

Meeting Minutes
ZONING BOARD OF ADJUSTMENT PUBLIC MEETING

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

Barrington, NH
October 15, 2014
7:00PM

Members Present

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

Member Absent

Gerard Gajewski

G. Schmaltz to sit for G. Gajewski

MINUTES REVIEW AND APPROVAL

1. Approval of September 17, 2014 Regular Meeting Minutes.
2. Approval of September 24, 2014 Regular Meeting Minutes.\

A motion was made by G. Bailey and seconded by R. Desmaris to approve September 17, 2014 and September 24, 2014 meeting minutes. The motion carried unanimously.

ACT ION ITEMS

3. **238-4-TC-14Appeal 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 by applicant for a rehearing on above case move to November to allow time for the Calef's to exercise their right to amend the motion for rehearing, including grounds therefore, within 30 days after the date on which the written decision was actually filed "as provided for in New Hampshire RSA 677:2.

D. Hatch abstained and M. Schmaltz voted on the request for continuance.

R. Desmaris asked for clarification on why they needed to continue.

K. Forbes explained that the Board had not read the Notice of Decision into the record until September 24th which was more than 30 days after the decision had been made. The applicant was allowed an additional 30 days to amend their request for rehearing under the statute and the applicant was choosing to exercise that right.

M. Gasses expressed that the written decision was not ready within 5 business days of the Board making their decision, so the applicant was entitled to an additional 30 days to amend their request under the statute.

A motion was made by R. Desmaris and seconded by G. Bailey to continue the request for rehearing to November 19, 2014. The motion carried unanimously

G. Calef asked to explain to the Board why the request was done. Mr. Calef had received a letter from the Three Socios accusing them of intentionally delaying their project and threatening them with damages. Mr. Calef wanted it duly noted that the reason for the 30 day extension was that the ZBA had failed to give the applicant a Notice of Decision in the prescribed time. The ZBA had deliberately left their Notice of Decision to the last day, which had given them one day to come up with an appeal.

K. Forbes respectfully disagreed with the comment “the Board intentional waited and failed to act”. The ZBA had asked our Counsel to draft a Notice of Decision; we then set up a special meeting, we had our meeting and discussed what we wanted to have for a written record for the Boards decision. The Board was within their purview to act in that manner and Mr. Calef was within his rights to exercise his right to an additional 30 days. Mr. Calef was totally entitled to the additional time.

Mr. Calef expressed he would withdraw his comment regarding “intentional” but it was the ZBA’s action which had caused the delay.

K. Forbes explained Mr. Calef was entitled to the extra time because the Board had waited until after the Boards Attorney had prepared a draft Notice of Decision to review and read into the record. Mr. Calef was exercising his right to the additional 30 days under the statute.

Mr. Calef asked that the discussion be part of the record because it would come up again based upon the letter he received.

M. Gasses explained she had not seen the letter.

K. Forbes expressed she was not aware of any letter.

Mr. Calef expressed that he had not brought the letter that evening, but he did have a letter from the Three Socios attorney. In another incident the Board had caused a delay by not having a full Board.

K. Forbes expressed it was not Mr. Calef's fault there was not a full Board, he was absolutely right.

4. [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

Hugh Hawkins explained he was there for a variance for stairs to a deck and appeal of a decision to allow the issuance of a building permit on a private road. The applicant was adding an 8'X10' landing and stairs down into a driveway area. The proposed landing would make access safer for residents and guests. They had contemplated multiple plans but chosen the current plan because it would minimize disturbance to the area and landscaping. Mr. Hawkins read through the justification for a variance.

1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant.

Currently the owner has a set of stairs exiting the existing deck toward the woods opposite the driveway. The terrain and lighting present a hazard to the owner and guests. To correct this issue, extensive ground work disturbance would need to be undertaken and lighting installed.

2. Granting the variance would be consistent with the spirit of the Ordinance.

The existing house was installed in 1969 which falls under the exemption 11.3(1). Section 11.3(2) pertains to "recreational use of water" Due to existing property constraints, the new landing and stairs were installed to allow access to the deck to and from the water for recreational use and viewing of the Lake.

3. Granting the variance will not affect the property values of abutting properties since it fits the characteristic of the neighborhood. Also, the new landing and stairs exceeds the distance from the shoreline than the abutting properties.

4. Granting the variance would do substantial justice.

Granting the variance would allow the owners to enjoy their property more fluently, not impose upon the neighboring properties and be safer for the owners and guests. The soil disturbance is of minimal impact due to only two sonotubes being required vs the extensive ground work necessary for access to existing stairs.

