Mendon Zoning Board of Adjustment

2282 US Route 4 Mendon, VT 05701

December 6, 2023 (via Certified Mail Return Receipt Requested, First-Class U.S. Mail & email)

Concetta Pasquarello Joseph Trego 170 Terra Lane Mendon, VT 05701

Re:

Appeals of Zoning Permit #2023-15

Terra Lane, Mendon, VT

Dear Concetta Pasquarello and Joseph Trego.

Enclosed please find a complete copy of the Findings and Decision of the Mendon Zoning Board of Adjustment in connection with the appeals filed by you. The Board has denied the appeals. The permit issued to the Gates (Permit #2023-15) is valid unless an appeal to the Environmental Court is filed and pursued.

I am enclosing the Findings and Decision and would ask that you date and sign the personalized Acknowledgment page and return it to me in the enclosed envelope.

As stated in the Acknowledgement, any appeal of this decision must be made not later than thirty (30) days from December 6, 2023.

Very truly yours,

John J. Kennelly

Encl. JJK:clv

CC:

Brian and Carol Gates (via Mail, email, w. Encl)

Nancy Gondella (via email, w. Encl.) Steve Ellerin (via emal; w. Encl.)

ZBA Members: Susannah Loffredo Harvey Zara, Therese Corsones (via email; w.encl.)

Mendon Zoning Board of Adjustment

2282 US Route 4 Mendon, VT 05701

December 6, 2023, 2023 (via Certified Mail Return Receipt Requested, First-Class U.S. Mail & email)

Imants Smildzins 522 Sherwood Drive Mendon, VT 05701

Re:

Appeals of Zoning Permit #2023-15

Terra Lane, Mendon, VT

Dear Mr. Smildzins,

Enclosed please find a complete copy of the Findings and Decision of the Mendon Zoning Board of Adjustment in connection with the appeals filed by you. The Board has denied the appeals. The permit issued to the Gates (Permit #2023-15) is valid unless an appeal to the Environmental Court is filed and pursued.

I am enclosing the Findings and Decision and would ask that you date and sign the personalized Acknowledgment (last page) and return it to me in the enclosed envelope.

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Very truly yours,

John J. Kennelly

Encl. JJK:clv

CC:

Brian and Carol Gates (via Mail, email, w. Encl)

Nancy Gondella (via email, w. Encl.)

Steve Ellerin (via emal; w. Encl.)

ZBA Members: Susannah Loffredo Harvey Zara, Therese Corsones (via email; w.encl.)

Mendon Zoning Board of Adjustment

2282 US Route 4 Mendon, VT 05701

December 6, 2023 (via Certified Mail Return Receipt Requested, First-Class U.S. Mail & email)

Charles & Nancy Swift 18 Quaker Meeting House Rd Armonk, NY 10504

Re:

Appeals of Zoning Permit #2023-15

Terra Lane, Mendon, VT

Dear Mr. & Mrs. Swift,

Enclosed please find a complete copy of the Findings and Decision of the Mendon Zoning Board of Adjustment in connection with the appeals filed by you. The Board has denied the appeals. The permit issued to the Gates (Permit #2023-15) is valid unless an appeal to the Environmental Court is filed and pursued.

I am enclosing the Findings and Decision and would ask that you date and sign the personalized Acknowledgment page and return it to me in the enclosed envelope.

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Very truly yours,

John J. Kennelly

Encl. JJK:clv

CC:

Brian and Carol Gates (via Mail, email, w. Encl)

Nancy Gondella (via email, w. Encl.)

Steve Ellerin (via emal; w. Encl.)

ZBA Members: Susannah Loffredo Harvey Zara, Therese Corsones (via email; w.encl.)

Findings and Decision of the Mendon Zoning Board of Adjustment Page 2

Findings and Decision Of the Mendon Zoning Board of Adjustment

In re: The Appeals of Permit 2023-15

Appellants Smildzins, Pasquarello and Swift

Brian Gates submitted an application for a Zoning Permit on July 27, 2023 for property owned by him at 166 Terra Lane in Mendon, Vermont. The Mendon Zoning Administrator approved the application as Mendon Zoning Permit 2023-15 on August 23, 2023. Appeals of the permit to the Mendon Zoning Board of Adjustment (ZBA) were filed by Imants Smildzins, owner of 522 Sherwood Dr., Concetta Pasquarello and Joseph Trego, owners of 170 Terra Lane, Charles and Nancy Swift, owners of 122 Terra Lane, and Geoffrey Wells, owner of 176 Terra Lane.

