

Present: Andy Jellie (Chair); Terri Fisk (Vice Chair), Nancy Houghton, Bob Davis [6:16pm], and Matt Baran

Staff: Liz Emerson

Public in attendance: Jason Reimers, John Tuthill, Kirk Frost, Evelyn Page, and Bonnie Remick

Chair Jellie called the meeting to order at 6:00pm.

Case # 23-01: Roger Clarke Building Permits Appeal: The Perry Mountain Community Group wishes to appeal the Building Inspector's approval of two building permit applications. The first application is for a 60'x40' barn/garage. The second is for a 10,000 square foot house. The property is identified as Map 222 Lot 001 and is located at 1484 Borough Rd. in the Watershed Protection District (Zone D).

Continued.

Nancy Houghton recused herself from this item.

Chair Jellie stated that the Board received correspondence and clarification from the Town's Attorney, NH Municipal Association, and others. It is clear that the ZBA, acting as a Building Code Board of Appeals, is limited to only review the Building Inspector's decision relative to the application. RSA 674:34 is the only statute that provides guidance on this. The Board will not discuss the construction of the proposed house on this lot. The appeal addresses four items:

- a. completeness of the building permit application;
- b. if the Select Board followed the process required by RSA 674-41, that the Select Board receive comment from the Planning Board before approving the building permit – this is not in the ZBA's purview;
- c. that Class VI roads may not be widened. This item would need to be appealed to the Superior Court, not the BCBA;
- d. the Town's obligation to the Francis conservation easement. This is a Select Board authority item and is not connected to the issuance of a building permit.

The Board agreed to the decision on these items. Chair Jellie stated that the Board will not be addressing items b-d, and will thus only discuss item a. The BCBA has the authority to review and overrule the Building Inspector's decision to issue a building permit. The BCBA can review the permits in their current form to see if it is sufficient. If determined not to be sufficient, the BCBA can address other information needed for the permits, or the permits can be put on hold until the information is submitted. The Board would first like to hear from the public within the appropriate scope. He noted that public comments should be kept the three minutes each.

Chair Jellie noted that the Board will be reviewing the application for location, type of construction, septic system permits, indication of compliance with local requirements, driveway permit, water items in compliance with the guidelines, etc.

Jason Reimers, BCM Environmental & Land Law, PLLC, representing the Perry Mountain Community Group, addressed the Board. He asked if he could have additional time past the three minutes. Chair Jellie agreed to five minutes. Jason Reimers stated that there is a lack of information in the application submitted. The application contains almost none of the required information. Section 7.3.2 of the Building Code, Requirements for Complete Application, states that the application must show the plans and specifications of work to be done. There were no plans for specifications submitted. The application simply states that this is to be a 10,000 s.f. house, 5 bedroom, 5 bath, 1 story. This is quite a footprint, adjacent

to steep slopes on an undeveloped mountain lot. Septic specifications are required for all homes, even modest ones. It is especially important to have this information for this site, due to its location, and the size of the proposed dwelling. The Building Code states that this information 'shall' be provided. The public interest is a standard which must be employed by the Board, per the Appeals section of the Building Code. It does not serve the public interest to ignore this requirement when the proposed construction goes through a conservation easement and is located near steep slopes. Section 7.3.2 requires that the plans be stamped by a licensed architect or engineer. There are exceptions to this requirement, if the building is proposed to be less than 4,000 s.f., which this is not. These requirements are applicable and even more important for this proposal, due to its size and location. An engineer would consider drainage and steep slopes for this property. It is in the public interest to have the plans stamped. Section 7.3.2 requires that the applications contain names, signatures, and license numbers for associated contractors, but neither application contains this information. The application for the home itself lists two names that were requested to be removed. The applicant submitted an application with missing and incorrect information. The Select Board and Building Inspector should not have approved an application with missing and misleading information. Section 7.3.2 also lists additional requirements, such as location, type of construction, proposed start date, etc., with information from the building permit. This requires the location of the proposed structure as a basic piece of information. The applicant is proposing a 10,000 s.f., 1 story building, on top of mountain, and the Building Inspector and Select Board ignored the lack of basic location information. It is not in the public interest to approve an application without this information. Without a location, there is no way of knowing the impact or proximity to steep slopes, wetlands, and potential erosion items. The Section requires that all septic permits approved by DES be submitted, but none were submitted. This item is not a discretionary choice. Tom Dombrowski submitted a statement that there will be no septic issues with this proposal. Jason Reimer stated that, while he respects Mr. Dombrowski's work, this statement is not functionally equivalent to the septic approval required by Section 7.3.2. Regarding the fact that this property is located in the Watershed Zone D, the applicant provided no information. Ms. Emerson previously made a statement that the application appears to be in compliance with the guideline requirements of this zone. Jason Reimer noted that, while this might be true, in reviewing topo maps of the area, there is a pond across Borough Road, which has a stream to a large wetland that almost touches this property. This could be of concern.

In response to a question from Chair Jellie regarding the square footage discrepancy for this building, Ms. Emerson explained that a building permit amendment was submitted proposing a 2 story, 10,000 s.f. house. The application plans show a 9,500 s.f. building.

