

Zoning Board of Adjustment  
Approved Meeting Minutes  
May 26, 2015

Members Present: Dr. Gail Devoid, PhD, Chair, Douglas Supry, and Bradley Parker and Edward J. Cherian Jr.

Member Ex-Officio: Roger W. Sanborn arrived at 7:30 pm.

Others present: Kellee Jo Easler, Planning & Development Community Assistant, Alan Hardy Planning & Community Development Director, and Rose Fife, Recording Secretary

Meeting opened at 7:10 pm.

**Election of Chair and Vice Chair**

A motion for Dr. Gail Devoid, PhD to continue to be Chair was made by Douglas Supry, seconded by Edward Cherian Jr. and passed by a unanimous vote.

A motion for Douglas Supry to be vice chair was made by Bradley Parker, seconded by Edward Cherian Jr. and passed by a unanimous vote.

Motion that present Board is reelected was made by Doug Supry, seconded by Bradley Parker and passed by a unanimous vote.

**Old Business**

**Recruiting new members.** Chair asked members of the audience if anyone would like to volunteer. None stepped forward.

**New Business**

**Mary Pearson, Dorothy Sweatt, & Linda Riel of 118 Little Hill Road, Webster NH, for a Variance for a lot area less than required by the zoning ordinance, per Article V, Lot Area & Dimensions. The proposed property is located at 8 Long Street, Boscawen, Map 94, Lot 21 in an AR Zone.**

Mary Pearson testified. She would like to keep the bounds where they are located. They do not want them moved out in the middle of the hay field. Alan Hardy said that the town requires 2.55 acres. The proposal will be slightly under sized. Edward Cherian Jr. asked about lot size. Chair Dr. Gail Devoid read that there were sheds and barns there in 1853 and asked where the boundary line was located then. She also asked if the property were surveyed. Mary said yes the property was surveyed, but she also walked the bounds based on the history given to her by her father. Alan Hardy put emphasis on the last note about the side bound in the application, both parties agreed (neighbors) on the lot lines. Edward Cherian Jr. asked if it were a survey or if it was done by meets and bounds. Alan Hardy said yes. The GPS location will need to be located. Boundary line agreement will be drawn up by an attorney and agreed to by the parties.

Chair Devoid read the application into the record again. A boundary line is recommended to reestablish that line. The area needed is 2.55 acres and the property is 2.4659 acres, just under the requirement. Edward Cherian Jr. asked Alan Hardy about the conveyance, not the deed in the application dated September 1949 but references a deed from March 1949. Mary thought it was when her father conveyed the property to her mother. Discussion ensued regarding this conveyance document. Doug Supry asked if the family were going to retain the property. Mary stated that yes they would for the time being.

Alan Hardy asked if the Board had any questions regarding the points of the variance. Chair Devold stated that if the request were granted, not much on the property would change.

Abutters in favor: none.

Abutters in opposition: none.

Any public in favor: None.

Any public opposed: None.

DECISION: Bradley Parker made a motion to accept the application, seconded by Doug Supry and passed by a unanimous vote. None opposed and none abstained.

### **Other**

Edward Cherian Jr. went to a Timber workshop last November put on by the State of NH Department of Revenue Administration, NH DRED and NH Timberland Association. A court case in Rockingham County last year was a point of discussion at that workshop. State regulates timber harvesting and the town has no authority. There was a review of timber tax exemptions. The town must sign an Intent to Cut within 30 days unless it is not filled out appropriately or if the property was not property that could be logged. Towns cannot require a road bond for logging. Only DRA or a Forest Ranger can inspect a logging site to look for violations. Intent to Cut state law requires a written contract between the property owner and logger. If you are using wood for sugar house you can cut all you want off your property. Alan Hardy stated that they have a mill in Boscawen and they put into Ordinance about recognition of native lumber.

Member Ex-Officio Roger Sanborn arrived at 7:30 pm

### **New Business**

**COLD BROOK GRAVEL, Inc. Application for a special exception submitted by Cold Brook Gravel, Inc. of 221 Franklin Street, Franklin NH 03235, for Relief from Article 4.01 Commercial Removal of gravel, sand in order to amend the conditions of approval contained in the special exception granted on 4.16.86 relative to a "100 ft buffer strip or green area to serve as a screen from the abutters" for property located at 267 Queen Street, Boscawen NH 03303, Map 81, Lot 24, in an AR zone.**

Tim Bernier of TF Bernier, Inc. testified. The property is located 267 Queen Street. It has been a gravel pit for 30 years. It is 256 acres.

