

ZONING BOARD OF ADJUSTMENT
Boscawen Municipal Complex
April 23, 2024
Draft Minutes

Present: Scott Maltzie, PhD, Acting Chair, Tracy Jo Bartlett, and Tama Tillman.

Alternate Members Present: none.

Absent: Edward Cherian Jr.

Staff Present: Kellee Jo Easler, Director, Planning and Community Development
Kara Gallagher, Coordinator, Planning and Community Development
Ruth Ashby, Assistant, Planning and Community Development
Rose Fife, Recording Secretary

6:30pm Call to Order by Chair

- Roll Call
- Approval of draft minutes – Motion to approve the March 26, 2024 Minutes, as amended (see below), was made by Ms. Tillman, seconded by Ms. Bartlett, and passed by a 3-0 vote. Amendment: Line 61 remove ‘d’ in Sanborn. Ms. Easler thought that Ms. Gallagher was there and should be added to the ‘Staff Present’ area, but after consideration, it was agreed that Ms. Gallagher was not there.
- Designate member for Action Items – n/a

Old Business:

- Rules of Procedure – 3rd Discussion – Scott explained this was the 3rd of 3 required meetings to accept the addition of the Utilization of Town Counsel Policy and the proposed changes. A **motion** to approve the amendments was made by Ms. Barlett, seconded by Ms. Tillman, and passed by a unanimous vote. A final draft will be attached to the Minutes as requested. Ms. Easler will also keep a copy in the binders for the next meeting. Ms. Tillman requested a scanned copy as well. Ms. Easler added that they will be posted to the website as well.
 - *Utilization of Town Counsel Policy*
 - *Proposed changes to Section: Amendments*

New Business:

- A request submitted and owned by **Michael Brazil, Jr.** for an **Appeal of Administrative Decision – Building Permit Application on a Class VI Road. The applicant proposes to build an addition to his existing house on the property located at 25 Merrill Corner Road, Boscawen, NH 03303, Map 47, Lot 34 in the AR zone.**

Ms. Gallagher read the public notice into the record.

Ms. Easler asked the Board to determine if the application is complete and to address Regional Impact. The board concurred that the application was complete. A **motion** that there is no regional impact was made by Ms. Tillman seconded by Ms. Barlett and passed by a unanimous vote.

The public hearing was opened at 6:36 pm.

51 Attorney Michael Harris of BCM Environment and Land Law represented Michael Brazil Jr. Michael
52 Brazil Jr. was also present to testify.

53
54 Attorney Harris explained to the Board that they are appealing RSA 674:41.II regarding a building
55 permit application that was denied. Mr. Brazil owns 32 acres on Merrill Corner Road which also has
56 an existing home that was built in 1989. Mr. Brazil purchased the property and home in 2022. The
57 home is small for his family and he would like to add another bedroom and expand the kitchen and
58 add a 2-car attached garage. Originally, they were informed by the Planning & Community
59 Development staff that they could not process the building permit application. The Select Board then
60 denied the application. In 2008 the town made a policy to disallow building permits on a Class VI
61 Road. He does not believe it is a legal issue that needs to be resolved by this board. RSA 674:41 was
62 for a case-by-case basis to hear the merits of the case. This is a 15-year-old policy that completely
63 prohibits building permits for town residents living on Class VI roads. It prohibits additions, decks,
64 garages, etc. It was possibly created to prohibit developments on Class VI roads. Last year the
65 Conservation Commission considered amendments to the policy as well as the Planning Board. The
66 Police and Fire Chief's have said they do not have an issue with amendments to this policy. Those
67 changes have stalled and it has been almost a year since the Planning Board took up this issue.

