

MEETING MINUTES

FOR

ZONING BOARD OF ADJUSTMENT

As Chair of the Zoning Board of Adjustment, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are:

We are utilizing the Microsoft Team for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Microsoft Team, and the public has access to contemporaneously listen and, if necessary, participate in the meeting through dialing the following phone #1-603-664-0240 and Conference ID: 542261940

OR Call 603-664-0330 or email: jhuckins@barrington.nh.gov

OR

bit.ly/BarrZB200715

Wednesday, September 16, 2020
7:00 p.m.

Please note that all votes that are taken during this meeting were done by Roll Call vote.

Chair, Karen Forbes read from the Governors Emergency Order

Members Present

Karyn Forbes, Chair

Cheryl Huckins

Raymond Desmarais, Vice Chair

George Bailey

Staff Present

Marcia Gasses, Town Planner

John Huckins, Zoning Administrator/Code Enforcement

K. Forbes noted that they only had four members but were adding a member that would be present next month. A three out of four vote would be required for an affirmative vote of approval.

ACTION ITEMS CONTINUED FROM August 19, 2020

1. [261-39-GR-20-ZBAAppeal \(Owner: Richard Kelsey\)](#) Request by applicant under RSA 674:41 relief under section II to appeal of administrative decision not to issue a permit to renovate existing structure on an island at Mendums Pond 1.64-acre (Map 261, Lot 39) in the General Residential (GR) Zoning District.

Eric Maher on behalf of Richard Kelsey was present. M. Maher explained that the case was an appeal of an administrative decision under RSA 674:41. To allow for the issuance of a Building Permit on a road that is not a Class V road. Map 261 Lot 39 A memorandum had been submitted to the Board prior to the meeting.

The subject parcel is South Island located in Mendums Pond, owned by Mr. Kelsey on a 1.46-acre lot. The cabin is 348 square feet. Exhibit A contained an aerial photo. The cabin dated back to the 1940's. There are limited enmities inside, range, oven, as well as sofa, and bed. Two thirds of the structure is stone with one third being wood. The cabin historically and a sink on the inside of it. The cabin had been historically used for three season use. Mr. Kelsey intended to continue to the camp as a seasonal camp and not particularly using it during the winter months.

The cabin had been significantly vandalized in 2016. The door had been torn off leaving the components of the structure exposed to the elements for a prolonged period of time. Due to the age of the building and the length of exposure the building was in dire need of repair. Mr. Kelsey began repairs to the building unaware at the time that he needed a building permit until informed by the building inspector. A limited amount of work had been done and that is why he was before the Board in order to assure he is compliant with all provisions of the state building code and receives all necessary approvals and permits.

Mr. Kelsey intended to repair the damage to the structure itself as well as make some basic improvements. He would like to install namely, a 12V Solar Panel on the cabins roof, a small exterior shower and sink to be co-located with the structure housing the composting toilet.

The improvements were divided into two parts. Part 1 included repairing and replacing the wooden portions. The roof would be replaced with a limited amount of solar manels attached to the rear of the roof. The specification of the solar panels was provided in the information that had been submitted. There would be 3 to 4 panels each of which 40" X 26". The panels would take up between 20 and 30 square feet. The panels were not anticipated to be visible from the shore of Mendums Pond. The panels would be on the rear facing side, the area was heavily vegetated with a lot of tree cover, and up gradient so you would not see it if out kayaking. The wattage is small so there would be a limited number of appliances that could be utilized. It was just for adding a limited amount of comforts such as lights.

The composting toilet was exhibit H in the packet provided and showed the approximate location of the proposed outhouse. The proposed location was well within any setbacks that exist under the Towns Zoning Ordinance associated with shoreland protection as well as the NH Shoreland Protection Act. The intent was to have a composting toilet which the Board had previously approved. In addition, Mr. Kelsey would like to install a small sink for just washing dishes as well as a small shower both of which would pump water from the lake. There was no intent on installing a drinking water well. The water would not be considered potable. Mr. Kelsey also wanted to install a wastewater disposal system that would be authorized by DES. Mr. Kelsey had already been in contact with a contractor regarding the installation of a system. There was no concern by the applicant regarding setbacks given the size of the island given the distance. The requirements of the system itself would be determined by NHDES.