A hearing on the appeals before the ZBA was scheduled for October 4, 2023 at 6:30 pm at the Mendon Town Office. Notice of the hearing on the Appeals was posted at the Mendon Town Clerk's Office and at DePalo Coffee (formerly the Mendon Country Store). Notice of the hearing was also published in the Rutland Herald on September 19, 2023.

Attendance at the hearing was also available by Zoom (or the equivalent) and by phone. The persons who attended in person, or otherwise, are identified in Exhibit A. The hearing began on October 4, 2023 at approximately 6:43 p.m. Three members of the Zoning Board of Adjustment ("ZBA") were present in person (John Kennelly, Teri Corsones and Harvey Zara). Susannah Loffredo appeared via the GTM Link. The four members present represented a quorum of the ZBA. In addition to the members of the board, Steve Ellerin, the Mendon Zoning Administrator, was also present.

The first appeal was filed by Imants Smildzins. Mr. Smildzins owns property at 522 Sherwood Dr. in Mendon, which is adjacent to the Gates' Property. Mr. Smildzins attended the hearing on October 4th in person and testified.

The second appeal was filed by Concetta Pasquarello and Joseph Trego. Ms. Pasquarello and Mr. Trego are the owners of 170 Terra Lane in Mendon. Neither Ms. Pasquarello nor Mr. Trego attended the hearing.

A third appeal was filed by Charlie and Nancy Swift. Mr. and Mrs. Swift own property at 122 Terra Lane in Mendon. Mr. and Mrs. Swift attended the hearing virtually via a Go To Meeting link ("GTM Link") and testified in support of their appeal.

A fourth appeal was filed by Geoffrey Wells. On the day of the hearing Mr. Wells' attorney contacted the Town to advise that Mr. Wells was withdrawing his appeal.

Additionally, eight other persons attended the hearing, including Carol Gates, in person on behalf of the permit holder and Brian Gates via the GTM Link. Everyone present at the hearing is identified in Exhibit A. All of the persons who were going to testify were sworn in.

FINDINGS

SMILDZINS' APPEAL

The first appeal addressed was that of Imants Smildzins. Mr. Smildzin's appeal was set out in his letter of August 31, 2023 addressed to Mr. Steve Ellerin and received by the Town Clerk on September 5, 2023.

Mr. Smildzins identified himself as an engineer and landscape architect with 44 years of experience.

He testified that the proposed accessory building sought by the permit was 30 by 50 feet.

He claimed that only one accessory building was permitted in the Residential II zone.

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.

Mr. Smildzins testified that Mr. Gates is self employed and has parked tractors and trucks on this property and the new construction appears to be for used to store or house what is a business-related use.

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 (Home Occupation) of the zoning ordinance.

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 pointed out that no driveway width or slopes are shown on the site plan to properly issue a zoning permit based on this standard.

Mr. Smildzins stated that the application does not address how the new impervious surfaces maximizes site infiltration and minimizes surface run off. This is of particular concern, in his opinion as the parcel lies within the 25% slope district and was defined as a sensitive development area pursuant to Section 616 (Structures in Sensitive Areas).

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, he argued that the application is deficient to determine compliance with the applicable setbacks on the proposed 1500 square foot accessory unit.

SWIFTS' APPEAL

The next appeal of the Gates permit was filed by Charlie and Nancy Swift who are the owners of 122 Terra Lane in Mendon.

The Swifts appeared via the GTM Link and testified in support of their appeal.

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.

The Swifts also argued that the applicants should submit a survey to confirm property boundaries and setbacks.

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.

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.

The Swifts argued that the Gates should be required to put in a drainage system which directs all water from the edge of the property down to the culvert along the road.

There were 2 other appeals filed. One of them was withdrawn by the Appellant Geoffrey Wells, who owns 176 Terra Lane. The other appeal had been filed by Ms.

Pasquarello and Mr. Trego, owners of 170 Terra Lane. Neither Ms. Pasquarello nor Mr. Trego appeared for the hearing.

Mrs. Gates had the opportunity to question Mr. Smildzins and Nancy and Charlie Swift after they had presented their testimony in support of their appeals.

Mrs. 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 developments in general.

Mrs. Gates also argued that the accessory structure is not in the sensitive development area and therefore does not require review in accordance with sections 504-506 of the Zoning Ordinance.

Mrs. Gates testified that the new building would be used for storing some excavation equipment and the family's many toys, including boats, jet skis, snowmobiles and ATVs, plus yard machines.

Mrs. Gates also testified that the new building was not being used by the Gates for a home occupation.

