

**DRAFT 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: 718535288#

**OR**

Call 603-664-0330 or email: [jhuckins@barrington.nh.gov](mailto:jhuckins@barrington.nh.gov)

**OR**

[bit.ly/BarrZB201021](https://bit.ly/BarrZB201021)

Wednesday, October 21, 2020  
7:00 p.m.

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

**K. Forbes read the Governors Order**

Roll Call

Karyn Forbes, Chair  
Cheryl Huckins  
Raymond Desmarais, Vice Chair  
George Bailey  
Dave Whitten

**ACTION ITEMS CONTINUED FROM September 16, 2020**

*Motion was made by G. Bailey and seconded by C. Huckins to approve the minutes of September 16, 2020*

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

The motion carried 4-0  
R. Desmarais abstained

1. **261-39-GR-20-ZBA Appeal (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.

K. Forbes expressed that the Board had a new member and he would need to present the request even though he had been before the Board a number of times.

Attorney Maher represented the applicant. Attorney Maher explained that the request was an appeal of an administrative decision under 674:41. The purpose of the Appeal of the administrative decision was to allow for the issuance of a building permit. Under RSA 674:41 the access must be from a Class V road or better. The subject property was Map 261 Lot 39. The lot is 1.64 acres. Exhibit A and exhibit H of the appeal memorandum Exhibit A showed an aerial view of the island itself. The island was shaped like a "U". The south westerly tip showed a home. A three-season cabin that had been in existence since the 40's was located on the property. Access was by boat only. The cabin was only 348 sq. ft. constructed partially of stone and partially of wood. A small area for sleeping was located in the cabin along with a small propane stove, fireplace, and a basin in order to wash dishes.

The cabin had been substantially vandalized back in 2016 breaking the door, destroying a lot of the wood, exposing the cabin to the elements for a long period of time causing the wood elements to decay. Mr. Kelsey sought a building permit from Mr. Huckins and because it was determined to be a substantial renovation it triggered an erection of a building which triggered 674:41 which required the ZBA to hear appeals when a building is proposed to be erected on a road that is not a Class V or better road.

The Board may authorize the issuance if it finds "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 to the municipality."

Mr. Kelsey was proposing to repair and renovate the cabin. Although Mr. Kelsey felt it was irrelevant to the proceedings he was also proposing installing solar panels to the rear of the structure which would not be visible from the lake, along with an accessory structure on the middle of the island for a composting toilet, small pump shower, and sink. A NHDES wastewater treatment system would need to be installed. Mr. Kelsey was in talks with an installer and has agreed to do so. There was sufficient land area to meet all required NHDES setback requirements.

When the request was brought before the Board it was approved with conditions. One was it had to remain a three-season cabin, that the restrictions had to be recorded at the registry of deeds, that Mr. Kelsey could not install solar or water system without further authorization from the board and he couldn't insulate the cabin. They had moved for rehearing when they felt that the conditions associated with the solar panel as well as the water were lawful. The Board subsequently voted to grant a rehearing.

The solar panels were described in exhibit G. They would not take up more than 30 sq. ft. to the rear and no more than 300-400 watts. Members had previously raised concerns about the solar panels being installed. The prior concern expressed was that the installation of solar panels would lead to the installation of a water pump and if you had a water pump you would have wastewater. They believed that the concern was addressed by the installation of a NHDES subsurface system.

Attorney Mayer expressed for the reasons stated they believed that Mr. Kelsey met all the requirements for the issuance of a building permit. It was their opinion that the pertinent inquiry was the issuance of the permit for the construction of the building. There would be no distortion of the official map, it was a preexisting cabin, nor was there a desire to alter the existing footprint of the building, there had been an outhouse on the property in the past, no difficulty in the Town carrying out the Master Plan. The only concerns raised in Master Plan had been around the concern for the conversion of seasonal homes to full time residences. Mr. Kelsey agreed not to use the property as a full-time residence. The layout of the property and access issues make it a seasonable property.

