

Minutes of the Hearing on the Appeals of Permit 2023-15

1. Four different persons filed appeals of zoning permit #2023-15.
2. As duly noticed in the Rutland Herald on September 19, 2023. The hearing on the four appeals began on October 4, 2023 at approximately 6:43 p.m.
3. The permit was issued to Brian Gates, the owner of 166 Terra Lane, in Mendon, VT. Properties parcel ID 03-02-20.000.

A. THE APPEALS

4. The first appeal was filed by Imants Smildzins. Mr. Smildzins is a resident who lives on 522 Sherwood Dr. in Mendon, which is adjacent to the Gates' Property.
5. Mr. Smildzins attended the hearing on October 4th in person and testified.
6. The second appeal was filed by Concetta Pasquarello and Joseph Trego. Ms. Pasquarello and Mr. Trego live at 170 Terra Lane in Mendon. Neither Ms. Pasquarello or Mr. Trego attended the hearing.
7. A third appeal was filed by Charlie and Nancy Swift. Mr. and Mrs. Swift live at 122 Terra Lane in Mendon.
8. Mr. and Mrs. Swift attended the hearing virtually via a Go To Meeting link ("GTM Link") and testified in support of their appeal.
9. A fourth appeal was filed by Geoffrey Wells.
10. On the day of the hearing Mr. Wells' attorney contacted the Town to advise that Mr. Wells was withdrawing his appeal.
11. Three members of the Zoning Board of Adjustment ("ZBA") were present in person (John J. Kennelly, Therese Corsones and Harvey Zara). Susannah

Loffredo appeared via the GTM Link. The four members present represented a quorum of the ZBA.

12. In addition to the members of the board, Steve Ellerin, the zoning administrator was present.
13. Additionally, eight other persons attended the hearing, including Carol Gates representing the permit holder, in person or via the GTM Link. Everyone present at the hearing is set forth on Exhibit A.

B. SMILDZINS' APPEAL

14. The first appeal addressed was that of Imants Smildzins. Mr. Smildzin's appeal was set out in his letter August 31, 2023 addressed to Mr. Steve Ellerin and received by the Town Clerk on September 5, 2023.
15. Mr. Smildzins was sworn in and testified by describing the reasons for his appeal.
16. Mr. Smildzins identified himself as an engineer and landscape architect with 44 years of experience.
17. He testified that the proposed accessory building sought by the permit was 30 by 50 feet.
18. He pointed out only one accessory building was permitted in the residential 2 zone.
19. Mr. Smildzins testified that there is currently a 900 square foot garage at the premises and the application seeks permission for a garage/storage building as an accessory structure.

20. Mr. Smildzins testified that the applicant is self employed and has parked tractors and trucks on this property and the new construction appears to further use of the new structure to store or house what is a business-related use.
21. Mr. Smildzins argued that the Gates should be required to certify that the use of the garage/storage structure is not a home occupied business or if that is not the case then to abide by Section 602 of the zoning ordinance.
22. Mr. Smildzins pointed out that in his opinion the application is deficient in addressing sufficient access for first responders and utility vehicle access for delivery of oil or gas, and further pointing out that no driveway width or slopes are shown on the site plan to properly issue a zoning permit based on this standard.
23. The application does not address how the new impervious surfaces maximizes on site infiltration and minimizes surface run off. This is of particular concern as the parcel lies within the 25% slope district and was defined as a sensitive development area (pursuant to Section 616).
24. Mr. Smildzins also argued that the application is deficient in providing grading information to determine if the driveways are compliant with the town's standards. Likewise, the application is deficient to determine compliance with the applicable setbacks on the proposed 1500 square foot accessory unit.
25. Mr. Smildzins also raised the issue of whether the application complies with the zoning ordinance concerning impervious surfaces coverage limitations.