Mr. Bernier went over the site plan and its layout. It was originally approved as a special exception in 1986. There was some confusion over the years regarding the gravel pit and its expansion. There are a few houses in the area. There were several approvals granted by the Planning Board since then that encroach into the 100 foot buffer. There is a lot of confusion as to who the 100 foot vegetative buffer applied to. Chair Devold asked if it were their contention that the lots on the bottom of plan were not included in this 100 foot buffer. Mr. Bernier said that they thought the 100 foot buffer was to protect those house lots. In 1986 the wording is 100 foot buffer strip to use as a screening for the abutters.

What they are asking for is a minor amendment to the strictest interpretation of those words. They would like to maintain the 100 foot vegetative buffer on a vast majority of the property. Due to material and environmental issues they are being pushed in another direction. At build out, they surveyed the property for the first time, there is wetland impact in that direction. The current mining area is 27 acres, the expansion is approximately 45 acres. They would like the 100 foot buffer reduced to 50 feet as that is where the material is that they can mine without any environmental impact. The areas that are

shown in orange on the plans are the only areas that they would like the 50 foot buffer. The rest of the property will stay 100 feet. He showed the aerial photo of the site. Along the top of the property there are 2 abutters. The only place they are getting within 50 feet is well over 1000 feet from the proposed construction. JJ Kelley LLC is located along the long orange line. Mr. Bernier showed the Board on the map where the mining is taking place within the 100 foot buffer. Roger Sanborn asked how close they are to the line. Mr. Bernier said 50 feet. Mr. Sanborn asked what the actual distance was. Mr. Bernier said 100 feet for mining, but trees have been removed, so closer to 30 feet. The distance from the (long orange) property line to a home is 1+ miles. The state law is 20 feet. In no case under state law does it become more than a 50 foot buffer. They are looking to mine 41 acres. If they increase the setback it means the removal of 6 acres of mineable land. This is a quarry, based on today's regulations. They are required to comply with RSA 155e. Most quarries are exempt. Safety issues are addressed. There will be a chain linked fence established at the 50 foot setback. It will be 6 feet high. There is an average of 9 feet of overburden out there. They will slope overburden to a 3:1 slope. They need to leave a 10 foot shelf. They will be at 87 feet before they can start mining dimensional stone. There are only two residence impacted where they are asking for relief and they are located the furthest from this use.

Chair Devoid asked if they were mining granite. Mr. Bernier said that they were. Chair Devoid asked where they have done reclamation. Mr. Bernier said they have not done any reclamation yet. Mr. Sanborn asked if they were presently working on it. Mr. Bernier said they were. He stated that the mining had encroached on the abutter and they have some survey work and coordination with the abutter. Chair Devoid asked when they thought that would take place. Mr. Bernier said that they are working with the Planning Board. Chair Devoid asked if the safety concerns comes from MSHA. Mr. Bernier does not think it necessarily come from them. He requires that they have fences there. Edward Cherian asked if there were an alteration of terrain application needed. Mr. Bernier said yes, the application is in his office. Mr. Sanborn asked if they have done the plans for sloping and how many yards of sloping it will take. Mr. Bernier said that they had done the plans. The shelves come out into the quarry. Edward Cherian asked if there was a reclamation plan filed with the town. Alan Hardy said that the plan was done a very long time ago. Mr. Cherian asked if there would need to be a new reclamation plan filed. Alan Hardy said that they do not have one and reclamation for a quarry is different than a sand pit. Mr. Cherian asked if there were a limit on active acres that they can use at one time. Alan Hardy explained. More discussion ensued regarding reclamation. Alan Hardy asked how long it had been since the sand pit had been touched. Dick Edmonds said that it hasn't been used for at least 10 years. Mr. Bernier explained that they have reclamation and restoration to do which doesn't impact this expansion. They will close the area that is on Cold Brook Gravels property immediately and work with the abutter. Mr. Sanborn asked when the reclamation will be done. Mr. Bernier said that Pit area #1 should be reclaimed in a month. And if a resolution is agreed upon with the abutter that will be done at the same time. Bradley Parker asked if that included trees. Alan Hardy said loam, etc.

Mr. Bernier said that if this were an industrial use or an industrial building they could not be any closer than 50 foot to the property line per the Ordinance and the only requirement is a fence. In this case they are using a vegetative buffer instead of a fence.