68
69 The denial of the application: It was not just the 2008 policy, but the Selectmen also found one of the
70 exceptions did not apply. Their research shows that Merrill Corner Road was published on the town's
71 official map. The Select Board says there is no official map. The town staff told them that there was
72 an official map. In 2018 the Planning Board considered amendments to the official maps. This went
73 to the voters and was approved. The Select Board is saying the map was never recorded. It has been
74 more than a decade and it was utilized as an official map. If this was in a court room there should be
75 a stop to saying there is not an official map. One other provision in the RSA that brings them to ZBA
76 which is #II, which says you can grant relief if it is a reasonable exception. There is no criteria list for
77 what a reasonable exception is. NH Supreme Court has said you can grant a reasonable exception if it
78 is practical difficulty or unnecessary hardship on the property owner. The request is consistent with
79 other development on Merrill Corner Road and that part of town. There is no existing impact on the
80 use of Merrill Corner Road; no more traffic as they are adding no other living units or any development
81 being added. It would not create any more risk or difficulty for emergency services. There is no extra
82 burden on the town for maintenance on the road. It is only ¼ mile from Water Street, which is an
83 accepted street. They are asking for an exception. He hopes the policy gets amended.

84
85 Acting Chair Maltzie asked Ms. Easler if this rule did not exist would there be any issues with this
86 building permit application, or was the application not looked at. Ms. Easler explained that it was not
87 looked at. The Select Board is in the process of amending the policy.

88
89 Abutters in favor: none.

90
91 Abutters in opposition: Eric Guay, who lives on Merrill Corner Road, disagrees with the increased
92 traffic testimony given. Also, Mr. Brazil has people living in his camper on his property, which adds
93 to traffic. Mr. Guay prefers a slower way of life; no traffic. This will increase traffic. He maintains
94 70% of the road down there and there is more traffic coming from Mr. Brazil's home as he lives at the
95 end of the road. Mr. Guay's fear is that this will allow more subdivisions in the area. If they allow a
96 subdivision in the future, the Public Works Department will have to maintain these roads. He asked if
97 this would be decided this evening as there is a board member missing. It was explained to him that
98 they only needed a quorum, which they have.

99
100 Other abutters none.

101

102 Kellee Jo Easler, Health Officer and Planning and Community Development Director wanted
103 clarification regarding people living in a camper. Mr. Brazil explained that his mother is living in his
104 40-foot toy hauler camper. They have been there over the winter. Ms. Easler explained that there is a
105 zoning requirement that if they are living in a camper, they need to let the town know when they are
106 there. They are only allowed 24 weeks. Mr. Brazil will come to see her this week.

107
108 Rebuttal by Attorney Harris. If a subdivision was planned in the future, they would need to go before
109 the Planning Board and he is sure there would be opposition. Ms. Easler added that the Planning Board
110 would not approve a subdivision on a Class VI Road.

111
112 Ms. Tillman asked Ms. Easler if her impression that at the Select Board meeting it was decided that
113 this would be sent to the town attorney. Ms. Easler could not speak to that. The ZBA could speak to
114 the town attorney.

115 Attorney Harris explained that the Select Board denied their application and he and his client asked
116 the Select Board to speak to the town attorney. They are resting it solely on the reasonable exception.

117
118 Ms. Easler added that the Select Board is in the process of updating the policy for Class VI roads and
119 they do not have an official map. The official map must be approved at town meeting and recorded at
120 the registry of deed after it is signed by the town clerk. That has not been done. They are hoping to
121 bring it to town meeting in 2025.

122
123 Ms. Barlett asked how old his children were. Mr. Brazil answered 14, 12, and 4 months old. She asked
124 if they all live there now? Mr. Brazil answered that his 2 daughters are there every other week and the
125 rest live there. He did improve his part of the road. Without asking the town, he paved his portion of
126 the road. He is just trying to live back there. He needs the exception due to the size of his house. He
127 does maintain the road. Ms. Bartlett asked if he had a plan on which side of the house it would be
128 added. Mr. Brazil answered that there are plans in the packet but he would like to add onto the left
129 side. Ms. Barlett asked if he would keep it a single-story structure. Mr. Brazil answered he would.
130 Ms. Bartlett asked if it would have a basement. Mr. Brazil answered it would be on slab.

131
132 Acting Chair Maltzie asked Ms. Easler if the applicant would have to come back to them for approval
133 of the building permit if they approved this request. Ms. Easler said they would not. Ms. Tillman
134 asked if this were to be approved, would he be able to get his building permit? Ms. Easler answered
135 he would be able to get his building permit. Ms. Bartlett asked who the Select Board denied their
136 application. Ms. Easler answered. Acting Chair Maltzie asked if the policy is that a building permit
137 on a Class VI Road was not allowed. Ms. Easler noted that the property cards clearly mark that no
138 building permits will be issued for property on a Class VI Road.

