

**Town of Cavendish Planning Commission
Appeal Hearing Minutes November 15, 2023
Cavendish Town Office, 37 High Street, Cavendish, VT**

Members Present: Tim Calabrese, Shirley Clark, Bruce McEnaney, Noah Schmidt, and Miguel Seville.

Members Absent: Jeffrey Strange

Members of Public: Rick Chambers (Cavendish Town Manager), Rebekah Fontaine (Okemo Valley Television), Jason Rasmussen (MARC), John Broker Cambell (VT DEC), Cheryl James, Charles James, Mike Kinahan, Nate Gritman, Daire Gibney, Donovan Nichols, Karen Evans, Chris Saylor, Eric Evans, Christina Lefebvre, Abraham Gross

NOTE: A SITE VISIT TO 256 DEPOT ST. WAS CONDUCTED PRIOR TO THE HEARING AT 4:00 PM

1. Call Hearing to order, roll call

Tim Calabrese called the meeting to order at 6:30pm.

Tim opened the hearing, stating: "This hearing is for an appeal of a flood hazard violation notice dated 9/19/2023. Submitted by Charles and Cheryl James for their property at 256 Depot Street, Proctorsville. In response to a violation letter dated 9/19/2023 which states that a violation of the Cavendish Flood Hazard Regulations has occurred. The violation is in reference to Section 6-C. The warning was posted October 20, 2023 on the town's website, the town's posting board, and the Vermont Journal the week of October 23, 2023."

Tim goes on to outline how the hearing will proceed, starting with testimony from the Jameses and after that any one wishing to provide comment or testimony to the Planning Commission. Tim then swore in all members of the public who wished to speak.

2. Appeal Hearing
 - a. **Appellant:** Charles & Cheryl James 256 Depot St, Proctorsville
 - b. **Reason For Hearing:** Appeal of a Flood Hazard Violation Notice

Testimony from Charles and Cheryl James:

Charles introduced himself and outlined the damage caused by the flooding on July 10, 2023 along with subsequent flooding later in July. He outlined the landscaping work he

conducted, including the planting of trees and the unintentional construction of creating a berm. He said he was willing to work with the town to make things right if he inadvertently made an error by creating a berm. He explained the planting of the trees and the addition of a fence was focused on privacy from their neighbors. He explained their relationship grew contentious after the flood and wanted to provide his property with privacy. Charles concluded that he was more than willing to work with the town to resolve the issue and was not aware of any Flood Hazard Regulations in the Town of Cavendish.

Christina Lefebvre provided testimony as an abutting landowner. She outlined her concern with the grading work that was conducted post flood, the creation of the berms, and the addition of a fence. She outlined the additional risk of flooding this work creates on her property and risk of being able to retain insurance. Eric Evans provided testimony regarding changes made post flood and provided photos to the board. He gave context to the photos to help understand when and where photos were taken. This packet was passed out to the board and offered to the public to view. He expressed concerns about the James' post-flood reconstruction, particularly the creation of a new berm and the elevation of their property. They feared increased flood risk to their home due to these changes and cited violation of the town's flood management plan.

The Jameses informed the Commission that they had been in contact with different State agencies that gave them information that led them to believe that what they were doing was permitted and allowed.

John Broker Cambell, a State representative, understands this issue to be a local floodplain issue which the state does not get involved with. He noted that he is involved in a very narrow scope of his work and is not in a position to speak for the other agencies that the Jameses may have been in contact with.

Mike Kinahan gave testimony to the site work conducted at the James property and stated that he saw no material change in the backyard aside from the creation of the berm from planting trees. He also wanted to highlight the mitigation efforts they made when installing their fence.

Karen Evans asked about the FloodPlain Regulations. Tim informed her that this property is in a river corridor and stream setback. Tim stated that in these areas you cannot have any fill, or any obstructions within 50' of the river bank. He said you can plant trees, if you have an existing structure within the 50' you cannot add on to that structure toward the stream bank you are limited to adding on behind the existing

structure. He highlighted the table on page 5 of the Flood Hazard Regulations outlining permitted uses.

Noah asked the Jameses why they didn't plant their trees flush with the existing grade to avoid creating a berm.

Cheryl responded that they didn't plant in the ground due to the clay in the soil and saturation of the soil. She stated that she was told that the soil will settle 18-24 inches once the water table lowers. That is the reason that they mounded the trees up to ensure they will thrive.

Tim asked about clarification on timing and when certain items were constructed. The conclusion was the berm and the fence. The Jameses did not think the fence was on the violation letter so should not be included in this hearing. Rick Chambers, the Town Manager stated that the fence would have been on the violation letter had he seen it and believes it should be considered in this hearing. Cheryl found the date of the fence construction which was September 29, after the violation letter was written. Which explains why this was not included. It was the feeling of the board that they would include the fence in the hearing rather than forcing all parties to go through an additional hearing to deal with the fence separate from the berm because they are so closely tied.

Mike Kinahan had a question about adding a fill which is permitted when used to elevate existing structures above the floodplain. John Broker Cambell noted that this refers to specifically raising an existing structure which is considered four walls and a roof. So a fence would not be considered a structure.

There was a question about what a fence is considered in terms of definition. Noah clarified that a fence is considered an obstruction in the Flood Hazard Regulations.

Chales understood that a fence was allowed if a fence was 24 inches off the ground, he is unclear where he found this source of information.

Miguel highlighted the issue with the panel fencing along the streambank with the potential of erosion and the panels causing blockages down stream leading to increased flooding.

The Jameses said that they are willing to work with the town and remove the fence within the 50' setback if need be. They are also willing to take whatever mitigation efforts to solve the issue regarding the planting of trees in a berm.

Eric Evans asked if this violation will address his belief that their property is 18" higher than it was pre flood. He asked if there's a way to ensure that their property remains downstream of theirs as it had been pre flood.

Rick thought it did look higher but is unable to verify that with any evidence. He also mentioned that we have heard testimony from many people tonight along with letters written stating that the elevation did not change.

Tim is concerned with giving a height needed for a fence to be raised in order to comply with Flood Hazard regulations. John Broker Cambell stated that this is a river corridor which is different from the FEMA maps which give depth. A river corridor simply shows where water will flow laterally in the case of a flood. John does not believe that anyone would give a specific height measurement.

Tim asked about what the depth of the water was during the peak flood. Cheryl said that it was up to her knees on her property and Christina said it never went above her slab which she estimates to be 8-12".

Tim wrapped things up asking if there were any additional comments.

Eric added that they had spoken to the state about trying to find a way to create a spillway of sorts on the opposite bank to help mitigate flooding on the property owners.

3. Other Business

4. Adjourn

Miguel made a motion to close the hearing. Bruce seconded the motion. The motion passed unanimously.

Respectfully submitted
Noah Schmidt