

**Present:** Andy Jellie (Chair); Terri Fisk (Vice Chair), Nancy Houghton, Bob Davis, and Matt Baran

**Staff:** Liz Emerson

**Public:** Sharon Francis; Leanne & Ben Mortell; Kathy Eames; Katie & John Lajoie; Patrick O'Grady; Christopher Hill; Jim Romer; Tom Adams; Janessa Keith; Jim Coutois; Evelyn Page; Erica & Albert Pfister; Stan McCumber; Jenny Wright; Ian Ludders; Roger Williams; Joan Ilves; Nick Taylor; Maureen Spilsbury; John Tuthill; Mark Frizzell; Robert Frizzell; Richard Carter

**Zoom:** Roger & Brenda Clarke; Kirk Frost

Chair Jellie called the meeting to order at 6:00pm.

**APPROVAL OF MINUTES OF PREVIOUS MEETINGS: July 21, 2022**

**Terri Fisk moved to accept the Minutes of the ZBA meeting of July 21, 2022, as submitted. Bob Davis seconded. With five (5) members in favor the Minutes were approved.**

**Case # 23-01: Roger Clarke Building Permits Appeal:** The Perry Mountain Community Group wishes to appeal the Building Inspector's approval of two building permit applications. The first application is for a 60'x40' barn/garage. The second is for a 10,000 square foot house. The property is identified as Map 222 Lot 001 and is located at 1484 Borough Rd. in the Watershed Protection District (Zone D).

Ms. Emerson explained that the appeal asked for the Building Code Board of Appeals (BCBA) to review the Select Board's decision. However, that is not within the BCBA's power. Per RSA 674:34, the powers of the BCBA: the BCBA shall hear and decide appeals of orders decisions or determinations made by the Building Official or the Fire Official, relative to the application and interpretation of the State Building Code or State Fire Code, as defined in RSA 155-A:1. An application for appeal shall be based on the claim that the true intent of the Code or the rules adopted under have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The BCBA shall have no authority to waive requirements of the State Building Code or State Fire Code. Appeals of decision of any local BCBA shall be made within 30 days of the Board's decision to the State Building Code Review Board, as outlined in RSA 155-A:10.4C. The BCBA only has authority over decisions made by the Building Official or Fire Official.

*Nancy Houghton recused herself from this item.*

Ms. Fisk noted that in her opinion, there is a discrepancy in what the Board can decide from what Ms. Emerson is stating that the Board can decide. Ms. Emerson stated the Town Attorney has reviewed the entire appeal application and what was previously approved; all information Ms. Emerson relayed has come directly from the Town's attorney.

Ms. Emerson explained that the BCBA cannot overturn Select Board decisions. This must be done through the Superior Court. The Board should review the appeal and all the information in the packet. The Board should review the five criteria as part of the Building Code and review the Building Inspector's review of the building permit.

Ms. Fisk suggested that the applicant should first speak to the criteria.

A member of the Perry Mountain Community Group stated that the scope of this building is the first issue the Board needs to decide. He quoted RSA 676:3, which was amended in 2022, and went into effect in August. This is significant because it requires the BCBA in its decision not to accept/deny the appeal, but to make factual findings.

