

MEETING MINUTES  
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING

**Barrington Annex Building**  
**(next to Elementary School)**  
**(NEW LOCATION) 572 Calef Highway**  
Barrington, NH  
November 19, 2014  
7:00PM

**ZONING BOARD MEMBERS MET WITH LEGAL COUNSEL AT 6:00PM**

Members Present

Karyn Forbes, Chair  
George Bailey  
Meri Schmalz-Alt  
George Schmalz-Alt  
Raymond Desmarais  
Dawn Hatch

Members Absent

Gerard Gajewski

**MINUTES REVIEW AND APPROVAL**

1. Approval of October 15, 2014 Regular Meeting Minutes.

*A motion was made by R. Desmaris and seconded by G. Bailey to approve the minutes. The motion carried unanimously*

**ACT ION ITEMS**

2. **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.**

*Request for rehearing on the above Case*

G. Schmaltz and M. Schmaltz sat for D. Hatch who was recused and G. Gajewski  
G. Schmaltz will sit for G. Gajewski on all other cases.

K. Forbes read the case description. There had been an amended request for rehearing filed by Attorney Whirth.

R. Desmaris expressed he did not see anything that the Board had not seen or discussed during the hearing.

G. Bailey agreed he had not heard any new arguments in the material presented.

*A motion was made by R. Desmaris and seconded by G. Schmaltz to deny the request for rehearing. The motion carried unanimously*

- 121-18-GR-14-ZBA (Hugh & Michele Hawkins)** Request by applicant for a variance from Article 11.2(1) reference made to Articles 11.3 (1) & (2) to build an 8 x 10 deck landing and stairs. Appeal to allow the issuance of a building permit on a private road, under RSA 674:41 on a 1.15+/- acre lot at 49 Acorn Point (Map 121, Lot 18) in the General Residential (GR) Zoning District. By: Stonewall Surveying; PO Box 458; Barrington, NH 03825

#### **Request by applicant to continue until December 17, 2014**

*A motion was made by R. Desmaris and seconded by G. Bailey to continue the application to December 17, 2014 The motion carried unanimously.*

- 220-18-GR-14-SR (Stephen & Lorraine Flynn-owners)** Request by applicant for Appeal of the Planning Board Decision Case # 220-18-GR-14-SR (Owner: Stephan & Lorraine Flynn Map 220, Lot 18) Approved on July 8, 2014 for a 3.4 Conditional Use Permit and Site Plan Approval. Applicant: Deborah Rogers; 68 Greenhill Road; Barrington, NH 03825

#### **Request for rehearing on the above Case**

K. Forbes explained there was a request for rehearing by Deborah and Craig Rogers and a statement to deny made by Steven Whitley on behalf of the Barrington Planning Board.

G. Bailey expressed he did not see anything in the request for rehearing.

*A motion was made by R. Desmaris and seconded by G. Bailey to deny the request for rehearing. The motion carried unanimously.*

- 256-43-GR-14-ZBA APPEAL (Owner/Applicant-Stephen Jeffery)** Request by applicant for Appeal of Administrative Decision of the Code Enforcement Officer, John Huckins (RSA 676:5) Notice of Violation of the Zoning Ordinance Article 3.1.6 Site Plan Review Regulations on a 75 acre lot at 128 France Road (Map 256, Lot 43) in the General Residential (GR) Zoning District. By: Justin L. Pasay. Esq.; Donahue, Tucker & Ciandella, PLLC 111 Maplewood Avenue, Suite D; Portsmouth, NH 03801

Justin Pasay with Donahue, Tucker & Ciandella represented Steven Jeffery.

Mr. Pasay expressed that if he were to question Mr. Jeffery, he would say that his property consisted of approximately 75 acres with a conservation easement. He began the operation of his tree farm on or before 1983. It is in the GR District which permits agriculture and forestry uses. He added that at no time has there been an improvement constructed on the property. He believed the whole issue came down to whether site plan review was required when Mr. Jeffery began his activities in 1983.

Justin Pasay expressed that on or before his forestry use began there was no commercial construction on the site. He believed the use had continued as it had since 1983, at no point at had there been an improvement on the site. It came down to whether Mr. Jeffery was required to get site plan approval in 1983. Both the applicant and the Town agreed it was a permitted use. The 1983 site regulations dealt with site development.