139
140 Attorney Harris added that there is an existing structure there already.

141
142 Abutter Eric Guay wanted it noted that there is no 'section' of the roads. This is a town, Class VI
143 Road. There are no individual sections of the road.

144
145 Ms. Easler noted that previously there have been agreements for maintenance of the roads. The prior
146 owners had agreements to keep road up. They are discussing liability release. There are no guarantees
147 that emergency services can get down there. That is the reason behind no building permits. Ms.
148 Tillman asked if there was a form to fill out? Ms. Easler answered no. Ms. Tillman noted that there
149 are people at that house already; it would be the same number of people. People are there already.
150 Acting Chair Maltzie asked if the liability waiver is specific to the owner of the property. Ms. Easler
151 answered that other towns do allow building permits which typically state that they will not hold the
152 town liable. Ms. Tillman questioned the liability when the number of people in the home would not
153 change. She further asked Mr. Brazil if they had to sign a waiver when they purchased their home.

154 Mr. Brazil answered he did not. Attorney Harris thought perhaps it was because it was already recorded
155 and Mr. Brazil bought the property knowing about the waiver. If there is any question about that, the
156 board can place a condition that they record a new waiver. Ms. Easler noted that there were a few
157 things in their deed that was recorded from the previous owner.

158
159 Attorney Harris did not pull all the recorded documents. He feels that what is recorded is burdened on
160 Mr. Brazil.

161
162 The public hearing closed at 7:06 pm.

163
164 Deliberation/Decision

165
166 Acting Chair Maltzie is not comfortable approving this request tonight. The town policy, the RSA, the
167 reasonable exception are all layers. He understands the applicant's position, but he feels the board
168 should speak to legal. He does not want to make a mistake that would adversely affect the abutters.
169 That may seem less fair to the applicant, but he is thinking about the bigger picture.

170
171 A **motion** that the board meets with the town attorney for purposes of discussing this matter was made
172 by Acting Chair Maltzie and seconded by Ms. Bartlett.

173
174 Ms. Tillman asked about meeting with the town attorney. Ms. Easler explained that the board can
175 request to meet with the town attorney. Ms. Tillman noted that if they did approve the request, it would
176 set precedent. The Select Board has denied their request.

177
178 Acting Chair Maltzie asked when the Select Board meets next. Ms. Easler answered May 2nd. Acting
179 Chair Maltzie asked to get on their agenda.

180
181 A **motion** to table the motion to meet with the attorney was made by Ms. Tillman, seconded by Ms.
182 Bartlett, and passed by a unanimous vote.

183
184 Public hearing was reopened at 7:10 pm.

185
186 Attorney Harris asked how long they would have to confer with town council? Acting Chair Maltzie
187 answered May 28, 2024 is the next meeting and his goal would be to have this resolved for them by
188 that date.

189
190 Public hearing was closed at 7:13 pm.

191
192 A **motion** to bring the **motion** to speak to the town attorney off the table was made by Ms. Bartlett,
193 seconded by Ms. Tillman, and passed by a unanimous vote.

194
195 Acting Chair Maltzie asked if they can meet with the town attorney next week. Ms. Easler believes
196 they can speak with them by next month. If it is continued, it can be done with a date certain before
197 the May 28th meeting. Discussion regarding timing. Acting Chair Maltzie has May 2, 2024 available
198 and the other board members could join him. Ms. Easler will facilitate that.

199
200 There is a **motion** on the floor to speak to the town attorney's regarding this matter, which was made
201 and seconded. The **motion** was passed by a unanimous vote.

202
203 A **motion** to continue this case/appeal to May 28, 2024 at 6:30 pm was made by Ms. Tillman, seconded
204 by Ms. Bartlett, and passed by a unanimous vote.

205
ZBA DM 4.23.24

206 A **motion** to adjourn at 7:21 pm was made by Ms. Tillman, seconded by Ms. Bartlett, and passed by a
207 unanimous vote.

208

209 **Next Meeting:** May 28th, 2024 @ 6:30 p.m.

210

211 *Respectfully Submitted,*

212 *Rose Fife, Recording Secretary*

DRAFT