

**RESIDENTIAL/COMMERCIAL BUILDING PERMIT APPLICATION
TOWN OF JACKSON**

PO Box 268
Jackson, New Hampshire 03846
Phone: 603-383-4223 Fax: 603-383-6980

Date of Application 12-12-13 Permit Number Issued _____
Map & Lot Number R-13 000019
Street Name and Number Gredhill Rd.
Village District _____ or Rural Residential District _____ (Check one)

Property Owner Information:

Name Arthur Couture Telephone #'s 752-4622, 752-5303
Mailing Address 133 Sweden St.
Email Address arcouture@nh.rr.com

Contractor Information:

Name Couture Const. Corp. Telephone #'s 752-4622
Mailing Address 1803 Riverside Drive, Berlin NH
Email Address arccc@nh.rr.com

Reason for Permit:

Structure: New Addition _____ Alterations _____ Wind Generation Facility _____
Specify changes: new barn

Intended Use: _____

Dimensions of New Structure or Addition: _____

Is this property or part of this property in Current Use? Yes _____ No Explain _____

See RSA Chapter 79-A Current Use Taxation. "Current use" is an assessment of land value for taxation purposes meant to encourage the preservation of open space. Land presently within "current use" cannot be part of the buildable area of the lot unless removed from current use.

Structure Setback Requirements: 50 feet from the edge of any road right-of-way (typically the edge of the road right of way and the front property line are one in the same), 25 feet from any abutter property line and 50' from the near bank of any year-round stream or body of water which is a property boundary. Setback requirements may also be affected by Section 5, River Conservation District, of the Zoning Ordinance. The village district has additional requirements that apply along route 16A and for frontage on a road right of way. Please refer to the Zoning Ordinance

Specify the setback distances: Facing the road _____ Back of property _____

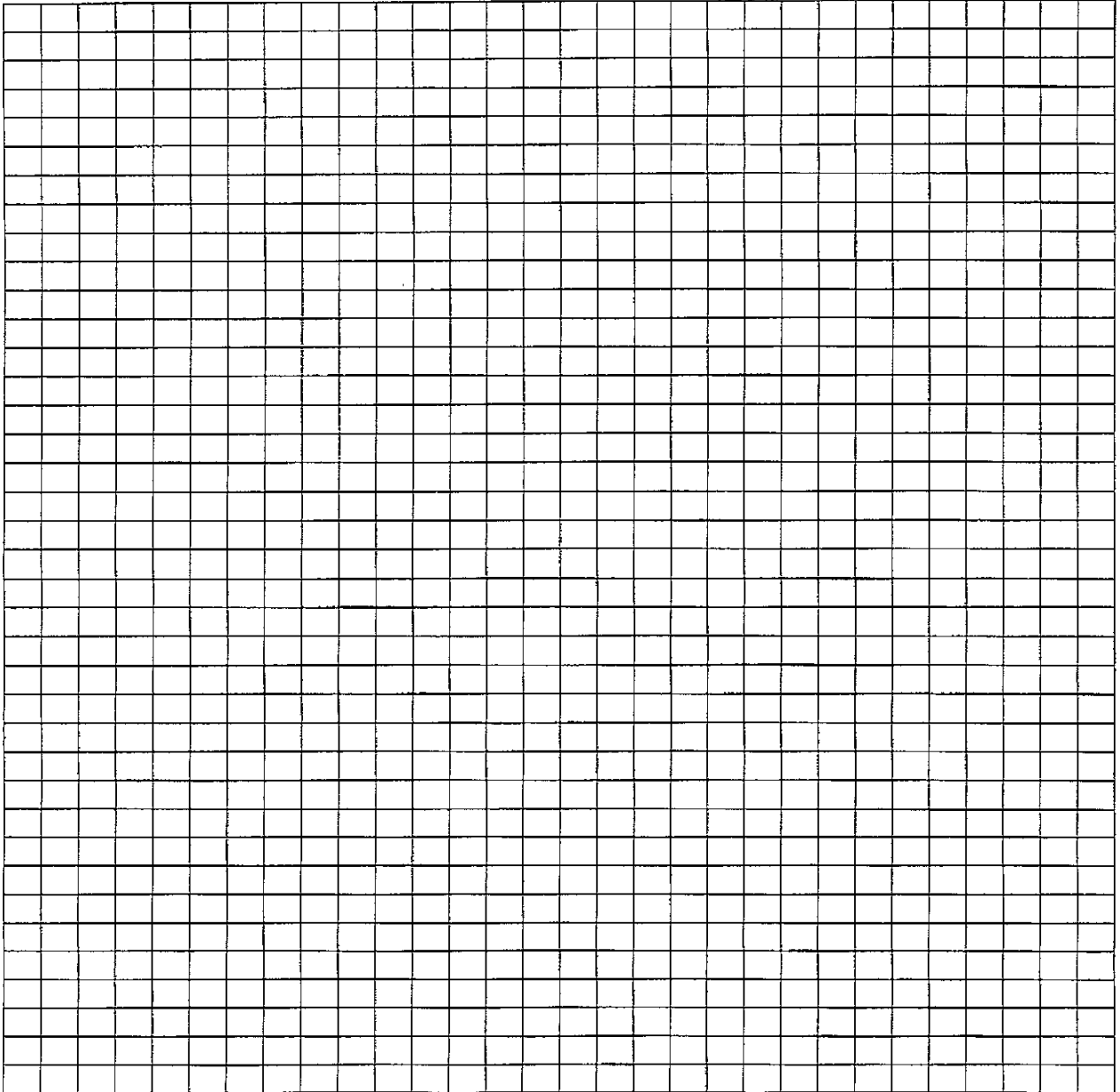
Side of property _____ Other Side of Property _____