There would be no future hardship to future purchasers where the restrictions would be placed on file at the Registry of Deeds. The issuance of the building permit would not cause any financial impact to the Town. No equipment would need to be purchased by the Town in relation to the existing cabin. Attorney Mayer on behalf of Mr. Kelsey requested the permit be issued for the reasons given without any restriction on the installation of solar panels or the water system, provided Mr. Kelsey follows all applicable permitting requirements.

K. Forbes asked Attorney Mayer if there was issue with the requirement that the cabin remain seasonal. Attorney Mayer stated no.

K. Forbes asked Attorney Mayer if there was issue with no insulation would be installed. Attorney Mayer expressed no.

K. Forbes expressed the requirement that no sewer, water, or electricity be installed was the issue they objected to and Attorney Mayer expressed, correct.

K. Forbes explained that it boiled down to the solar panels, shower, and the NHDES system.

Attorney Mayer did not think the members would have an issue with the NHDES system as a Board member had pointed out at the prior meeting that there was no prohibition from someone taking a bath in the lake and by having a system would be adding a treatment that would not otherwise exist.

K. Forbes expressed that they had actually had that the applicant must provide for sanitation for example a composting toilet. It was just the issue of the sink/shower and the solar panels.

Attorney Mayer expressed there was a schematic of the location of where they would be located on exhibit H. The shower and outhouse would be located separate from the cabin itself.

K. Forbes asked if the outhouse would be larger than the prior.

Attorney Mayer expressed he did not know. It would be 6'2" x 7' Be believed it would be larger than the prior privy.

K. Forbes expressed they would go back to the standard since they now had a new member on the Board.

K. Forbes expressed the standard in this situation was: if the issuance of the permit would not tend to distort the official map, which Barrington does not, or increasing the difficulty of carrying out the Master Plan on which it was based.

K. Forbes did not see how it would affect the Master Plan at all.

K. Forbes if erection of the building or issuance of the permit will not cause hardship to future purchasers. Board members expressed no.

K. Forbes or undo financial impact on the municipality. The reason the Board was there was because there was no road to the property.

Attorney Mayer expressed one of the sticking points that Mr. Kelsey wanted to raise was if Mr. Kelsey wanted to add the solar panels after the fact or the sink or shower, he would not have to come before the Board again. All he would need is an electric or plumbing permit through the Building Inspector. It was allowed as a matter of right under the zoning ordinance. They believed those types of things were outside the jurisdiction of the Board.

Attorney Mayer referenced his October 8, 2020 letter to the Board which was provide to the Board with information on the limitations on the Board to impose conditions. The court has held that the restrictions must be reasonable, cannot be arbitrary, and have to be tied to the consideration before the Board. Because the construction of the building itself is the only consideration before the Board. The construction of the sink and shower were outside the Boards jurisdiction.

K. Forbes asked J. Huckins if it was true that the applicant could have gone to the building inspector and asked to make the addition of the outhouse to add the shower.

J. Huckins explained 674:41 talks about erection of a building. The only reason he had Mr. Kelsey go through this was because Mr. Kelsey's building had been taken down. It was technically a reerection of a building. He was covering his butt. Electrical permits etc. are not considered reerection of a building. So those would not need to go through the process.

R. Desmarais expressed that they were erecting a new outhouse.

J. Huckins explained that according to Barrington's regulations you could build up to a 200 sq. ft building for an accessory use without a building permit. There was no building permit required to build the structure.

G. Bailey expressed John was responsible for the building permit but in this instance, he was seeking a building permit from Town. In the letter dated October 8 a requirement was that the structure would not have an undue financial impact on the municipality. Bailey questioned providing medical or fire service out there. Did the Town own a boat to gain access. He believed it would be an undue hardship if the Town did not have that type of equipment to get out there.

Attorney Mayer expressed that it was no different than seeking a building permit on a Class VI Road. You may have difficulty getting an ambulance or fire truck down there. Property owners routinely provide a waiver of liability to the Town to provide for that. RSA 674:41 envisions that. It was a routine requirement and they would give one. The erection of solar panels would actually provide greater fire safety measures that don't currently exist.