Mr. Pasay expressed that both they and the Town agree that the use is permitted. The question came down to whether site plan approval was required in 1983; they believed it was not, the Town believed it was.

Mr. Pasay expressed that the 1983 site regulations dealt with site development and was tied to constructing and improving as was defined in the definition. There were no improvements at the time the use was began in 1983 therefore it was now a grandfathered use. He contended that the 1983 Site Plan Review Regulations were entitled “Nonresidential and Multi-Family Dwelling Unit Site Plan Review Regulations” where the current title was “Site Plan Review Regulations for Nonresidential Uses and Multi-Family Dwelling Units”. In the 1983 title there was no term “use”. He argued the regulations were adopted to review of non-residential and multi-family dwelling units. It did not say non-residential use as in the current regulations.

Mr. Pasay moved on to the requirements for submission in 1983, under section 2; Submission Items: Site Development Plan and Supporting Data. Section 2.2 talked about the proposed structures, which was the trigger for site review. In the current regulations development was defined more expansively.

Mr. Pasay argued Jae Whitelaw’s point in her submittal that site plan approval was no required for a non-residential use in 1983. Mr. Jeffery had not built anything on the land; he has had portable sawmill use on the land since that time. The Town had not noticed Mr. Jeffery under 5.3 of the article, contending he had expanded the legally non-conforming use.

Mr. Pasay argued that 674:32 –a referenced by Attorney Whitelaw was not enacted until 2001, 16 years after Mr. Jeffery began his operation. It was implicit to the statute that you could not expand or enlarge an agricultural use without site plan approval. He went on to argue that under the 1983 regulations review would have been required for parking lots, because they would have been considered improvement to land such that a site plan was required.

Jae Whitelaw represented Code Enforcement officer and the Town of Barrington. The only item they agree on is that the use is allowed. She had never heard anyone argue that a nonresidential use did not require site plan approval. Mr. Jeffery admitted to operating the business. Ms. Whitelaw Jae pointed out that a building permit was issued in 1983 for a structure, she was not sure if the structure was used for the business.

Mr. Jeffery explained that the permit was for a barn to replace a barn which had fallen down. It housed his tractor, chain saws, etc.

Ms. Whitelaw asked if they were saws used in the business.

Mr. Jeffery expressed, "on occasion".

Ms. Whitelaw asked how large the barn was.

Mr. Jeffery stated 816 sq. ft.

K. Forbes asked the size of the previous building.

Mr. Jeffery stated 1200 sq. ft. He expressed that he had sheep and goats in the barn for a decade.

Ms. Whitelaw asked which lot the equipment was stored on. She expressed a hard time understanding how Mr. Jeffery conducted his business.

Mr. Jeffery explained that he cut the logs into boards on the tree farm lot. He had always used the shop, his welder was there and he sharpened his saw there.

Ms. Whitelaw asked on what lot the portable saws were brought onto.

Mr. Jeffery explained the tree farm lot. He had not cleared or changed the topography when the saws were brought in.

Ms. Whitelaw summarized that the buildings being used for the business were on the 2.5 acre parcel.

Mr. Jeffery expressed that the building had been there since 1979 and always been a woodshop. The building inspector had expressed that he hadn't cared what he did there, as long as he did not put in a residence.

Ms. Whitelaw contended that the site plan regulations were not just for the review of structures as Attorney Pasay contended. Provision 2H in the Site plan Regulations required a circulation plan for vehicles and pedestrians. She expressed that there was certainly access to the site for vehicles picking up clapboards and delivering logs, those accesses would have been of interest to the Town.

Ms. Whitelaw explained they had looked at section 5 of the 1980 site plan reg. in section 1 there is no reference to development. She had a hard time believing 100% that nothing at all was done to the lot. The purpose of site plan review went to whether there was a nonresidential use on the property.

R. Desmaris asked if site plan review was used for a farm.

Ms. Whitelaw expressed under the regulations, yes. If farming was accessory to a residential use then that would be a different thing. The regulation called for review of nonresidential uses.

