

MEETING MINUTES
ZONING BOARD OF ADJUSTMENT MEETING

Barrington Annex Building
(next to Elementary School)
(NEW LOCATION) 572 Calef Highway

Barrington, NH
November 20, 2013
7:00PM

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

ROLL CALL

Members Present

George Bailey
Raymond Desmarais
Gerard Gajewski
Dawn Hatch Ex-officio-Alt
Meri Schmalz-Alt

Members Absent

Karyn Forbes, Chair
David Vincent

MINUTES REVIEW AND APPROVAL

1. Approval of September 18, 2013 Regular Meeting Minutes.
2. Approval of October 16, 2013 Regular Meeting Minutes.

The approval of the minutes was postponed until December 18, 2013

ACTION ITEMS

3. **102-93, 94-GR13-ZBA (Wilma Smith)** Request by applicant for a variance from Article 4, Sections 4.1, 4.1.1 & 4.2.1 nonconforming to setbacks, Article 5 Section 5.1.1 Development on Nonconforming Lots, to place a manufactured home located 15.7' from the side and 17.3' from the side where 30' is required on a .3 and .2 acre lots located in the General Residential (GR) Zoning District at Long Shores Drive (Map102, Lots 93 & 94)

Request by applicant for a 90 day continuation to December 18, 2013

A motion by D. Hatch and seconded by G. Bailey to continue the application to December 18, 2013 at the applicants request. The motion carried unanimously

4. **225-20.2-NR-13-ZBA (Churchill Barn Woodshop)** Request by applicant for a variance

Article 4, Sections 4.1.1 Minimum Standards, 4.2.1 Standards for the GR and NR District to construct a 28' X 50' barn 10' from the right away when 40' is required on a 2.22 acre lot located in the Neighborhood Residential (NR) Zoning District at 142 Waterhouse Road (Map 225, Lot 20.2). By: Robert Churchill; Oyster River Woodworking; Barrington, NH 03825

Mr. Churchill described the request for a variance from the front and side setback, 25' from the front and 10' from the side. He had appeared before the Planning Board with a plan to keep the structure out of the setbacks but it would have been located within the Wetland Buffer, the Board felt a compromise was in order. The Board had suggested 20', which the applicant stated he could not meet. PSNH would not allow a building to be placed over the existing underground utility, necessitating the 25' front setback request and 10' side setback request.

R. Desmarais sitting as Chair suggested the applicant read his responses to the Justification for the Variance.

Mr. Churchill read his responses to Part IV of the application. They are summarized below.

1. *Special conditions exist such that literal enforcement of the ordinance will result in unnecessary hardship to the applicant as defined under applicable law.* While there was a large enough section of land in the back right corner of the lot, he felt that there would be an undo cost burden for underground utilities and unnecessary impacts to the wetlands and buffer.
2. *Granting the variance would be consistent with the spirit of the ordinance.* Mr. Churchill explained that the granting of the variance would be consistent with the spirit and intent of the ordinance because the rural feel of the Barrington neighborhood would continue. The property is the last house located on a Class VI Road with almost no chance of further homes being built or the road being upgraded.
3. *Granting the variance will not result in diminution of surrounding property values.* Mr. Churchill referenced a letter from Crystal Bourdon, Realtor. The letter stated in her professional opinion, the proximity of the barn on Waterhouse Road would not adversely affect the neighboring property values.
4. *Granting the variance would do substantial justice.* Mr. Churchill explained that granting the variance would do substantial justice by avoiding impacts to sensitive environmental areas and would keep the structure on top of previously disturbed areas. An existing woods road that had been built to access an old sand & gravel pit was now under a conservation easement.

5. *Granting the variance would not be contrary to the public interest.* Mr. Churchill expressed that he did not feel that the public interest would be impacted by allowing construction of the barn with a reduced minimum road setback.

G. Bailey questioned if the building could be located in an area near the house. He believed it could.

Mr. Churchill expressed there were steep slopes and close proximity to his septic system. He would also need to sink a foundation and he would like a wood floor for his woodshop.

