



**ZONING BOARD OF ADJUSTMENT
BARRINGTON EARLY CHILD LEARNING CENTER
77 RAMSDELL LANE
BARRINGTON, NH**

**WEDNESDAY NOVEMBER 16, 2011
7:00PM**

MEETING MINUTES

PRESENT:

Karyn Forbes, Chair
George Bailey
Gerard Gajewski
Ellen Conklin
Raymond Desmarais

ABSENT:

None

GUESTS:

Steve Conklin; Barrington
Bryan Benlind; Land-Technical Service Corporation; P.O. Box 60;
Ossipee, NH 03864
Brian Lenzi; Barrington
Don Braughtigan; Barrington
Mike Schlosser; MJS Engineering; 5 Railroad Street; Newmarket NH
03857
Malcolm McNeill; P.O. Box 815; Dover, NH 03824

STAFF:

Constance Brawders – Town Planner
Gregory M. Jones – Transcriptionist

NOTE: THESE ARE SUMMARY ACTION MINUTES ONLY. A COMPLETE COPY OF THE MEETING AUDIO IS AVAILABLE THROUGH THE LAND USE DEPARTMENT.

CALL TO ORDER

The Barrington Zoning Board of Adjustment Chair Karyn Forbes called the meeting to order at 7:00 p.m.

ROLL CALL

Barrington Zoning Board of Adjustment Meeting Minutes / gmj

A formal roll call was conducted confirming members present as stated above

MINUTES REVIEW AND APPROVAL

1. Approval of August 17, 2011 Regular Meeting Minutes.

G. Bailey motioned to approve the Regular Meeting Minutes of August 17, 2011. G. Gajewski seconded the motion which passed with a vote of three (3) in favor, to zero (0) against and two (2) abstentions.

2. Approval of September 21, 2011 Regular Meeting Minutes.

G. Bailey motioned to approve the Regular Meeting Minutes of September 21, 2011. G. Gajewski seconded the motion which passed with a vote of three (3), to zero (0) against and two (2) abstentions.

3. Approval of October 19, 2011 Regular Meeting Minutes.

E. Conklin motioned to approve the Regular Meeting Minutes of October 19, 2011. R. Desmarais seconded the motion which passed with a vote of three (3), to zero (0) against and two (2) abstentions.

STAFF COMMUNICATIONS

ACTION ITEMS

4. **ZB11/693 (Lot Line Consolidation and Boundary Line Adjustment for Evamor Lenzi Estate, Robert Lenzi, Steven Lenzi and the Lenzi Family 2009 Revocable Trust)** Request by applicant for a Variance on Article 4.1 p. 3, requirement for Young Road frontage for Lots 31/33 and Lots 34/35; Special Exception for Article 4.1 p.2, requirement for vehicular access off Young Road for Lot 13; and Variance for Zoning Ordinance 5.1.4-Lot Line Adjustments involving non-conforming Lots, located in the General Residential Zoning District (GR) on a 7.261 acre site located at 347 Young Road (Map 115, Lots 13,31,32,33,34 & 35).

Bryan Berlind, President of Land-Technical Service Corporation (P.O. Box 60; Ossipee, NH 03864) approached the Board on behalf of the applicant. Berlind presented the Board with the current Tax-Maps for the lots in question, a "Plan A" (available at the Land Use Department) which was previously approved by the Planning Board and meets all constraints of the Zoning Ordinance, and "Plan B" (available at the Land Use Department) which is the applicants preferred plan before the Zoning Board for consideration. Berlind explained that his client has struggled with the constraints of the Zoning Ordinance dimensional requirements in the past and stated that "Plan A" is the only approvable configuration of the lots without the need for variance. Berlind opined that "Plan A" is not the best plan for the interests of the Municipality, surrounding neighborhood or the individual lot owners. Berlind informed the Board that deeds for the approved "Plan A" have never been filed and that the Tax-Map configurations on-file accurately exhibits the current legal configuration.

Berlind opined that the submitted "Plan B" better meets the objectives and intent of the Zoning Ordinance despite the need for variances. He explained that the "Plan B" configuration will not expand the non-conformity of new "Lot 34" and will add a Right-of-Way for access to Lenzi-Point Road. New "Lot 33"

will be smaller in area, accessed from Lenzi-Point Road and new "Lot 32" will become larger in area but not expand the use or patterns of the land as current. Berlind explained that "Plan B" will require a Variance to Zoning Ordinance Section 4.1 p.3 for new "Lot 34" as there is no road frontage and reminded the Board that the area of the new Lot will increase making it less-non-conforming. He stated further that "Plan B" will require a Variance to Zoning Ordinance Section 5.1.4 for new "Lot 33" as the lot will become smaller in area. The Variance Requests relate to requirements of Sections 4.1 (Dimensional Requirements), and 5.1.4 (Lot Line Adjustments involving Non-Conforming Lots). Berlind explained that he is seeking a Special Exception to Zoning Ordinance Section 4.1 p.3 for Lot 13 a part of a submitted application for a driveway to new "Lot 34".

