



COMMUNITY DEVELOPMENT

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Draft Zoning Board of Adjustment Minutes October 8, 2013

Board Members:

Heath Partington Chairman – Present
Jim Tierney, Vice-Chairman – Present
Mark Samsel, Secretary – Present
Jay Yennaco, Member – Excused

Mike Scholz, Member – Present
Mike Mazalewski, Alternate – Present
Tony Pellegrini, Alternate - Excused

Staff:

Nancy Prendergast, ZBA/Code Enforcement Administrator
Cathy Pinette, ZBA Minute Taker

Call to Order/Attendance

The Chair called the meeting to order at 7:30 pm, introduced the Board, and explained the meeting process.

The Chair appointed Mr. Mazalewski to sit for Mr. Yennaco.

Public Hearings

Mr. Samsel read Case #27-2013 into the record along with the abutter list.

Lot 21-G-600, Case #27-2013

Applicant – Janet Balise Revocable Trust
Owner – Same
Location – off of Range Road
Zone – Residence A District

The Applicant was denied a building permit to construct a single family home for failure to comply with RSA 674:41(I). The applicant has submitted an Appeal of Administrative Decision to the Zoning Board of Adjustment as allowed under the provisions of RSA 674:41(II).

- Attorney William Mason on behalf of Janet Balise Revocable Trust addressed the Board. He stated that this case was before the Board at the beginning of the year and the Board granted the variance. They had recently applied to the BOS for relief from RSA Section 674:41 and the BOS stated they had no jurisdiction as the lot is not a Class 6, 7 or private road. Mr. Mike McGuire, Building Inspector has denied them a building permit as they do not meet the criteria under RSA Section 674:41. Attorney Mason stated that under that RSA his client has the right to appeal the denial to the ZBA who is given the authority to make an exception and overrule the Building Inspector's decision. Attorney Mason stated he was given a list of conditions from staff that the ZBA could apply if granted.

Questions/Comments from the Board

- The Chair asked Attorney Mason if he was given documentation from the BOS stating this. Attorney Mason stated he has spoken to Attorney Campbell and Attorney Campbell was the one who stated the BOS has no jurisdiction. He did not receive a written denial.
- The Chair asked Attorney Mason if they were prepared to comply with Section II of RSA 674:41. Attorney Mason stated no, because under a previous version of that RSA the application would go to the Planning Board.
- The Chair stated there are several items in Section II to grant appeal. The burden is on the applicant and those things are not happening. He read Section II. Attorney Mason stated that several of the issues the Chair raises have already been argued when the Board granted the variance. He stated this is a 4.6 acre lot, neither the Police or Fire Departmentst have an issue with it, there is no financial impact to the Town, and there is no impact to future purchasers as the area around this lot is developed. This is just a discontinued road that goes to this property.
- Mr. Shayne Gendron of Herbert Associates addressed the Board. He showed the Board the plan for the lot, he described the driveway and stated it would be flat and 14 feet wide, this lot is approved for a 4 bedroom house, it is approved by the State of NH as a buildable lot and he has met with Deputy Chief Martineau and they are installing a turnaround on the property.
- The Board asked what the length of the property line is to the approved road. Mr. Gendron stated 163 feet approximately.

The Chair opened the hearing to the public at 7:50 pm.

- Mr. John Carpenter, 233 Range Rd., addressed the Board. He stated he is not against the applicant building on their property. He stated one thing Attorney Mason did not speak about was the legality of the access. The property is deeded to a highway on old plans that pre-existed Simpson Rd. The highway has 3 access points to other parcels. The area where the sign post is was never discontinued. It was not part of the warrant when the road was discontinued. If there was an easement it would have had to be disclosed when the applicant sold the abutting properties and it was not and is not in any of the deeds. Mr. Carpenter gave the Board the Planning Board maps that showed how this property is supposed to be accessed, he also gave them the deeds of surrounding properties including 231 and 233 Range Rd. and no where in the deed does it state there is an easement. He stated Mr. Herbert drew up the original plans and they were approved by the Town. He stated he now has many people trespassing on his property due to this application. The Board asked Mr. Carpenter if there was a driveway on the Town approved plan. Mr. Carpenter stated the warrant closed Simpson Rd, not the highway. He stated the applicant's property is deeded to the highway "from Lowell Rd to the #2 School House". He stated the highway was never discontinued. The Board and Mr. Carpenter discussed the deeds, the language in the deeds and which lots have access. Mr. Carpenter stated the applicant has 3 access points where they can put the driveway. The Chair asked Mr. Carpenter if he thinks a building permit should have been granted. Mr. Carpenter stated yes, but at a different access point. The Board discussed discontinued roads and the option of the applicant to partition the Court for access. Mr. Carpenter stated the law states they have no access where they are proposing and no utilities can be brought into the property from that location as it crosses other peoples land. The Board asked why the Building Inspector denied the permit. The Chair stated because it does not meet the criteria of the RSA. Mr. Carpenter stated he does not feel enough was discussed at the last hearing about access.

