

**ZONING BOARD OF ADJUSTMENT  
FREEDOM, NH 03836**

Freedom Zoning Board of Adjustment: July 9, 2002

Present: Chairman Jim Breslin; Bill Stoops; Craig Niiler; Alternate Howard Bouve; Alternate Frank Seabury

Notification of this meeting was posted at the Freedom Town Office, the Freedom Post Office, the July 4, 2002 edition of the Carroll County Independent.

Chairman Breslin called the meeting to order at 7:00 p.m.

Chairman Breslin invited Todd and Elaine Giles to approach the board with a request for a special exception. The request involves the removal of trees within the shorefront zone. Case #43-3-02.

Mr. Giles explained to the board his need for the removal of the trees. Mr. Giles had already contacted the State of New Hampshire, Les Babb, Selectman, Bill Klotz, Freedom Conservation Commission Chairman; Eric Bossidy, Selectman and Bob Houle, Freedom Planning Board Chairman. These town officials have reviewed the site and approve of the cutting plan. Klotz signed the copy on June 22, 2002 approving the plan. Mr. Giles submitted letters from both of his abutters, Mr. and Mrs. Banes and Mr. and Mrs. Thurston, with no objections from them. Mr. Giles stated he has taken into consideration their neighbors' request regarding lighting; it will be kept to a minimum.

Chairman Breslin asked about the camp foundation located on the plan. Mr. Giles explained it is a very old foundation from a camp that burned in 1948. They have no plan to do anything with it. Chairman Breslin stated that this plan is according to the State of New Hampshire's Shore front Protection Act therefore it is stricter than the Town of Freedom's regulations.

Chairman Breslin asked for any public comments, there were none.

Stoops asked if they would be adding any vegetation? Mr. Giles stated they would be leaving most of what is presently planted.

Niiler asked how the Giles' access the water? Mr. Giles explained that there is an old animal path that they use, eventually they plan to apply for a dock permit. There is no plan for stairs unless an erosion problem starts.

Motion by Bouve, seconded by Chairman Breslin to approve this cutting plan with the condition that all structures conform to their proper setbacks. Mr. Giles explained that all building, zoning and Site Plan Review applications have been approved. The motion passed unanimously.

Chairman Breslin explained the order of the Ossipee Lake Marina hearing. Mr. Cooper will speak first followed by public comments, the meeting will then be closed and the board will discuss and make a motion. Each item will be reviewed one by one.

Chairman Breslin invited Mr. Randy Cooper, attorney for the applicant, to approach the board. Mr. Cooper distributed to each member a Memorandum of Law explaining the case he will present tonight.

Mr. Peter Malia, town attorney, explained that the board's first item of business (#1 of the agenda) is to decide the applicants' first request, motion for rehearing on boat storage (May 28, 2002 meeting) regarding Lot #41. The board will deny or grant this motion and do not need comments from the abutters or public.

Chairman Breslin closed the hearing to the public.

Chairman Breslin stated that in his belief the board's process was not incorrect nor was a wrong conclusion made. There has been no new information found and he has no reason to believe any errors were made. Malia explained that a new hearing could be granted if new evidence is presented or a motion was made with a technical error against the applicant. Chairman Breslin stated that he feels no error was made.

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Bouve reviewed the Memorandum finding three points that he does not agree with in the material.

Motion by Bouve, seconded by Seabury to deny the appeal for a rehearing on boat storage because no new information was submitted and the board made no errors in its decision. The motion passed unanimously.

Chairman Breslin invited Mr. Cooper to approach the board with his request for an Appeal of Administrative decision on boat storage (Decision Board of Selectmen) regarding Lot #41. This is item #2 of the agenda.

Mr. Cooper explained that this request stemmed from the October 7, 1997 decision of the ZBA. Mr. Cooper used pages 4 of 13, 5 of 13 and 6 of 13 of the Memorandum of Law to explain his position (attached). Mr. Cooper explained that the exhibits noted in the memorandum correspond with the ones given at the May 28, 2002 meeting.

Mr. Cooper stated that the October 7, 1997 decision was meaningful. The Building Inspectors actions were meaningful. No one appealed the decision and now things are being reinterpreted that were never appealed.