The applicant believed that the proposal was fully compliant with the requirements in order to issue a building permit under RSA 674:41 There are four criteria that must be met under the RSA 674:41. The issuance of a building permit would not tend to distort the official map, increase the difficulty of carrying out the masterplan on which it is based, erection of a building or issuance of the permit will not cause hardship to the future purchasers, and if the erection of the building or issuance of the permit would not cause undue financial impact pm the municipality.

In regard to distortion of the official map it was an existing lot and the structure was existing since the 1940's. In regard to the Master Plan there had been stated concerns about structures on the shoreland being converted from seasonal use to year-round use. It was stated in the memo that Mr. Kelsey was only going to use the camp for seasonal use and was willing to have the Board place a condition as to three season use, i.e. not in the winter and recording the decision with the Registry of Deeds. That way any future purchasers of the property were put on notice. In addition, they believed that the physical characteristics of the site preclude usage of the property in the wintertime. Access in the winter was difficult because it was located on an island. Even if they could access it by snowmobile it would not make for comfortable living conditions. The outhouse would not be able to be used for fear of bursting of pipes.

In regard to hardship on future purchasers it was an existing cabin being updated which would allow for a sanitary place to go to the bathroom, wash dishes, take showers, etc. In terms of financial impact to the Town there is

anticipated to be no financial impact to the Town primarily because the cabin will remain a three season use in accordance with the historical use of the property.

K. Forbes asked if there was currently an outhouse on the property.

E. Maher stated there was not. It would be a new structure.

K. Forbes asked what kind of range was in the building to start with.

R. Kelsey expressed there was an outhouse on the property that been vandalized and rendered unusable. It was a pit outhouse.

E. Mayer confirmed with Mr. Kelsey that the range had been a propane gas stove.

K. Forbes asked if there was anyone prepared to speak in favor of the application.

No one spoke.

K. Forbes asked if there was anyone prepared to speak against the application.

No one spoke.

K. Forbes opened the question part of the meeting.

R. Desmarais expressed that the Board had deemed it a rustic cabin at the last meeting as it had existed that way since the 1940's. The documents refer to it as a seasonal camp, but he deferred to others to make the determination between the two.

K. Forbes asked J. Huckins to speak to that as the Code Enforcement Officer.

J. Huckins expressed that the Town does not recognize what is a rustic or a seasonal. NHDES has a regulation that if it did not have a septic and they could prove it was not lived in full time going back to the 72 than it is considered seasonal because of the lack of septic. It is also required to be disclosed at the time of sale. It order not to be considered seasonal it would need to have a septic. NHDES were the only ones to define it.

K. Forbes asked if the Town had a definition for seasonal camp.

J. Huckins replied no. There was no definition for seasonal or rustic cabin.

K. Forbes expressed that they have it not being occupied between December 1 and April 15. She also remembered there was a discussion regarding providing so for of sanitary sewer on the property.

R. Desmarais expressed the Board had discussed allowing some form of composting toilet would be appropriate.

K. Forbes expressed that the only changes are the shower...

R. Desmarais expressed reason that the Board did not want solar was because it would enable them to have power to pump water. Once they were pumping water, they were generating wastewater and they would need a septic system. The island was very sensitive environmentally.

K. Forbes expressed the Board take a step back and look at what was proposed then with what was proposed now. The only difference was the addition of the solar panels and the shower.

R. Desmarais expressed they were putting in a complete outhouse facility including shower. They were adding a complete other structure to the island.

K. Forbes expressed they would have had to have some form of composting toilet. The Board had already anticipated the toilet. It was the fact that there was a shower in that area to, not just the composting toilet.

