

## Mendon Zoning Board of Adjustment

2282 US Route 4  
Mendon, VT 05701

July 2, 2024

(Via: Certified Mail, Return Receipt requested, USPS & Email)

Carol and Brian Gates  
166 Terra Lane  
Mendon, VT 05701

Re: *Gordon Stake*  
*Appeal of Permit #2024-03*  
*100 (fka 0) Terra Lane, Mendon, Vermont*

Dear Mr. and Mrs. Gates

Enclosed please find a copy of the Findings of Fact and Decision issued in connection with the Appeal of Gordon Stake, concerning the permit #2024-03 issued on or about April 3, 2024. I am also forwarding copies of the exhibits accepted into the record at the hearing on May 28, 2024, to you via email.

Also enclosed is a copy of the Acknowledgment of receipt of the Decision and a Notice of your right to appeal this decision. Please return the signed Acknowledgment to me by US mail or email.

Very truly yours,

*/s/ John J. Kennelly*

John J. Kennelly

Encl.  
JJK:clv

Rodney McPhee, Esq.  
Members of the ZBA  
Jesse Bridge, Town Clerk  
Steve Ellerin, Zoning Administrator  
( All by email, just letter)

# Mendon Zoning Board of Adjustment

2282 US Route 4  
Mendon, VT 05701

July 2, 2024

(Via: Certified Mail, Return Receipt requested, USPS & Email to 'Rodney McPhee'  
<rmcphee@fgmvt.com>)

Rodney E. McPhee  
Facey, Goss & McPhee PC  
P.O. Box 578  
Rutland, VT 05701

Re: *Gordon Stake*  
*Appeal of Permit #2024-03*  
*100 (fka 0) Terra Lane, Mendon, Vermont*

Dear Attorney McPhee

Enclosed please find a copy of the Findings of Fact and Decision issued in connection with the Appeal of your client, Gordon Stake, concerning The permit #2024-03 issued on or about April 3, 2024. I am also forwarding copies of the exhibits accepted into the record at the hearing on May 28, 2024, to you via email.

Also enclosed is a copy of the Acknowledgment of receipt of the Decision and a Notice of your client's right to appeal this decision. Please return the signed Acknowledgment to me by US mail or email.

Very truly yours,

*/s/ John J. Kennelly*

John J. Kennelly

Encl.  
JJK:clv

All persons present at the hearing via email  
Carol and Brian Gates, via certified Mail RRR, Regular First Class Mail and email

**Findings and Decision  
Of the Mendon Zoning Board of Adjustment**

In re: *The Appeal of Permit 2024-03*  
*Appellant Gordon Stake*

A hearing on the appeal of Gordon Stake before the ZBA was scheduled for May 28, 2024 at 5:30 to be held via GoTo Meeting. Notice of the hearing on the Appeal was posted at the Mendon Town Clerk's Office and at DePalo Coffee (formerly the Mendon Country Store). Notice

Present for the hearing were: Brian Gates; Carol Gates; Gordon Stake; and Attorney Rodney McPhee representing Mr. Stake. Zoning Board of Adjustment members Jack Kennelly, Harvey Zara and Teri Corsones (which constituted a quorum) and Zoning Administrator Steve Ellerin were also present. Also in attendance were Ross Rosenzweig; Imants Smildzins and Patti Lancaster.

At the outset of the hearing Mrs. Gates referred to a letter dated May 23, 2024 requesting ZBA Chair Kennelly to recuse himself. After review of the letter and discussion of the grounds the Gates claimed Mr. Kennelly should be recused. The Chair declined to recuse himself, finding no basis for a recusal.

The property is located at 100 Terra Lane in Mendon (the "Lot"), and is in the Residential District II Zone which allows, as a permitted use, accessory structures and uses. Mendon Zoning Ordinance ("MZO") at §306 (c)(2). The zoning application references a 50' by 30' one-story garage as a proposed new construction. It is undisputed that there is no residence on the lot.

Mr. and Mrs. Gates, Mr. Stake and Steve Ellerin were sworn in. Mr. McPhee outlined his client's appeal and submitted Exhibits 1 – 13. Mr Stake testified. Mrs. Gates also questioned Mr. Stake. During the testimony of Mr. Stake and discussions between the Board and other persons, Mr. Gates periodically engaged in rude, profane and aggressive language. The Chair advised Mr. Gates that his language and behavior were inappropriate and if it continued he would be muted. Mr. Gates continued the inappropriate behavior. The Board deliberated briefly regarding the disruption after which Chair Kennelly asked that Mr. Gates be muted. However, Mr. Gates continued to disrupt the proceedings by periodically shouting in the vicinity of Mrs. Gates while she spoke,.

