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**COMMUNITY DEVELOPMENT**

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**Zoning Board of Adjustment Draft Minutes  
November 26, 2013**

**Board Members:**

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

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

**Staff:**

Nancy Prendergast, ZBA/Code Enforcement Administrator  
Laura Accaputo, 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 seated Mr. Mazalewski for Mr. Yennaco for Case #27-2013.

Mr. Samsel read Case #27-2013 into the record.

**Lot 21-G-600, Case #27-2013** (continued from 10/8/13)

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).

The Chair explained the case was left in public at the October 8, 2013 meeting and had not yet gone into Deliberative Session.

- Attorney William Mason addressed the board on behalf of Janet Balise Revocable Trust. He stated the ZBA granted a variance to his clients to build a single family home on their four acre lot that had access but no road frontage on a Class V, VI, or private road. Their application for a Building Permit was denied by the Building Inspector for failure to comply with RSA 674:41(I). He explained as part of this process you go before the Board of Selectmen to demonstrate practical difficulty or unnecessary hardship. The BOS wouldn't hear it stating they do not have jurisdiction if it isn't a Class V, VI, or private road and therefore he is asking that the decision for compliance of 674:41 be overturned so they may obtain a Building Permit.

The Chair stated the Board Members seated had gone through the case almost in its entirety on October 8, 2013 and asked that any public comment be limited to new testimony.

**Questions/Comments from the Board**

- The Chair explained the abutters questioned whether this appeal is valid under RSA 674:41 (II) citing the requirement “when the circumstances of the case do not require the building, structure, or any part thereof to be related to existing or proposed streets.”

- Attorney Mason explained the proposed structure received a variance for no frontage while it has access. It doesn't impose any form of hardship to neighboring properties or public interest. The variance application was reviewed by fire, police, and public works and the plan is reflective of their comments. To build 200ft of road for one house doesn't make sense from an economic standpoint.

The Chair opened the hearing to the public at 7:40pm.

- Brad Balise of 231 Range Road stated he does not believe this meets the criteria of Section 674:41 (II) as it clearly states it cannot be related to an existing road. There is no deeded right of way or legal access at this location; it was given to the abutters in 1962 when the road was closed by complete discontinuance. It also does not apply to Section 674:41 (III) which is more stringent.
- The Chair referenced two letters submitted by Mr. Balise that were included in the agenda packet and reviewed by the board and noted his objections were well stated in those letters.
- Mr. Balise noted the evidence the applicant provided regarding RSA 231:43 (III) that they have a specific right to access at this location does not apply as the road was not discontinued subject to gates and bars but closed by a warrant article and a complete discontinuance which requires different criteria. The land was deeded to the property prior to any ownership.
- Jon Carpenter of 233 Range Road stated he agreed the property has access but not the access shown on the site plan. They have a right to access the property by the road it's deeded to. The Planning Board approved a specific access to this property at a different location not shown on the site plan.

The Chair closed the public portion at 7:50pm.

- Attorney Mason disagrees that a public discontinuance extinguishes private rights of passage to abutting property owners. He stated there are plans on record with notations that those private rights of passage are not to be extinguished. They would like to get the Building Permit and move forward with construction or sale of this property.
- Mr. Carpenter stated he agreed with Mr. Mason concerning rights and laws but they apply to the road the property is deeded to.

**Mr. Samsel motioned to go into Deliberative Session, seconded by Mr. Scholz. Motion passed 5-0.**

Hearing no general comments from the Board, the Chair suggested the Board go through the criteria.

- 1) Not issuing the permit would create practical difficulty or unnecessary hardship on the property owner.
  - All members agree.
- 2) Circumstances are such that the construction on the lot need not be related to existing or proposed streets.
  - All members agree except The Chair who questioned whether the word "related" means connected, and at what point in time, as the entire goal in this case is to connect or be related to the existing road. The Chair then read the verbiage from the section in the book A Hard Road to Travel "When the circumstances of the case do not require the building, structure, or part thereof to be related to existing or proposed streets"; He then cited a section in Chapter 7 pg 119 "Although the four standards listed above (referencing the requirements in Section 674:41) might possibly be met in the case of an agricultural shed or primitive hunting camp, they will virtually never be met in the case of the proposed year round home because the circumstances of the case always require some relation to existing and proposed streets. Also because a lot with a year round home but no access to maintained highways is cut off from emergency vehicles and other services it will always constitute hardship to future purchasers." Mr. Scholz and the Chair discussed their interpretations of both sections.
- 3) Issuance of permit will not distort official map.
  - All members agree.
- 4) Issuance of permit will not increase difficulty in carrying out the Master Plan.

- All members agree.
- 5) Issuance of a permit and construction therewith will not cause hardship to future purchasers.
- All members agree.
- 6) Issuance of a permit and construction therewith will not cause undue financial hardship on the community.
- All members agree.
- 7) Does not violate the basic zoning objectives; does not violate health, safety, or welfare of the community.
- All members agree.

**Questions/Comments from the Board**

- The Chair stated the abutters believe that point number two (above) makes the request invalid per 674:41 however it is one of the criteria that are looked at as part of the process. He also stated he believes there is a private easement at the location (referenced Section 231:43 bullet 3) and the town cannot take away that public access. He does not believe that other accesses would preclude use of the private easement and stated it is hard to tell from the plans where the road goes and whether it was completely discontinued.
- Mr. Samsel noted the Board received testimony from both sides as well as input from the Towns Attorney and he is ready to make a decision.
- The Board discussed conditions, legality of the access, and liability waivers.