At the October 4th hearing the following were marked as Exhibits and were all admitted as evidence:

Exhibit 1 – Gates Application for Zoning Permit. (7 pages)

Exhibit 2 – Portion of Ridgeline and 25% Slope Map.

Exhibit 3 – September 18, 2023 Letter from Mr. & Mrs. Gates to ZBA responding to Appeals.

Exhibit 4 – Ridgeline District and 25% Slope Overlay Map of entire town.

Exhibit 5 – Tax Map marked to locate Terra Lane and the Gates' and Appellants' properties.

At the conclusion of the testimony, 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 better address the issues in dispute about the location of the boundaries, compliance with setbacks, and the terrain of the property.

After discussion of Board members' and the parties' schedules and availability, 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 pm at the Gate's property. The hearing was then adjourned for the evening at approximately 7:55 p.m.

The continuation of the hearing was announced to everyone present, in person or on the GTM Link.

On October 19 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.

The ZBA met at the Town Office at 4:15 p.m. on October 19 in a deliberative session. Members John Kennelly, Harvey Zara and Teri Corsones were present.

The result of the deliberative session of the Board 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. That option was conveyed to the Gates by email and mail. There was no response by the Gates.

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 officer's actions.

On November 15, 2023 three members of the ZBA went to view the site from the property of Charles and Nancy Swift, who gave the Board access to their property at 122 Terra Lane to observe the placement of the accessory building. ZBA Board members Harvey Zara, Susannah Loffredo and Jack Kennelly attended the near-site visit.

Construction of the accessory building was significantly under way; the slab was laid and the building was fully framed.

There was one rudimentary structure to the west of the accessory building. It looked to be temporary and will have to be removed or else the building would be infringing on the required side yard setback.

The ZBA members at the November 15th visit (from the Swifts' property) were satisfied that the accessory building approved in Zoning Permit 2023-15 as placed was in compliance with the setback requirements for a Residence II Zone.

DECISION

After consideration of the testimony and evidence submitted at the October 4 and October 19 hearings, and also based on the November 15th site visit by three members of the Board, the Board makes the following Decision:

 Section 601 of the Mendon Zoning Regulations does not limit a property to one accessory structure per lot.

Findings and Decision of the Mendon Zoning Board of Adjustment Page 9

2. The proposed structure will not be used as a home occupation business per Mrs. Gates' testimony.

3. The property is not located in the Ridgeline Overlay District, and is not located in a 25% Slope District. The property is not subject to Sensitive Development Area requirements.

4. A survey is not required for a zoning permit application.

5. The maximum impervious surface in a Residential II District is 50%. The impervious surface of the property including the proposed structure does not exceed that percentage.

6. Applicable setback requirements have been met subject to the rudimentary structure referenced above being removed.

7. None of the Appellants has proven that the Zoning Administrator's approval of Zoning Permit #2023-15 was in error. Accordingly, the Appeals of Smildzins, Swifts, Pasquarello and Trego are denied and the decision of the Zoning Administrator in issuing Zoning Permit 2023-15 is affirmed.

Dated this 6th day of December, 2023

Therese Corsones Harvey Zara Susannah Loffredo

Mendon Zoning Board of Adjustment

John J. Kennelly, Chair

In re: The Appeals of Permit 2023-15
Appellants Smildzins, Pasquarello and Swift

ACKNOWLEDGMENT

By this form and signature, I do hereby	attest that I	[Print
Name], an Appellant in the above referenced r	natter have read and	understand the
Mendon Zoning Board of Adjustment's Finding	to the second se	
sections of the Mendon Zoning Ordinance. I a		
Decision of the Board of Adjustment by filing a		
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other means, within thirty (30) days of the date		
		·
Dated:		
	By: [Print Name below s	ignature]

Applic	ant 🗶
Permit #	2023-15-

Zoning Admin 🗆

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Approval Date NOTICL Approve D 8/23/23