Length of frontage on the street _____

SITE PLAN DETAIL

In the space below draw the exact shape of your lot and mark the boundary distances: Show all present and proposed structures in their correct location on the lot.

1 SQUARE EQUALS TEN FEET



Special Flood Hazard

Is this land in an area of Special Flood Hazard? YES _____ No _____

Please see Section 10 of the Jackson Zoning Ordinance for details on flood areas.

CONSTRUCTION TYPE: (applicable to proposed work on permit) Check all that apply.

Foundation:

Concrete
Cem. Block _____
Stone _____
Piers _____

Basement: *none*

Full _____
3/4 _____
1/2 _____
1/4 _____

Insulation: *n.a.*

Blanket _____
Walls _____
Roof _____
Attic _____

Exterior Walls:

Clapboard
Wide Siding _____
Wood Shingles
Stucco _____
Brick _____
Vinyl Siding _____
T-11 _____
Log _____

Interior Finish:

Drywall
Plaster _____
Paneling _____
Knotty Pine _____

Floors:

Basement _____
First Floor
Second Floor _____
Third Floor _____

Bedrooms:

number _____

Electric:

Type of Service _____

Heating:

Electric _____
Hot Water _____
Hot Air _____
Fireplace _____
Wood Stove _____
Steam _____
No Heat _____

Plumbing:

Full Baths # $\frac{1}{2}$ _____
Laundry Room _____
Garbage Disposal _____
Kitchen Sinks # _____
Other _____
No Water _____

Out buildings: include size of building

Garage _____
Barn *32 x 44* _____
Shed _____
Deck _____
Patio _____
Swimming Pool _____
Other _____

PERMITS AND APPROVALS:

Site Disturbance:

Type: Driveway _____ Excavation _____ Well _____ Septic _____
Blasting: Contractor Name _____ Phone _____
License Number: _____ Proposed start date of project: _____

Driveway Permit:

Copy of driveway permit is attached: Yes _____ No _____ Not Applicable _____

Septic System:

Note: New septic loads may not be added to any existing structure without an approved town and state septic system design.

Non-Conforming Lot Size: See Zoning Ordinance Section 6 for Minimum Lot Size requirements.

Septic Approval # _____

Additional Items of Note:

Water Testing & Wells: The state of New Hampshire encourages all owners to have new and existing wells tested.

Water: Dug Well _____ Drilled Well _____ Community Well _____ Town Water _____

Water course if applicable: _____

Is this property located within the Jackson Water Precinct boundary? _____

Is the property in compliance with the Jackson Water Precinct requirements? _____

Please call Jackson Water Precinct 383-6539 for more information.

Well Radius:

For any lot, the entire well radius to the extent possible shall be located on this lot. If the well radius cannot be located entirely on the lot, it shall be located to the extent possible within the well radius of any abutting lot or within land which is non-buildable under state and local regulation. The purpose of this requirement is to protect water quality on all lots. An applicant shall be expected to release the town in connection with protective well radii in the same manner as the State of New Hampshire under RSA 485-A:30-b. This release shall be recorded at Carroll County Registry of Deeds.

Streams & Rivers: Please refer to the Jackson Zoning Ordinance

Plumber: _____ N/A _____
License Number: _____

Electrician: _____ N/A _____
License Number: _____

Gas Fitter: _____
License Number: _____

RESIDENTIAL/COMMERCIAL BUILDING PERMIT FEES:

A Building Permit APPLICATION Must Be Submitted For ALL PROJECTS

Although a building permit is not required for Alterations within the footprint of an existing building or structure, a Building Permit Application must be submitted.

Note: When a permit is not required (circumstances outlined above) the Town of Jackson will not require or provide inspections of the work. Inspections may be required under the State of New Hampshire Building Code, RSA 155-A. It is the obligation of the contractor and / or owner to request inspections.

