

ZBA Minutes 10/3/11

Contributed by Lisa Fellows-Weaver
Tuesday, 03 January 2012

Zoning Board of Adjustment

Minutes

October 3, 2011

Official as of November 28, 2011

Chairman Bruce Farr calls the meeting to order at 7:00 p.m.

PRESENT: Chairman Bruce Farr, Tom Lavigne, Nona Holmes, Robert Bailey, Alternates Jean Lane, Doug Pollock, and Curtis Naleid, Board Administrator Linda Smith, and Board Secretary Lisa Fellows-Weaver.

VOTING MEMBERS: Bruce Farr, Tom Lavigne, Nona Holmes, Alternate Doug Pollock, and Alternate Curtis Naleid.

ABSENT: Vice-Chairman Roy Pender

MINUTES

Mr. Lavigne makes a motion, second by Mr. Pollock, to approve the minutes of September 26, 2011, as written. Mr. Farr clarifies a statement noted in the minutes which states that Mr. Cleasby had stated that the selectmen granted him permission to build a year-round home on this parcel. Mr. Cleasby replies yes. Mr. Farr asks if a building permit was provided. Mr. Cleasby replies no, he attended a selectmen's meeting and he spoke to the board at that meeting and told him that as long as he was able to obtain a legal septic system design from the State of NH, the current use taxes be paid, and he would be proceeding to getting a building permit and the selectmen were working with him. Mr. Farr states that this is not the same as having permission to build a home and he would like to have a copy of something in writing. Mr. Cleasby states that the permission was verbal and he provides a letter for the board to review noting conditions. Mr. Farr reads the letter noting the conditions and states that there is nothing available in writing and Mr. Cleasby states that approval was a verbal conversation held at a meeting. Mr. Farr states that he believes that the minutes are accurate as provided. Motion passes unanimously; 5/0.

APPLICATION

Case #11-04: Larry Cleasby, Old Pittsfield Rd. Map 205; Lot 1. Applicant is seeking variances to permit construction of single family residence. Variance to Article IV, Section (B)(1)(b)(3) and (c)(1), lot has 0' frontage where 150' of frontage is required on a town maintained road.

Mr. Farr asks if the proposed house or foundation exists today. Mr. Cleasby states that they have started with the footings.

Mr. Pollock asks if the road is a Class VI road all the way through and is the road subject to gates and bars. Ms. Smith replies that at the March 29, 1980 town meeting, Art. 48 was proposed to close eight roads including Old Pittsfield Road, as recommended by the highway advisory committee. She states that the location of Old Pittsfield Road was described from the Silvana Cenci's driveway to the Epsom line. She states that the Cenci property is now the property of Robert and Janet Clark. Ms. Smith adds that there was some discussion held at that meeting regarding maintenance on Class VI roads.

Mr. Lavigne asks who has paid for all of the improvements that have occurred on the road since Mr. Cleasby has lived there. Mr. Cleasby states that he has paid for the gravel, for engineering services, and for all the work that has been done. He adds that he sold his older home and now that owner has an agreement with the town for maintenance and improvements. Mr. Cleasby states he hired a soil engineer to test the soils and to do all the work for the culvert permit.

Mr. Lavigne states that he has reviewed all of the materials provided at the last meeting dating back from 1974. Mr. Cleasby states that there was a lot of controversy in the past and much of the problem was from other residents trying to stop the water from coming down the road way. Mr. Cleasby states that he is on the back side of the road and his land does not bring any water to the road. He explains that all of the water from the area runs off the opposite side of the hill. He adds that most of the water issues are from the first part of the road and the watershed. He states that the road is ledge bound on both sides and there is no other area for the water to go. He states that perhaps this is why the pond was built, as a detention pond.

Mr. Lavigne states that the road is in fair condition, better than what it was many years ago and he asks who paid for all of the improvements. Mr. Cleasby replies that in total he has paid over \$100,000 already.

Mr. Cleasby provides a copy of the maintenance agreement with town. He states that as far as major maintenance he is required to contact the road agent regarding removal of trees or major repairs. He states that he basically does the maintenance like snow plowing. Mr. Farr states that the agreement does not obligate Mr. Cleasby to spend any funds on the road. Mr. Cleasby replies that it does actually based on the safety for his family and others living on the road beyond him. Mr. Cleasby states that the town will not spend funds on the road. Mr. Farr states that Mr. Cleasby has a personal obligation to maintain the road; however, this agreement states that Mr. Cleasby must have the town's permission before work can be done on the road and the town agrees to consider granting permission; this does not mean that there is a financial responsibility. Mr. Cleasby states that in the beginning it was his financial responsibility to everything that needed to be done to the road. He adds that this agreement was after the fact. He purchased the original lot from the town as a tax sale with the rights to build a house and the land was sold with the agreement that he could build the house. He explains that when he met with the selectmen he told them that he was interested in purchasing the lot only if he was able to build a home and the selectmen were interested in the tax money. He states that this was agreed on right up front before the purchase was completed. Mr. Farr requests to see the agreement stating that he could build.