Jason Reimer stated that the application still shows a 10,000 s.f. building, but his argument would be the same for a 9,500 s.f. building. He noted that the change from 1 story to 2 stories is essentially a different building than originally submitted, and another reason to remand this to the Building Inspector or the Select Board.

John Tuthill asked how the Board arrived at its opinion regarding the scope of the items to be discussed on this item. Chair Jellie stated that this was based on the Town's Attorney and counsel from the NH Municipal Association. He stated that these documents are not part of the public record. John Tuthill stated that the requirements for RSA 674:41 have not been met and the Select Board did not consider if a residential building would be permitted on this section of Class VI road. There are several steps that have not been appropriately taken, prior to permit approvals. He urged that this be remanded, in order to go back to square one and complete a clean process.

Kirk Frost stated that the building permit was originally submitted on October 21, 2022 and approved by the Building Inspector on October 21, 2022. This quick turnaround does not illustrate the proper checks and balances. Regarding the limited scope of discussion, he stated that he was hoping the Board would review this item based on how the Town is carrying out its processes. A building permit on a Class VI road requires an exception process through the Select Board, not the Planning Board. Some of this process is indiscriminate. The revised plans from the applicant are copies off the internet and have scratched out information for the new proposal. The Planning Board, based on the recommendation of an attorney, held an additional meeting on this item, but the Chair did not allow public comment. There are gaps in the process of how buildings are approved on Class VI roads. He urged the Board to remand this item.

Evelyn Page noted that the Acworth Selectmen have reached out to several times regarding a request for perambulation of the Town lines. This has not been done. This could have an impact regarding this property. Nancy Houghton stated that this has not been done due to poor weather. Mr. Dombroski stated that this will not be considered until the spring. Ms. Emerson noted that this is not part of the discussion on this item.

Bonnie Remick stated that she has a question regarding if there is a conflict of interest, as the applicant and the Town are both working with Mr. Dombroski. She noted that there cannot be access to this property on the Class VI road, without damaging the easement.

Chair Jellie closed the public comment portion of the meeting.

Chair Jellie stated that it is clear the application is incomplete. The first item to discuss about the application is the information regarding location, type of construction, proposed starting date and other information required on the building permit.

Terri Fisk stated that she has not seen a timeline for this project. The Board has received basic pictures, location, and other information. It is clear that this property is located in a watershed and that there is water on the abutting property. Information continues to trickle in, such as the change in building stories. The location is very general and there are other significant incompletions. She believes the Board could decide to remit this to the landowner for further consideration, including an exact location of the home on the property.

Ms. Emerson stated that an approximate location is appropriate at this time, as the survey has not been completed and so it is difficult to know exactly where the conservation easement sits. The applicant has stated that he wants to build as close as he can to the top of the mountain, while meeting the 25' required setbacks.

Ms. Fisk noted that there are no property line footages included. Chair Jellie stated that the exact building location is not yet known. It was noted that no building can be started until the Town resolves the boundary line issues. Ms. Fisk stated that she believes it seems out of process to approve items before all issues are resolved.

Ms. Fisk stated that there was little information submitted regarding the septic information. Chair Jellie stated that a statement was submitted from Mr. Dombroski. Ms. Fisk noted that the source of the statement needs to be considered.

Ms. Emerson stated that, per the Building Code, the exact location of the proposed structure is not required. An estimated is okay at this point because of the lot line discrepancies. The only requirement not submitted is the proposed state date, and this is due to the fact that the Town first needs to resolve the boundary line issue.

Ms. Fisk stated that the watershed information perhaps should have been more thorough. Ms. Emerson stated that there are wetlands nearby, but these are not active ponds, streams, brooks, or reservoirs. There is no active water on Mr. Clarke's property. Ms. Fisk stated that water nearby could be considered. There is certainly water run-off that could feed this area.

Chair Jellie asked Ms. Fisk what makes this application not be in compliance with the required guidelines. Ms. Fisk stated that this is mostly due to lack of detail, such as size of the project. The owner can be his own contractor, so signatures on the plan are not necessarily an issue.

Ms. Emerson noted that the following uses are permitted in Watershed Zone D:

- a. Residential lot of five (5) acres. No lot shall contain other than a one- or two-family dwelling on a contiguous foundation or slab. Setbacks from all lot lines shall be a minimum of twenty-five (25) feet.
- b. Agriculture and Forestry (lumbering) uses which will not be detrimental to the Watershed.
- c. Special Exception: Home occupations having been approved by the Planning Board.

Ms. Fisk stated that she wonders if more information regarding the size of the project should be taken into consideration due to the fact that size has everything to do with the impact on a lot in the watershed. Chair Jellie stated that the Select Board could have reviewed this item. This is not within the Building Code Board of Appeals' purview at this time.

Bob Davis stated that there is some information that needs to be included on the permit, as previously stated. If this information is filled in on the permit, this would be appropriate. Matt Baran noted that the building permit would not be issued if all of the items are not submitted and complied with.