G. Bailey expressed that the topography provided did not indicate steep slopes and there appeared to be enough room.

R. Desmarais questioned the cost of the underground utilities.

G. Bailey did not see a hardship in the spirit of the ordinance.

R. Desmarais expressed the additional cost to the rear of the lot was primarily for underground utilities. He asked what requirement is there for underground utilities.

Mr. Churchill explained that it was a subdivision requirement and the current service to the house was not large enough to handle the additional load.

R. Desmarais asked for public comment.

There was none

Discussion ensued regarding other possible options.

D. Hatch expressed that the Conservation Commission and Planning Board supported the location in the front of the lot.

R. Desmarais provided a memo from the Conservation Commission to the Planning Board, which discussed the different alternatives.

Planner Gasses explained that the Conservation Commission supported the compromise of 20' discussed at the Planning Board in their memo. They did not support the crossing of the wetlands in the rear of the lot.

R. Desmarais expressed that there were still options.

G. Bailey wanted to see the pricing to move up to the location he suggested and the cost of upgrading the service to support the use.

R. Desmarais asked if the applicant would like to continue the application.

The applicant agreed.

A motion by G. Bailey and seconded by D. Hatch to continue to the December 19, 2013 meeting. The motion carried unanimously.

Need to provided ZBA and Conservation Commission minutes for the next meeting.

- 5. 238-4-TC-13-ZBA-Appeal (The Three Socios, LLC)** Request by applicant to appeal the October 1, 2013 decision by the Planning Board from Section 6.2.2 Common Open Space of the Zoning Ordinance governs the use of open space within conservation subdivisions. That a well serving off-site locations may not be located in the open space of a conservation subdivision located in the Village (V) Zoning District (Map 238, Lot 14) By: John L. Arnold; Hinckley, Allen & Snyder LLP, Attorney at Law; 11 South Main Street, Suite 400; Concord, NH 03301-4846

John Arnold represented the applicant. Rick Green and Jim Mitchell from Three Socios were also present. Barry Gier from Jones & Beach Engineering.

Mr. Arnold explained the applicant wished to appeal a decision by the Planning Board which determined, that to locate a well within open space to serve an offsite location is not allowed under the Zoning Ordinance. The applicant felt that the Planning Board was wrong in its interpretation and were asking for a reversal of the Planning Board decision. He expressed that the use was consistent with the purpose of open space.

Mr. Arnold pointed out the location of the Three Socios Lot, which is located between Journey Baptist Church and George Calef Fine Foods. The lots are located in the Town Center and are not on any type of municipal water. There are a number of small lots located along Route 125 and around the corner on Route 9. The Zoning in the Town Center is to allow for a denser development, but without a municipal water supply, it is difficult for the lots to be built out to their potential. NH DES has restriction on development within the well radius on these lots.

The applicant met with Mr. Falzone who owns the open space for the Village Place Subdivision. Mr. Falzone has agreed to allow the placement of the well in the open space. In addition, the Conservation Commission has agreed to hold the easement on the open space with the well in place.

The well would include a well head and underground utilities to service it. The access would be tied into the trail system.

The Planning Board based its decision in large part on the fact that Section 6.2.2 of the Ordinance does not explicitly identify wells serving off-site locations as an allowed use of open space. That reasoning was flawed because Section 6.2.2 is not meant to identify all permitted uses of the open space. If that had been the case, the only permitted use of open space would be for wells and septic systems serving the development. Section 6.2.2 does not identify any other permitted uses. Common uses associated with the conservation areas such as recreational trails, forestry or agriculture uses would be prohibited. Such an interpretation would be plainly inconsistent with the purpose of open space as referenced in the Subdivision Regulations 13.6.3.

Section 13.6.3 of the Subdivision Regulations further undercut the Planning Board's Decision. That section governs the leasing of open space to third parties, and states that if open space is leased it, Shall be maintained for the purposes set forth in the zoning ordinance.