After some discussion the Board agreed that the configuration of lots as presented in "Plan B" satisfies the requirements of Sections 5.1.4 and 4.1 p.3 & 4 of the Barrington Zoning Ordinance. Chair K. Forbes informed the applicant that a Letter of Authorization and signatures from the Lenzi Family 2009 Revocable Trust will be required before any approvals are validated. The Board discussed its findings for the Variance Requests and Special Exception relative to the Variance and Special Exception criteria for approval.

Chair K. Forbes opened up the meeting for public comment. There was no public comment.

G. Bailey motioned to accept both the requested Special Exception to Article 4.1 p.2, requirement for vehicular access off Young Road for Lot 13, as there will be no detriment to surrounding property values or hazards to the public created as a result of this project, and two (2) Variance requests to Zoning Ordinance Sections 5.1.4 for new Lot 33 and 4.1 p.3 for new "Lot 34" (Current Tax Map Lots 31/33 and Lots 34/35) based on the following: a) Such circumstances exist that literal enforcement of the Zoning Ordinance results in unnecessary hardship to the applicant. b) Granting the variances will be consistent with the spirit of the ordinance. c) Property values will not be diminished as a result of this project. d) Granting the variances will do substantial justice. e) Granting the Variances will not be contrary to the public's interest. These variance and special exception approvals are conditioned upon receipt of an Authorization Letter from the Lenzi Family 2009 Revocable Trust. G. Gajewski seconded the motion which passed unanimously with a vote of five (5), to zero (0) in favor.

5. **ZB11/694 (Steven & Ellen Conklin)** The Zoning Board of Adjustment has received a request by applicant Steven & Ellen Conklin to appeal the Planning Board decision of August 4, 2011 for acceptance of Drainage Design, located in the General Residential Zoning District (GR) at Gerrior Drive & St. Matthews Drive (Map 268 Lot 1.6 & 1.7).

E. Conklin and Raymond Desmaris recused from discussion.

Attorney Malcolm McNeil addressed the Board relative to his Motion to Dismiss the applicant's Appeal of the Planning Board decision of August 4, 2011 for acceptance of Drainage Design, located at Gerrior Drive & S. Mathews Drive. McNeil stated that he is in agreement with the findings of the Town's Legal Counsel. McNeil opined that the Zoning Board of Adjustment does not have jurisdiction over the Subdivision Regulations of the Town and that the proper avenue to appeal through the court system was not taken by the applicant for the appeal in question.

S. Conklin addressed the Board and presented further materials for review (available at the Land Use Department) which support his Appeal of the Planning Board decision of August 4, 2011 for acceptance of Drainage Design, located at Gerrior Drive & S. Mathews Drive and answers questions raised within Attorney McNeil's Motion to Dismiss. Further, as presented within the newly submitted materials, the

Conklin's wish to change their appeal to address non-conformance to Section 7.1 (Performance Standards) of the Barrington Zoning Ordinance.

Attorney Malcolm McNeil expressed concern with the idea of changing the appeal relative to this drainage design issue over 90 days passed the deadline for submission of appeal to the court system. McNeil re-affirmed his position that nowhere in the original appeal of the Planning Board decision was the Zoning Ordinance addressed and the ZBA does not have jurisdiction in this matter.

S. Conklin stated that the deadline error for submission for appeal was a mistake. Had the Conklin's known that 7.1 of the Zoning Ordinance was the only issue the Zoning Board of Adjustment may regulate, an Appeal based on Section 7.1 would have been submitted originally. The Conklin requested that the Appeal be allowed to move forward and that the ZBA offer the Conklin's the same generous assistance as practiced with other regular citizens.

G. Gajewski opined that the ZBA does not have the authority to overturn a decision made by the Planning Board based on the Subdivision Regulations. Chair K. Forbes opined that the appeal cannot be changed and that a new application for appeal should be filed. She stated that this is a legal issue and that Courts should decide. G. Bailey opined that the public is entitled to be heard and that he has not had an opportunity to read all reports relative to this issue.

S. Conklin requested that the submitted materials be reviewed by the Town Legal Counsel. Planner Brawders informed the Board and Conklin's that under NH RSA 676:4 (b) the applicant is charged the legal counsel review fee subject to the Planning Board's authority.

Attorney McNeil opined that the request to change the appeal is inappropriate.

G. Bailey motioned to continue the case pending Town Legal Counsel review of additional supporting materials submitted by S. Conklin as they relate to S. Conklin's change of Appeal of the planning Board decision of August 4, 2011 for acceptance of Drainage Design at Gerrior Drive & St. Mathews Drive. G. Gajewski seconded the motion which passed with a vote of two (2), in favor to one (1) against.

6. **ZB11/695 (Marie-Cecile Dubois 1994 Trust)** Request by applicant for a variance for relief from Article 4-Dimensional Requirements from Section 4.2.1 to construct a 2 car garage to replace the existing carports on a 40 acre site located in the General Residential Zoning District (GR) at 134 Old Settlers Road (Map 228/230, Lot 18).

E. Conklin and R. Desmaris returned to the Board.

G. Gajewski motioned to continue the application to the December 21, 2011 meeting of the Board. E. Conklin seconded the motion which passed unanimously with a vote of five (5), to zero (0) in favor.

ADJOURNMENT

Respectfully Submitted,

Gregory M. Jones