David Smith, Broad Bay Alliance, disputed some of the facts that Mr. Cooper stated. Mr. Smith did not agree that the original 9/04/97 application was for buildings. Mr. Smith also disagreed that the property at the top of the hill was used exclusively for outside boat storage. Mr. Smith stated that he was disturbed that no one on the bay knew of the hearing. Chairman Breslin asked if he was saying no notice was made? Mr. Smith stated that he was not personally notified. Chairman Breslin explained that the notice was made through public means for those who are not abutters.

Faye Melendy, abutter attorney, wanted to characterize the situation. In 1997 approval was given for two buildings. It was not given for a number of buildings to hold 225 boats, this is an important distinction.

Kevin Price, owner of the Ossipee Lake Marina, explained the original situation. Originally a 19,000 square foot building was torn down and rebuilt in better condition. Mr. Price went to the ZBA with a request for two 50'x200' buildings. The ZBA had a concern of outside storage and asked, after negotiated if Mr. Price would accept 225 boats inside? Mr. Price accepted this as allowance for building two buildings for 225 boats. Mr. Price stated that their negotiations resulted in that number. The discussion went further than the two building he requested, the board wanted outside storage inside, Mr. Price stated he could have put the storage anywhere without it. Chairman Breslin clarified that Mr. Price had originally requested two buildings. Mr. Price stated yes.

Mr. Smith stated that he thinks the Chairperson at the time, Deborah Fauver, would disagree with that statement.

Mr. Cooper stated that Paul Dorian granted the building and zoning permits for the front building. It is very clear in the minutes that two buildings would hold 50 boats each and that is the assumption that was worked with.

Mr. Malia clarified that the 9/04/97 application copy, as submitted by Mr. Smith, was for a building to replace several dilapidated buildings. At a later date the application for the two buildings was presented.

Mr. Smith apologized if he was wrong about two buildings replacing the three dilapidated buildings.

Mr. Malia explained that the ZBA makes the final interpretation of the appeal of the administrative decision. A rehearing was requested first and then the applicant is asking for a reversal of the selectmen's interpretation that the 1997 approval was for two storage buildings with 10% outside storage. This ZBA needs to determine if the selectmen made an error.

Chairman Breslin closed the meeting to the public.

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Bouve asked about the number of six marina lots? It was explained that at the time there were six, but since there has been a merger.

Chairman Breslin stated that this board needs to decide the intent of the board at that time. Mr. Malia explained that this decision should be made relying on minutes and other information from that time. Bouve stated that using the number of 225 was not a good idea at that time, it should have been done with a specific size in mind.

Chairman Breslin asked Mr. Price if his original intent was for two buildings with 50 boats inside each leaving others outside and would you make this same request again? Mr. Price stated he would make the request with more specifics. Chairman Breslin stated he would not undo a prior board decision since the marina was satisfied with the two buildings.

Niiler stated that the question at hand is if we support the decision of the selectmen? Mr. Malia stated that it is this board's job to interpret the 1997 decision and hold the conditions to it. Niiler stated that two buildings were approved, he is unclear of the intent and cannot issue new permits based on this. Niiler asked the board if this board is supporting the selectmen's decision? Bouve stated that he feels it was not the intention of the 1997 ZBA to allow inside storage for 225 boats. Chairman Breslin stated he couldn't see any reason to overturn the selectmen's decision. Niiler commented that this echoes last month's decision.

Motion by Chairman Breslin, seconded by Bouve to deny the request to overturn the Selectmen's decision. The motion passed unanimously.

Chairman Breslin stated that tonight's meeting would go until 11:00. If at that time more business is to be conducted another date and time will be selected.

Chairman Breslin invited Mr. Cooper to approach the board with an application for Special Exception to approve the restoration plan on Lot #42 (#3 of the agenda).

Mr. Cooper explained that this request involves violations that were made along the work road. Bouve asked why this board has to approve this? Mr. Cooper explained that it is a condition of the State of New Hampshire that the town approves it.

Mr. Bill White, of the North Broad Bay Association, asked if the Freedom Conservation Commission approved the plan. The answer was yes.

Motion by Bouve, seconded by Seabury to approve the request for a Special Exception to approve the restoration plan. The motion passed unanimously.

Chairman Breslin invited Mr. Cooper to come before the board with an application for a Special Exception to approve bathroom building (#4 on the agenda). Mr. Cooper explained that the building was built with an approved septic plan and building permit. Five abutters signed an approval of Lot 42's parking and bathroom. Mr. Cooper expects a condition of this approval to be the merger of Lots 41 and 42 to receive the accessory use necessary. Mr. Cooper used pages 8 of 13 through page 10 of 13 to explain the applicant's position.