Chair Devoid asked if they have met with all of the abutters. Mr. Bernier stated that they have met with everyone that came in for the hearing this evening. They have spoken to quite a few. The only areas impacted are the ones delineated by an orange line on the plans.

Mr. Parker asked about later development. Mr. Bernier said that the quarry is 87 feet away and it goes down in a hole and it moves away from the property line. It should be built out in approximately 30 years. A quarry has a life expectancy, it won't last forever. Mr. Parker asked if it were approved how soon would they be working in it. Mr. Bernier said approximately 2 months to get their last approval.

Alan Hardy let the Board know that Cold Brook is operating on an extended permit. It expired in 9/2014. Mr. Cherian asked if the AOT Permit is also on an extension. Mr. Bernier said that it was. Alan Hardy said when an AOT is open it stays open until the project is complete. Mr. Sanborn asked if they were blasting there now. Mr. Bernier said that they were. Mr. Supry asked if they had gone outside the area permitted. Mr. Bernier explained that they hired what they thought was a reputable engineering firm and unknown to Cold Brook Gravel the namesake of that firm had retired and sold the business to another engineer and he had gotten approval for an area of the pit that had been mined. In 2009 what was

permitted had already been mined. Cold Brook thought they had another 5 acres approved but it was approval for existing mined land. That engineering firm is no longer in business. It prompted them to do a total boundary survey as it hadn't been done since 1984. Mr. Bernier said that every 5 years they need to go out and survey where they are and show on those plans they are in compliance. Mr. Cherian said that there is a concern that they are playing catch up every 5 years.

Mr. Sanborn asked what the State's attitude is on having things corrected before going forward. Mr. Bernier said that the State does not want to shut them down and put people out of work. They are trusting that Mr. Bernier is going forward with corrective measures. Mr. Sanborn asked if the State gave them benchmarks where they need to be at a certain date. Mr. Bernier said no. Mr. Parker asked if the existing area they are working in will be closed in the fall. Mr. Bernier said no, they should have all permits in place to continue working. Alan Hardy showed on the plans where they are working, where the 2009 approval is for site, etc. This is a multi-year project. Mr. Cherian asked if the new permit would be inclusive of where they are working. Alan Hardy said yes. Mr. Bernier said they wanted to show where they were going.

Mr. Supry asked if it would be in any interest of the town to get the town engineering involved in any of this. Alan Hardy said that one of the concerns is that all involved are in a different place then where they expected to be. Mr. Cherian asked if the town engineer comes up with a punch list what do they do. Alan Hardy explained. Zoning Board acts on the use. Mr. Cherian stated that it is more of a permit enforcement issue, not a ZBA issue.

Mr. Sanborn would like to see a safe guard, i.e. the town engineer, coming in. Alan Hardy said that the board needs to take the information that the applicant is presenting. Mr. Cherian felt that the applicant should have some sort of a time line to fix the things that are not right. Chair Devold does not feel that that should not be on the applicant's expense as it is information that the Board is asking for. Mr. Supry wanted to know if that could have happened if the town had an annual review by the Town's engineer. Chair Devold said that an important point is that it has been surveyed and they are moving forward.

Mr. Bernier said that the Planning Board had the same conversation about an annual review.

Chair Devold brought the Board back to the applicants request to amend the 100 foot buffer strip. She went over the plan. Mr. Bernier said that they would attach the plan to what the Board approves if they approve it. Mr. Supry asked what the distance was between the property line and the demolition of the right hand orange line. Mr. Bernier said about 200 feet.

Abutters in favor: none.

Abutters in opposition: Eric Monroe, 215 Queen Street. He is representing JJ Kelley also. Mr. Sanborn asked him to point out where they are located on the map. The left hand orange side. They want to see the setback stay at 100 feet. They have ignored their setbacks before. Alan Hardy said that the town is direct abutter, JJ Kelley second direct abutter and Scott Ainesworth is the 3 abutter that will be affected by the change. Mr. Supry asked if anyone in the town had any comments regarding this application. Alan Hardy said no. Mr. Cherian asked who represents the town as an abutter. Alan Hardy said the Town Selectmen. Chair Devold asked if there had been any talk for or against by the town? Alan Hardy said no.

Horizon Holdings, letter in opposition signed by Jon Kaufman was read into the record. They are asking the Board not to approve the request.

