

Approved on November 16, 2011 - GMJ



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

**WEDNESDAY SEPTEMBER 21, 2011  
7:00PM**

**MEETING MINUTES**

Items # 1-4 to follow Item # 5

**PRESENT:**

Karyn Forbes, Chair  
George Bailey  
Gerard Gajewski

**ABSENT:**

None

**GUESTS:**

Alison Desmaris; 320 Hemlock Lane; Barrington  
Karen A. Gould; 27 Vacation Drive; Barrington  
Don Braughtigam; 333 Hemlock Lane; Barrington  
Raymond Desmarais; 320 Hemlock Lane; Barrington  
Ellen Conklin; 352 Hemlock Lane; Barrington  
Steve Conklin; 352 Hemlock Lane; Barrington  
Pam Failing; 17 Edgewater Drive; Barrington  
Malcolm McNeil; P.O. Box 815; Dover NH 03824  
Mike Sievert; MJS Engineering; P.C; 5 Railroad Street; Newmarket; NH  
03857

**STAFF:**

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

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

## MINUTES REVIEW AND APPROVAL

1. Approval of December 15, 2010 Regular Meeting Minutes.

Minutes of December 15, 2010 were approved August 17, 2011.

2. Approval of the July 20, 2011 Regular Meeting Minutes.

Minutes of July 20, 2011 were approved August 17, 2011.

3. Approval of the August 17, 2011 Regular Meeting Minutes.

The Minutes were not reviewed by the Board.

## STAFF COMMUNICATIONS

There were none.

## ACTION ITEMS

4. **ZB 11/693 (Lot Line Consolidation and Boundary Line Adjustment for Evanor Lenzi Estate, Robert Lenzi , Steven Lenzi and the Lenzi Family 2009 Revocable Trust)** Request by applicant for a Variance from Article 4 – Dimensional Requirements, Section 4.2.1, Lot Frontage and Special Exception for access off a private road for future development under Article 7 – Supplemental Regulations, Section 7.2 Development on Class VI Roads and Private Roads, of the Zoning Ordinance to allow access from Lenzi Point Road 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).

Request by Applicant to be continued until October 19, 2011.

**G. Bailey moved to grant the applicant's request for continuance until the Board's October 19, 2011 meeting with one condition. The condition being that if the applicant does not appear before the Board on October 19, 2011 the Item will be dismissed. 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 (GR) Zoning District at Gerrior Drive & St. Mathews Drive (Map 268 Lot 1.6 & 1.7).

Vice-Chair Raymond Desmaris and member Ellen Conklin recused from discussion.

The Board proceeded with three members.

Chair K. Forbes informed the Board that a motion to dismiss the applicants appeal of the August 4, 2011 Planning Board decision for acceptance of Drainage Design, located at Gerrior Drive & St. Mathews

Drive was submitted by Attorney Malcolm McNeil (P.O. Box 815; Dover; NH 03824). Chair Forbes cautioned the Board and applicant that the ZBA cannot proceed with this appeal if it is determined to be out of Zoning Board jurisdiction. Attorney McNeil approached the Board to summarize his motion to dismiss the appeal. Attorney McNeil gave an overview of Zoning Board of Adjustment jurisdictional boundaries. McNeil stated that under RSA 677:15, an appeal to a Planning Board decision may be brought before the New Hampshire Superior Court within 30 days of the Board's decision. He informed the Board that this timeframe has been surpassed. He continued that under RSA 675:5 III, an appeal may be submitted to the Zoning Board of Adjustment only if a decision by the Planning Board was based on an interpretation of the Zoning Ordinance. Attorney McNeil informed the Board that after review of all materials pertaining to the appeal, the Subdivision Regulations of the Town of Barrington alone were utilized by the Planning Board to render a decision in the affirmative to relocate the drainage pond in question. He stated that nowhere in these materials nor the applicants appeal is the Zoning Ordinance referenced. He asked that the Zoning Board grant his request to dismiss this appeal based on the Boards lack of jurisdiction in this matter.

Applicants for the appeal of the August 4, 2011 Planning Board decision Steven & Ellen Conklin approached the Board. S. Conklin opined that another perspective exists that the Board should consider. He stated that as the Site and Subdivision Regulations are constrained by the Zoning Ordinance, and the Site and Subdivision Regulations were meant to be written in harmony with the Zoning Ordinance and not as stand-alone documents, a decision by the Planning Board could be appealed to the Zoning Board of Adjustment per RSA 675:5 III. He continued that Zoning Ordinance *Section 1.3 – Applicability*, and *Section 7.1 Performance Standards*, offer language which he opined is not in concert with the August 4, 2011 decision by the Planning Board to accept the drainage re-design in question. He continued that as the Planning Board does not have the authority to dismiss these Zoning Ordinance requirements, this also warrants an appeal to the Zoning Board of Adjustment. In conclusion S. Conklin stated that Zoning Ordinance *Section 7.1 Performance Standards*, is carried out in the Subdivision Regulations *Section 10.3 Stormwater Management Plan*. RSA 676:5 III directs the Zoning Board of Adjustment jurisdiction accordingly for this appeal and a sufficient argument exists to proceed to the merit of the appeal.

R. Desmaris, speaking as an abutter, expressed concern with the environmental impact the detention pond in question will have on down-gradient properties within the watershed. Desmaris agreed with S. Conklin that the Zoning Board of Adjustment does have oversight and is the appropriate regulatory body for submission of appeal as stated in *Sections 1.3 – Applicability*, and *7.1 Performance Standards* of the Zoning Ordinance.

Chair K. Forbes opined that as Attorney McNeil's materials for dismissal of this appeal were received within 24 hours of the meeting, it would be reasonable for the applicant to have time to address the arguments made in the dismissal and seek further legal advice.

Attorney M. McNeil stated that there was no obligation for the dismissal materials to be submitted in advance and that the reason for the early submission was so the Town Attorney may have opportunity to review the pleadings.

Member G. Bailey asked that Attorney McNeil supply the Board with an approved set of Planning Board minutes to offer clarity of voting members at the time a decision was rendered on this Item.

**Member G. Gajewski moved to continue the Item to give Town council an opportunity to review the pertinent materials. G. Bailey seconded the motion which passed unanimously with a vote of three (3), to zero (0) in favor.**

**ADJOURNMENT**

**G. Bailey motioned to adjourn the meeting of the Barrington Zoning Board of Adjustment at 8:00p.m. G. Gajewski seconded the motion which passed unanimously with a vote of three (5), to zero (0) in favor.**

Respectfully Submitted,

Gregory M. Jones