

MEETING MINUTES  
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING

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

Barrington, NH  
September 24, 2014  
7:00PM

Members Present

Karyn Forbes, Chair  
George Bailey  
Meri Schmalz-Alt  
George Schmalz-Alt  
Raymond Desmarais  
Gerard Gajewski

Member Absent

Dawn Hatch

**ACT ION ITEMS**

- 1. 238-4-TC-14 Appeal of Decision of The Town of Barrington, New Hampshire Planning Board**  
Pursuant to New Hampshire R.S.A. 676:5 (III)/George A. Calef and Arvilla T. Calef, Trustees of The George A. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008 and Arvilla T. Calef and George A. Calef, Trustees of the Arvilla T. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008 v. Town of Barrington, New Hampshire.

**Appeal of Planning Board Decision Case # SR12/240 (Owner: The Three Socios, LLC Map 238, Lot 4)) Conditional Approval on April 15, 2014 based on alleged violation of the Zoning Ordinance.**

Review of DRAFT for Denial of Appeal on the case referenced above.

K. Forbes explained that the Board had already voted and they were there to review a draft Notice of Decision prepared by our Attorney.

R. Desmaris expressed the Board had agreed many of those articles sited were purpose clauses and not appealable.

The Board members concurred.

R. Desmaris read the decision into the record.

The administrative appeal is denied. The planning board's decision of April 15, 2014 is affirmed to the extent it involves construction, application or interpretation of items of the Barrington Zoning Ordinance.

The administrative appeal is denied. The planning board's decision of April 15, 2014 is affirmed to the extent it involves construction, application or interpretation of terms of the Barrington Zoning Ordinance.

1. The applicants withdrew their claims regarding §'s 6.2.2 (8) and 6.2.2 (9) of the zoning ordinance.
2. With respect to the remaining sections of the zoning ordinance cited by applicants, several ordinance sections are general statements of purpose a/k/a "purposes clauses." They are not specific requirements of zoning and they have no regulatory content. Therefore, these sections are not appealable. These are: §'s 2.2, 2.2.5, 7.1, 12.1, 12.2.
3. To the extent these statements of purpose may be appealable as administrative decisions, the applicants did not meet their burden of establishing that the planning board's site plan approval misconstrues, misapplies or misinterprets these sections of the zoning ordinance. The planning board record indicates that it did not misconstrue, misapply or misinterpret these sections of the zoning ordinance.
4. Other zoning ordinance sections cited by the applicants are requirements that developments comply with other sets of regulations. If these other regulations are not met, the appeal should be taken under the procedures of the applicable board or agency, not under the zoning ordinance. These are: § 3.1.6 Site Plan Review. §'s 3.1.5, 4.2.4 (1) DES.
5. The planning board approval is conditioned on approval of three (3) site plans relative to the proposed new well. Concerns about water issues and compliance of the wells with applicable requirements will be addressed during those reviews. The well is not a part of the subject site plan. Thus, there is no error by the planning board in construing, applying or interpreting § 7.1 (1) of the zoning ordinance.
6. The essence of the oral argument presented by the applicants at the August 27, 2014 hearing involves a dispute between the applicants and Mr. Milo over abandonment of a well and/or rights to a new well. The ZBA has no jurisdiction to adjudicate that private contract dispute.
7. The Joint Motion to Dismiss is granted in part relative to the parts of the administrative appeal which assert that the planning board did not comply with its site plan review regulations. The ZBA has no jurisdiction to review appeals of the planning board's interpretation, construction or application of its site plan review regulations. The remaining parts of the Joint Motion to Dismiss are moot given ¶'s 1 - 6 of this decision.

G. Bailey asked to have the first sentence in paragraph 5 reread.

*A motion was made by R. Desmaris and seconded by G. Bailey to adopt the Notice of Decision as read into the record. The motion carried unanimously.*

*A motion was made by G. Gajewski and seconded by R. Desmaris to adjourn at 7:10 p.m. The motion carried unanimously*

Respectfully submitted,

Marcia J. Gasses  
Town Planner & Land Use Administrator