

Zoning Board of Adjustment
Meeting Minutes September 2, 2015

5 **Present:** Jory Augenti, Jim Pittman, Tim White, Paul Bartoswicz, Mike Cahalane, Tom Hart (alternate),
Len Espie (alternate)
Others Present: Rebecca Boyden (Zoning Enforcement Officer), Roger Lacasse (Province Shore
Campground)
Minutes prepared by Barbara Thompson

10 The meeting was called to order at 7:00 pm.

Approval of Minutes:

15 Jory moved and Tim seconded to approve the minutes of August 5th with corrections. The motion
passed. Line 70: strike *agreed but*. Line 54: *in* should be *an*
Paul moved and Mike seconded to approve the minutes of August 12th as written. The motion passed.
Mike moved and Jory seconded to approve the minutes of August 27th as written. The motion passed.

20 **Old Business:** Mike reminded the members he would like to address changes to the rules of procedure
and applications in a future meeting.

Correspondence: None

Public Hearing

25 **7:17 PM**

Case #083

Province Shore Campground

36 Remick Road

Map 109, Lot 1

30 **Variance Application to allow construction of various steps, decks and porches on campsites**

Paul asked to step down and let Tom Hart take his place as Tom has had more experience with this case
than he has. Jim polled the members. There were no objections. Tom replaced Paul on the Board.

35 Jim went over the hearing procedures and read the application.

Mr. Lacasse told the Board they can disregard the application for site #48 as they have left the
campground.

40 Jim stated that Rebecca was invited as a valuable asset for this hearing.

Jim explained the Board had a meeting with the Town Attorney (Matt Serge) as this is a complex case
and the Board felt it needed some guidance on how to proceed to best enforce the ordinance and
secondly to finalize things for Mr. Lacasse. Jim summarized the talking points with the attorney. 1.)

45 These cases may not represent all the potential cases that could relate to the campground. 2.) All the
campsites need to be accounted for. 3.) There needs to be an accounting of what is in existence

presently. 4.) As a grandfathered campground any new changes on the property/sites would require a building permit.

Rebecca outlined points agreed between the Town Attorney, Mr. Lacasse and herself in 2014.

5 Although the campground is nonconforming the lots that are not part of the Province Lake District (PLD) are grandfathered and, therefore, any activity that is allowed by the Town on a campsite is allowed on those sites without the need for a variance. Mr. Lacasse does not need a variance to take an RV off and put a new one on because that is part of his privilege for having a grandfathered campground, but he does need a permit to put on a porch or a deck. The only issue in terms of denials is the portion of the
10 campground that is in the Province Lake District (established 2007), because the PLD imposes a higher standard and actually went into effect before the purchase of the campground (2009), so, in fact, the restrictions of the PLD are imposed on them. Those 29 sites are the only ones needing a variance.

15 Jory brought up the subject of setback violations on some sites and the need to make a nonconforming site more conforming.

Rebecca stated that was not part of the agreement in the exchange she had with Matt. The agreement made at that point was that the only part of the campground that was restricted by nonconformity was the PLD. The information she gleaned from the attorney was that the existing campsites that were
20 functioning could continue to function within the standard uses allowed for a campground. So, if there is campsite X, even if it is within the setback, it is grandfathered and doesn't need a variance.

Jory objected. If anyone wanted to put a structure on the site it would require a variance.

25 Rebecca rebutted that an accessory structure is a use in a campground established as acceptable within the uses of a campground.

Jory asked where she got her understanding.

30 Rebecca explained this was established with Ossipee Lake Campground (OLC). The attorney ruled that because OLC had established a precedent of always allowing accessory structures on campers in campgrounds and had been doing it for 30-40 years that it was considered a standard use for the campsites. It is unjust to deny the Province Shore Campground (PSC) the privilege of accessory
35 structures. It has to do with what has been established by precedent as an allowable use on a particular campsite.