Ms. Smith refers to a document she understands he may be referring to, called an agreement and release, and when a house is built on a private or Class VI road the selectmen require this agreement be signed by the property owner and is then recorded at the registry of deeds.

Discussion ensues and Mr. Cleasby states that this information is noted in the selectmen's minutes. Mr. Farr explains that this is a change in past practice and he was unaware that the town sold buildable lots.

Mr. Cleasby states that he originally had two building permits for the lot. He states that there was a technicality and later the permit was reissued.

Ms. Smith provides the board with the agreement and release for this property from the building department's file. She states that there is language holding Mr. Cleasby responsible regarding the road. Mr. Farr states that this is a waiver of liability and he asks if there is a difference between selling a property as a buildable lot and telling people that if they would like to build on their lot they need to sign a waiver. Ms. Smith explains that town counsel has explained that a lot is only a building lot if a building permit can be obtained. The process must be gone through to obtain the permit.

Mr. Lavigne asks if Mr. Cleasby has entered into an agreement with the neighbors beyond him concerning the maintenance with the road. Mr. Cleasby replies no as they had to have their own agreement and release signed. Ms. Smith explains that Mr. Cleasby will be required to maintain the road, which is required in the agreement and release form. Mr. Farr reads the agreement and notes that there is a statement for maintenance for the traveled portion of the road.

Ms. Smith adds that the relief being requested of the zoning board is so that the applicant does not have to upgrade the road, as required in the zoning ordinance. She states that there are two separate items that need to be addressed in order for Mr. Cleasby to obtain a building permit: the zoning ordinance and state statute RSA 674:41. She adds that the selectmen have authority over issuance of building permits for Class VI roads under RSA 674:41.

Mr. Lavigne states that this is a Class VI road and the applicant is requesting relief for a building permit.

Variance Criteria

1. Granting the variance would not be contrary to the public interest.

Mr. Cleasby states that the house is not on the main road and is treated like a private driveway. Mr. Farr explains that the town has voted that everyone needs 150' of frontage and states that Mr. Cleasby is claiming that with this situation there is no frontage, and is still in the public's interest. Mr. Cleasby replies that he has frontage; however, it is frontage on a Class VI road. He adds that he is a taxpayer and he will be allowed to have a residence in town. He feels it is a benefit to the town to have a taxpayer and revenue for the property. He adds that he has been a resident in this town for many years.

2. The use must not be contrary to the spirit of the ordinance.

Mr. Cleasby states that this is a Class VI road. Mr. Farr explains that his interpretation of this condition is that all development must be on class V roads or better, roads must be accessible for emergency equipment, must be available to school busses, and must be according to the Master Plan and maintain the character of the town. Mr. Farr states that the proposal is against all these items because the building is proposed to be on a Class VI road. Mr. Cleasby states that there are many Class VI roads in town that all emergency vehicles use; it is not uncommon for this type of road in this town. He adds that the road will be maintained by himself and he does not have any problems getting in and out with his vehicles, heavy trucks, and equipment.

3. Granting the variance would do substantial justice.

Mr. Cleasby states that granting the variance will allow his family to have a home.

4. The proposed use would not diminish surrounding property values.

Mr. Cleasby states that the proposed home is just a residential home. He states that the proposal is not hurting any values, in fact, may increase values. He states that the area was an overgrown area that has been turned into an agricultural area.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to the owner. Special conditions of the property that distinguish it from other properties in the area. The proposed use is a reasonable use because:

Mr. Cleasby states that the land is on a Class VI road and he owns a lot of land. He explains that he is looking to preserve the woodlands and he is only proposing one home in the middle of the lot.

Mr. Farr asks for comments from abutters or affected parties. Janet Clark, affected party, reads a commentary opposing the variance. She explains that the variance is not in the public interest as it is unjust because of the negative impact to their land. She states that this variance would diminish their property values. She states that continuing development on Class VI roads uses the town's limited resources. She states that the town's resources are ill-equipped to deal with the multiple negative impacts of this development. She states that they are requesting that the variance be denied because if granted there will be continuous negative impacts occurring to their land. She states that as work is conducted on the road, there is runoff that continues to flow into their pond. She expresses concern with costs to the town when there are continuous calls to town staff, road agent, and police.

In addition, Mr. Farr reads correspondence from abutter Daniel Brennan, stating that he feels that the zoning laws have been well thought out and should be followed. He writes that without a hardship identified or special circumstance, the request for variance should not be granted.

With no additional comments, Mr. Farr closes the public portion.