G. Bailey expressed that he was glad for Attorney Mayer's explanation. He had brought it up because it was in the materials supplied by Attorney Mayer.

C. Huckins explained that Mr. Kelsey owned the house on the lake, access was the same as houses on a private road. Mr. Kelsey had purchased a parcel of land from which he could obtain access. Owning the piece of land also entitles him to access McDaniel Shore Drive. His house was badly vandalized, and he wanted to renovate it and fix the destruction which the Board should allow him to do. There was nothing unreasonable about repairing the damaged cabin. The cabin was not being expanded, he's putting in a new age outhouse, and composting toilet. As far as the solar went the Town had plenty of seasonal cabins with solar that have electricity and water. She expressed it would be prejudicial not to allow him to place solar panels on his camp.

D. Whitten questioned if the Board knew if the Fire Department had a boat or not.

C. Huckins believed they did.

D. Whitten questioned whether access for the Fire Department was through the access the applicant had purchased. Whitten also expressed that currently Marine Patrol did not have access to this parcel.

D. Whitten asked if the shower and outhouse were in the same building.

Attorney Mayer explained it would be in the same building. There would be a composting toilet with a small basin with water pumped from the lake, which would be connected to the subsurface system. There would be a shower adjacent to it in the same structure.

D. Whitten expressed his biggest concern was pumping water out of the lake, which nothing can be done to stop him at this time. His concern was for the waste and having a system designed to handle the waste.

Attorney Mayer expressed that was the intent. If there was a pumping system to allow for running water NHDES required a subsurface disposal system.

D. Whitten asked if it could be noted that the Town had access to his property for access for public safety and maybe add the State of NH.

Attorney Mayer expressed that that was a pretty big ask and he would have "ask" his client. He would likely not have an issue for emergency access for his own property but giving the State of New Hampshire the right to access the lake through his property would be effectively giving a permanent easement to the public to access his property.

J. Huckins expressed in the case of an emergency, emergency personnel have the right to access through anyone's property. Emergency personnel would use the nearest connection to the water.

R. Desmarais expressed everyone was talking about Class VI roads and this was an environmentally sensitive island. His concern was pumping and disposing of water on this island. He was fine with the plan; he was not sure how it would work. How would it be constructed. You could not get heavy equipment on the island. He asked if they would be opposed to taking their plan to the Conservation Commission.

Attorney Mayer expressed that they had so many hearing on this he was reluctant to present this to another board. The Conservation Commission was an advisory body only. If DES was going to require what DES was going to require it would be Mr. Kelsey's problem to assure it is executed. There would have to be inspections and signoffs. The actual specifics of the subsurface system are still being discussed with an engineer.

R. Kelsey explained there were contractors who install septic systems on islands and have all the equipment needed. New Hampshire did not recognize grey water systems legally so it would have to be a full septic system.

C. Huckins expressed it would be much safer for the environment than an outhouse, which was there before.

K. Forbes asked if there was anyone else to speak in favor.

No one spoke.

K. Forbes asked if there was anyone to speak against.

No One spoke.

K. Forbes closed the public testimony portion of the hearing.

K. Forbes explained they would start with the standard for granting a permit under 674:41. She explained the Board had approved this once and they were now just dealing with the conditions.

- Would the structure distort the official map

K. Forbes expressed everyone agreed because the Town did not have an official map.

- Would the structure increase the difficulty of carrying out the Master Plan

K. Forbes asked the Board and C. Huckins stated no.

- Would the structure cause a hardship to future owners

K. Forbes and C. Huckins expressed they could not see how.

- Would the structure have undo financial impact to the municipality.

K. Forbes expressed she understood the concern with getting out there, but that was the concern on any Class VI road or island. Part of the solution is the waiver of liability, which we are never completely happy with.