Mr. Arnold went on to express the Decision was also inconsistent with Section 6.2.2 (9) of the ordinance, which identifies specific prohibited uses of open space. That section did not identify wells serving off-site locations. Moreover, if the Planning Board's interpretation were correct, that only uses expressly permitted in Section 6.2.2 are allowed, Section 6.2.2(9) would be meaningless. Private lot areas, cluster group lot areas, street rights of way and parking areas would already be prohibited.

Mr. Arnold argued that the only reasonable interpretation of Section 6.2.2 is that any use consistent with the conservation purposes underlying open space was allowed. The purpose of the common open space was to preserve the rural character, scenic views and recreational uses of the open space. If the board looked at, ZO Article 6.1; Subdivision Regulations, Article 13.1 He believe the proposed Well served all of those purposes. Although the proposed well did not "service the proposed subdivision that difference had no impact on the preservation of open space. The rural character, scenic views and recreational uses of the open space are equally preserved whether a subdivision resident drinks the water from the well or a neighbor drank the water. Furthermore, the proposed Well is consistent with the purpose of the open space in that restrictions on the land area within the well radius imposed by state law are designed to protect the land from development and contamination in order to preserve water quality.

Mr. Arnold summed up by stating that the proposed Well would be allowed if the water from it was consumed by residents of the subdivision. Allowing neighbors to drink the water instead did not change the impact on the open space in any way. All utilities would be underground and the gravel access way to the well would be interconnected to the recreational trail system intended by

Barrington Village Place. It was counterproductive to prohibit a use that falls squarely within the purposes of the open space. Consequently, they respectfully requested that the Board reverse the Planning Board Decision.

R. Desmarais asked if the Planning Board minutes were supplied.

John Arnold stated he had supplied the decision but not the minutes in the appeal packet.

D. Hatch asked if the dot was the existing well.

John Arnold expressed it was the proposed location.

D. Hatch asked for the location of Milos, George Calef's & Citizen Bank well.

Barry Gier expressed that the well on Millos property would be discontinued.

M. Schmaltz expressed that it was a great idea. That it would bring a business to Town and allow for existing businesses to expand bringing a financial benefit to the Town.

G. Bailey asked how many parties would be serviced by the well. He asked for what protections would be in place.

G. Bailey asked if there were wells currently on the sites to be served by the Well.

Barry Gier explained that any treatment would be on the Milos property and comply with DES regulations.

John Arnold explained currently four sites identified.

D. Hatch expressed that she believed the use did need to come to the Zoning Board.

R. Desmarais expressed that the applicant was proposing increasing the amount of users in the area, the 64 homes, plus the additional use. He did not feel they were

John Arnold expressed that the lots using the proposed well would be drawing from an area in close proximity to the site even if the well were not in the proposed location.

R. Desmarais asked for those in favor to speak.

Lisa Ball expressed Journey Church supported the applicant's request.

Nick Tsoukalas of Milos supported the applicant's request; Millos currently could not expand because there water supply was not sufficient.

R. Desmarais asked if anyone was opposed.

Stephen Jeffery of France Road asked to have a letter submitted for the record and read from the letter. *"The "well" the applicant is proposing is defined by NH DES as a Transient Non-community Water System. The "well" that the applicant wishes to install in the open space for the Village Place Subdivision is a non-residential use which requires a Site Plan Application. The applicant has not submitted a site review application for this structure and use as required by RSA 674:43. I do not believe the ZBA has authority to rule on these variance applications because the applicant has not fulfilled the statutory requirements. RSA 674:21-a prohibits any and all development in any area designated as open space. The conservation restriction is further defined by RSA 477:45. In order to pursue this proposed use, Mr. Falzone, the owner of the Village Place Subdivision would be required to request the town to revoke the previous subdivision approval and submit a new subdivision application, subject to the current Zoning Ordinance, which may include the "well". The minutes of the Barrington Conservation Commission indicates Fr. Falzone has no intention of submitting the required applications. I request that the ZBA deny these applications until the required applications are submitted to the Barrington Planning Board."*

R. Desmarais explained the board was currently reviewing an appeal from a Planning Board decision. There was a variance application to follow.