Chair Jellie stated that the Board can move forward, as it seems that the Select Board must have been confident that the correct information will be received. Alternatively, the Board can choose to deny the permit, until that information is submitted.

Ms. Fisk stated that she believes there is more that should be required at this stage. The presentation for this item is fairly loose so far. This item continues to evolve, showing that it is too loose at this point. The change in the structure could have an impact on the groundwater. The topography of this area and the construction could impact this. If this information is not firmed up, the Board is doing a disservice to the Town and the landowner. Chair Jellie stated that the information regarding the construction has already been submitted.

Chair Jellie noted that, if the Board agrees to remand this item, the information on the size and location of the proposed building may not change.

Ms. Emerson noted that the Town Attorney stated the applicant has supplemented his application. The Board should review the current application only and decide if sufficient information is included.

Ms. Fisk stated that she would at least like to see footages as to where the building is proposed to be located. There are usually much stronger maps submitted for applications. There is an incomplete picture as to the proposed location on this site.

Ms. Emerson stated the applicant submitted a map with an estimated 20,000 sq. ft. area.

Ms. Emerson stated that the Select Board has already approved building on a Class VI road for this item. The only way to overturn that would be through Superior Court. The Board can decide to rescind the building permit specifically, leading the applicant to need to reapply with the necessary information. The Board could agree to put the permit on hold until the information is submitted. She would be the one to review the submitted information to determine if it is acceptable.

Terri Fisk moved that there should be a requirement that the building permit application be reopened for clarification of details such as the location, type of construction, septic, topography, and watershed impact items due to this type of construction (a 2-story house with a basement), which were not presented to the Building Inspector originally.

It was noted that, as this is a public appeals process, counsel for the applicant should be allowed to speak.

Ms. Emerson stated that a watershed study is not a requirement to approve a building permit. Ms. Fisk stated that the proposed location has to do with impact to all items around it. Chair Jellie stated that he disagrees with this statement.

Ms. Emerson stated that there is a low-lying wetland nearby, which is essentially a vernal pool, but the only thing in the watershed guidelines is for streams, brooks, ponds, and reservoirs on the applicant's property, of which this item is not one.

Terri Fisk moved approve the appeal to the extent that there should be further consideration under the building code for the information submitted since the permit was granted, and a determination as to location of building and septic, type of construction, topography, and impact on the lot.

Discussion:

In terms of a timeline, Ms. Fisk stated that she believes this would be up to the Building Inspector.

Terri Fisk amended her motion that the Board approve the appeal to the extent that it deals with the completeness of original information submitted and the completeness of subsequent information submitted, due to location of building and septic, type of construction, topography, and impact on the lot on watershed items.

Bob David seconded.

Discussion:

Ms. Emerson stated that the application has met the criteria for the Watershed Zone D. Ms. Fisk stated that, depending upon location of the house, there could be impact on this item.

Ms. Emerson stated that, if approved, this motion would renege the building permit. The applicant could then choose to reapply with the same information he currently has or wait until he has a start date.

Bill Rescsanski asked for clarification on this motion.

Ms. Fisk stated that the motion should be for clarification on all information submitted, originally and subsequently.

Chair Jellie suggested that the motion language could follow what was suggested by the Town Attorney, that permits be put on hold on the condition that additional information is submitted by the applicant. This would allow the applicant to then move forward and not start from scratch.

Ms. Fisk agreed that the applicant does not need to start from scratch. The Board must either deny or approve the appeal in front of it. She agrees with the appeal in some portion. Her intent was not to make the applicant restart the process from the ground up, as this has come too far through the process for that.

Ms. Emerson stated that her interpretation of the motion was that the applicant would need to start from scratch, if the appeal was approved.

Ms. Fisk stated that, to deny the appeal, the Board does not necessarily have a say in what happens to the application after that point.

Ms. Emerson agreed that a denial cannot be made with conditions.

Ms. Fisk withdrew her previous motion. Bob Davis withdrew his second.

In response to a question, Ms. Emerson explained that she is the one to make the determination as to the nearby water source in this District, based on the Town's mapping system.

Matt Baran moved to deny the appeal, as the applicant has an approved driveway permit, the proposed projects appear to be compliant with the guideline requirements that the lot is at least 5 acres with no streams, brooks, ponds, or reservoirs on or near the property, the proposed builds appear to be in compliance with all local land use regulations, and the applicant is aware of the required 25' setbacks and will be in compliance once these lines are defined .

Chair Jellie seconded. With five (3) members in favor and (1) against, the appeal was denied.

It was requested that, per RSA 91-A, communications received and used in consideration during this meeting by the Board be made available to the public. Ms. Emerson stated that the 91-A request can be submitted through the Select Board's office.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS: January 12, 2023

The Board agreed to table discussion of these minutes until a future meeting.

Administration:

None at this time.

Matt Baran moved to adjourn the meeting. Bob Davis seconded. With five (5) members in favor, the meeting was adjourned at 7:26pm.

Respectfully submitted,

Kristan Patenaude
Recording Secretary