Jory said the OLC was in place long before zoning, just like the original campground, so any new site has to come under the new ordinance. When zoning came in in 2000 and OLC expanded a couple of years ago, those lots would have to conform to the zoning ordinance.
40

Rebecca disagreed and said this was not how Matt had laid this out a year ago.

Mike read Matt's statement from the meeting with the ZBA as follows: "Because of the various zoning changes, it is very difficult to determine how each campsite was used at a particular point in time, so I
45 am operating under the assumption that the campsites at issue are allowed to continue having trailers on them. That said, no campsite use can be expanded or enlarged without a special exception from the ZBA." This applies to all campsites.

Mike stated that any campsite in the campground is a nonconforming entity and any expansion of any part of it needs to come before the ZBA.

5 Rebecca read from emails from Matt from last year. Jim asked for a copy of those emails. Rebecca handed out copies.

10 Rebecca again stated she thought that the attorney had said the sites outside the PLD could continue with all the uses and benefits that any conforming campsite could, because all of those campsites are conforming. The campground isn't conforming but the sites all meet the measurements required for a campsite.

15 Mike explained the zoning ordinance sets the measurements for sites but does not shed any light on structures, and that's an expansion by definition. It makes the lot dimensionally less adequate. Because the campground is nonconforming all the sites within the campground are nonconforming. Everything would have to pass through a variance. Building permits cannot be issued.

20 Rebecca disagreed and explained Matt may have led her astray if there has been a meeting that contradicted her premise regarding the conformity of the sites. Her understanding from Matt was that the sites were conforming and enjoyed all privileges of any other campsite.

Jory countered that where the ordinance does not allow specifically for decks, porches or an out building, that's an expansion of a nonconforming use.

25 Rebecca stated this disagreement needs to be resolved in order to proceed, for if all the sites are nonconforming then all the paperwork she's been basing all her decisions for Mr. Lacasse are pointless, because the conversation with the attorney led her to believe the only thing at issue was the PLD.

30 Jory explained the Board met with the attorney for over 2 hours. Everybody was under the same impression that PSC sites require a special exception unless they are within the setbacks. The lots talked about on the boundaries would require a variance if somebody wanted to add a deck. The lots are pre-existing so you can put a camper on but if you want to build any other structure you need a variance.

35 Rebecca asked if one can take an RV off and put another one on. Jory said yes, unless the site is abandoned. Rebecca said that based on OLC, why if it is in the setback and nonconforming, can they take their RV off and put on a new one and not enjoy the privilege that OLC has of putting structures on campsites? Jory responded the OLC shouldn't be putting structures on new lots put in after zoning.

40 To confirm the ZBA meeting with Matt, Rebecca then reasoned they shouldn't be putting any structures on any of the lots unless they took a structure off. The use of the structure was no longer grandfathered. Any structure on a campsite was grandfathered and what Matt had said to her was the use of structures on campsites was considered part of the regular use of a campsite. There was never a distinction made at that point that if OLC created new lots that those new lots would not enjoy the same privilege as existing lots.

45 Tim added that there is a vague line in the ordinance in the campground Section 1006 that says 'structures customarily incident to the operation of the campground', but does not specify whether it applies to the campground or the campsite. Tim suggested that Rebecca got one interpretation from

Matt's letter to her regarding the PSC, but the ZBA got a very strong sense of a different point of view from their meeting with Matt.

5 Jim informed Rebecca he had forwarded Matt's email to her and asked if she had received it. She said not yet so Jim gave her a copy.

Rebecca reiterated agreement is needed to go forward.

10 Jim asked if she had a copy of the 2014 letter. Rebecca handed out copies. The Board had seen this letter previously.

15 Rebecca said the letter was written to clarify the PLD only. This went out before she had completed a map of the campground she was making. She went over the map with the Board. She was operating under the impression that Matt believed the other lots could proceed with privileges any other lot would enjoy. She apologized for missing the lots in the setbacks and everyone agreed to deal with that later.

