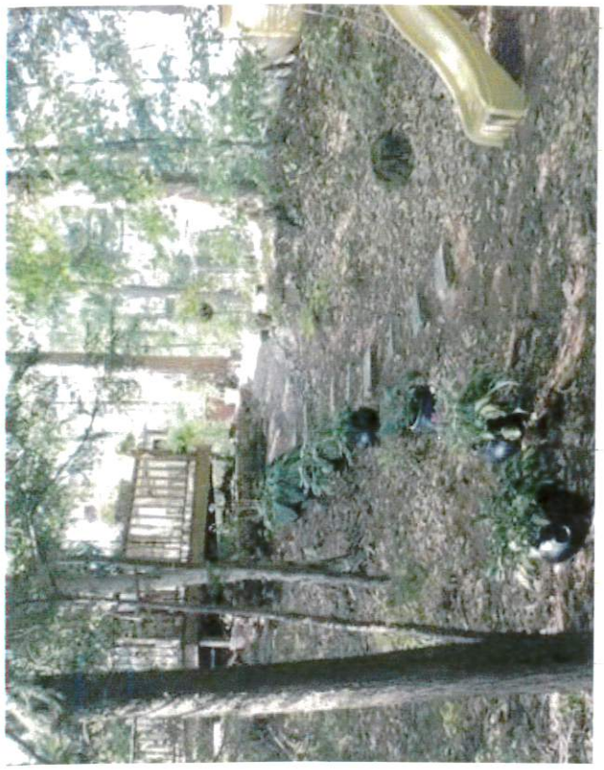

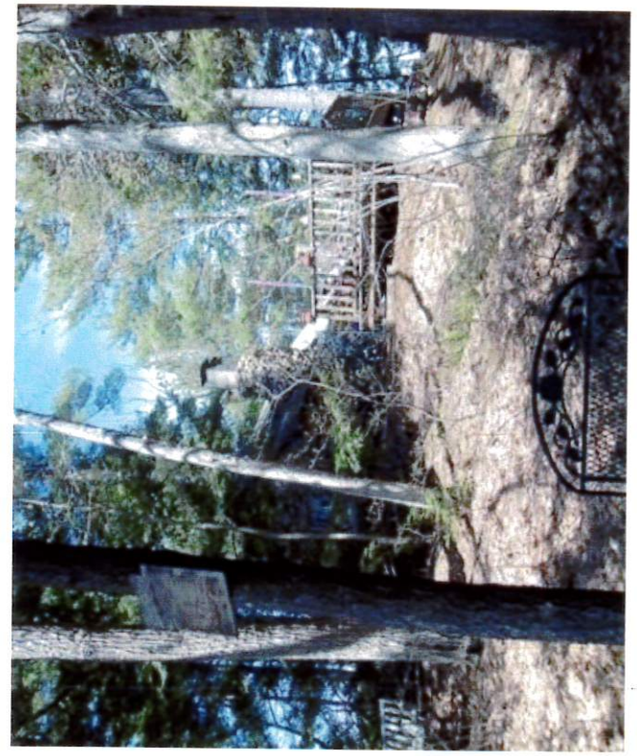

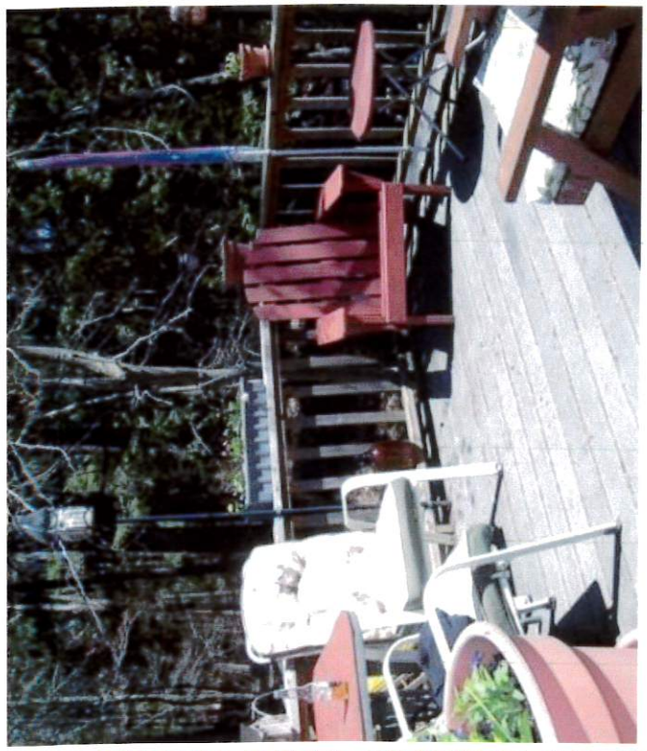

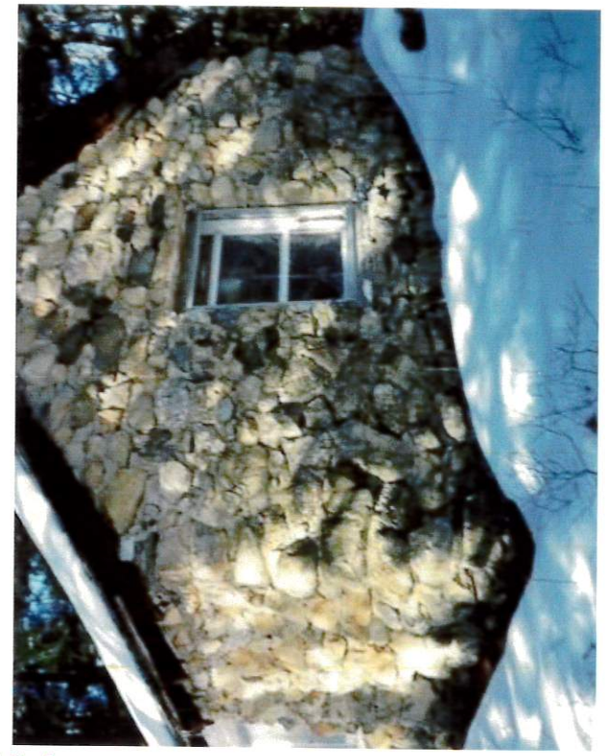

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Neighborhood

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Mendums Pond Iss is located in the city of Barrington, NH.

$374,900	$341,500	62	$179
Median Listing Price	Median Sales Price	Median Days on Market	Price Per Sq Ft

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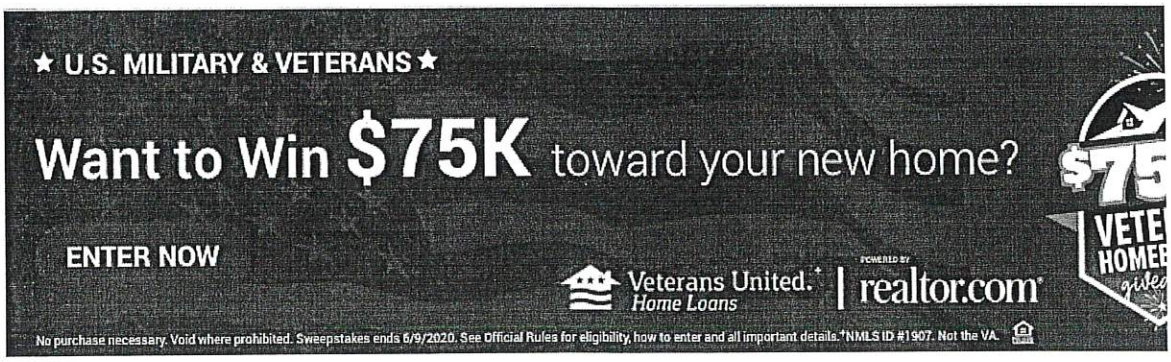

Price & Tax History

Property Price

Date	Event	Price	Price/Sq Ft	Source
Today	Estimated	–	–	
04/16/2014	Price Changed	$250,000	$718	MLSPIN
07/15/2013	Price Changed	$279,900	$804	MLSPIN
05/25/2013	Listed	$299,900	$862	MLSPIN

Property Tax

No property tax history available for this property.

About History & Taxes Data

The price and tax history data displayed is obtained from public records and/or MLS feeds from the local jurisdiction. Contact your REALTOR® directly in order to obtain the most up-to-date information available.

Recently Sold Homes Near Mendums Pond Iss

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