C. SWIFTS' APPEAL

26. The next appeal of the Gates permit was filed by Charlie and Nancy Swift who are property owners that live at 122 Terra Lane in Mendon.
27. The Swifts appeared via the GTM Link and testified in support of their appeal.
28. They felt that the drawing submitted in support of the permit lacked key information and asked that the applicant resubmit the proposal with a more accurate drawing containing sufficient information to determine boundaries, setbacks, other improvements such as driveways and a parking structure for commercial construction equipment.
29. The Swifts also argued that the applicants should submit a survey to confirm property boundaries and setbacks.
30. The Swifts testified that the proposed building will be 1500 square feet and will have an impermeable surface reducing the property's ability to absorb water which will instead flow downhill onto their property.
31. The Swifts claim that the roof of the new accessory building will drain directly onto their property line creating a significant water flow onto the property.
32. The Swifts point out that Mr. Gates should be required to put in a drainage system which directs all water from the edge of his property down to the culvert along the road.
33. There were 2 other appeals filed but one of them was withdrawn, that they may appeal of Jeffrey Wells, and no one appeared to argue the appeal filed by Ms. Pasquarello and Mr. Trego, owners of 170 Terra Lane in Mendon, VT.

34. Mrs. Gates had the opportunity to cross examine Mr. Smildzins and Nancy and Charlie Swift after they had presented their testimony in support of their appeals.
35. Ms. Gates also offered arguments and evidence in support of the permit arguing that the 25% slope district provisions in section 317(1) were not applicable to the permit because they only were relevant to the construction of private driveways and roads and not to development in general.
36. Ms. Gates also argued that the accessory structure is not in the sensitive development area and therefore not requiring review in accordance with sections 504-506 of the zoning ordinance.
37. At the end of the Swift testimony in support of their appeal, and Ms. Gates cross examination and testimony and argument in support of the permit the board took a short recess to go into a deliberative session. The deliberative session ended and the board reopened the hearing and requested a site visit of the property to determine some of the issues about the location of the boundaries, compliance of setbacks, and the terrain of the property to address the issues in dispute.
38. It was agreed that a site visit would be scheduled for October 19th at 4:15 p.m. at the Gate's property. The hearing was then continued to the site visit on October 19 at 4:15 at the Gate's property.
39. The continued hearing was then adjourned for the evening at approximately 7:55 p.m.

Minutes of ZBA Hearing on October 19, 2023

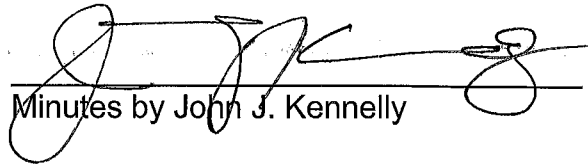
40. Pursuant to the Board's request for a site visit after the hearing on October 4th, the hearing on the appeals was continued to October 19, 2023 at 4:15 p.m. at the Gates' property at 166 Terra Lane in Mendon, VT.
41. The continuation of the hearing was announced to everyone present, in person or on the GTM Link, after discussion of board members' schedules and availability.
42. On October 19th Mrs. Gates emailed the ZBA Chair claiming that the Board had no authority to schedule a site visit, that she never agreed to the site visit, and that the fees for the appeal had not been paid.
43. The ZBA then met at the Town Office at 4:15 p.m. in a deliberative session.
44. The result of the deliberative session of the board, (members Kennelly, Zara and Corsones present) was that the Gates would be given the option of permitting a site visit or the submission of a survey of the site setting out all boundaries and siting all of the proposed new construction.
45. The board discussed that the failure to pay an appeal fee simultaneously with filing an appeal does not deprive the ZBA of jurisdiction over the appeals.

Section 1103 of the Mendon Zoning Ordinance does not list payment of a fee as a mandatory condition of filing an appeal of an administrative officers actions.
46. The Gates will have until a date in November to advise the Board what their decision is.

47. If the Gates decide not to accept either option, the hearing will be deemed closed and the Board will next make its decision on the Smildzins' and the Swifts' Appeals.

48. These minutes are not final and are subject to correction and supplementation.

Dated this 23rd day of October, 2023



Minutes by John J. Kennelly