Allen Kelley of France Road had a process question. 676:5 III. Mr. Kelley read 676:5 III. He believed that the appeal of the Planning Board Decision needed to be heard by the Superior Court where a Conservation Subdivision Regulation was developed under "innovative land use."

R. Desmarais questioned Planner Gasses.

Planner Gasses expressed that the Town Attorney had been present at the meeting. Ms. Gasses did not disagree with Mr. Kelley or feel qualified as a layperson. She stated that the appeal of conditional use permits and special permits did go to the Superior Court but did not feel comfortable in the determination of this appeal.

R. Desmarais expressed that the board needed a legal consult with the Town Attorney on the matter.

Lisa Ball asked to make a statement for the record.

R. Desmarais allowed her to speak.

Lisa Ball expressed the applicant has worked real hard in trying to bring businesses to the community and they keep going round and round.

R. Desmarais expressed that it was very important that the correct process was followed that any decision the board makes is not throw out when it goes to court.

Planner Gasses clarified with the Zoning Board that the Variance Application would still be heard that evening.

A motion was made by M. Schmaltz and seconded by D. Hatch to continue the Appeal of the Planning Board Decision until December 18, 2013 pending consult with the Town Attorney.

G. Bailey asked if they heard from the Attorney that they hold a special meeting for the applicant.

Where if the applicant were successful on their variance request the appeal would not be necessary, G. Bailey withdrew his request.

The motion then carried unanimously.

238-4-TC-13-ZBA-Variance (The Three Socios, LLC) Request by applicant for a variance from Article 6, Section 6.2.2 to allow open space within a Conservation Subdivision to be used for a well serving off-site location and a variance from Article 6, Section 6.2.6 to allow the well, gravel access way and appurtenant underground utility lines to be located within the perimeter buffer of the conservation subdivision located in the Village (V) Zoning District (Map 238, Lot 14) By: John L. Arnold; Hinckley, Allen & Snyder LLP, Attorney at Law; 11 South Main Street, Suite 400; Concord, NH 03301-4846

John Arnold representing the applicant stated he did not want to bore the board by repeating what he already had said and requested that for the record that the comments made for the prior appeal be referenced. Mr. Arnold wanted to highlight items, which were specific to the variance applications. One variance was to allow the well in the open space. The second variance was to allow the piping, utilities, and access through the perimeter buffer.

John Arnold highlighted that there are a lot of small lots located in this area.. The area was zoned for dense development, which is supported by the Master Plan. Development is really stifled by the

lack of municipal water and the ability of individuals to draw enough water on the small lots. The private parties have agreed to this plan and the Conservation Commission supports it.

John Arnold encouraged the board to start with a baseline, which was the well and the infrastructure to support it, which was allowed if it served the conservation subdivision. Nothing was changing but who would drink the water. The well would not affect the open space and buffer because only the wellhead would be seen. The property values would be increased by the availability of clean water. A well would have no different impact if it served the residences of the subdivision. The location of the well would not affect the buffer because it is located in an area that is treed and wet.

John Arnold expressed that the wells were not contrary to the public interest. The public interest is to protect the open space. The primary purposes of Section 62.2 are to preserve the rural character, scenic views and recreational uses of the open space. Article 6.2.2 (8) of the Ordinance expressly allowed for open space to be used for “individual or community water and sewage systems required to service the proposed development.” The open space was preserved the exact same way no matter who drinks the water. The rural character, scenic views and recreational uses of the open space are equally preserved whether a resident drinks the water from the well, or whether a neighbor does. There was no impact on the character of the locality, or any public threat to public health, safety or welfare.