Alterations to an Existing Building or Structure Extending Outside the Existing Footprint :

A permit is required for alterations that extend outside the footprint of an existing building or structure (i.e. including but not limited to decks and attached sheds).

Note: Alteration is specifically defined at Section 3.4 of the Jackson Zoning Ordinance. The definition reads: "Alteration" means any structural change to a building and change of present design or use where compatible and consistent with existing uses.

Permit Fees are required for all projects except Alterations under the circumstances described above.

Building Permit Fees will be determined by the Town's Building Inspector. The fees are calculated based upon gross area (total square feet of all floors) of the proposed work and type of construction. The gross SF is multiplied by the adjusted SF construction cost. The construction cost is determined by using regionally adjusted Building Valuation Data (BVD). The BVD is a national average construction cost for building

to the minimum standards of the Building Code. Building Valuation Data is updated twice a year by the International Code Council and is available for viewing at the Town Office.
All fees will be collected prior to the issuance of the Building Permit.

Example:

Type of construction: R-2 Residential, 1 and 2 family, V-B
Area: unfinished basement 1,200 SF x \$19.20 = \$23,040
1st floor 1,200 SF x \$130.43 = \$156,516
2nd floor 800 SF x \$130.43 = \$104,344
Total SF Construction Cost = \$283,900
\$283,900 (total construction cost) x .0025 (permit fee multiplier) = \$709.75

- 1 check for a non-refundable base fee to process the application of \$25.
- 1 check for 0.0025 per dollar value for the estimated value of work requiring an inspection using the ICC Building Valuation Data.

Permit Application Non-Refundable Processing Fee \$25 _____
Permit Fee - estimated value of work \$ 75,000 x 0.0025 = 18750


Note: Project value is subject to review by the Town of Jackson based on the area of the project and estimated costs per square foot, giving consideration to the work to take place.

IN THE EVENT THAT A BUILDING PERMIT IS NOT ISSUED, THE APPLICATION FEE IS NON-REFUNDABLE.

Permitted work must be completed within one year from the date of issuance. Application for a renewal permit may be submitted. Permit renewal fees are \$25 for All Projects.
Failure to secure an approved Building Permit may result in fines pursuant to RSA 676:17

I understand and accept that approval granted by the Town of Jackson, based upon information supplied herein, does not relieve me from having to comply with any Local Ordinances, State or Federal Laws.

I hereby certify that the information herein is true and the above project will be accomplished in accordance with the information submitted. I have read and understand the Town of Jackson Zoning Ordinance as it applies to this project and I understand the Building Inspector will act to enforce both the Zoning Ordinance and the State of New Hampshire Building Code.

Owner(s) Signature:  Date: 12-12-13

Owner(s) Signature: _____ Date: _____

Owner(s) Signature: _____ Date: _____

Building Inspector Approval:

_____ Date of Approval _____

BRENDA COUTURE
ARTHUR COUTURE
185 SWEDEN STREET
BERLIN NH 03570

6321
64-8900/2117

Pay to the
Order of

Team of Jackson
Two Hundred Twelve

12-11-13
Date

\$212.50
Dollars

FRONT
GLASS
NO. 1



GUARDIAN ANGEL CREDIT UNION
200 COOS STREET, P.O. BOX 822
BERLIN, NH 03570

For *Sherry Hill*

Arthur Couture

MC

⑆211789000⑆ 000200344A⑆ 6321

(S69°24'E Record)

S69°31'36"E

1225.43'

