

Planning Board Meeting Minutes
July 27, 2020
Amended August 26, 2020

Members present: Taylor McGraw, Jim Amaral, Tom Albee, Laurie Hiestand
Also attending: Planner Bob Faunce, Attorney Kristin Collins, Applicant Jeff Spinney

6:30 – start, call to order by Taylor

The purpose of the meeting was to hear a request for reconsideration of the Board's previous vote that effectively denied grandfathered status to Jeff Spinney's boat ramp. Jim began by stating that he had inadvertently omitted letters of support from Toby Stockford and Mike Trask when he distributed information at the last meeting so he felt reconsideration was called for. He read an email to Attorney Kristin Collins expressing regret at the omission.

Bob Faunce read an email from Patrick Lyons, representing abutter Philbrook, regarding the reconsideration:

Bob - If I may ask one thing of you, considering we may not have the opportunity to speak during tonight's meeting, could you please verbally share with the Planning Board that you provided a draft of your memo and proposed procedural approach with the abutters via email through their counsel and that they object to (1) your memo's submission to the Board and the abutters not having the opportunity to respond to your memo, (2) any additional new argument that may be raised tonight, and (3) their inability to participate in and speak during tonight's meeting.

He then suggested that the applicant through his attorney Kristin Collins present their arguments. She started by stating that direct abutters should be allowed to speak. She said that no new information was being presented but some of it may seem new because it was in a different format. Bob responded that no new information would be allowed. ~~Kristin said that the board needed to object to anything new if they thought this was the case.~~ (This statement implies that that unless the PB affirmatively identifies an item presented by the applicant this evening as "new evidence", it should be automatically included as part of the record of the decision being reconsidered. Given the many meetings, public hearings, submissions, etc., it is unreasonable for the PB to be able to identify something as "new evidence" in every instance. If the PB's decision on reconsideration is appealed, those involved in the appeal will have the opportunity to ferret out this information.)

Kristin summarized her letter: information (letters establishing use over time) was left out of the hearing, usage was not relevant to decision, whether a structure existed in 1993 (SZO enactment) was relevant and whether it exists today, if so, it can be replaced or improved, and there is a record of continuous use over time. Kristin explained that use helps to demonstrate that an underlying structure must exist because you can't just use a raw riverbank. Evidence in record shows continuous use which likely means there was a structure.

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Kristin reviewed the timeline and asked that the two letter writers be allowed to speak. Bob agreed that they should be allowed to respond to PB questions and clarify their comments but not to present new information.

Kristin said the Trask letter was important because it attests to use beginning in the 1950s to the present except for one year due to a change in ownership. Mike said the road and launch were always maintained to some degree and boats have been launched as long as anyone can remember. The launch area might not be clearly visible because of mud.

Commented [KMC1]: See audio recording at 13:50.

Kristin reviewed the letter from Mike Trask. It states that road was well maintained, there was a turn around opening at the water, might appear natural to some, but sure seemed like it received periodic maintenance. The only year not hunted or used was during Dellenbaugh ownership. She stated that because periodic maintenance was performed, this makes it a structure that supports the use of launching boats. She also stated that lapse in use for a summer or two is irrelevant when it comes to whether this is a nonconforming structure. The current use may be heavier, but the structure is the same as has always been there because Mr. Spinney had not placed additional material on the ramp since his ownership.

In response to a question from Jim, Mike said that he never saw anyone applying gravel but it was always open and his father had talked about the ramp being there when he was younger. He said property owner Stavenhagen used a boat and trailer to launch his rubber raft. Mike knew people who used the area for launching. He never saw a dump truck dumping gravel but there was enough gravel on site to keep it usable. Probably only the minimum necessary to get in or out was applied. He usually used the launch site in October and November for hunting. He said the cut between the trees was always present and that the grass was kept back at times the ramp was being use. The access road used to be a state-aid road before it was discontinued so it was well known in the community for access to the river. Bob said that the last statement was not relevant for this reconsideration.

Toby Stockford said that the boat launching facility has always been there, built into the banks of the river and always apparent. It was maintained enough for use by the next person. He first used it in the late 1980's and has used it since then for duck and deer hunting. He has used trailers for launching duck hunting boats. Reed Road has always been viewed as a public access and he visited the site 3 times a week when he was younger and since then in the fall to launch boats. There was always lots of gravel in October. In response to a question from Jim, he never saw anyone apply gravel but his visits were mostly at night. At times it might get "shy" and then it would be fixed. He launched 14' aluminum and Jon boats with a total weight each of 1,500-2,000 pounds. It has always been a dependable place to lunch and he never got stuck. In response to a question for Laurie, he used trailers for launching. . Asked by Kristin whether the ramp ever got washed out he said that during some bigger tides it did wash out but that it would get repaired.