Bouve asked about the May 28<sup>th</sup> plan having a dump station shown? Mr. Cooper explained that the marina is just asking for approval of a bathhouse that was built with a permit but still needed to be seen by the ZBA. Bouve asked again, no dump station? Mr. Cooper stated that if they were seeking marina approval then a dump station would be applied for. Mr. Malia explained that the applicant's original "global approach" as a whole was found to be unacceptable. Mr. Malia explained that all the marina special exception criteria and general special exception criteria were reviewed, this time only the general special exceptions need to be reviewed.

Ms Faye Melendy approached the board stating that she disagrees with both Mr. Cooper and Mr. Malia.

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These requests are coming back in the same use as what was already denied. When a new application comes back it must have:

- 1) Material changes since denial,
- 2) Difference from previous denial.

The entire application was already denied in May. Now instead of submitting one large application, the applicant is trying to do it in pieces. The decision cannot be taken apart and approached in that manner. The board has already denied everything. Ms Melendy added that the marina has never received their special exception therefore it is a previously existing non-conforming use. Section 306 may be met but the lot is not part of the marina so it cannot use the bathroom as part of the marina.

Chairman Breslin asked for comments from the public.

Donna Tartaglino-Fahey, member of the beach club, sees problems in the future with septic and bathroom. Please keep the land Rural Residential.

Bill White, North Broad Bay Association, stated that at their boards July 6, 2002 meeting total opposition was expressed. The Association requests this board to uphold their May 28, 2002 decision and ask the selectmen to reinforce their cease and desist, adding that there is a public restroom at the Freedom Town Beach.

Donna Kupka, Freedom resident, expressed the feeling that the bathhouse is necessary for the lake's sanitation, she sees it as an asset to the lake and the facilities.

Anne Cunningham, public, asked if the bathhouse was to be used as public or restricted to the marina patrons. Mr. Price stated that anyone who would like to use it could.

Barney Shaw, public, stated he felt it would be a catastrophic problem without the bathhouse, adding he had no knowledge of the Freedom Town Beach's restrooms.

Nina Emilianoff, public, felt that people using the sandbar would not go back to the marina to use a restroom. Mrs. Emilianoff stated that if the marina is allowed to increase then there would be an increase in traffic, the marina was fined and still allowed to use Lot #42 for bathhouse. Why can't the bathhouse be moved?

Michael Emilianoff, public, stated that the impact of a large business owner over a small owner is immense.

David Smith stated that this request was already turned down once. No new reasons have been shown that this will not adversely impact the character of the land. The North Bay Association, the Broad Bay Association and Camp Nellie Huckins are all in complete opposition of using Lot #42.

Don Silke, public, had a concern of how much more traffic a large facility will add to the lake especially on a holiday weekend.

Lorraine Shabit, of North Broad Bay Road, stated she felt the bathhouse is 300' away from the water and uphill, it is not easily accessible.

Sheila Jones, Vice President of the Broad Bay Association, fears the integrity of the shoreline and water will be sadly compromised.

Kevin Price stated that he makes no money on this bathroom, it has cost him money. He was told he could build the bathhouse during the transition of Dorian to Matton and finally Matton filled out the permit.

Bouve asked Price if he had a zoning permit? Mr. Price stated he was not told to apply for one by Mr. Dorian.

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Robert Smart, Broad Bay, stated that the board needs to decide if the bathrooms shall be located on Lot #42, not if the marina has them.

Mr. Cooper stated in rebuttal to Ms Melendy's comments. The ZBA denied the May 28, 2002 application without prejudice and Mr. Cooper cited Morganstern vs. Town of Rye. There is a material change, this application is not a "global approach", the bathroom is smaller, and the parking lot is smaller. In regards to traffic on the lake, that is something for the state to control. All the additions, parking and bathroom were all in the public interest.

Anne Cunningham, public, stated that the marina should not be rewarded for after the fact actions. This sets precedence for others to do as they please. Ms Cunningham urges that conditions be set on anything granted and analyze the volume of the marina and make them stick to it.

Jim Rines, White Mountain Survey Co., expressed concern that Mr. Dorian and this board are all laymen. These things were granted with good faith and may have made honest errors. Things should not be held against someone who filed an application as a layman, also.