K. Forbes read from the minutes the requirements the Board had made. "The structure must remain a seasonal camp. No insulation shall be installed nor shall electricity sewer or water be provided to the structure without further approval of this Board." The issues were the solar panels and the shower.

K. Forbes started discussion on the electric. The applicant claimed that the amount of electricity that would be produced was minimal. 3-4 100-watt 12-volt solar panels. It could only be used for a limited number of items such as (small refrigerator, lights and or television).

K. Forbes stated it was a minimal amount of electricity and R. Desmarais agreed.

K. Forbes asked J. Huckins to discuss the wastewater they were creating. She asked if NHDES has to permit it.

J. Huckins explained you were allowed to have outhouses without a water supply. Once was brought water on the site you would have to have some type of tank. The leaching depending on the volume could be some form of drywell. It all came down to the volume of water and the use.

K. Forbes asked if NHDES had to approve whatever they did for wastewater.

J. Huckins stated yes. They would need a permit and test pits would need to be dug four feet above the seasonal highwater table.

K. Forbes expressed they would be pumping directly from the lake not from a well.

J. Huckins expressed that was his understanding. It would not be for potable water.

C. Huckins expressed he was going to take a shower with lake water with a shower or he was going to go in the lake with his soap.

K. Forbes expressed there would be a tank.

J. Huckins expressed there would be, and it would leach through the drywell system, which would filter off any pathogens that would come off of them rather than go directly into the water. By using a system, it was actually cleaner for the environment.

K. Forbes asked if G. Bailey had any questions.

G. Bailey was looking through the material presented regarding allowing the use of solar panels in the Zoning Ordinance. On page 6 it states "the Town's Zoning Ordinance does not prohibit any property from having electric, sewer, or water utilities. To the contrary, the Zoning Ordinance often requires such utilities. Zoning Ordinance 6.3.4 (requiring subdivisions to have water and sewer that comply with DES standards") He could not find that part of the information,

K. Forbes explained J. Huckins had expressed that if the property had not been vandalized in 2016 Mr. Kelsey would not have required a Building Permit nor receive any relief from the ZBA to install solar panels the shower or the sink.

K. Forbes asked if he would even have needed a building permit for the solar panels.

R. Desmarais for the shower?

J. Huckins explained that an accessory structure 200 sq. ft. or less was not required to have a building permit through the building codes and in the Town of Barrington you did not need to meet setbacks.

K. Forbes asked if he would he need a building permit for the solar panels.

J. Huckins stated yes, he would need an electrical permit.

K. Forbes expressed even if there had not been vandalism, to put solar panels in he would need a building permit, so that's not accurate.

J. Huckins expressed that the RSA says that you need a permit for the erection of a building. It does not say for a building permit. The RSA comes in for the rebuilding of the portion of the building that was destroyed. That was why he could not issue a permit because there was a building being erected.

K. Forbes summarized with J. Huckins 1) a permit was needed for the solar installation 2) for the shower he would not have needed a building permit because the structure was less than the 200 square feet and was used for accessory type building. Technically you need a permit for plumbing but in this case, you are just attaching to the septic and you did not need a permit from him for tying into septic.

K. Forbes asked if DES grants a permit for the tank for the shower...

J. Huckins expressed that was their permit not his. NHDES does the inspection for the permit when it is installed to their standards.

K. Forbes expressed here are the issues, the solar panels, the shower, and the outhouse. One issue raised was the scope of the restrictions the Board could place on the building and the construction. The applicant had agreed to seasonal use. That was in the prior order and it is in the current order. The prior order also required that they provide for sanitary sewer disposal at the property.

The request that led to the request for reconsideration was the limitation on the electricity and the water. C. Huckins had pointed out that people were going to be there in the summer, and they would jump in the lake and wash and at least if they are in a shower the water gets filtered before it gets released.

K. Forbes expressed that she had a concern that restricting the solar was very limited and does not fit within the scope of what the Board can do because it was not related to the standard. The standard for that the Board was giving relates to the four criteria: "if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of the master plan on which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality."