Jim asked whether Toby had directly observed anyone adding gravel. Toby explains he was only there for a minimal amount of time and wouldn't likely observe work.

Jim asked whether the ramp would get silted over. Toby explained that the silt would vary based on use. ~~Toby reaffirmed this was a site for sportsman, not a big commercial launch site.~~ (As such, the expectations people have should be adjusted. (I did not pick this up in reviewing the meeting audio).

Laurie said that Stavenhagen stated that the site was never used as a boat launch while Toby responded that Stavenhagen was there usually on weekends and allowed anyone to use the land but he didn't visit when they were present out of respect for them. Toby doesn't recall seeing the Stavenhagens on site while using the ramp and that he would try to avoid using it at times they were in town. It was common knowledge in town that it was a location to use for river boat access. Jim said in an email Stavenhagen indicated he used the site to launch a rubber raft. Toby said due to age, Stavenhagen needed to use a trailer for launching the raft. Kristin confirmed with Toby that he mostly used the ramp in October and November, and that the Stavenhagens were mostly there only for the weekends at that time of year.

Jim stated that Mr. Spinney's email from Mr. Stavenhagen does not explicitly state trailer use. Toby & Mr. Spinney both clarified that it is not likely that Joe Stavenhagen did this without help of a trailer due to his age and the weight of the boat.

Kristin summarized findings from witnesses and conclusions by them, showing a structure at/before 1993.

Kristin said it was clear that when the site washed out, gravel was applied and it was consistently used over time. During Stavenhagen's ownership people used his property with his knowledge according to the written statement from Stavenhagen. She then reviewed the documents she submitted to the Board. She said the Board has never applied this same level of scrutiny to other SZ projects. She said a boat ramp is a different kind of structure.

Kristin presented Exhibit A, which included evidence of past permits issued by the Planning Board for structures and erosion control below the high-tide line.

Kristin's Exhibit B showed satellite photos over time depicting that the cleared area could not be seen due to tree cover although it existed and 2013-2018 photos during which the area was in use also did not show the cleared area.

Kristin's Exhibit C showed the HT line and a portion of the area below the HT line. She said anything above the HT line is conforming. A 2002 photo shows the ramp area, logs and boards but no grass. A 2003 photo shows much grass but the structures are still apparent. The conclusion is that grass grows very quickly but one can still see the ramp area. A 2007 photo shows the dock in place. While there is much grass, the ramp was in use. A 2012 photo shows grass and rocks in the ramp area even though it is in use. The 2002 photo shows rocks and gravel in the ramp area.

Jim commented that the photos were not persuasive while Kristin responded that they demonstrate heavy trailer use even though grass is still present. The 2012 photo shows gravel and rocks present without recent addition of gravel. Laurie stated that there has never been observed addition of gravel. Kristin said that there is evidence of repairs and material added seasonally. The whole community had access to the site. Laurie said that if Jeff has used the site for years, why does it need to be improved now? Jeff responded that he uses equipment much heavier than a boat and trailer to install and remove the dock and floats. He needs to do maintenance and wouldn't want to do that without a permit.

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Kristin said that there are no photos from 1993 so the best evidence is continued maintenance. A current photo shows gravel material ~~but due to increase in use it looks different~~. She said ramps are in the same category as docks, which are permitted. If a ramp is in bad shape there is no question it can be repaired or improved but it is harder to understand a ramp as a structure. Section 15.C.6 states that if a structure extends beyond the HT line it can be improved if it has a NRPA permit. Since it references docks, the section can apply to ramps.

In response to a question from Laurie Jeff said the ramp is 12' wide while the opening is about 20' wide. Jim said the rock and gravel shown in the photos could be material washed out from the access road and there were areas not close to the ramp that had rocks and gravel. Bob said that he questioned the applicability of Section 15.C.6. Kristin disagreed and further stated that 15.C.5 could apply with ramps being an abutting structure. Bob responded that ramps could be considered an accessory structure rather than abutting structure.