- Mr. Brad Balise, 231 Range Rd. addressed the Board. He stated he is very frustrated with this application. It is in violation of many laws in many ways. The Board was given misinformation at the last hearing. Property lines were erased from the plan. There is no right of way to this property where they want it. He spoke about discontinued roads and NH Supreme Court Cases. The Board asked Mr. Balise if he has petitioned the Court to change his deed to state he owns to the middle of the road. Mr. Balise stated no, the law protects him. He spoke about eminent domain and how you cannot do that. He stated he hasn't seen any evidence from the applicant that they have a right to use that access point. The Board asked Mr. Balise if he was good with the application if the applicant accessed the lot from another access point. Mr. Balise stated yes, but not over his land.
- Attorney Mason stated he has seen the plan dated 1 977 with notes and a discontinuance of the Simpson Rd property line but the notes state that there is a right of way to property owners. He also stated he had correspondences from Attorney Campbell dated 2/23/13 and page 2 of this letter speaks to this lot. The Board was provided a copy.
- The Chair asked Attorney Mason if they were intending to bring the utility lines and the driveway over this access point. Mr. Mason stated yes, the driveway is 14 feet wide and it will be 163 feet to the property line and then to the house.
- Mr. Carpenter stated in 1962 when Simpson Rd was closed every property owner on Simpson sued the Town and lost as the Court said the Town was not responsible for that road. The only ones who didn't sue was the Balise family as they had other access points to their property. He stated they cannot bring utilities up a discontinued road per the law. Mr. Carpenter spoke about the lawsuit (Thorndike vs. Town of Windham, 1962) stating that because the landowners had no access to get the utilities in, the Town put in an easement on Princeton and at both ends of the discontinued road.
- Mr. Brad Balise stated there will be hardship for the new owners of the property after his parents sell it because someone could put up a jersey barrier to block their illegal access.
- Mr. Samsel recommends the Board consult with Attorney Campbell. Mr. Tierney and Mr. Scholz would like a chance to look at some case law. Mr. Mazalewski stated he thinks the Board has no right to decide whether they have access or not. Mr. Samsel agrees with Mr. Mazalewski but questioned what exactly the Building Inspector's reason was for denial. He would like to hear from the Building Inspector. The Chair read the denial letter of 7/9/13 and it was denied based on not meeting RSA 674:41 I. The Board discussed this. The Chair stated in response to Mr. Balise's statement about hardship, that the Board does not look at hardship for future owners.
- The Chair asked Attorney Mason if he was agreeable to a continuance so they can get more information. Attorney Mason was agreeable to that. The Board will meet with Attorney Campbell for further discussion.

Mr. Scholz motioned to continue Case #27-2013 to November 5th, seconded by Mr. Tierney. Motion passed 5 – 0.

Zoning Board of Adjustment Rules of Procedure (By-Laws)

A public hearing is to be held in accordance with NH RSA 676.1 *Method of Adopting Rules of Procedure* to amend the Zoning Board of Adjustment By-Laws by changing “By-Laws” to “Rules of Procedure”, updating staff and department titles, and clarifying language throughout the document to reflect current procedures. The Variance Application, as an appendix to the Rules of Procedure, is also being amended to include the following language in the application instructions: “Address numbers should be clearly visible from a public way in accordance with the State adopted Building Codes”.

- The Chair stated that there were a series of changes made to the By-Laws which were minor in nature including, but not limited to, naming changes, how the Board works, the appendix, and instructions for applicants for street numbers. The Board discussed different Sections that they had questions, comments or changes to. The Board discussed making substantive changes vs. minor changes.
- Mr. Tom Case addressed the Board. He stated that the Board advertised this under RSA 676.1 as a public hearing and most of the public does not care about the Zoning Board of Adjustment By-Laws. He stated the ZBA is the only Board that has a hearing on the By-Laws.
- The Chair asked Ms. Prendergast why the newspaper notices get bumped sometimes. Ms. Prendergast stated that she was told that others submit their information before the CDO and there wasn't enough room.
- The By-Law's will be brought back to the Board for final review after tonight's changes are incorporated at the next meeting.

Review and Approval of Draft Meeting Minutes

- 9/24/2013 – Postponed to the next meeting

Old/New Business

- The Chair stated he was approached by a member of the public who asked why the ZBA does not perform the Pledge of Allegiance at their meetings. He asked the Board members to think about this and it will be discussed in a couple of weeks.
- The Board checked the date for the continuance of Case #27-2013 as there was a mistake in the meeting schedule date.

Mr. Scholz motioned to move the continuance from Nov. 5th to Nov. 26th and notify the applicant and 2 abutters, seconded by Mr. Samsel. Motion passed 5 – 0.

Adjournment

Mr. Samsel motioned to adjourn, seconded by Mr. Scholz. Motion passed 5 – 0.

Meeting adjourned at 9:50 pm.

These minutes are in draft form and respectfully submitted for approval by Cathy Pinette, ZBA Minute Taker.

DRAFT