

Official

**HOOKSETT ZONING BOARD OF ADJUSTMENT
MINUTES
Tuesday, July 13, 2010
HOOKSETT MUNICIPAL BUILDING
35 Main Street**

CALL TO ORDER

The meeting was called to order by acting chair J. Levesque at 7:00 pm.

INTRODUCTION OF THE BOARD

J. Levesque, R. Bairam, G. Hyde, D. Pare, T. Lanphear, and J. Gorton Council Rep.

R. Duhaime arrived at 7:15 pm.

Excused: C. Pearson

APPROVAL OF MINUTES

June 8, 2010

R. Bairam motioned to approve the minutes. Seconded by G. Hyde.

Vote unanimously in favor.

CONTINUED PUBLIC HEARINGS

FALCON BROOK

Maurais Street

Map 45, Lot 33-2

A request for a Special Exception from Article 18 Section E to construct two (2) roadway crossings on the parcel to access the majority of the buildable/non-wetland/non-wetland buffer land.

Voting Zoning Board Members: J. Levesque, R. Bairam, G. Hyde, D. Pare (alternate), and T. Lanphear (alternate)

The applicant requests a continuation to August 10th because they have not met with the Conservation Commission.

R. Bairam motioned to continue to August 10, 2010. Seconded by G. Hyde.

Vote unanimously in favor.

REHEARING

STAN PRESCOTT, LLC

225 Hackett Hill Road

Map 22, Lot 42

A request for a Variance from Article 4, Section C.1 to allow two lots to be created with 140.25 feet of frontage where 200 feet is required.

Voting Zoning Board Members: J. Levesque, R. Bairam, G. Hyde, and D. Pare (alternate)

Stan Prescott, surveyor: We were here a few months ago. This lot had 280.5 feet of frontage. We want to divide it into 2 lots. Mr. MacEachern has a claim of adverse possession, which is a lot of 140.25 feet of frontage, and Mr. Scarponi would like to keep 4.7 acres with 140.25 feet of frontage. We want a variance for frontage less than 200 feet.

Matt Lapointe, Attorney representing Mr. Scarponi: This came before you as a petition to quiet title. Mr. Scarponi believed he owned this entire lot and had a deed saying so. Mr. MacEachern claimed he had a deed to that lot. At a certain point, it became clear that Mr. MacEachern's deed didn't describe this lot and he then claimed he used that property and owned it by adverse possession. There is a building on this property that was inhabited at one time and is now used as a wood shed. The judge went to the site and looked at the property and the lawyers conferenced and the judge stated there was a claim of adverse possession for part of the parcel. He ordered the parties to go into a conference room and divide the parcel equitably. They came up with the plan presented. That was a difficult and long process. When this was presented to the judge he approved it and issued an order approving this settlement and ordered the division of land. The court can order title to property but we can't effect the subdivision. The Planning Board couldn't approve the subdivision without the ZBA's approval. So here we are. The criteria for a variance was submitted in a motion for rehearing. Those were reviewed. (See file)

1. The variance will not be contrary to the public interest.

The requested variance resolves a dispute between two landowners. Resolving that matter and quieting title to a disputed parcel is in the public interest. Until the Litigation is resolved, the subject parcel is not marketable. Moreover, the requested variance is not dissimilar to variances granted for other lots within the geographic proximity to the subject lot. Many lots within the area have fewer than 200 feet of frontage. Indeed, a similar variance was granted with respect to the lot abutting to the north. (the Leeds parcel, Map 22, Lot 44).

2. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.

The Litigation and the claims asserted in the Litigation make this a unique condition. Two parties claimed ownership to the same parcel. The discrepancy between the tax maps and the actual ground conditions only compounded the dispute. Appellant, and the abutter to the south, Lionel MacEachern, are presently Subject to a Court order directing them to divide the parcel in the manner presented. The Court's order in this regard is lawful. The topography of the parcel in question and the use to which Mr. MacEachern has put the parcel are such that the only equitable division is the one proposed by the parties and ultimately ordered by the Court.

3. Granting the variance is consistent with the spirit of the ordinance.

The zoning ordinance is intended to promote uniformity. Allowing this variance will not materially alter the characteristics of the property or the neighborhood. This variance is similar to other variances that have been granted to benefit other lots within a close geographic proximity. The zoning ordinance is also designed to provide a regulatory framework to enhance the marketability of real property. Under a Court Order to seek and obtain the requested variance, Appellant asks merely that the ZBA implement the judicial decree so that title to the subject parcel can be quieted. Denying this variance only subjects the Appellant and Mr. MacEachern to further litigation and prolongs the cloud on the title. Moreover, nothing about this requested variance materially alters character of the land in the area. RSA 674:17, II (“Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.”)

4. Granting the variance will do substantial justice

The Court, exercising the equitable powers granted to it, has determined how justice should be done in this matter. Given the claims of adverse possession by Mr. MacEachern and the claims of fee title ownership by the Appellant, the resulting property division represents the embodiment of equity given the facts of the case. It would be an injustice to prohibit Appellant (and Mr. MacEachern) from implementing the decision of the Court.