Bonnie Remick stated that Class VI Roads, conservation easements and land use protections in remote areas have been developed in the public interest. No Town or public official is exempt from this framework. The BCBA does have jurisdiction to hear the appeal and reverse the Select Board's decision, if it feels that decision is unjust and would be detrimental to the public interest. The Select Board failed to consider its obligation as grantee of the conservation easement to enforce and protect all provisions of that easement. As grantee, the Select Board is obligated to assure the area continues in its original undisturbed state as a safe haven for wildlife of all types. The Select Board has failed to protect the public interest in that regard. According to the legally binding provisions of the conservation easement, the road in this area was established within boundaries at the stone walls and marked trees that border the road. The Select Board failed to follow the process required by RSA 674:41, which generally prohibits the issuance of a building permit on a lot unless that lot has frontage on a class five road. No evidence has been provided that there is an approved plan for the proponent's use of the road. The land purchased by Mr. Clarke was not marketed as a building but rather as an off-the-grid, roughing it, possible lot for tenting or for a small hunting cabin. This is not the area for a 10,000 s.f. one story residence. No evidence has been provided or requested by the Select Board to show that Mr. Clarke has provided satisfactory information regarding how water and power will be provided, and how septic disposal will be handled. She is concerned regarding the water runoff from the clearing. The building permits must be remanded to the Select Board for the following documentation: building location, construction start date, all septic system permit compliance, compliance with all local land use regulations, and adherence to Watershed Zone D guidelines adopted by the Charlestown Planning Board in 1982. There are incomplete documents with no signatures, no contractors, and no license numbers. This proposal is incomplete and appears to be illegal in several respects. She noted that her front door sits 45' off the road and her garages 6' off the road. Mr. Clarke has moved her unlocked gate at the beginning of the road. The Select Board has ordered her to remove the gate, but she needs to be able to move her livestock to/from the pasture. This new determination is a hardship her legal rights. The Select Board has continuously failed to protect the public interest and the conservation easement. The building permits should be remanded back to the Select Board for proper completion and inclusion of all required documents.

Chair Jellie asked for other direct abutter comments. Ms. Emerson stated that the direct abutters are listed at Bonnie Remick, Kirk Frost, and the Carol Brown Trustees.

Kirk Frost stated that he believes it is incorrect that the BCBA cannot make this appeal decision. Section 8 of the Charlestown Building Code illustrates that the BCBA has full authority on this matter. He urged the Board to consult Matthew Decker, Town Attorney, on this matter. Mr. Decker informed his attorney that the permits filled out needed to be withdrawn, and he was attempting to get the Select Board to do the same. He stated that he has noticed that the Select Board, regarding their approval of every permit that has come before them lately, has made rushed decisions, without any regard or discussion pertaining items raised during the meeting. The barn permit was submitted on 10/19/22, and the Select Board stated several times that the Town Attorney had warned them not to approve the permits. Thus, the Select Board actually voted against the permit on 10/19/22. On 10/26/22, the Select Board reviewed a new blank barn permit and a new dwelling permit for a 10,000 s.f. structure, and the Select Board voted to approve both of them without allowing any public input. Sharon Francis was at that meeting and tried to speak but was

shut down by the Selectboard Chair. Mr. Frost continued that his attorney stated the Town Attorney has admitted that the permits were deficient and do not follow the process of Charlestown. Mr. Frost urged the Board to consult the Town Attorney. The Board is supposed to act as a check and balance to the processes of Charlestown. He asked if any Selectboard members were present.

Ms. Emerson stated that there were Selectboard members present, however tonight's Board is not reviewing the Selectboard's approval; it is reviewing the building permits themselves and the Building Inspector's approval. The appeal was made out to the BCBA and the RSA states that the powers of the BCBA are to review the Building Inspector's or Fire Chief's interpretation or approval of building permits.

Mr. Frost urged the Board to consult the Town Attorney, as it has much more authority than what it is being told.

Roger Clarke stated that most of what has been brought up by the abutters is false. The facts are not in place. The road has been listed as a highway since the 1700s, going from Charlestown to Acworth. This is a two-rod road, 33' wide, and also has a building structure located on the road. This structure is not a shed, as previously stated by abutters; it is actually a four-car garage. Ms. Remick is trying to protect the entire property by installing a gate and trying to run everybody out. However, he bought this property wants to be able to come/go freely. The gate was not correctly installed. Regarding the runoff concern, runoff for this property goes down 200' over the side of the mountain. There should not be any concerns regarding water runoff, as that is his problem.