Mr. Sanborn asked about some of the letter's content. Mr. Bernier explained about Pit Area A. There is definitely excavation that crossed the line. They are working with Mr. Kaufman.

Letter from Meridian Land Services Inc. representing JJ Kelly LLC was read into the record. They are requesting the Board deny the request. Alan Hardy stated that #7 in the letter is legally incorrect. The law has been changed. You can do a conditional approval.

Letter from David Leuser and family who reside at 283 Queen Street was read into the record. They are in opposition.

Public in favor: none.

Public in opposition: John Lemorous. Dick Edmonds runs one of the cleanest operations he's seen. He's not happy with the noise though. The Board doesn't know what the pit looks like. This isn't a gravel pit it's a crushing operation. They are taking granite out. The Board should think volume, not area. In 1986 when Bunk Bailey was granted the variance he said there was 10-20 years of material there but there is more. He's the closest abutter to the pit. The noise is loud. Asked Mr. Bernier if there were any way to sound proof it. Mr. Bernier said that it is an open face mining operation. It's the air blast that makes the noise. He stated that they are leaving a hill that should buffer some of the noise. Dick Edmonds tried to expand on noise and blasting. They try to blast when people are at work. Mr. Bernier said that the hours of operation will stay the same.

Dick Edmonds said that he has a notation that he would like done to the plan showing the 5 acre pieces with drill steel in it.

**DECISION:** Bradley is concerned with the property value of abutters. He feels that the 100 feet is quite reasonable. Chair Devoid asked Alan Hardy about the State laws about 50 feet if an abutter were concerned vs. 100 feet. Alan Hardy said that the town has a set of earth regulations that they've worked on. Town felt RSA 155e was sufficient. The minimum standard is RSA 155e and the requirements of alteration of terrain. Mr. Cherian felt that 50 feet, which is acceptable by the State and acceptable all over the state should be acceptable in Boscawen. He is hesitant not to lean towards granting this as it is minimum standards. Kellee Jo Easler stated that in 1986 the 100 foot buffer was put in. Mr. Cherian stated that most of the residences that are closes to them still have the buffer in place. Chair Devoid also stated that Mr. Edmonds has property rights and he should be able to use the land according to State law. Mr. Cherian said that 50 feet by 100 feet is a lot of material that the owner is denied use of. Much discussion ensued regarding buffers and setbacks. Alan Hardy asked Dick Edmonds when they bought the pit. He said about 15 years ago. Mr. Sanborn doesn't have a problem with it as long as it doesn't continue the way it has been going. Mr. Parker asked if they would feel the same way if there were homes along that property line. Chair Devoid said that the Board has to deal with the situation as it is now. Mr. Cherian said that the quarry has been there a long time. Chair Devoid said that from what she has seen tonight things are improving. Mr. Cherian said that the pit hasn't been used in 10 years and should be reclaimed. A letter can be done to the Planning Board to recommend the yearly inspection. Chair Devoid asked who would write the letter. Alan Hardy said that Chair Devoid can do a draft and send it to him in an email and they will put it on letter head. Alan Hardy reiterated that the proposal only affects 2 abutters. Chair Devoid said one has a house 7,000 feet away and the other home 1,000 feet away.

A motion to approve the request was made by Edward Cherian Jr. for a special exception submitted by Cold Brook Gravel Inc of 221 Franklin Street, Franklin NH 03235 for relief from Article 4.01 Commercial Removal of Gravel, sand in order to amend the conditions of approval contained in the special exception granted on 4.16.86 relative to a "100 ft buffer strip or green area to serve as a screen from the abutters" to be reduce from 100 feet to 50 feet as noted on the plans dated April 2015 by T. F. Bernier Inc. and referenced by the orange boundary lines notated on the map. This motion was seconded by Doug Supry and passed by a 4-1 vote with Mr. Parker in the minority.

## **Minutes**

Chair Devoid abstained as well as Mr. Cherian as they were not at the last meeting.

A motion to approve the Minutes of February 19, 2015 was made by Doug Supry, seconded by Bradley Parker and passed by a 3-0 vote.

A motion to adjourn the meeting at 9:31 pm was made by Mr. Sanborn seconded by Mr. Supry and approved by a unanimous vote.

The next meeting of the Zoning Board of Adjustment will be held Tuesday, June 23, 2015 at 7 pm.

*Respectfully submitted by Rose Fife*