Lister Appeals By

OFFICE USE ONLY: Do Not Write Above This Line

APPLICATION FOR ZONING PERMIT

#APP	LICATION FOR ZONING PERMIT RECEIVED
The undersigned hereby requests a zoning por Permit will become void in the event of misre completion within two years.	ermit for the following use, to be issued on the basis of the representations contained herein: epresentation or failure to undertake construction within one year of the date of approval or
Owner of Record:	Ray Cur
Mailing Address:	166 TERRA LANG MODE
Telephon ::	166 Terra LAne menden 802-236-2958
Telephone:	000 200 200
Email:	Weedronnections @ Asi Com
Representative of Contact Person: (If different from number)	Weedconnections @ Aol. Com Fred Watkins (Builder) 802-353-8152
Mailing Address:	82 e. ausshington St Ruthand
Telephone:	802-353-8152
Telephone:	
Email:	WATKINS Building 2002 @ 9MAIL. Com
Description of Property (The foll	owing information may be obtained in the Mendon Town Office.)
Deed to this parcel is recorded in:	Book 64 Page 50
Zoning District:	Menden 30
Names of all Owners of Record:	Brian gutes
911 Stree* Address:	166 Terra Lane menden
Property Tax Map Number:	Map 03 Block 02 Parcel 20,000
Lot Size:	1.2
Description of Project	
Nature of Project (New construction that requires a well or septic system requires a State of Vermont Wastewater Permit.)	New Construction - Single Overhead Door Corrage/Storage Structure - No Waste/Water Accessory Structure Supply to Building
Existing Use and Occupancy	NIA
Change of Use (requires site plan approval)	N/A
Existing Number of Bedrooms	NIA
Proposed Number The addition of any bedroom(s) that noreases the design flow for the water and vastewater systems requires a State of Vermont Wastewater Permit.)	N/A
Proposed Use and Occupancy	garage /Stores New Porn

The applicant or an interested person may appeal any decision by the Administrative Officer within fifteen (15) days of the date of such decisio . This permit shall not take effect - NO CONSTRUCTION ALLOWED - until the time for such appeal has passed.

Applicant 👸 Zon	irg Admin 🗆	Posti	ne T		11
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The applicant or an interested person may appeal any decision by the Administrative Officer within fifteen (15) days of the date of such decision. This permit shall not take effect — NO CONSTRUCTION ALLOWED — until the time for such appeal has passed.

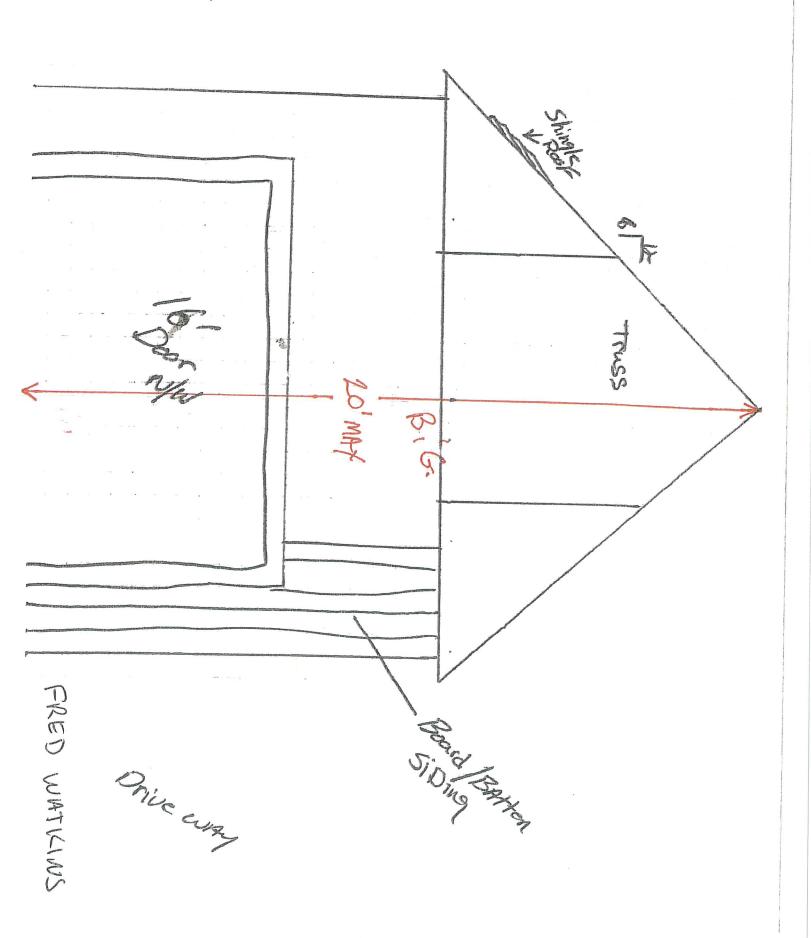
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Applicant \square