Mrs. Gates questioned Mr. Ellerin as to whether there were permits issued for accessory structures for other properties without a principal use or building on the same lot. Mr. McPhee objected to the relevancy of Mrs. Gates' questions to Mr. Ellerin. That objection was sustained. Mrs. Gates submitted 12 exhibits (Exhibits A-L) in conjunction with her testimony( and her request for the recusal of the Chair). Mrs. Gates also called Steven Ellerin and questioned him on why he granted the permit that was being appealed. There was no further testimony.

The public part of the hearing was closed at approximately at 7:05 pm and the ZBA went into a second deliberative session.

## **FINDINGS**

The Permit (#2024-03, Exhibit G), was approved by the Zoning Administrator on April 3, 2024,. The Permit was for an accessory building that would have been 1,500 square feet.

There is no residence on the Lot . Accessory buildings are a Permitted Use in the Residential District II (Section 306 ( c ) (2)) if the structure has less than 100 square feet. The Gates seek to construct a building with a floor area of 1,500 square feet.

A prior permit had been issued for the Lot in 2022 and not appealed, for a container as an accessory building (Permit # 2022-25, Exhibit J). Since that permit was issued the Gates have used the Lot as a place to park trailers, snow plows, additional containers, and cut timber. ( Stake Exhibit 9)

Under Section 601(b)(3) a permit is needed if there is already one accessory structure or use on a lot .

In Article XVI: DEFINITIONS of the MZO the term “Accessory Use or Structure” is defined as “A use or building customarily incidental and subordinate to the principal use or building and located on the the same lot.”

The Stake appeal was timely filed on April 17, 2014.

## **DECISION**

After consideration of the testimony and evidence submitted at the May 28<sup>th</sup> hearing the Board makes the following Decision:

1. The proposed structure would be the second accessory building on the Lot, but there is no residence or permitted principal use of the Lot. If there is no principal building there can't be any accessory building.
2. The prior permit ( Permit# 2022-25) was not appealed and has no relevance to the present appeal.

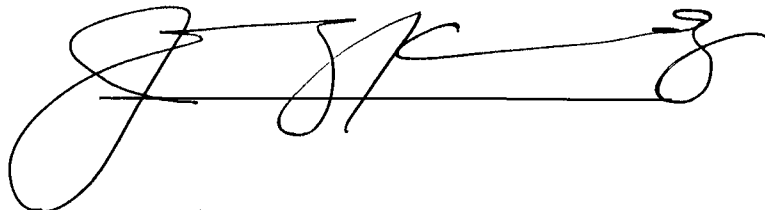
The Gates argue that there are other buildings that they characterized as accessory structures without a principal building on the premises, or the structures violated the setbacks, which were granted Permits ( Exhibits A-D, F and I) . Mrs. Gates argued that because there were permits issued to the properties identified in her Exhibits, those permits had precedential effect on the ZBA. The ZBA didn't rule on any of the other permits and Mrs Gates could not point to any appeals of the permits she was talking about. If no appeal was taken of any of the permits Mrs.Gates was proffering , those permits are valid and not subject to attack, once the appeal period has passed. 24 V.S.A. § 4472(d)

Based on the forgoing findings of fact and the provisions of the MZO, the Zoning Board of Adjustment hereby grants the Appeal of Gordon Stake. Permit # 2024-03 should have not been issued and it is hereby nullified and void.

Dated this 2nd day of July, 20024

Mendon Zoning Board of Adjustment

John J. Kennelly, Chair

A handwritten signature in black ink, appearing to read 'J. J. Kennelly', written over a horizontal line.

Therese Corsones  
Harvey Zara  
Susannah Loffredo

**Mendon Zoning Board of Adjustment**

In re: *The Appeal of Permit 2024-03*  
*Appellant Gordon Stake*

**ACKNOWLEDGMENT of RECEIPT OF ZBA DECISION and  
NOTICE OF RIGHT TO APPEAL**

By this form and signature, I do hereby attest that I \_\_\_\_\_ [Print Name], an Appellees in the above referenced matter have read and understand the Mendon Zoning Board of Adjustment's Findings of Fact and Decision, and all applicable sections of the Mendon Zoning Ordinance. We acknowledge that we may appeal this Decision of the Board of Adjustment by filing a Notice of Appeal within thirty (30) days of the date of this Decision pursuant to 24 Vermont Statutes Annotated §4471 and Vermont Rule for Environmental Court Proceedings 5(b). Any Notice of Appeal of this Decision must be filed with the Clerk of the Environmental Court, by certified mail or other means, within thirty (30) days of the date of this Decision (July 1, 2024).

Dated: \_\_\_\_\_

\_\_\_\_\_  
By:  
Brian Gates

\_\_\_\_\_  
By:  
Carol Gates