John Arnold expressed that in allowing the utility lines and an access path servicing the well to cross the perimeter buffer of the subdivision lot was not contrary to the public interest. Section 6.2.6 required a 100’ buffer surrounding a conservation subdivision, which was free of all structures and provided a visual screen from exterior roadways. Referenced Article 18 of the Zoning Ordinance .The purpose of the buffer was to soften or mitigate the effects of one land use on the other. Situating an underground well, together with underground water and utility lines would have absolutely no impact on its stated purpose. It was illogical to interpret the buffer provision to prevent the crossing of utilities and access ways. If interpreted in such a way, it would be impossible to provided access and utilities to the subdivision itself. The lot was unique in that it was a very large parcel of open land adjacent to a commercial zoning district sitting on top of an aquifer adjacent to very small commercial lots. The fact that the well could be allowed without affecting the purpose of the open space of buffers and provide water to the adjacent small commercial lots is benefit. There is no public purpose to be gained by denying the folks in the commercial area to drink the water from the open space area. Putting the well and piping in the open space and tying the access in to the trail system would be a benefit to the community.

R. Desmarais asked when the subdivision was approved.

M. Gasses expressed the project had conditional approval in August of 2012 and final approval early 2013. There was approximately 2000' of road constructed and one building permit issued.

R. Desmarais asked the size of the lots.

Barry Gier expressed approximately one acre.

R. Desmarais expressed they were allowed to go to one acre because of the open space.

G. Bailey asked what businesses would be served.

John Arnold expressed Milos, Calef's, Journey Church, and the applicants. There was the possibility of adding users in the future by agreement.

M. Schmaltz asked how many additional business could be served.

Barry Gier explained that with the proposed well radius they were allowed to go up to 14,400 gallons per day. So they could add additional users in the area. Currently the proposed uses total 4000 gallons per day.

G. Bailey asked if there was no other place to put the well accept on the conservation area.

Barry Gier there was no space on the proposed site or the existing lots that would be served.

Richard Green stated the existing wells would be capped and are drawing from the safe aquifer, so that it would essentially be the same draw. The well would become a state monitored well.

D. Hatch expressed that the well was a positive improvement.

D. Hatch expressed the one well location set farther back than the existing wells were an improvement. She would support it completely.

R. Desmarais asked for those in favor.

Lisa Ball of Journey Church expressed the Church supported the application.

R. Desmarais asked if anyone wished to speak in opposition.

No one spoke.

R. Desmarais closed the Public Hearing to deliberate.

D. Hatch expressed again the well would be set father back and would be monitored, the water was from the same aquifer and to her the well was an improvement.

G. Gajewski expressed that it was the best reason for a variance he had ever heard in recent times.

M. Schmaltz expressed she would have to agree with G. Gajewski.

R. Desmarais expressed that it was not what open space was intended for. That they would be going counter to what the zoning was intended for. The subdivision should be redone and allow for a lot that would allow for a well.

G. Bailey expressed he was a Selectmen when the Town Center came about and a water district was not provided for.

G. Bailey express he did not believe using the open space for a well was what the intension was, that the applicant could come up with a better alternative to disturbing that site.

G. Gajewski expressed he disagreed with G. Bailey that the pipe and the access would have minimal effect. The open space had to have access.

R. Desmarais expressed if the Town wanted a water district they should establish one.

G. Gajewski expressed that the Route 9 and 125 location was kind of a unique area.

R. Desmarais asked if they had the Conservation Commissions opinion on this.

M. Gasses stated that the Commission had voted to accept the easement with the well located on the open space.

M. Schmaltz expressed that wells are best located in conservation areas because the area is so pure.

D. Hatch expressed that the State of NH supports wells in conservation areas.

G. Gajewski stated again because of the location you are going to have a hard time getting water to this area.

R. Desmarais expressed that then it should be done through a water district.

G. Gajewski expressed that was not within their authority.

D. Hatch expressed that the one well is not going to have any negative impact.

R. Desmarais expressed a well was allowed in place of 64 wells, not in addition to.

J. Gajewski expressed it was accentually the same thing, allowing for one well to service the four lots a short distance away.