The Board voted to allow abutters 5 minutes each for comments. Attorney Patrick Lyons representing the Philbrooks objected to new evidence presented by the applicant and Bob while the abutters were not allowed to present new evidence.

Abutter Carol Ervin said that new evidence was submitted, that a previous landowner said there was never a boat ramp, people were using the property without permission, old photos showed no structure and the newer photos were not in the record. Abutter Jeff Philbrook said he previously submitted an agent letter for his father and that occasional gravel is not a structure and land owner statements attested to no structure. If the site has been used for the last 18 years, it should still be OK today without improvements. He objected to the photos and new evidence.

Kristin responded that MMA suggests that new information can be submitted in a reconsideration at the Board's discretion. Stavenhagen has allowed use of his land. A use doesn't need to be specifically listed in the use table if in the same category. Improvements proposed by Jeff would reduce potential for future erosion. A Newcastle abutter said there are many locations on the river with rocks and gravel. At this point the members began their discussion.

Jim said that a structure must be in existence at the time of adoption of the ordinance to be grandfathered and there is conflicting evidence of this. He has no idea of when or how much gravel may have been applied ~~or who applied it~~. Landowners saw no structure. It might have been a spot for boat launching because the material was gravelly but there is no information on source or amount of gravel that may have been applied. He stated that neither Toby nor Mike are lying, but that he thinks this is the "natural nature of the area" with maybe a shovel or two of gravel applied.

Tom stated that after listening to all of the arguments, he believes a structure existed in 1993. Toby and Mike both know what happened on the waterway and Tom supports that.

Laurie said the area may have been used but was it maintained as a boat ramp? She needs to maintain her own area with minor gravel additions. There is no evidence in this instance. She said Delorme maps show the locations of launching areas. Nothing supports a maintained boat ramp as there are no pictures of launching or maintenance.

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Taylor said that from his observations at the site walk there is enough gravel at low tide to demonstrate a ramp, the area has been used consistently by the public and he feels a boat ramp existed in 1993. He stated that there was more than a 5 gallon bucket of gravel and it was clearly maintained. The public may have used the ramp more often than homeowners. There was enough evidence to show people have used the ramp since the 1980s and prior to 1993. *(Taylor – please review your comments. There were some gaps in the audio and some of conclusions are unclear).*

Jim said the burden of proof is on the applicant and he asked Bob about standards they could apply.

Bob said such standards may vary from application to application and it is difficult to prove something 27 years after the fact. Bob felt there was enough evidence to support the existence of a boat ramp in that time frame.

Motion by Taylor, second by Tom that a boat ramp existed at the time of adoption of the ordinance in 1993. Taylor & Tom in favor, Jim & Laurie opposed. Motion failed. The previous vote of the Planning Board has been reaffirmed.

Bob then discussed the issue of whether the boat ramp could be considered an accessory structure and referred to his memo. He read the definition of accessory structure. The applicant had received a permit for the principal structures, a dock and floats, and a ramp could be considered accessory to such permitted structures. He said the SZ table of uses is limited and there were two alternatives to address this – accessory uses/structures and uses similar to. For example, a driveway could be considered an accessory structure to a home.

Jim stated that he doesn't understand how a non-permitted structure can be allowed as an accessory. Bob explains ordinance cannot be comprehensive in listing/description. The ordinance provides a pressure relief valve for the limited list of uses because not everything can be listed in a table.

Taylor discussed whether a ramp was necessary for putting a dock and floats in the water. Bob responded that DEP found that there was no practicable alternative since the upstream dam and downstream reversing falls substantially eliminates other alternatives. Bob indicates that an accessory structure supports permitted activity and would be allowed.

Laurie asked if the portion of the ramp below the HT line needed to be removed seasonally. If so, it represented a significant change to the application and should not be considered. She said the applicant's other application would allow him to improve the upland portion of the site for boat launching.

Bob responded that the board has already voted that a boat ramp was not grandfathered and previously concluded that the use was not continuous and therefore not grandfathered.

The new application should not be used as a way of getting around the Board's vote.

Laurie and Jim both indicated accessory structure was beyond the project under review and Tom said it should not be considered an accessory structure.

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Motion by Jim, second by Laurie that the boat launch is not considered an accessory structure.

Jim & Laurie for, Tom and Taylor against. Motion fails.

Meeting concluded at 8:35 PM.

Robert Faunce for PB

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