C. Huckins expressed the Town would also be able to tax a useable three season home.

G. Bailey expressed that was not relative to what they were considering.

G. Bailey expressed the Class VI and Private Road standard was not relative where this was an island and the concern was getting people there.

K. Forbes asked whether most people were in favor of granting the building permits and the issue was just the consideration of the conditions. The Board was just concerned with the conditions that went with the permit.

K. Forbes directed the Board to go over the past conditions.

- The camp must remain a seasonal camp and no insulation shall be installed

1) The Board agreed that the cabin should remain without insulation

- Applicant must provide for sanitary sewage disposal at the property, for example a composting toilet as approved by DES

2) The Board agreed

- The Decision shall be recorded at the Strafford County Registry of Deeds
- 3) The Board agreed

- The applicant shall execute a waiver of liability
- 4) The Board agreed

K. Forbes expressed it came down to the solar panels and the shower

K. Forbes expressed she did not have a problem with either the solar panels or the shower. She did not believe the requirement limiting the use of solar panels was not reasonably related to the relief that was being requested. There was a problem if he could get the permit from the Board and later get a permit from J. Huckins because it falls outside the Board's scope of authority. K. Forbes was ready to approve the permit without any restrictions on solar panels or the shower.

C. Huckins agreed.

G. Baily expressed his concern was the capacity of the composting toilet and whether it would have the capacity to handle the grey water it would need to facilitate or would he need to install a larger system that DES would have to approve so that there was not nitrates infiltrating into the lake.

K. Forbes expressed that it was in DES's authority.

R. Desmarais expressed it was DES and Conservation Commission.

G. Baily expressed in the past the phosphate levels had been measured by UNH, which was why he raised the concern.

K. Forbes expressed that she disagreed. That when DES issues a permit it trumped everything. It would trump whatever the Conservation Commission said.

D. Whitten expressed the composting toilet was separate and not hitched to the septic system. The grey water and shower were a separate system, so he did not have concern. The shower and the sink were the only things feeding the grey water system. The system was safer than what currently existed. C. Huckins agreed.

K. Forbes expressed the grey water or disposal system must be approved by DES per the conditions.

K. Forbes stated the conditions the Board was placing were:

- 1) The Board agreed that the cabin should remain without insulation
- 2) Applicant must provide for sanitary sewage disposal at the property, for example a composting toilet as approved by DES
- 3) The Decision shall be recorded at the Strafford County Registry of Deeds
- 4) The applicant shall execute a waiver of liability that shall be recorded at the Strafford County Registry of Deeds.

*A motion was made by C. Huckins subject to the conditions listed by K. Forbes and seconded by D. Whitten*

G. Baily called for further discussion. He expressed that he understood what action the Board was taking, he understood the difficult position they were putting the applicant in and he hoped in the end the applicant would be respectful of what the Board requested.

Roll Call

D. Whitten          aye



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

The vote carried 5-0

## **ACTION ITEMS**

2. **116-5-GR-20-Var (Owners: Thomas & Patricia Ballestero)** Request by applicant for a Variance under Article 4.1.1 Minimum Standards Table 2 from front setbacks 16.1' and 38.1' where 40' is required, right side from setbacks 14.2' and 22.1' where 30' is required and left side from setbacks 22.8' and 29.999' where 30' is required (Map 116, Lot 5) at 26 Big Rock Lane in the General Residential (GR) Zoning District.

Thomas Ballestero had called in. The applicants had purchased the home and upon inspection found their best option was to tear down the structure and rebuild the new structure in almost the same footprint. The original structure had been built in the 50's and added on to multiple times causing it to have an irregular footprint. They planned to install a rectangular shaped footprint and install a modular on top of it.

K. Forbes asked for Mr. Ballestero to explain the plan.

T. Ballestero explained that the shaded area was the old footprint. The dark hatched area showed where the proposed structure was in the setback. The house was rotated a little to match the other houses on the road. The area of nonconformance was reduced by about 155 sq. ft. The existing footprint was being reduced by a little over 200 sq. ft. They had received their shoreland permit from the State last June. They had a demolition permit. The existing septic permit was approved and installed in 2007. It was a high end two-bedroom system. It was planned to be a three-season vacation home. They were looking for approval of the proposed areas of relief so that they could begin construction.