5. Granting of the variance would not be contrary to the public interest.

The new landing and stairs will have no negative impact to the public or neighboring properties. Also, there will be no negative impact to the environment or to Swain's Lake.

Mr. Hawkins explained he was also asking for a waiver from the private road agreement.

K. Forbes asked for an explanation.

M. Gasses explained that under RSA 674:41 the Zoning Board could grant relief from requiring the applicant on a private road from going to the Selectmen for the issuance of a building permit, if the structure did not bare a relationship to the road. In this case was a deck on an existing structure, Tom Abbott supported the request in this instance because it would save the applicant an extra step.

K. Forbes asked if the 8'X10' landing was at the same level as the main deck.

Mr. Hawkins expressed the landing was 3 steps lower.

K. Forbes asked if the basement doors were facing Swains Lake.

Mr. Hawkins if they had come directly off the side it would have taken up half the space available to access the basement doors and he had wanted to maintain the access.

R. Desmaris asked how many stairs there were from the top of the deck.

Mr. Hawkins expressed possibly 15 stairs. He would have to count to be sure. It was one of the reasons they did not want to come off the front.

G. Bailey expressed it was 12 stairs according to the picture.

G. Bailey asked when the original deck was built.

Mr. Hawkins stated 1969; he had only done some repair work.

G. Bailey asked when the new deck was built.

Mr. Hawkins expressed a month or so ago. He accepted blame for building without coming to the ZBA first. He had first gone to Tom Abbott, who had sent him to NHDES for a shore land permit. He had received a permit by notification from NHDES.

G. Bailey asked why he had not turned the stairs and deck to come off directly toward the driveway.

Mr. Hawkins expressed if had had done that the stairs would have projected out into the area where is daughter parks her truck and he was afraid of inadvertent contact. It would also restrict access to the basement, which is how he moves wood in during the winter.

G. Bailey asked how wide the existing deck was.

Mr. Hawkins expressed 10'X24' or 25'.

K. Forbes explained the ordinance requires that you have to conform as much as possible. The land appeared to be flat and there needed to be a hardship in the land which prevents compliance with the ordinance. It appeared the stairs could be placed off the side toward the driveway.

Mr. Hawkins expressed that the stairs would come down into the area his daughter parked her truck and there was a retaining wall that provided protection for the stairs where they are located.

K. Forbes expressed it appeared you could conform to the ordinance, the landing and stairs had been built without knowing what the ordinance was. People usually came in when there are boulders or wetlands in the way.

K. Forbes explained the only time you get relief from the Zoning Ordinance when you cannot comply. The Board explained how the landing could be relocated to allow the deck to be farther away from the water. They are always more interested in pushing you further away from the water.

D. Hatch asked how wide the driveway where the vehicles parked was.

G. Bailey expressed that some of the dimensions were missing from the plan. There was no distance to the retaining wall. The dimensions were needed so that they could get a better picture.

G. Bailey asked where the prior access was.

Mr. Hawkins explained the stairs went toward the woods.

M. Schmaltz asked why the stairs had not been located in other locations.

Mr. Hawkins explained there was an area with tree stumps from damaged trees or the terrain would require more disturbances. The area in the driveway would interfere with snow removal as well as the worry of his daughter hitting the stairs.

D. Hatch asked how wide the parking area was.

Mr. Hawkins expressed it was not as wide as it appeared in the pictures, there was a drainage ditch. They could not park on the drainage pipe because it would not hold the weight.

R. Desmaris expressed he was concerned they would need to put a landing. He showed the applicant where on the plan he believed the landing and stairs needed to be placed.

K. Forbes explained based on what they have been presented they are seeing that the applicant could place the structure to be more conforming than was currently presented. The driveway was not a reason to grant

relief. The driveway was gravel there was no real cost to the applicant. They wanted to give the applicant time to work with staff to make the structure more conforming and to check on the requirements for an additional landing. They were always more interested in pushing people back from the water, they would prefer an encroachment to the road setback to a water setback.

G. Bailey expressed they needed the distance from the house, the existing deck to the driveway.

R. Desmaris expressed that any measurement that they would provide relief for would need to be on the plan.

D. Hatch advised the applicant to address the stumps which could not be taken out when he came back.

A motion was made by R. Desmaris and seconded by D. Hatch to continue the application to November 19, 2014. The motion carried unanimously.

ADJOURNMENT

A motion was made by G. Bailey and seconded by D. Hatch to adjourn at 7:35 p.m. The motion carried unanimously.