G. Bailey expressed the concern was the piece of property the well was to be located on.

D. Hatch expressed that she did not read the Ordinance that way. Forgetting who would use the water a well was allowed in open space.

R. Desmarais believed the ordinance allowed one well in place of 64 wells.

D. Hatch expressed she did not read the ordinance that way. She did not feel it would have any negative impact.

R. Desmarais agreed it was a good idea but expressed that the subdivision should be redone so that the well is included.

R. Desmarais expressed that the applicant would have to go to the Attorney General to allow for the well in the conservation easement.

M. Gasses explained that the conservation easement had not been recorded yet and that the easement would be recorded with language to include the well, currently it was open space. The Conservation Commission has voted to take the easement with the well and the Town Attorney would work on language to incorporate the well within the easement.

A motion was made by G. Gajewski and seconded by M. Schmaltz to approve the variance.

R. Desmarais asked for the hardship.

G. Gajewski stated that he accepted the case as the applicant presented it as part of his motion.

R. Desmarais asked for the hardship.

G. Gajewski expressed that in one instance expansion of the businesses would be difficult second instance is the water quality is not acceptable.

M. Schmaltz expressed they could not expand their businesses.

Discussion ensued regarding addressing the five criteria for granting a Variance.

D. Hatch expressed that the applicant's packet it is expressed that the lot coverage and well radii imposed by the NHDES severely restricts the future expansion of existing businesses and the development of new businesses in the area. She believed that the hardship was stated.

The board took a voice vote, which carried.

The applicant asked for clarification that the vote was for both variances.

G. Gajewski confirmed the motion was for 6.2.2 and 6.2.6 of the Zoning Ordinance as presented in the application.

M. Gasses suggested a Roll Call Vote

Roll Call Vote

R. Desmarais no

D. Hatch yes

G. Bailey no

Meri Schmaltz yes

Gerard Gajewski yes

The motion carried three (3) to two (2)

- 6. 118-22-GR-13-ZBA-Variance (Charles H. & Paula H. McCoy)** Request by applicant for a variance from Article 4, Section 4.1.1 Minimum Standards and Article 5, Sections 5.2 Nonconforming Structures, 5.2.1 Permitted Expansion for certain Nonconforming Structures to expand the footprint of the existing home four feet laterally towards their south-easterly sideline and proposal to expand the existing deck four feet in the same direction, returning it to its pre-construction width on a .15 acre lot in the General Residential (GR) Zoning District at 62 Rocky

Point Road (Map 188, Lot 22) By Randy Orvis, Geometres Blue Hills, LLC; PO Box 277;
Farmington, NH 03835

Randy Orvis represented the applicant.

R. Desmarais stated the applicant needed to provide a letter of authorization to have Mr. Orvis represent them.

The applicant will provide the letter of authorization prior to the issuance of the Notice of Decision.

Mr. Orvis explained that the lot was an existing nonconforming lot with no building envelope. The variance would allow the applicant to replace a dated home. There would be no negative effect on the property values. He passed out photos of current properties in the vicinity. The proposed project would have no negative affect to abutting property owners, or the neighborhood at large. It would drastically reduce the storm water runoff from the lot, and would increase the property value substantially.

M. Schmaltz asked if the house would be torn down.

Mr. Orvis explained the house would be torn down and the foundation would be reused and extended four feet on one side. The application had to go through Shoreland Protection Permit process. They are getting rid of the paved driveway and adding a permeable driveway.

R. Desmarais believed it was an improvement.

A motion was made by M. Schmaltz and seconded and seconded by G. Gajewski to grant the variance. The motion carried unanimously

A motion was made by G. Bailey and seconded by G. Gajewski to adjourn at 9:05 p.m. The motion carried unanimously.

Respectfully submitted,

Marcia J. Gasses