20 For Rebecca the question becomes whether the grandfathered use of a campsite includes the privileges of putting up structures.

Mike again said no. RVs coming and going is okay, but nothing in the ordinance addresses additional structures.

25 Rebecca said, "The crux is if you say the use of a structure on the site is a grandfathered privilege and not a privilege that comes with the use of the campsite, that means the new campsites at OLC would not enjoy that privilege, which is what you are indicating." The big question is: Does any new site wishing to have additional structures have to come before the ZBA or are those structures part of the customary use of a campground? Nonconformity of the campground versus the conformity of the sites.

30 Mike asked if she had anything in writing from Matt regarding this as the August 2014 letter only deals with PLD. She said his correspondence regarding PSC suggested that the nonconformity of the campground could make an argument for the requirement of variances for decks and porches, but that he did not specifically say that was so, only that an argument could be made. So based on the ZBA meeting with Matt, his point of view has evolved, but in the meantime she has issued a lot of permits.

35 Tim said the issue with OLC is merely comparative. What's probably germane is the notion that these accessory structures include the types of structures the Board is looking at. Examination of PSC situation starts from the premise that any accessory structures at all are questionable, regardless. Any campground has to have a special exception to exist, as they are only allowed by special exception, and there are standards to meet for that special exception. The Zoning Ordinance is unclear as to 'structures customarily incident to operation of a campground'.

Jim shares confusion with others regarding the deficit in the ordinance in Section 1006.

45 Tim asked if the Town Attorney has provided in writing the guidance to issue permits in any campground, what strength that has relative to our ordinance, and the Board's actions under that ordinance? Mike said the attorney doesn't get to write our zoning ordinance. Tim agreed, but said things are happening on that basis. Matt's interpretation at this time with the force of permitting was that these

structures are customary activity. Mike countered it may be a customary activity to add a deck but it comes into limits. This board might say maybe a deck of a certain size is acceptable, but maybe a deck of this size with a roof on it isn't. Matt should not be providing that definition. Tim would like to see what Matt had to say in writing. Mike said that without that being here, it is unclear how to proceed.

5

Jim interjected the board is empowered to make those sorts of decisions and interpretations. In fact, it is a core purpose of the existence of the ZBA where the ordinance is not clear or doesn't fit a particular situation, the ZBA is the arbiter and duty bound to make those decisions. Mike agreed, adding the Board can also seek legal advice, but it is just advice. The attorney doesn't circumvent the board.

10

Rebecca conceded the attorney was clearer in the ZBA meeting than he was with her and suggests the proceeding should go forward from this point.

Jim asked for clarification.

15

Rebecca cited Matt's sentence: 'No sites in the campground can be expanded (i.e. adding decks and sheds, etc.) without ZBA permission' was never made clear to her. So, this should be the new starting point. This does mean that she gave PSC misinformation, because from the ZBA meeting it means that every site in the campground now requires an application for variance for any additional campsite structure.

20

Mr. Lacasse interjected that the zoning ordinance is there to protect the abutters and asked if anyone saw any abutters. His point was there were no abutters present at the hearing.

25

Since no sites can be expanded without ZBA approval, Rebecca felt it isn't up to the ZBA to determine how the RVs come and go. But if the ZBA is requiring every single site in the campground to come before the ZBA for an accessory structure, the Board is imposing an incredible hardship not only on the campground owner but also on how the campground conducts business, which is exactly why Matt told her he felt that those accompanying structures should be considered a standard use of a campground.

30

Otherwise the review process defeats the purpose completely. The process can take up to 3 months and makes the use of any structure moot.

Jim asked Mr. Lacasse if all of these structures are temporary and removed at the end of the season?

35

Mr. Lacasse said they are taken down when the RV leaves the campground.

Rebecca said that the structure is temporary relative to the RV and its time in the campground. Relative to the structures themselves, she does not feel it is up to the ZBA to judge the purpose of a structure.

40

Tim explained that purpose and intent must be considered when deciding on the 5 criteria in a case.