5. Granting the variance will not diminish the value of the surrounding properties

Several of the properties in proximity to this subject parcel have fewer than 200 ft of frontage, including the lot immediately to the north on Hackett Hill Road (the Leeds property). As long as title to the Appellant’s property is disputed, the lot is not marketable, cannot be used as collateral for a loan and, consequently, cannot be put to its highest and best use. Granting the requested variance removes any cloud on the title and enhances the value of the property. Enhancing the value of the Appellant’s lot will have no detrimental effect on the surrounding properties and may actually increase the value of the surrounding properties.

The final point here is to address the question of what will happen legally from the Planning and zoning perspective. If you grant this request to create lot 1 and lot 2, there is a question on the effect of lot 2. My view and the attorney for Mr. MacEachern have a different view. My view is that this parcel, being a non-conforming parcel would by virtue of your zoning ordinance merge with the adjacent parcel lot 13, which he also owns. Your ordinance says “*a non-conforming vacant lot must merge with any adjacent conforming or non-conforming lot, which is in the same ownership, provided that the resulting lot is not split by a zone line, creating a split zone lot*”. The deed that describes this property is muddy. The deed doesn’t describe this land. But in this case, he says I live there and I use this land and log and improved the shed. It is a little funny that he would now say that the deed isn’t clear and therefore, I don’t own the lot. When in arguing this case, he said I do own this lot. If you approve this, you will have one non-

conforming lot and a merged lot. If Mr. MacEachern disagrees, it is up to him to come before you and argue to merge or not. I'm just looking for one line. What happens to the adjacent lot is not what is before us tonight.

Open Public Hearing

Joanne Craighead, attorney representing Mr. MacEachern: The orange piece, Mr. MacEachern believed he owned by virtue of a deed from the Chagnon family. Lot 2 on your map is lot 13. Lot 13 had been in the MacEachern possession and was owned by the family in the 1950's and it transferred to the uncle. The bank took it by foreclosure and sold it to Mrs. Chagnon. When she died, the family approached the MacEachern, who then bought it in 1990 until this litigation. The reason for the adverse possession claim was because title to the tax map lot 13 was not clear because the description described property to the south and east of Hackett Hill. The judge understood that Mr. MacEachern might win an adverse possession for the entire property but they didn't own it for 20 years but rather than only 19. The judge told the parties to reach an agreement, which they did, and the judge approved it. The other track of , map 22 lot 14, where his mother lives, he doesn't have clear title. Before he can do anything with that property, he must clear that title. That piece wasn't in litigation. We agree with the request for this variance but we disagree with section 26, which states this lot should be merged. Our comments are because legally, that lot doesn't exist. The problem is legally it doesn't exist for deed purposes. The other point for the non-merger is the Zoning Ordinance talks of common ownership, and his mother does have stake or an equitable interest in this property. She is a life tenant on that property. Our request, given the equity and what was pointed out by Mr. Lapointe, is for you grant the two (2) non-conforming buildable lots. A merger is not possible because of the problem with the deed.

R. Duhaime: Lot 42 is the lot being divided. Who owns lot 13?

J. Craighead: Per the surveyor, lot 13 doesn't exist.

S. Prescott: The tax map, in my submission, we included it. We will agree that the description of the lot doesn't fit where they are occupying it for 13 and 14. Lot 14 is the mother's house. Lot 13 is the lot he bought from Mrs. Chagnon. Mrs. Chagnon's house is on Mr. Scarponi's property. The deed says the land accepting the piece owned by his mother, the deed says it is 10 acres and it should be 10 acres less his mother's house. The description to that piece isn't the real right description.

R; Duhaime: Lot 14 has his mother's house and 13 has his house on it?

S. Presctot: Lot 13 has nothing on it. It was suppose to have Mrs. Chagnon's house. The dividing lines meet the setbacks for the home.

P. Rowell: If you read merger lots, if two or more lots of record are contiguous and single ownership they are merged. This lot that we are creating is not a lot of record.

M. Lapointe: We do not care if this is merged. We only mentioned it because you mentioned the merger. We want the division of lot 42.

S. Prescott stated that with lot 13 and 14 combined there is 280 feet of frontage. There is only a house on one lot.

Close Public Hearing

R. Duhaime: I don't think we need to get into the legality. They could have come up with lots where everyone could have adequate frontage and there is no hardship.

R. Bairam motioned to approve the variance from Article 4, Section C.1 to allow two (2) lots to be created with 140.25 feet of frontage where 200 feet is required. Seconded by G. Hyde.

Vote 2:3 Motion fails

Request for variance was denied for the following reasons:

1. Granting of his variance would be contrary to the public interest because this would create two non-conforming lots.
2. The spirit of the ordinance is not observed because the voters of the town have voted for 200 feet of frontage in the low density residential area.
3. Granting of the variance will not do substantial justice because it would create two non-conforming lots.

Lionel MacEachern: My father bought this land and divided it, on where my mother is and one to his son and another. That property was conveyed as an entire parcel. My mother has 150 feet of frontage.

ADJOURNMENT

The meeting was adjourned by the Chair at 8:30 pm.