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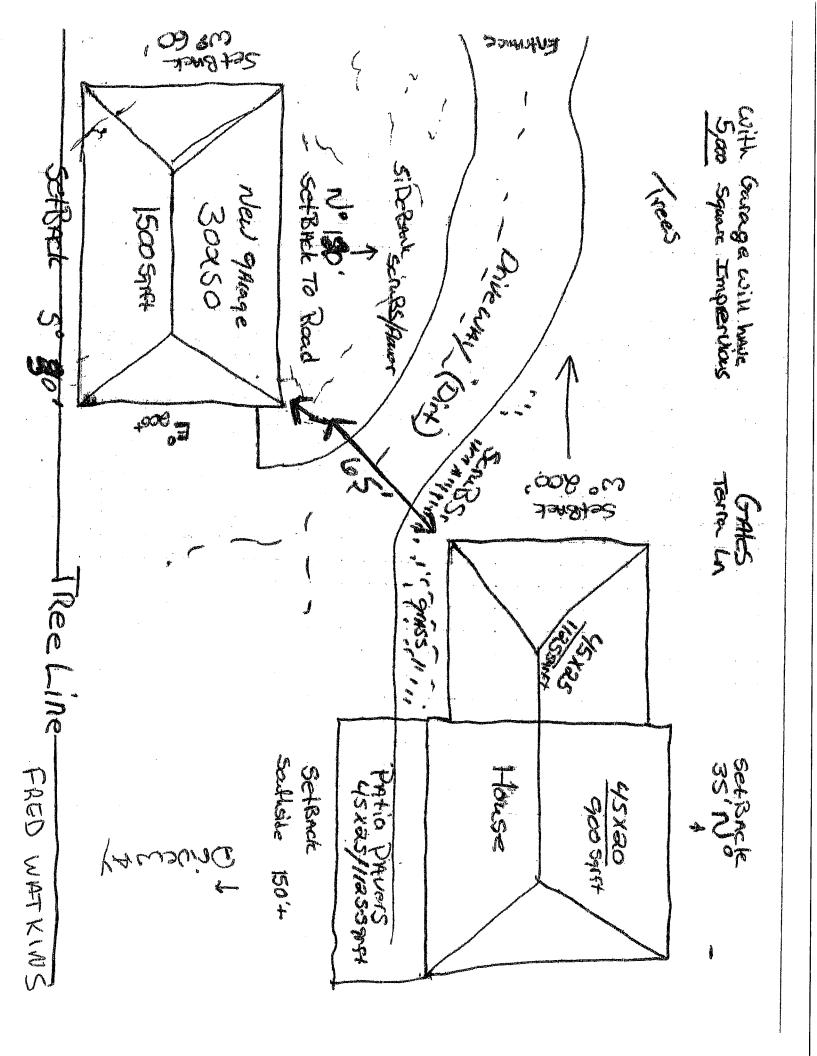
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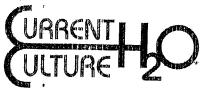
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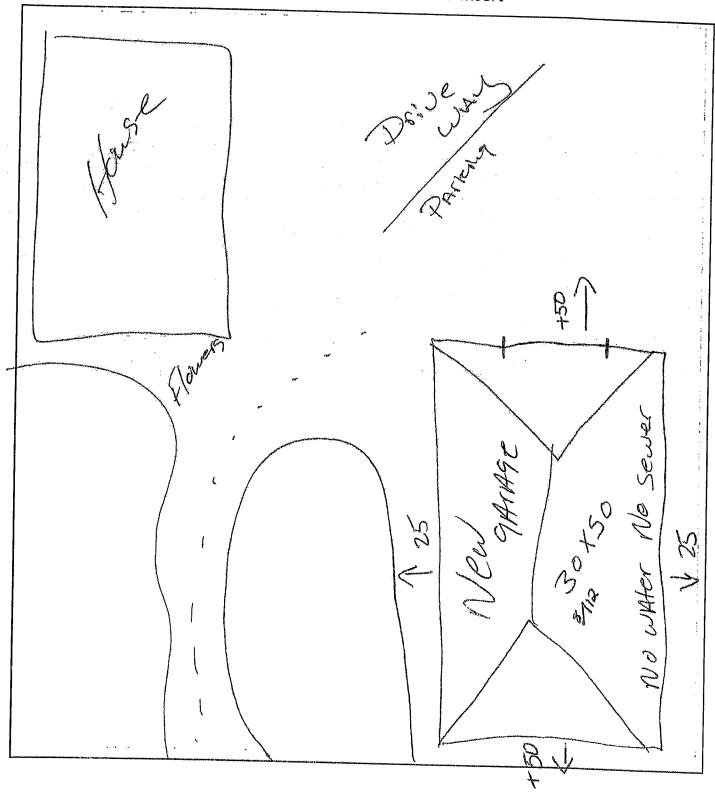