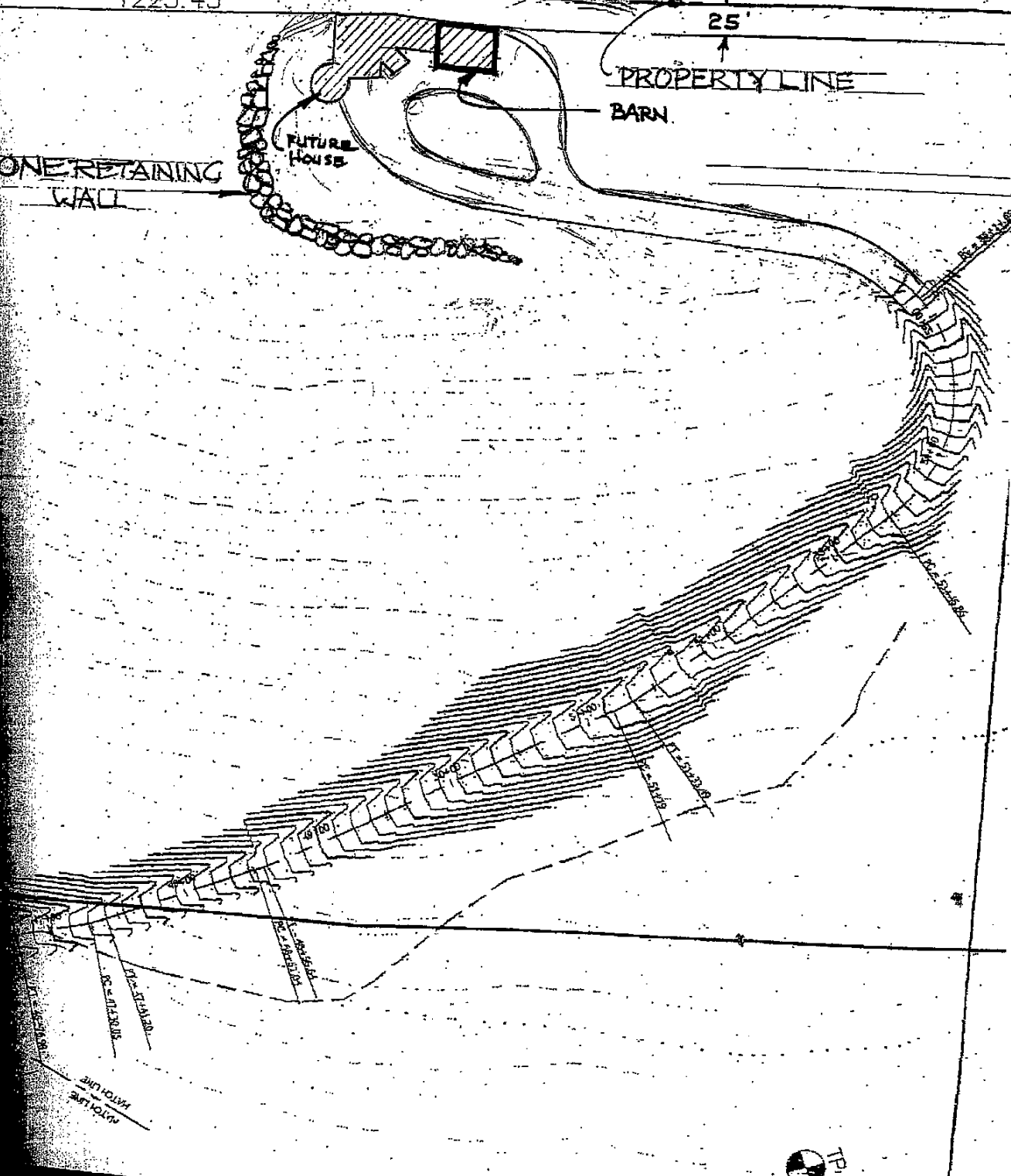
25'

PROPERTY LINE

BARN

FUTURE HOUSE

STONE RETAINING WALL





ABUTTER'S LIST

Site: Arthur Couture Parcel

Location: Green Hill Road, Jackson, NH

<u>Map #/ Lot #</u>	<u>Owner/Address</u>
R13/19	Arthur R. Couture (subject parcel) 1803 Riverside Drive Berlin, NH 03570
R13/20, R13/24 R13/25 & R13/26	Daniel P. Swanson, Jr. (subject parcel) 15015 N. Lynwood Spokane, WA 99208
R13/17-B	Andrew Kling 26 Read Road Salem, MA 01970
R13/17-C	Saco Realty Trust c/o Peter G. Hastings, Trustee P.O. Box 290 Fryeburg, ME 04037
R13/18	Christopher M. Betts P.O. Box 205 Beals, ME 04611
R13/170A & R13/57AIII	United States Forest Service Supervisors Office 71 White Mountain Drive Campton, NH 03223
R13/21, R13/22 & R13/23	Sally A. Brasill P.O. Box 364 Jackson, NH 03846
R13/27	Town of Bartlett Town of Jackson P.O. Box 268 Jackson, NH 03846
R13/28	Gilbert & Ellen Forest 100 Appleton Street Unit #1 Boston, MA 02116
R13/29	Mallett Corporation P.O. Box 831 Jackson, NH 03846
V01/5	Jackson Golf & Sleigh Center P.O. Box 803 Jackson, NH 03846
V01/8	Frederick L. Pittenger Pittenger Green Hill Realty Trust 152 Lincoln Street Melrose, MA 02176

Map #/ Lot #
V01/9

Owner/Address
Brian Byrne
P.O. Box 322
Jackson, NH 03846

AmmonoosucSurveyCoutureabutlist.word

Couture Construction Corporation

From: Couture Construction Corporation [arccc@ne.rr.com]
Sent: Monday, April 29, 2013 9:02 AM
To: 'Sonny Couture'
Subject: FW: Abutters List- Green Hill Road, Jackson, NH
Attachments: AmmonoosucSurveyCoutureabutlist.doc

Hoping this works this time.

*Couture Construction Corp
1803 Riverside Drive
Berlin, NH 03570
603-752-4622
603-752-3397 FAX*

From: Gregory Howard [mailto:wetsoil1@roadrunner.com]
Sent: Friday, April 26, 2013 10:45 AM
To: Arthur Couture
Subject: Abutters List- Green Hill Road, Jackson, NH

Dear Sonny,

Attached is the list of abutters you requested.