Pat Bernard, public, stated that the bathhouse is not on marina land, lets get back to the decision.

Tim Kupka, marina employee, stated that everyone should consider how many improvements have been made since Mr. Price purchased the marina. The traffic on the lake is not all the fault of the marina. The bathhouse is located in the best location, if this is not approved there will still be a need for bathrooms and porta-potties will be the solution.

Chris O'Sullivan, public, spoke that the facility is nicely run and has improved since new ownership.

Ms Melendy stated in rebuttal to Mr. Cooper that when the application was denied without prejudice, this was not an invitation to file a new application. Section 676.3 makes it clear that written denials are final and then trigger an appeal process.

Chairman Breslin closed the meeting to the public.

Mr. Malia stated that this bathhouse application is different from the "global application" submitted in May. It can be granted with the condition that lots 41 and 42 be merged. Mr. Malia also stated that to approve this, it is an accessory use to the marina granted by special exception even though it is not on land merged with the marina.

Seabury asked if the bathhouse could be moved to an area that is legally the marina? Niiler had a concern if it would be used in that area. Niiler added he has no problem with its location but make it legal to be there. Niiler asked if the lots are merged does it gain grand fathered status. Mr. Malia stated no. Chairman Breslin added that merging of lots does not change their zoning. The lots can be merged with or without the ZBA approval through the planning board.

The board decided to review Section 304.6.2 Special Exceptions for Marina:

- 304.6.2.1 Moot
- 304.6.2.2 Moot
- 304.6.2.3 Moot
- 304.6.2.4 Moot
- 304.6.2.5 Acceptable
- 304.6.2.6 Moot
- 304.6.2.7 Not applicable

The board reviewed Section 306.1 Special Exceptions:

- A. Acceptable. Bouve disagreed.
- B. Not applicable
- C. Not applicable

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- D. Not applicable
- E. Condition that Alvino Road's back entrance be accessible to emergency vehicle only.
- F. Not applicable
- G. Not applicable
- H. Not applicable
- I. Not applicable
- J. Soil is very porous with the bathhouse self-contained. Not an issue.
- K. Wall mounted lighting will be directed toward walking surfaces.
- L. Addition of arborvitae for landscaping. Voted 3-2.
- M. No change

Chairman Breslin asked Mr. Price if the bathroom would be open for all. He stated yes.

Bouve asked if the board could approve the bathhouse and not the parking? Mr. Malia stated yes, but the same test will be necessary for both.

Motion by Chairman Breslin, seconded by Seabury to grant the bathroom on Lot 31-42 with the following conditions:

- Subject to merger with all other marina lots
- Planting of twenty arborvitae plants 4' tall, spaced 4' apart circling the outside of the bathhouse with the exception of the entrance.
- Alvino Road's back entrance be accessible for emergency vehicles only.
- Lighting shall be wall mounted directed toward walking surfaces.

The motion passed unanimously. Chairman Breslin explained the 30-day appeal period.

Chairman Breslin invited Mr. Cooper to approach the board with a request for Special Exception to approve a parking lot on Lot #42 (#5 on the agenda). Mr. Cooper explained that there was inadequate parking at the marina and can see no negative impact.

Bouve asked how many spaces he is asking the board to approve? Mr. Cooper stated 29 spaces. Ms Melendy asked how many were on the application submitted in May? There were 59+/- . Mr. Malia asked if they are seeking approval for what is currently there? Mr. Cooper answered yes. Mr. Cooper asked the board to review the same criteria they did for the bathhouse decision for this decision.

Chairman Breslin asked for comments from the public.

Ms Melendy stated that she has the same objections as previously. This is an accessory use to a special exception that was not granted, this is the same application as presented last month.

David Smith echoed Ms Melendy. Mr. Smith read some editorial letters that were published in local papers.

Donna Kupka wanted it known that she was not an employee of the marina.

Donna Tartaglino-Fahey asked if these decisions are being railroaded through to benefit someone else? Chairman Breslin assured her that these hearings are not discussed until the public hearing.

Bouve stated that the special exception must meet all criteria to be approved. Mr. Smith agreed but does not see any evidence presented that this will not be of adverse impact.

