

Published October 27, 2024

Draft Minutes

Unofficial until approved.

Jackson Zoning Board of Adjustment

Public Hearing Thursday October 16th, 2025 regarding an Appeal of an Administrative Decision by Katherine and David McNeil concerning 59 Middle Mountain Trail

- Present:
 - ZBA: Frank Benesh, Dave Mason, Huntley Allen, and Peter McGlynn. (Member James Wasco was not present)
 - Katherine and David McNeil (Applicants) and Donald M. Ekberg, Esq. (Counsel to Applicants)
 - Town Engineer Burr Phillips and Town Code Enforcement Officer Kevin Bennett
 - Others Attendees: Tom Rozek from Elevated Excavation in Berlin, NH (Contractor of McNeil) and Jean Goodine (abutter) listening via Zoom).
- At 7:30pm The Chairman opened the public hearing and reported on the public notice in the Conway Daily Sun and mailings to abutters.
- The Chairman then noted that the zoning board of adjustment jurisdiction was limited the alleged violation of the Soil Disturbance section of the Zoning Ordinance (“Ordinance”) and asked that all testimony be limited to that issue and in the interest of time avoid discussion that was not relevant to this issue. He also sought to clarify the SelectBoard’s basis of the violation notice, asking Town Engineer Phillips to confirm that the cited violation was respect to the McNeil’s (contractor) changes, without town approval, to the septic plan by removing a stone pit and extending a culvert, thereby violating Section 4.1.6 of the Ordinance. Burr Phillips agreed to this characterization.
- Counsel to Applicants started his presentation by stating it was important to distinguish two things: (1) the flooding of the Goodine property and (2) the violation of the ordinance. He stated that there is no question a lot of water flowed down

onto the Goodine property but exactly how it happened, where it came from and whose water it is have not been established. He suggested that most of the water that flowed onto the Goodine property was not the McNeil's water but from the development across the Middle Mountain Road and uphill from the McNeil property. He also stated that it was viewed as a difficult lot to build on given the water being dispersed on the lot from elsewhere. He offered another explanation of the source of the water was a result of the culvert on the uphill side of Middle Mountain Road being blocked by unknown persons at an unknown date and thus diverted into the town culvert under Middle Mountain Road onto the McNeil property. Ultimately, Counsel argued that the issue is that the McNeil's are being asked to continue to deal with all the water on their property and not let it flow onto the property of abutters.

- When questioned by members McGlynn and Mason as to whether the actual as built culvert and pit consistent with the septic plan, Counsel deferred to Tom Rozek who admitted the culvert was extended past the planned location of the stone pit to the back corner of the property out of concern of the absorption capacity of the clay and ledge soil of the McNeil property and the likely performance of the stone pit in water absorption.
- Subsequently, Town Engineer Phillips noted that when he visited the property before the construction, the outflow of the Town Culvert was directed in a ditch that spun out into the middle of the property and dispersed across the property without evidence of channeling suggesting it flowed onto abutter's property. What the McNeil's have done is created a concentrated discharge. He added that it was the responsibility of the McNeil's and their contractors to come up with a design that avoided runoff onto abutters.
- When questioned by member Benesh, Town Engineer Phillips agreed that there was no written notification by him or Code Enforcement Officer Bennett of the ordinance violation to the McNeils or their contractors prior to the SelectBoard's violation and fine letter.

After closing the hearing, the Board deliberated and decided the following

- The Board determined that the changes in the drainage and stone pit contained in the approved septic plan eliminated the stone pit intended "to lessen impact on abutting lots" resulted in a concentrated discharge and violated Section 4.1.6 of the Zoning Ordinance (Vote 4-0)

- The Board also determined that the operative provision in Section 4.1.6 of the Zoning Ordinance¹ is contained in both versions of Section 4.1.6 amended as of March 10, 2015 and as amended as of March 11, 2025. *(Vote 4-0)*
- As the failure to construct the drainage as specified in the approved septic plan is sufficient make the above finding of a violation of Section 4.1.6 of the Zoning Ordinance, the Board makes no finding on other matters raised in the appeal that do not bear on the violation *(Vote 4-0)*
- The Board finds that the Select Board's Order did not provide adequate written notice to reasonably give the McNeil's actual notice of the issue, consistent with *Town of Swanzey v. Liebler* *(Vote 4-0)* and the assessment of the \$275 fine was the imposed fine is inconsistent with the prior written notice requirements of RSA 676:17 and is rescinded. *(Vote 4-0)*

The meeting was adjourned at approximately 9:00 pm.