Sincerely,
Gregory W. Howard, CWS/CSS
North Country Soil Services
P.O. Box 442
West Ossipee, NH 03890
(603) 539-9152

This e-mail and any files transmitted with it may be confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law or regulation. If you are not the intended recipient or the person responsible for delivering the e-mail for the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you believe that you have received this e-mail in error, please notify me at North Country Soil Services at 603-539-9152.



Couture Construction Corporation

From: Claude Pigeon [claudep.arccc@ne.rr.com]
Sent: Thursday, February 13, 2014 11:49 AM
To: 'Couture Construction Corporation'
Cc: arcouture@ne.rr.com
Subject: FW: Couture Property off of Green Hill Road
Attachments: CFPS%20seal[2].jpg; goody Goudreau, CFPS.vcf

From: Fire Inspector [mailto:jacksonfiredept@gmail.com]
Sent: Thursday, February 13, 2014 10:08 AM
To: Frank Benesh
Cc: Bill Lockard; Claude Pigeon
Subject: Couture Property off of Green Hill Road

Good morning Mr. Benesh,

As you may know by now, I have been given the assignment of trying to resolve and move forward outstanding building permit applications which were in existence at the time the building inspector resigned at the end of January. In doing so, the Couture permit is still outstanding and I am trying to understand what the exact issue is, and to determine what and who has the next step.

In reading Jackson's current zoning Ordinance, edition March, 2012. in section 2.2.1, it states A pre-existing lawful use of land, buildings, or structures may be continued although such use does not conform to the provisions of this ordinance. Having read that, and conducting some research with Chief Henry, it is my understanding that this piece of property and access too, has existed for a very long period of time certainly prior to November of 1971 When zoning was first adopted. It is currently my interpretation that the new owner Mr. Couture has provided a private driveway using an existing curb cut and access right of way road which he has been permitted for and has agreed to improve to the Highway departments recommendations to allow fire and emergency service access. As such this current building application meets the intent of the regulations as I understand them.

My question is, do you or the board members see something that I do not?

We appreciate your help during these times of change.

Thank you

Bob Goudreau, CFPS
Certified Fire Inspector, NPQB #386



Certificate #1172

Couture Construction Corporation

From: Fire Inspector [jacksonfiredept@gmail.com]
Sent: Thursday, February 27, 2014 3:27 PM
To: Arthur "Sonny" Couture
Cc: Frank Benesh; Bill Lockard
Subject: Status of Building Permit fro Greenhill Rd.
Attachments: goody Goudreau, CFPS.vcf

Good afternoon Sonny,

As promised, I have spent some time reviewing your permit application and the Towns zoning ordinance and more importantly the State Law. In particular RSA 674:41, It does appear that I, as building inspector am prohibited from issuing a building permit until an appeal is made to the ZBA as noted by the previous building Inspector Mr. Andy Chalmers. or you may appeal to the board of selectman for a variance. The State law is very specific in regards to building permit applications and land use regulations. I believe it would be beneficial for you state your work and time so far in this project to demonstrate to the board that it would be both a hardship and a financial upset to not be allowed to proceed with your plans to construct your building. I am sorry that this issue has come up this late in the process. If I can be of any other assistance with this issue, please let me know.

as a side note, you may want to visit www.nhmunicipal.org/TownAndCity/Article/480 for more information.

Sincerely,

Bob Goudreau, CFPS
Interim Building Official
Town of Jackson, N.H.

5. **Arthur Couture:** Map R13/Lot 19 (Green Hill Rd. – New Barn). Application submitted 12/12/13.

Response from Andy 1/2/2014:

To the Selectmen,

As I have not been appointed as the Town's Building Inspector I am making the following recommendations to assist you in processing this application.

I recommend denying the building permit application for R13 lot 19. This lot does not appear to meet the requirement(s) of RSA 674:41. This appears to be a 'land-locked' parcel, the only access is through an existing tote road utilized years ago for logging. While it is my understanding that the applicant has been granted a driveway permit by the town and that the applicant has expended considerable efforts and funds in improving this access this still does not appear to meet any of the minimum standards as established in RSA 674:41.

In denying this Building Permit application it will allow the owner to appeal to the Zoning Board of Adjustment. The applicant can file an appeal of administrative decision and/or file for a variance from having to comply with RSA 674:41. In consideration of the funds expended the applicant may also be able to make the argument that an equitable waiver may be applicable.

Respectfully,

Andy C Chalmers

Couture Construction Corporation

From: Couture Construction Corporation [arccc@ne.rr.com]
Sent: Friday, January 24, 2014 3:05 PM
To: 'arcouture@ne.rr.com'
Subject: Green Hill Permit Memo;
Attachments: Green Hill Permit Memo.pdf

Sonny,

Bob Goudreau just faxed this over for you and I thought you should see it now instead of waiting till Monday.