**Mr. Samsel motioned for Case #27-2013, Lot 21-G-600, to grant the appeal of the denial of a Building Permit to construct a single family home for failing to comply with RSA 674:41 (I) which the applicant submitted this appeal of Administrative Decision to the Zoning Board of Adjustment as allowed under the provisions of 674:41 (II) conditioned by the signature of RSA 674:41 the Agreement and Release to be signed by the Town and Applicant, seconded by Mr. Scholz.**

The Chair stated he would vote against this because he believes it needs to be related to existing and proposed streets.

Mr. Tierney asked for clarification of the motion.

Hearing no further discussion, the Chair went back to the motion.

**Motion Passed 4-1, the Chair voted against the motion.**

The Chair advised of the 30 day appeal period.

The Chair brought Mr. Yennaco back to the Board.

Mr. Samsel read Case #36-2013 into the record along with the list of abutters and a letter of authorization from Sean and Diane Sweeney permitting Tory Bianchi of Custom Pools Inc. to represent him in reference to the variance required for Lot 3-A-609, Case #36-2013.

**Lot 3-A-609, Case #36-2013**

Applicant – Tory Bianchi, Custom Pools Inc.

Owner – Sean R. & Diane S. Sweeney

Location – 40 Mitchell Pond Road

Zone – Rural, Wetland & Watershed Protection District, Open Space Residential Overlay

Variances from the following sections of the Zoning Ordinance are requested to allow for the installation of an in-ground swimming pool and surrounding patio within the WWPDP.

**Section 601.3 Uses Permitted** – to allow for the installation of an in-ground swimming pool and surrounding patio within the WWPD where it is not an allowed use.

- Mr. Tory Bianchi of Custom Pools addressed the Board. The request is to allow installation of an in-ground swimming pool and surrounding patio within the WWPD with a total intrusion of 1600 square feet. He discussed the lot and proposed location and explained there is no other usable space without re-routing the well system. He noted the wetlands are flagged on the property. He read the five criteria into the record.

#### **Questions/Comments from the Board**

- The Chair asked what the distance was between the house and the edge of the patio and Mr. Bianchi answered 25 ft.
- Mr. Bianchi stated the pool will be as natural and chemical free as possible with a self contained cartridge filtration system and a saltwater treatment system.
- Mr. Tierney asked about the retaining wall and was told there would be a small retaining wall in the front.

The Chair opened the hearing to the public at 8:25pm.

- Diane Sweeney, Owner, 40 Mitchell Pond Road stated the pool would be natural and cause no harm to the surrounding area.
- Mr. Tierney asked if they were doing additional landscaping and Ms. Sweeney answered yes.
- Sean Sweeney, Owner, 40 Mitchell Pond Rd, stated he agreed with Ms. Sweeney and believes this will enhance his enjoyment of his home.

The Chair asked about comments from the Conservation Commission. Ms. Prendergast stated they inquired if the pool could be located closer to the house and if the applicant would consider a filtration system that will lessen the impacts to the wetlands.

Mr. Bianchi addressed those concerns explaining if the pool were closer to the house there would be setback issues from the side of the yard where the deck and stairs are and there is no other usable space to put the pool. He also noted the filtration system is as eco friendly as a pool can get.

Mr. Tierney asked about fencing and Mr. Bianchi answered it will have a 4 foot fence surrounding it per code.

Mr. Tierney stated his concern the fence is not shown on the plan and he does not want to have issues of encroachment with the WWPD and asked if it should be drawn on the plan.

Ms. Prendergast explained it will be required to be included on the plan for the WWPD.

Mr. Samsel questioned the pool being 25ft off the side and Ms. Prendergast explained since it is an Open Space Development they have 15ft.

**Mr. Samsel motioned to go into Deliberative Session, seconded by Mr.Scholz. Motion passed 5-0.**

- Mr. Tierney stated he had no issue.
- Mr. Scholz stated it meets criteria and is the most suitable spot for it.
- Mr. Samsel agrees with Mr. Scholz.
- Mr. Yennaco stated he has no problem with it
- The Chair was happy to have the Conservation Commissions comments and have their questions answered.
- Mr. Tierney stated it actually meets the 100ft setback to the wetlands from the main body of the structure.

**Mr. Scholz made a motion for Case #36-2013 Lot 3-A-609 to grant relief from Section 601.3 to allow the installation of an in-ground swimming pool and surrounding patio within the WWPDP where it is not an allowed use, seconded by Mr. Samsel. Motion passed 5-0.**

The Chair advised of the 30 day appeal period.

**Review and Approval of Draft Meeting Minutes – 10/8/13, 10/22/13, 11/12/13**

**Mr. Scholz motioned to approve the draft minutes of October 8, 2013 as amended, seconded by Mr. Samsel. Motion passed 4-0-1. Mr. Yennaco abstained.**

The Chair seated Mr. Mazalewski for Mr. Samsel for the review of the 10/22/13 draft meeting minutes.

**Mr. Yennaco motioned to approve the draft minutes of October 22, 2013, seconded by Mr. Tierney. Motion Passed 4-0-1. The Chair abstained.**

The Chair seated Mr. Pellegrini for Mr. Tierney and Mr. Mazalewski for Mr. Samsel for the review of the 11/12/13 draft meeting minutes.

**Mr. Yennaco motioned to approve the draft minutes of November 12, 2013, seconded by Mr. Pellegrini. Motion passed 4-0-1. Mr. Scholz abstained.**

**Mr. Yennaco motioned to adjourn, seconded by Mr. Scholz. Motion passed 5-0. Meeting adjourned at 8:47pm**

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