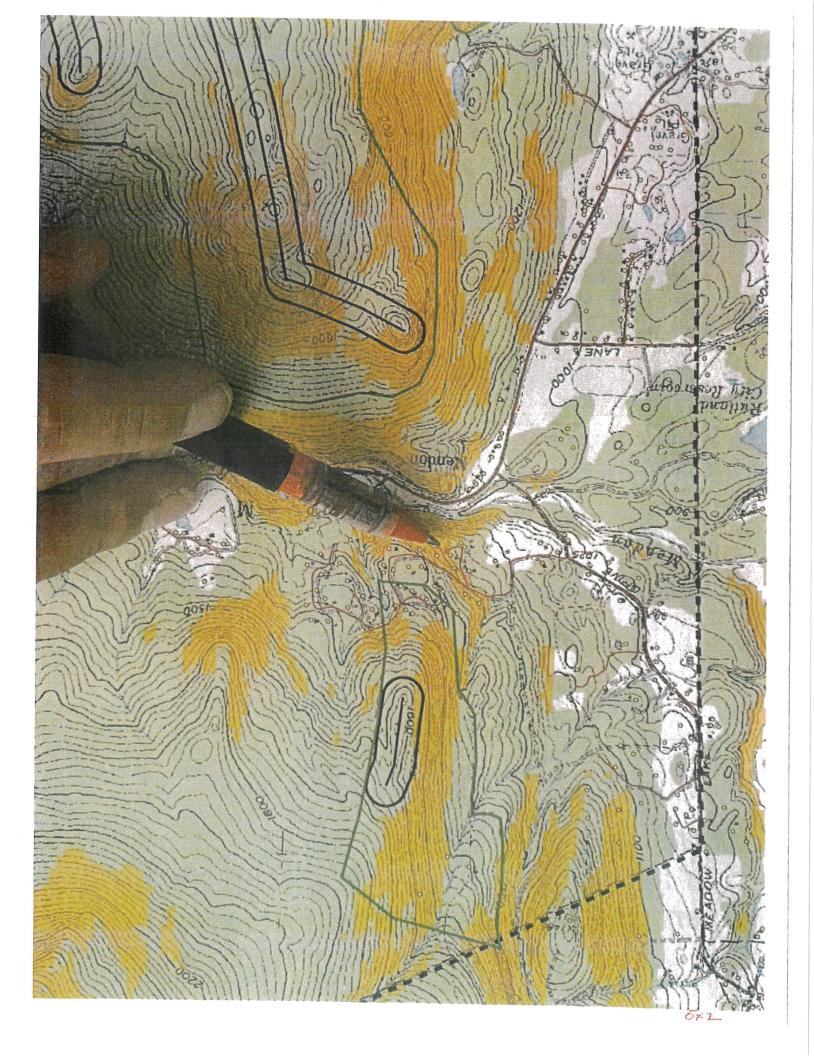
LEADERS IN HYDROPONICS

Current Culture H2O 4333 S. Minnewawa Ave. #101 Fresno, CA 93725 phone: 559.266.4769

email: sales@cch2o.com

DOCUMENT ATTACHMENTSelect Scanned Document To Insert







September 18, 2023

Zoning Board of Adjustment 2282 U.S. Rte 4 Mendon, VT 05701

RE: Appeal of Zoning Permit #2023-15 Brian Gates 166 Terra Lane, Mendon Parcel ID 03-03-20.000

To the Zoning Board of Adjustment in Mendon,

In Accordance with Article XI: Appeals Section 1101 (2) We are requesting that the Zoning Board reject the consolidation of the Appeals brought forth by Geoff Wells, Charles and Nancy Swift, Concetta Pasquarello, Joseph Trego, & Imants Smildzins.

Information provided by the above mentioned to the Zoning Board of Adjustment is misleading, incorrect and/or irrelevant.

- Brian and Carol Gates did not apply for the Building Permit on their property.
- 2. The Applicant has not received notification regarding an appeal or Notice of Hearing.
- 3. Terra Lane is Not Located in the Ridgeline District

4. Section 317(1) 3. 25% SlopeDistrict

To regulate private driveways or roads of any length which are built on slopes in excess of 25% so as to insure access for emergency and police vehicles, utility vehicles and delivery vehicles for oil and gas. Regulation in those cases are set forth in Sub-section 317(6) (Standard 6). The 25% Slope District is relevant with respect to the construction of the private driveways and roads described herein above only, and not with respect to development in general.