Anne Cunningham asked for an explanation of what happens when two lots are merged from different zones? Mr. Malia explained that an owner could merge land. Mr. Cooper explained that lot 31-42 is in both the shorefront overlay and the rural residential districts and right now nothing is outside of the 300' shorefront overlay.

Ms Melendy wanted to clarify the last decision, did the board not find that Lot 42 meets special exception?

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Mr. Malia explained that the bathhouse met the criteria as an accessory use to the marina. Chairman Breslin added that lot 42 cannot be used for general marina uses, it is only approved to the bathroom so far.

Les Babb, selectman, asked if the bathroom and parking lot need to go through Site Plan Review with the planning board? Mr. Cooper stated no because these changes were made before Site Plan Review was initiated in 2001. Mr. Malia was not sure but will look into it.

Mr. White asked if the parking lot encroaches into another district? No it does not.

Chairman Breslin closed the hearing to the public.

Chairman Breslin commented that there is no increase in use with this plan. Niiler stated it remains less than the boat slip requirement. Chairman Breslin asked Mr. Price how long the parking lot has been there? Mr. Price stated since 1998. He has a letter from the Freedom Conservation Commission stating that no violations are present.

The board decided to review Section 304.6.2 Special Exceptions for Marina:

- 304.6.2.1 Not Applicable
- 304.6.2.2 No Change
- 304.6.2.3 Not Applicable
- 304.6.2.4 Not Applicable
- 304.6.2.5 Not Applicable
- 304.6.2.6 No Change
- 304.6.2.7 Not Applicable

The board reviewed Section 306.1 Special Exceptions:

- A. Acceptable
- B. Not Applicable
- C. Not Applicable
- D. No Change
- E. Acceptable
- F. Improving
- G. No Change
- H. Alvino Road's Back entrance is only accessible for emergency vehicles. Acceptable.
- I. Not Applicable
- J. Shall not be paved.
- K. No Change
- L. Meets Requirements
- M. Not Applicable

Chairman Breslin stated that this application meets all criteria for marina and overall special exceptions.

Motion by Chairman Breslin, seconded by Stoops to grant the special exception to approve parking lot with the following conditions:

- There shall be no winter boat storage in the parking lot.
- The parking lot shall not be paved.

The motion passed unanimously.

Chairman Breslin invited Mr. Cooper to approach the board with a request for a variance. The request involves approval of those portions of lots 41, 41-1, 41-2, and 41-3 not in the Shore Front district to be used for marina use by special exception (#6 of the agenda). Mr. Cooper clarified that this does not include lot 31-42. Mr. Cooper stated that Mr. Price has a pre-existing marina use with approval only in the 300' of the shorefront, the use is split and only half is permitted. If the variance is granted then the remainder can be considered marina but this does not mean they can do things on it.

Mr. Cooper reviewed pages 10 of 13 through 13 of 13 in the Memorandum of Law.

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Mr. Malia asked if the marina is asking for any more structures? Mr. Cooper stated no. Mr. Malia stated then section 502 would no longer be an impediment if this variance were granted. Mr. Cooper stated it would not be an impediment.

Chairman Breslin asked for any comments from the public.

Ms Melendy wanted the board to realize that this would be an expansion of a non-conforming use. It is important to keep in mind about how big the marina can get, it should not be allowed to grow.

Mr. Malia summarized that currently the marina is under Section 502, if this variance is granted the marina will not be subjected to that ordinance, they will just go on to special exceptions.

Motion by Bouve, seconded by Chairman Breslin to deny this request for a variance for the following reasons:

- No hardship was found.
- The impact on the neighborhood would not benefit the public interest.

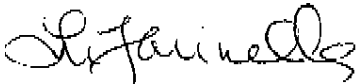
Ms Melendy clarified with the board the 30-day appeal period. Chairman Breslin stated that there is a 30-day period during which time anyone can appeal this decision.

Mr. Cooper asked the board if Ms Melendy is asking the ZBA to rule that the bathroom and parking lot cannot be used during this appeal period? Ms Melendy stated she was just asking for the same appeal period that Mr. Price had in the previous month. Mr. Malia stated that the selectmen would have to decide if the bathhouse and parking lot could be used, the ZBA is not an enforcing board.

Motion by Chairman Breslin, seconded by Niiler that the meeting be adjourned. The motion passed unanimously.

The meeting adjourned at 10:45 p.m.

Respectfully Submitted,



Linda Farinella, Secretary  
Freedom Zoning Board of Adjustments