Mike brought up the passing of Section 702 Change or Expansion of Non-Conforming Use and wondered if this might help in some way. He isn't sure if the coming and going of these structures make things no worse than they were before.

45

Rebecca pointed out that Section 702.2 talks about a 20% expansion allowance and argues that a 20% expansion of the RV would limit the size of any deck, steps or porches that could be added without

coming to the ZBA. More than 20% requires coming before the ZBA. This is not an expansion of use but an enlargement of the RV.

Mike brought up dimensional requirements which lead to Shoreland Protection and DES.

5

Mr. Lacasse said he spoke with the head of DES regarding the Shoreland Protection sites. He was told as long as the RVs were 50' from the water and the RV did not cover more than 30% of the site, there would be no problem.

10 Mike asked him to get this in writing and copy the Board. Mike also said that at 20% coverage you need a storm water management plan, so questioned the 30% coverage.

15 Matt had suggested the Board get a map showing the placement of structures on the sites. The Board felt this would be beneficial. Rebecca felt this was a waste of time as the sites are not static. Her feeling is the process is more important because it would apply to everything now and in the future. She explained that she had spent a great deal of time plotting the sites. She said there was no clear picture of when things were added and taken off individual sites. Jory felt this is exactly why a site map is needed to establish a base line for the campground now.

20 Jim said the Board would like to do a site walk.

Mr. Lacasse became agitated and accused the Board of making things more and more complicated and more difficult for him. He wasn't sure he wanted anyone from the Board on his property.

25 Jory reiterated his desire for a site map based on the attorney's suggestion. He said the process of granting special exceptions would require a site plan review and the map would be needed for that review.

30 Mike would like the site walk to see how Mr. Lacasse's business works and to see how things fit on the sites with the option of seeing whether a one-size-fits-all type of deck might work. After that the dimensional issues could be clarified.

35 Jim would rather do the walk-through to see what's going on before burdening Mr. Lacasse with the requirement of a full blown map. Rebecca stated there is nothing in the zoning ordinance that requires that. Jory said it was not in the zoning ordinance but the ZBA can ask for any information it feels necessary to decide a case.

Mr. Lacasse's agitation increased and he left the hearing at 8:42 pm.

40 Rebecca asked where in the zoning ordinance it states a special exception triggers a site plan review. Jim cited Article 10 Conditions for Approval of Permitted Uses text: 'The development or change of expansion of use of tracts for nonresidential uses or multifamily dwelling units is also governed under the Town Site Plan Review Regulations.'

45 Rebecca brought up the question again as to whether the 20% is an expansion or an enlargement.

Jim raised a point of order as to whether they could continue since the applicant left the hearing. He would still like to do the site walk. Rebecca agreed and felt that could be accomplished. The Board

Approved 10/7/15
Approved with changes
Not approved

discussed a date and Sunday, September 13th at 9:00 am would work for everyone with an alternate date of September 20th. Mike said he would be unable to make the 20th. Jim will contact Mr. Lacasse and get back to the members.

5 Mike moved and Tom seconded to continue the hearing until Sunday, September 13th for a site walk at 9:00 am contingent on Mr. Lacasse's acceptance of the visit. The motion passed. Mike made a motion to amend the previous motion to have a rain date of Wednesday, September 16th at 7:00 pm at the Municipal Office to proceed with the hearing should a site walk be untenable. Jory seconded. The motion passed. The hearing was continued at 9.05 pm.

10 Case #081 Special Exception for a pavilion continued from August 5th was reopened. In conjunction with the Special Exception the Board reviewed the application for Variance from Province Shore Campground for relief of setbacks for the construction of a pavilion. Jory moved and Tim seconded to accept the Variance application as complete, set a date for October 7th for a hearing, and to continue Case #081
15 until that date. The motion passed and the Variance was assigned Case #084.

Jory moved and Tim seconded to adjourn the meeting. The motion passed and the meeting adjourned at 9:20 pm.