Annie

Sonny Couture

From: Burr Phillips [csolutions@roadrunner.com] **TOWN ENGINEER**
 Sent: Wednesday, April 03, 2013 5:49 PM
 To: 'Andrew Chalmers'; 'Sonny Couture'
 Subject: Emailing: minimum_road_access_requirements.pdf

FYI - Something I found on-line. It appears that a variance, if approved by the ZBA, may be an option. See attached.

-BurrFrom Chapter 7 of "A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails", LGC 2004
 Pg. 1

Minimum Road Access Requirements Under State Law

RSA 674:41 has been characterized by some as zoning on the state level. It is a law that applies in all towns and cities, unless the municipality does not have a planning board with subdivision approval authority. Under RSA 674:41, no building permit can be issued, nor can any building be built, on any lot unless that lot has access from one of these five types of streets:

- A Class V or better public highway, including one that has been previously laid out, or one that has been accepted by the municipality (RSA 674:41 I(a), I(b)(4)); or
- A road shown on a plat approved by the planning board - either a subdivision plat, or a street plat (RSA 674:41, I(b)(2) and (3)); or
- A Class VI highway, but only if the governing body, after consulting with the planning board, has adopted a policy allowing building on that particular Class VI highway, or portion thereof, and then only if the owner has recorded a notice in the registry of deeds acknowledging that the town is not liable for maintenance or any damage that might occur on that road (RSA 674:41, I(c)); or
- A private road, but as with Class VI roads, only if the governing body, after consulting with the planning board has adopted a policy allowing building on that particular private road, or portion thereof, and then only if the owner has recorded a notice in the registry of deeds acknowledging that the town is not liable for maintenance or damage that might occur on that road (RSA 674:41, I(d)); or
- A street shown on a subdivision plat that was approved by the zoning board of adjustment or governing body before the planning board was granted subdivision jurisdiction. The Street must already have at least one building on it and must have been constructed prior to July 23, 2004 (RSA 674:41, I(e)).

HOW TO INTERPRET RSA 674:41

Applicability. RSA 674:41 applies to all lots, including those in older recorded subdivisions never approved by the planning board, as well as new subdivisions under the jurisdiction of the planning board. The only circumstance under which this law does not apply is in a municipality that has not granted subdivision regulation authority to the planning board. In *Vachon v. New Durham*, 131 N.H. 623 (1989), the Court held that the statute applies to all building permit applications not just those related to new subdivisions. The statute also must be considered if the erection of any building is proposed, even where the municipality requires no building permit.

RSA 674:41 applies to new buildings, as well as to remodeling, additions or conversions to year-round use of already existing buildings. The statute provides that "no building shall be erected... nor shall a building permit be issued for the erection of a building" unless the proposed building complies with the statute. Also, the first sentence of paragraph II speaks of the

“structure or part thereof,” implying that any physical expansion of the structure must comply.

Frontage. The statute refers to the “street giving access to the lot.” Generally, the lot must have actual frontage on one of the five types of streets described in RSA 674:41, I. An easement giving access to a “back lot” over the land of another will not meet the statutory standard unless the easement itself either is a public highway or is shown on a recorded plat

From Chapter 7 of “A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails”, LGC 2004
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approved by the planning board. In *Belluscio v. Town of Westmoreland*, 139 N.H. 55 (1994), the Court approved a building on a lot whose only access was an unapproved deeded easement. But in 1995, reacting to the *Belluscio* case, the legislature enacted the second sentence of RSA 674:41, III: “For purposes of paragraph I, ‘the street giving access to the lot’ means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right of way, unless such easement or right of way also meets the criteria set forth in subparagraph 1(a), (b) or (c).”

Grandfathering. Some municipal zoning ordinances “grandfather” existing lots. However, such zoning clauses do not make existing lots exempt from the state frontage requirement of RSA 674:41. Paragraph III of that statute provides: “This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this Section.” This sentence was added in 1989, and thus supersedes the holding in *Battock v. Town of Rye*, 116 N.H. 167 (1976), that a local grandfather clause exempts existing lots from road frontage requirements.

Streets and Driveways. A road is either some class of public highway or it is not. If it is not, then a lot fronting on that roadway does not qualify to be built on under RSA 674:41, I(b) unless that roadway is shown on a plat approved by the planning board. Otherwise, it must satisfy the requirements of paragraph I(d) or (e). Whether the roadway is colloquially referred to as a street or driveway doesn’t matter with respect to this law. The word “street” as broadly defined in RSA 672:13 includes all ways. So any roadway that passes muster under RSA 674:41 will count as a “street,” no matter what it actually looks like, or whether or not it was intended to become public. The purpose of this statute is to give the planning board jurisdiction over access to all lots. The relevant construction standards are whatever standards the planning board decides to impose when the plat is approved. For example, many zoning ordinances or subdivision regulations have provisions for shared driveways. In a municipality with such a provision, a shared driveway, if shown on a plat and approved and recorded as part of that plat, would count as a street that satisfies this statute.