That was her concern. The structure was going to remain three seasons. She looked for input from others.

R. Desmarais expressed that if you read 674 it says subject to conditions the Board may impose.

C. Huckins expressed she had no problem with what was being proposed. He was harnessing the sun to get a little electricity.

R. Desmarais looked at it as a major expansion from what they had. In his opinion.

G. Bailey expressed the Land Use Regulations confirm what R. Desmarais had expressed word for word so they could impose other items.

K. Forbes expressed that the conditions need to be related to the relief that is granted.

J. Huckins brought up 674:41

R. Desmarais read from 674:41 starting at paragraph II “or board of appeals may make reasonable exception and shall have the power to issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it was based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undo financial impact on the municipality. Any such decision made in this connection by the board of adjustment, local legislative body, or by the board of appeals pursuant to this section and RSA 674:14 and 674:15 shall be in writing, together with the reasons for the decision, and shall be subject to review in the manner described in RSA 677.”

R. Desmarais expressed it refers to the conditions the Board may impose.

J. Huckins expressed that the Board should read the beginning where it says that “no permit shall be issued for the erection of a building. . . . which was what the whole RSA is about.

K. Forbes expressed they should talk about a couple of procedure issues. This was an appeal of a denial of a building permit by the building inspector and the issue was if there is a 2-2 vote that would mean that the request for the building permit was denied. She did not know how the board members were going to vote and maybe they could get a sense of that and then the applicant can decide if they want to wait to next month when they have a new board member because then they would have five people instead of four people.

She like Cheryl did not have a problem with the limited solar or with the water and the shower. She knew R. Desmarais felt very strongly differently.

G. Bailey also felt strongly differently.

R. Desmarais expressed he was alright with giving them the option to coming back next month.

G. Bailey also expressed he was okay with the applicant coming back next month.

M. Mayer expressed he had messaged Mr. Kelsey. Mr. Mayer was available on the third Wednesday of the month. He explained it might currently look like a 2-2 vote.

K. Forbes suggested Mr. Mayer talk with this client privately and the Board would get back to them.

A motion was made by G. Baily and seconded by R. Desmarais to continue the application to October 21.

Roll Call

C. Huckins

R. Desmarais

G. Bailey

K. Forbes

The motion carried 4-0

ACTION ITEMS

2. [223-26-RC-20-Var \(Owner: Route 125 Development, LLC\)](#) Request by applicant for a Variance under Article 3 Permitted Uses, Section 3.3.5 (3) (a) Residential Uses Excluded, Article 19 Table 1 Note #8 to permit the use of three Commercial Lots for Residential use located on Route 125 (Calef Highway) (Map 223, Lot 26) in the Regional Commercial Zoning District (RC). BY: Beals

Associates, PLLC; 70 Portsmouth Avenue; Stratham, NH 03885.

K. Forbes read both application and the Board would hear them together as they are the same property.

Mark Johnson represented the applicant. Joe Falzone and Scott Cole from Beals Associates were also present.

The applicant was requesting a use variance to allow three residential lots in the Regional Commercial District and a Special Exception to allow the three residential lots to take access from a side not it's frontage.

The project was originally approved a 55 residential and six commercial lot subdivision. Commercial lots are in front residential lots were in back. After the approval of the subdivision it became clear that the use of the commercial lot C5 would be difficult to permit and use for commercial purposes because of the wetland along the top of the lot. The wetlands separate 125 from the buildable area of the lot. As a result of the wetlands and the buffers it would have to be setback at least 150' from 125. It would be difficult to get approval for a driveway through the wetlands.

They would like to subdivide C3 into three residential lots and the access would be off the subdivision road to be extended to provide the access. That was the reason for the special exception. The lots would have frontage on 125 and access would be from the rear and side of the lots.

The variance to allow residential lots in a commercial zone, they believe special conditions exist due to extensive wetlands, steep topography and buffers. The building envelope is far back from 125 which makes it hard to see any building from 125 limiting the commercial use of the property. Residential is allowed as part of a mixed-use development.