K. Forbes asked for clarification on the setbacks.

T. Ballestero explained the lines highlighted in yellow were the proposed setbacks and the darker ones were the existing. It appeared the front setback would be more than before.

G. Bailey expressed that there was only a little over a foot difference between the old and the new. The other setback increased on the side. He had no further comments but to say to process it.

R. Desmarais expressed it looked good.

D. Whitten did not have a problem.

K. Forbes asked if there was anyone to speak in favor.

Aubrey Mead expressed he and his wife were in full support of the application.

Stanley Bolduc expressed he was in full support of the application.

K. Forbes asked if anyone was there to speak against.

No one spoke.

K. Forbes closed the public comment portion of the meeting.

R. Desmarais expressed they had tried as best they could to meet the requirements and make it fit.

C. Huckins expressed they had done a good job.

*A motion was made by R. Desmarais and seconded by G. Bailey to approve the variance.*

Roll Call

R. Desmarais     aye

G. Bailey         aye

C. Huckins       aye

D. Whitten       aye

K. Forbes         aye

The motion passed 5-0

3. **116-16-GR-20-Var (Owner: Linda Tying)** Request by applicant for a Variance under Article 4.1.1 Minimum Standards Table 2 from front setbacks to 30-foot, where 40' is required at 462 Young Road (Map 116, Lot 16) in the General Residential (GR) Zoning District. BY: Ray Bisson, Stonewall Surveying; PO Box 458; Barrington, NH 03825

Ray Bisson of Stonewall Surveying represented the applicant Linda Tying at 462 Young Road. The property was 1.97 acres in the General Residential Zone. Linda Tying purchased the property in 1998. The existing right of way was only about 10' in width. It exits Young Road and became a variable width and at its widest point was just under 24' in width. Where each street frontage must be considered a front yard, this lot had frontage on Young Road and the private right of way.

The client wished to build a one car garage 18' X 24' at the end of the existing paved drive. The squared off portion of the retaining wall was actually part of the old barn. The right of way and Young Road made the setback requirement 40'. Pushing the garage over to meet the setback would move the house to a position that blocked the view of Swains Lake. Putting the garage in the rear would not make for safe and convenient access for everyday use, especially in the winter.

The existing driveway serviced the current lot and Tax Map 116 Lot 17. The existing right of way had very poor visibility to the left coming onto Young Road. His client did not want to use that access for everyday use due to the hazard. R. Bisson showed the sight distance. Reduction to 30 feet would not create any hazard and justice would be served.

K. Forbes expressed the only variance they were looking for was reduction from 40' to 30 ft. from the right of way.

D. Whitten asked the width of the right of way.

R. Bisson expressed that the right of way was 10' wide right at Young Road. 10' wide until it went by the barn. The old deed had it going around the barn. At that point it was just a driveway.

K. Forbes asked if there was anyone to speak in favor.

No one Spoke

K. Forbes asked if there was anyone to speak in opposition.

No one spoke.

K. Forbes closed the public testimony.

R. Desmarais expressed he did not see any problem.

K. Forbes did not see any issues.



*A motion was made by G. Bailey and seconded by R. Desmarais to approve the Variance.*

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

The motion carried 5-0

#### **MINUTES REVIEW AND APPROVAL**

#### **4. Approval of September 16, 2020 meeting minutes.**

*A motion was made by G. Bailey and seconded by C. Huckins to approve the minutes of September 16, 2020*

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

*Motion carried 4-0 with D. Whitten abstained*

#### **ADJOURNMENT**

*A motion was made by G. Bailey and seconded by R. Desmarais to adjourn*

G. Bailey	aye
C. Huckins	aye
R. Desmarais	aye
D. Whitten	aye

The Motion carried 5-0

Respectfully submitted,

Marcia J. Gasses  
Town Planner