Street Plat. It is not completely clear how the term “street plat” as used in RSA 674:41, I(b)(3) is defined. However, this wording appears to be a historical quirk, rooted in the fact that the pre-1983 version of the subdivision enabling law - former RSA 36:19 - didn’t use the word “subdivision” except in the title, but instead expressed the planning board’s authority in terms of “empower[ing] the planning board to approve or disapprove, in its discretion plats showing streets, or the widening thereof, or parks...” Former RSA 36:21 provided that the planning board must adopt subdivision regulations before exercising the authority granted by RSA 36:19 and that, therefore, “plats showing streets” included subdivision plats. So the very concept of subdivision regulation began as the concept of regulating road access. In some states it is still common to omit subdivision review where all lots front existing streets. In these states lot size and other similar requirements are controlled solely through zoning. See Rathkopf’s Law of Zoning & Planning, Section 64.03(I)(c)).

A street plat is the same thing as a subdivision plat, except that it doesn’t show any new lots - just a new street. Since both former RSA 36:19 and current RSA 674:41 are part of the subdivision review authority, the planning board, if it is asked to approve a street plat, should

From Chapter 7 of “A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails”, LGC 2004
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follow the same procedures it does for subdivision plats, including the notices and hearing required by RSA 676:4. Any new roadway shown on the plat, regardless of whether it is referred to colloquially as a street or driveway, should be required to be improved to whichever set of standards is applicable in the subdivision regulations, unless the board decides to grant a waiver to those requirements.

EXCEPTIONS TO RSA 674:41

RSA 674:41, II allows the zoning board of adjustment to grant an exception when a property owner wants to build on a lot that has no frontage on any class of highway and no frontage on any roadway approved by the planning board or other board prior to platting jurisdiction - for example a lot whose only frontage is on a private roadway not shown on any plan approved by the board - or when the planning board has failed to approve a street plat submitted by the property owner. The statute must be read carefully because even though an exception is possible, the standards the owner must meet are quite stringent. To grant the exception and allow the building to be erected, the ZBA must find all of the following:

- That the enforcement of the minimum frontage requirements in RSA 674:41 would “entail practical difficulty or unnecessary hardship;” and
- That the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets; and
- That the erection of the building will not tend to distort the official map or increase the difficulty of carrying out the master plan; and
- That erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality.

Analysis of Exception Standards. So far there has been no New Hampshire Supreme Court case construing this paragraph. Although case law gives good guidance on what “unnecessary hardship” is, at least for zoning variances, there is no New Hampshire case on what “practical difficulty” means. Clearly, though, the mere fact that a lot has no street frontage can’t by itself constitute “practical difficulty,” since if it did, every lot that applied would automatically qualify and the statute would be rendered meaningless.

Although the four standards listed above 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 a proposed year-round home because the “circumstances of the case” always require some relation to “existing or 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.”

An alternative way to handle building requests on landlocked lots is through the street plat process described above. It gives the planning board the ability to consider the type of access road that ought to be required for the proposed use.

Zoning Ordinance Exceptions. It does not matter if the standards for a special exception in the local zoning ordinance are different from the four standards listed above. The zoning special exception does not apply. An exception under RSA 674:41 has nothing to do with a special exception under zoning. Paragraph III of RSA 674:41 provides that this law supersedes any less stringent local ordinance.

From Chapter 7 of “A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails”, LGC 2004

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Towns Without ZBAs. In a town with no ZEA, the governing body (board of selectmen) must appoint five citizens to act as a special appeals board to determine whether an applicant qualifies for the exception under RSA 674:41, II.

THE TAKING ISSUE

If a town refused to allow any building on a lot, because of RSA 674:41, wouldn’t that be an unconstitutional ‘taking’ of property?

A full discussion of the regulatory taking of land is beyond the scope of this book.

However, in *Trottier v. City of Lebanon*, 117 N.H. 147 (1977), the owner of land with frontage only on a Class VI road had been denied approval of a proposed subdivision because of a local frontage requirement. The plaintiff claimed an unconstitutional taking, but the Court denied the claim, finding:

The facts show that prior to his purchase plaintiff made no inquiry as to the status of Old King's Highway, and the zoning problems posed by the deficient access route... It is undoubtedly true that plaintiff's land cannot be used for residential purposes without the expenditure of substantial additional sums to improve the Old King's Highway. Yet it is also true, as the trial court properly found, that the plaintiff carelessly 'purchased' this problem.