Consistent with the spirit of the Ordinance

Residential use permitted in commercial district (as part of mixed use)

No Diminution of surrounding property values

Likely to increase neighboring residential values over commercial use

Substantial justice

Consistent with previously conditionally approved residential subdivision

Not contrary to the public interest

Will protect wetlands and associated buffers

More compatible with abutting residential subdivision

Special Exception to permit access that is not across the frontage

- No detriment to property values
- No hazards
- No traffic issues
 - Minimal added traffic
- No excessive demand on municipal services
 - Three lots unlikely to have noticeable impact on municipal services
- No degradation of existing natural resources
 - Will protect natural resources by ensuring that no access through existing wetlands and buffer areas

A letter was provided from Gove environmental which stated it would be unlikely that a permit would be granted for a wetland crossing.

The commercial access through the resident subdivision would result in a road that is in excess of 2,000 ft. It would result in a long road with commercial vehicles going through a residential neighborhood.

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Mark Johnson presented what the redesigned subdivision would look like. The plan would need to be approved by the Planning Board.

K. Forbes asked if it was one lot that would be affected.

M. Johnson explained the one commercial lot would become three residential lots. The lots would meet all the requirements of the district.

R. Bailey asked what would happen to lot C1.

M. Johnson expressed it would remain in existence.

C. Huckins expressed it made good sense to her.

K. Forbes asked if there was anyone who wanted to speak in favor of the application.

No one spoke.

K. Forbes asked if there was anyone who wanted to speak against the application.

No one spoke.

K. Forbes closed the public portion of the meeting.

K. Forbes expressed there was a slide that presented all the reasons: wetlands, buffers, topography, and limited commercial use. She agreed with the special conditions. There would be no diminution of surrounding property values. It was consistent with the ordinance. They would have to use the access through the residential. The residential units would be barely visible from the road. Consistent with the public interest.

R. Desmarais expressed it would be conditional upon Planning Board approval.

M. Johnson expressed they couldn't do anything without planning Board approval.

K. Forbes expressed there were two requests.

A motion was made by R. Desmarais and seconded by G. Bailey to approve the Variance conditioned on Planning Board Approval.

Roll Call

R. Desmarais	aye
G. Bailey	aye
C. Huckins	aye
K. Forbes	aye

The motion carried 4-0

- 3. 223-26-RC-20-SpecExp (Owner: Route 125 Development, LLC)** Request by applicant for a Special Exception under Article 4, Section 4.1.2 Lot Frontage (Map 223, Lot 26) to permit access across a different side of the property from the Frontage located on Route 125 (Calef Highway) in the Regional

Commercial Zoning District (RC). BY: Beals Associates, PLLC; 70 Portsmouth Avenue; Stratham, NH 03885.

Special Exception

No Detriment to property values

No Hazards

No traffic issues

Minimal added traffic

No excessive demand on municipal services

Three lots unlikely to have noticeable impact on municipal services

No degradation of existing resources

Will protect resources by ensuring that no access through existing wetlands

G. Bailey expressed he thought it was a good plan.

A motion was made by R. Desmarais to approve the Special Exception and seconded by G. Bailey.

Roll Call

G. Baily aye

R. Desmarais aye

C. Huckins aye

K. Forbes aye

The motion carried 4-0

Both the Special Exception and the Variance were granted.

MINUTES REVIEW AND APPROVAL

4. Approval of August 19, 2020 meeting minutes.

A motion was made by R. Desmarais seconded by G. Bailey to approve the minutes of August 19, 2020

Roll Call

C. Huckins aye

R. Desmarais aye

G. Bailey aye

K. Forbes aye

The motion carried 4-0

ADJOURNMENT

A motion was made by R. Desmarais and seconded by G. Bailey to adjourn at 8:10 pm.

Roll Call

C. Huckins aye

R. Desmarais aye

G. Baily aye

K. Forbes aye

The motion carried 4-0

Respectfully submitted,

Marcia J. Gasses
Town Planner