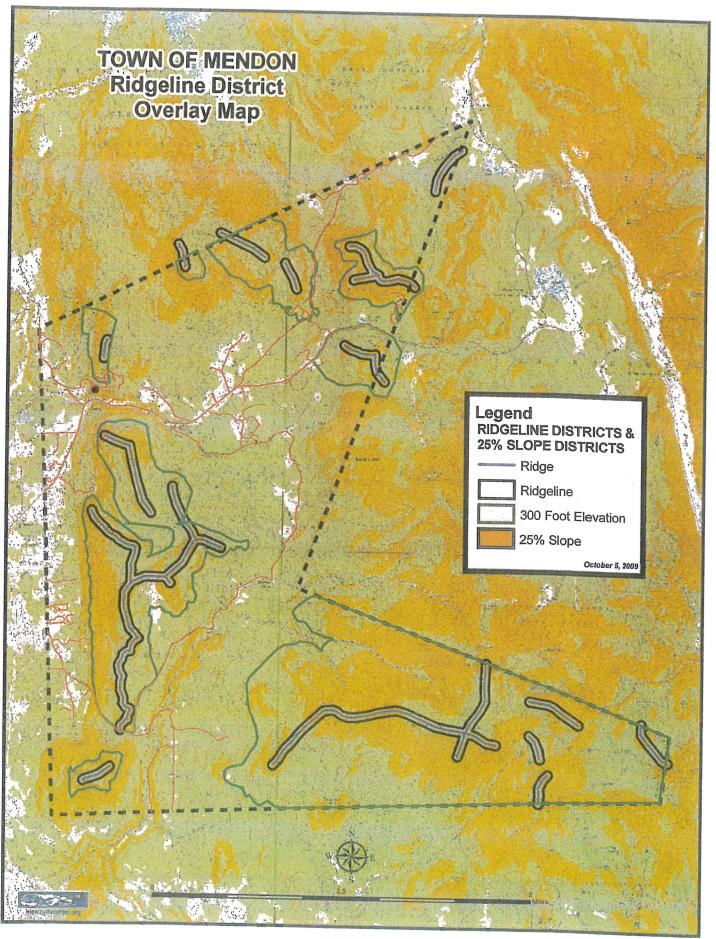
- 5. The Accessory Structure is in Not in a "Sensitive Development Area" as stated in Section 616. Therefor not requiring review in accordance with Sections 504-506.
- 6. Information given to the Zoning Board of Adjustment regarding the Site plan is False and Misleading.
- 7. The Zoning Administrator Steve Ellerin was given approval by the Selectboard of Mendon for \$2,000 to go to the Town Attorney Mr. Corsones for guidance in Approving the Permit for the Gates Property.

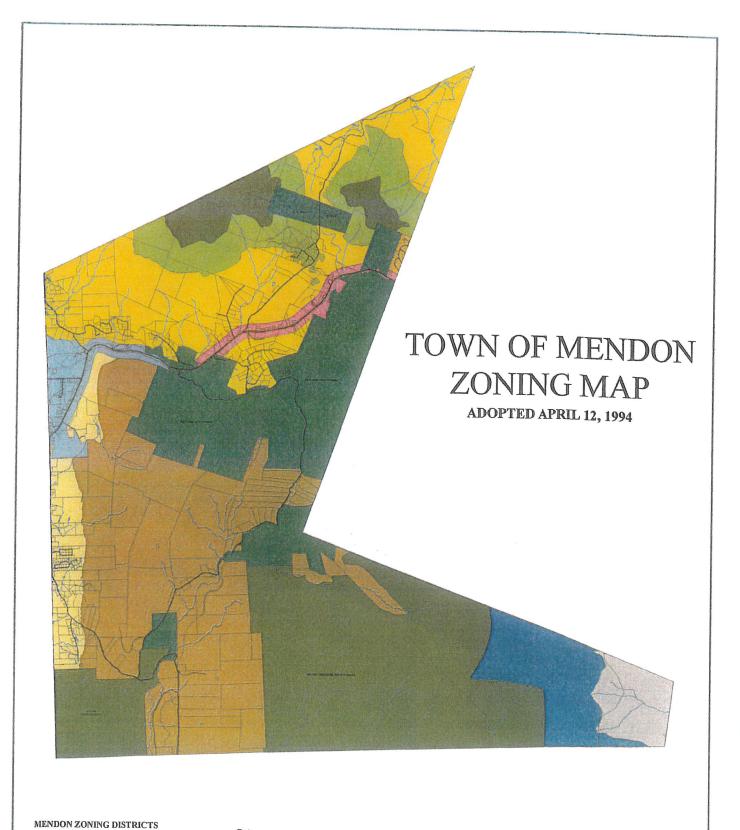
In closing we would like to add that this has been a personal attack by our neighbors.