In response to a question from Ms. Fisk, Ms. Emerson stated that the Planning Board did not provide comment to the Select Board on this item.

Ms. Fisk noted that, per the approved 12/6/22 minutes, the Select Board required comment and review from the Planning Board regarding building permits on Class VI roads. However, it then notes that the Planning Board is not required to comment on this item, but it was instead suggested by Town Counsel as a formality. Per Section 674:41, Erection of Buildings on Streets, no building should be erected on any lot with any part of the municipality, nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed is a Class VI highway, provided that the local governing body, after review and comment by the Planning Board, has voted to authorize the issuance of building permits for the erection of buildings on said Class VI highway or portion thereof. The Planning Board's comment seems to be an essential part of this item.

Ms. Emerson stated that this advice on actions taken came directly from the Town's Attorney. Ms. Fisk noted that he is not present at the meeting to speak to this, and it may have been in error.

Ms. Emerson explained that it has never been a practice in Charlestown for Class VI permits to go before the Planning Board for review before going to the Select Board. She noted a number of recent applications which followed that process.

Ms. Fisk noted that simply because it has not generally been done in the past, does not mean that this is the correct way to handle things.

Ms. Emerson explained that the consensus of the Planning Board was to not send comment to the Select Board. The Planning Board noted that the Master Plan wants to open up Zone D for more development.

The Planning Board noted that the Master Plan was created by task forces made up of over 70 people and adopted by the Planning Board. The Master Plan is essentially the Planning Board's comment.

Bill Rescsanski, ex-officio to the Planning Board, asked what will happen if the BCBA overturn's the Building Inspector's decision. Ms. Emerson explained that this would rescind the Building Inspector's approval but would not rescind the Select Board's approval for Mr. Clarke to build on his property. The only thing missing is an exact location for the proposed home and a septic design. This is due to Town boundary issues. Mr. Clarke would like to build as close as possible to the top of the mountain, but he still needs to meet setback requirements. Once the location is known, the design of the septic system will be finalized.

Ms. Fisk reviewed criteria #5 and noted that the applicant's proposed project appears to be in compliance with the guideline requirements of being at least five acres and that there are no streams, brooks, ponds, or reservoirs on or near the applicant's property. She asked if there are any runoff concerns, due to the topography of the site.

Ms. Emerson stated that the area is very steep. Per the Watershed Guidelines from 1982 for construction, residential development in the Watershed Zone is limited to lots of five acres or more. The developer of any such lot must demonstrate before construction begins that the ground percolation is satisfactory for installation of a septic system. If the area to be cleared is adjacent to a stream or brook, the developer shall use buffer strips, hay bales, debris basins, mulching ,or other means to prevent soil from washing into the waterway.

In response to a question from Ms. Fisk, Ms. Emerson agreed that the septic system has not yet been finalized. A rough idea and sketches have been provided, but nothing has been sent to state yet, until boundary lines are decided on.

Ms. Fisk noted that she has no reason to believe Ms. Emerson, or the Planning Board gave incorrect information for any personal reasons, or to protect any previous positions taken. However, she requested the Town's Attorney submit in writing to the BCBA, to assure what Ms. Emerson is telling the Board is accurate.

Chair Jellie explained that this concern opens the scope of the Board's consideration.

Mr. Baran suggested that the Board table this item to get the Town Attorney's opinion. Ms. Fisk agreed.

Sharon Francis stated that she has additional information that has not yet been presented.

Chair Jellie stated that he will allow Ms. Francis to speak if the Board does not choose to table this item at this time.

**Terri Fisk moved to table this hearing to January 26, 2023, at 6pm. Matt Baran seconded. With five (4) members in favor, the hearing was tabled.**

**Administration:**

None at this time.

**Bob Davis moved to adjourn the meeting. Matt Baran seconded. With five (5) members in favor, the meeting was adjourned at 7:12pm.**

Respectfully submitted,

Kristan Patenaude  
Recording Secretary