G. Bailey asked Justin Pasay what his definition of grandfathering use was that he used in his presentation.

Justin Pasay explained it was a use that was allowed or not regulated at the time the use began because of the way development was defined and the language in 3.1.6 today Mr. Jeffery would have to go to the Planning Board but because of the ordinance but because the use started in 1983 the Town would have had to allege he violated something in 5.3.

G. Bailey expressed that because some of the material was coming from off site and being milled he would interpret it as nonresidential use.

Mr. Pasay expressed that bringing logs from off-site was permitted in 1983.

G. Bailey argued that home produce would not be logs brought from off site.

Mr. Pasay argued the logs were conditioned on the site.

G. Bailey argued that the farming means from or on his own property

K. Forbes could not accept the argument made by Attorney Pasay that they have to be units. If you follow the evidence it was not residential use.

K. Forbes asked if there were people to speak in favor.

Paul Mausteller quoted equitable waiver requirements.

K. Forbes asked if there was anyone opposed.

Jeff Brann of France Road expressed that there had been a conservation easement and there was a need for a site management plan. He expressed that at the point that Mr. Jeffery started taking logs in from offsite he established an unpermitted business. Mr. Pasay had called the operation minimus. He had found Mr. Jeffery was advertising online for his business. He questioned whether all the information was accurate. Mr. Jeffery stated he had stopped work but Mr. Jeffery was in operation on November 11. He was interested in what percentage of the material was from offsite versus on site.

K. Forbes asked Mr. Jeffery how much material was from offsite.

Mr. Jeffery said he hadn't kept track.

Jeff Brann asked at Town Hall if any intent to cut had been filed in the last 10 years, and one could not be found.

K. Forbes asked what the requirement was for filing intent to cut.

John Huckins explained you were allowed 10,000 board feet for personal use without filing a permit.

Dan Ayer asked if there was a time limit on public comment.

Warren Groen expressed several years ago they bought land across the street to subdivided. Mr. Jeffery had found a violation in regard to the placement of a well. A well company had mistaking placed a well in the 50' buffer by 4'. They had gone to the ZBA for relief. He expressed Mr. Jeffery was a stickler for the rules; he would think it prudent that Mr. Jeffery also follow the rules.

Fred Nichols France Road expressed Mr. Jeffery was operating a business. He asked what he was operating as.

Mr. Jeffery expressed his gross income last year was \$12,000.

K. Forbes expressed the question was whether he needed to have site review.

Fred Nichols expressed that Mr. Jeffery had changed the use of his shed from animals to the production of clapboard.

Kathleen Seymour France Road expressed that Mr. Jeffery had testified in court that France Road was so dangerous that he had to drive slowly by her house. She did not understand if the road was so dangerous why he would think it was safe to off load logs from a logging truck parked in France Road.

Pat Lenzi expressed that he hasn't been impacted by Mr. Jeffery's business. She felt this was about more.

Alan Kelly of 129 France Road had lived there 31 years and lives across from Mr. Jeffery and he has not seen trucks offloading in the Town's Road.

Mr. Pasay expressed that when you boil down that it is the site regulations of 1983, a certified tree farm allowed the cutting of trees. The enabling language was written in 1983. Most communities did not have site regulations in 1983.

Mr. Jeffery expressed he was cutting his own fire wood which he is permitted to do. He runs his saw mill pretty infrequently. As a logger he cleaned up and took off materials from the sites he worked.

Jae Whitelaw expressed the Town does not question Mr. Jeffery's right to do what he does. In regard to Mr. Bailey's question, she expressed that the forest products should be realized from on site. She expressed when delivers are being made from off site that the use would require site plan review in 1983.

R. Desmaris suggested that they continue to next month so they can see what the intent was in 1983.

G. Bailey expressed it was his opinion that Mr. Jeffery needed site plan review.

D. Hatch expressed that they had a saw mill come before the Planning Board.

*A motion was made by R. Desmaris and seconded by G. Bailey to continue the application to December 17, 2014 so that the Town could query their records. The motion carried unanimously.*

*A motion was made by G. Bailey and seconded by R. Desmaris to adjourn. The motion carried unanimously.*

Respectfully submitted,

Marcia J. Gasses  
Town Planner and Land Use Administrator