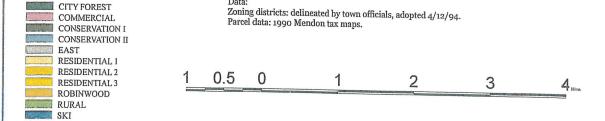
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Carol and Brian Gates





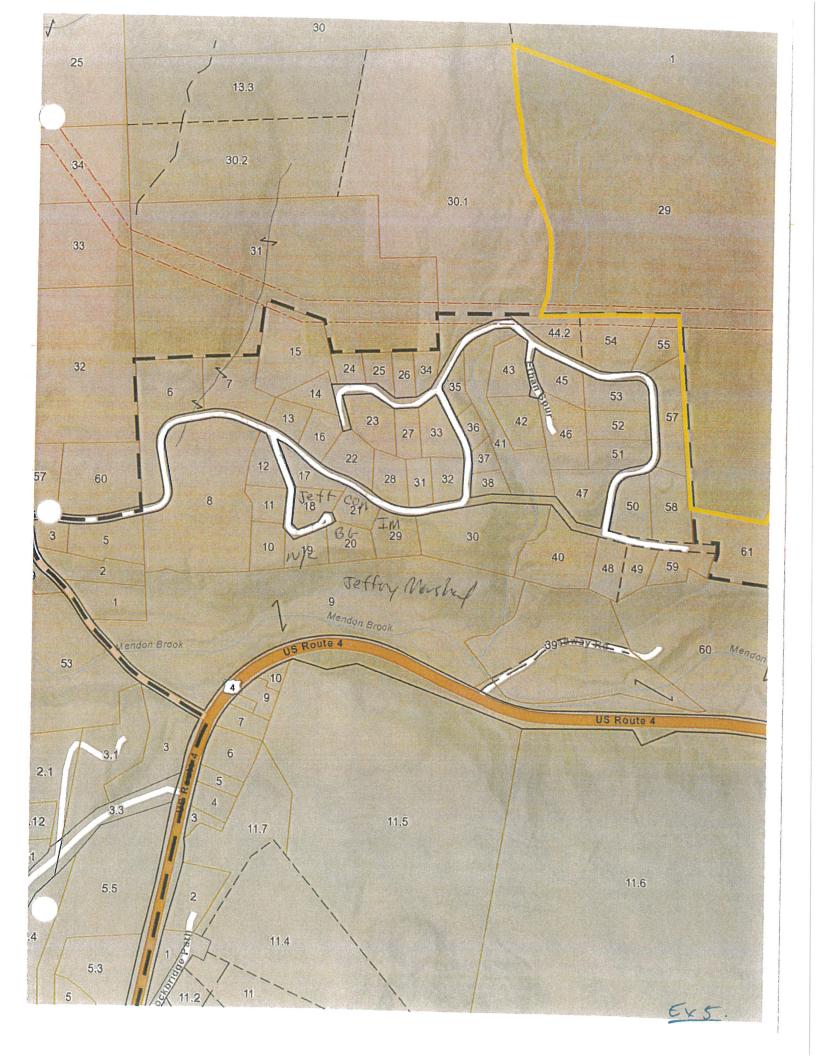


MAP UPDATED: MARCH 2008

CITY FOREST

VILLAGE WHEELERVILLE





Mendon Zoning Board of Adjustment Hearing on the Appeal of Permit # 2023-15 Attendees-October 4, 2023

Members - Attended In-Person

Carol Gates
Carolgates98@aol.com

Imants Smildzins slepotajs@aol.com

Tyler Whille Tyler@gmail.com

Members - Attended Via Zoom

Brian Gates weedconnections@aol.com

Ross Rosenzweig@gmail.com

Gordon Stake gstake@gmail.com

Nancy Swift nancylswift@aol.com

Charles Swift ewswift@gmtal.com

Board Members - Attended In-Person

John Kennelly – <u>kennelly@vermontcounsel.com</u> Harvey Zara <u>- harveyzara@gmail.com</u> Teri Corsones-<u>corsonesct@aol.com</u>

Board Member - Attended Via Zoom

Susannah Lofredo - susannah.gallus@gmail.com

Also in attendance were: Sheriff Officer Steven Ellerin, Zoning Administer