Ms. Holmes states that she recalls 50 years ago when water would just run off Old Pittsfield Road and onto Rte. 107 right into the Narrows Brook. She states that you cannot control the water and this is what rock walls were built for and ponds were dug. She states that people addressed these issues on their own; it was not expected that the town would be involved.

Mr. Lavigne makes a motion, second by Nona Holmes, to grant the variance based on the fact that all criteria have been met. Mr. Lavigne states that he has viewed the area and there has been a significant amount of land clearing. He states that there is a tremendous amount of ledge and he does not believe that this could be considered as farm land; however, it is perfect for a house and is not sub-dividable. Mr. Lavigne states that the proposal is pretty much limited to what could be done. Mr. Lavigne replies that he feels that the proposal is reasonable and reasonable use of the land. He adds that the conditions of the road have been improved and he recalls that at one time this road was not passable. Mr. Lavigne states that the applicant has chosen to spend funds on the road and continued to maintain the road at his choice. He adds that, although the board is not a precedent setting board, the board has approved building permits for lots with less acreage and no frontage on town roads. He explains that this is a Class VI road and the ordinance states that you are not allowed to build on these types of roads unless you meet the criteria. Mr. Lavigne states that he believes all criteria have been met.

Mr. Farr disagrees and explains that the town's ordinance does not say that building is allowed if the criteria is met; the ordinance states that you cannot build on a Class VI road. He adds that the state allows a variance if the evidence provided convinces the board, in their wisdom, to set aside the ordinance. He states that the ZBA does not set the ordinances in town; it is the job of the planning board and the town has voted the 150' requirement. He states that everyone is bound by the regulations unless they request relief from this board explaining that their situation is unique. Mr. Farr states that the existing camp lots in town are unique. He states that this is opening up new land without frontage and feels that this is against the ordinance. He adds that he does not see that granting the variance is in the public's interest and has not been shown to be. He states that the only testimony he has heard was relative to additional tax revenue; it is not a bona fide reason to substantiate the public interest clause. Mr. Farr adds that this is not contrary to the public interest and states that you do not build on a Class VI road. As far as substantial justice, Mr. Farr states that case law states that substantial use is for reasonable use of the land, not that the land can be developed to its most extensive use. He notes that this lot can be a wood lot and the road can be used as it is or brought up to town's standards. Mr. Farr states that allowing the applicant to build a home on a Class VI road, with no frontage, and not improve the road is injustice compared to anyone else who has the same situation on a Class VI road. He states that he does not see the burden of proof. Mr. Farr also explains that as far as the hardship, this land is in the middle of a wood lot, which is nice but is no different than any other Class VI roads with wood lots. He states that there is no hardship on the land. He states that this lot is an undeveloped lot that is not unique. There is ledge on the lot; however, the ledge does not affect the use as the land has the value as it is. Mr. Farr states that he feels that criteria 1, 2, 3, and 5 have not been met.

Mr. Pollock states that he does not feel that the water issues are really relevant to what the applicant is requesting. He

explains that the water that is running off across the road may not necessarily be generated from the applicant's parcel.

Ms. Holmes states that it appears that all of the land is slanted towards Epsom and the Flat Meadow brook would be the area where the water would drain to, not down the road. Ms. Holmes states that she does not have any problems with living out in the middle of nowhere as long as the owners take care of all road repairs, plowing, etc.

Mr. Naleid states that he feels it is unfortunate the events that have taken place over the past years. He states that perhaps the issues could have been addressed differently so to make this process a smoother request. He explains that he visited the area today and feels that there are things that could be done to improve the water flow. He states that he noticed that there was water in both ditches flowing over driveways. He states that he does not feel that any of the five criteria have been answered with enough clarification for him to approve the request for a variance.

Ms. Smith suggests that the board recommend that any motion offered to grant the variance contain language stating that the board is not granting relief in any form from RSA 674:41. Mr. Lavigne and Ms. Holmes agree to add this statement the motion.

Mr. Lavigne makes a motion, second by Nona Holmes, to grant the variance based on the fact that all criteria have been met, with the understanding that the board is not granting relief in any manner from RSA 674:41.

Roll Call Vote:

Mr. Naleid – opposed
Ms. Holmes – in favor
Mr. Pollock – in favor
Mr. Lavigne – in favor
Mr. Farr – opposed
Motion passes; 3/2.

Ms. Lane and Mr. Bailey return to the board.

Correspondence

Ms. Smith provides information to the board regarding alternate members and voting. No action is required.

Other

Ms. Smith states that the planning board is working on potential ordinance changes. She adds that notification will be provided to the board should there be a meeting scheduled to discuss potential amendments.

Adjournment

Mr. Lavigne makes a motion, second by Mr. Naleid, to adjourn. Motion passes unanimously at 7:55 p.m.

Respectfully submitted
Lisa Fellows-Weaver
Board Secretary