If a town's true motive for denying permission to build on a lot under RSA 674:41 relates to something other than the adequacy of the road - for example, because it wants the land to remain "wild" as some sort of preserve - then such a denial is indeed quite likely to constitute a taking. See *Burrows v. Keene*, 121 N.H. 590 (1981). Furthermore, the way to regulate density of development is through a zoning ordinance (see *Caspersen v. Town of Lyme*, 139 N.H. 637 (1995)), or through the prevention of "scattered and premature" subdivisions, not through RSA 674:41. This law provides a way to regulate road access adequacy and is not a back-door way of regulating or preventing development itself.

WHO ENFORCES RSA 674:41?

Every local official involved with land use issues can have some role to play in enforcing the state frontage requirements contained in RSA 674:41.

- If the town has a building permit system, then whoever issues the permits, whether it is a building inspector, code officer or selectmen, must refuse to issue the permit unless and until the lot complies with this law. If a town has no building permit system, it can still enforce this statute against an owner who builds without the required frontage through a citation, cease and desist order or court action under RSA 676:17, 17-a or 17-b. See the *Guide to District Court Enforcement of Local Ordinances and Codes* published by the New Hampshire Bar Association.

- The planning board has a major role in this statute under RSA 674:41, I(b). An owner of a lot with frontage only on a pre-planning board, unapproved road can apply to the planning board for approval of that road as part of a Street plat as discussed above.

From Chapter 7 of "A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails", LGC 2004 Pg. 5

- The planning board can also get involved if someone submits a subdivision or site plan application on land that has no frontage of any of the types listed in RSA 674:41, I. If so, the application should be denied until it complies with RSA 674:41.

- The selectmen or town/city council will get involved whenever a lot's sole frontage is on a Class VI road or private road, because under the statute it is the local governing body that must decide whether the municipality's policy will be to permit buildings on that road, or portion thereof RSA 674:41, I(c) and (d).

- The selectmen or town/city council, as well as town meeting voters, also could become involved in a case where there was a long-existing private road pre-dating the planning board and not shown on any approved plan, and the owners, instead of asking the planning board for a street plat approval, decide instead to petition for a layout of that road as a public highway. See Chapter 2.

- The zoning board of adjustment can get involved if the landowner decides to seek an exception under paragraph II of the statute.

- The town meeting could get involved in a case if the planning board refused to approve a street plat and the owner then petitions the town meeting to accept the road as a public highway under RSA 674:41, I(b)(4), which refers to RSA 674:40. See Chapter 2,

HOW RSA 674:41 APPLIES

Property Access Not Guaranteed. Before the advent of the planning board, Property Owner A sold the front half of a woodlot - the part with Class V road frontage - to Property Owner B for a house lot. Although Owner A has for years used B's driveway as access to remove firewood, Owner A has no deeded easement from his land to the highway. The driveway is not shown on any plat or plan. He now asks for a building permit to locate a small cabin on his woodlot. It is his belief that New Hampshire law guarantees him access to his property. Owner A's belief about guaranteed access is a common misconception. The only statute that comes close to a guaranteed access is the owner consent section of RSA 231:43, which reserves an owner the right to access over a previously discontinued highway unless the owner gives it up in writing. See discussion in Chapter 4. This statute doesn't help Owner A, since his lot never had highway access.

Paragraph I of RSA 674:41, requires the building permit to be denied at this point, because Owner A doesn't have access via any of the types of "approved street" listed there. In order to satisfy RSA 674:41, Owner A's first problem is to get a private easement from Owner B. Or maybe he can petition superior court for an easement by prescription or an easement by necessity. These legal doctrines relate to private easements, not public highways, so they are not described further here. A municipality does not normally get involved in the kind of private dispute Owner A may have with Owner B. It's a matter of private property law. Assuming Owner A obtains the private easement, he must still meet the public requirements of RSA 674:41. Owner A's options are:

- Submit a street plat to the planning board showing the easement over Owner B's land as a driveway. RSA 674:41, I(b)(3). Presumably, the planning board's review could be of the expedited variety similar to boundary line agreements (RSA 676:4, I(e)) because no new

From Chapter 7 of "A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails", LGC 2004 Pg. 6
lots are being created. The problem is deciding what street standards the planning board should apply. Unless the town's regulations contain relaxed driveway standards, the street standards in the subdivision regulations would apply, unless waived or relaxed by the planning board.

- In the alternative Owner A can request an exception under RSA 674:41, II from the zoning board of adjustment. The board can add conditions such as, in this case, appropriate width and construction standards for the driveway to make sure that granting the exception complies with the standards listed above. See *Dube v. Senter*, 107 N.H. 191 (1966), decided under RSA 36:26, which was the predecessor of RSA 674:41.
- Owner A could petition the selectmen for a layout under the statutes, or petition the town meeting to accept the driveway as a public highway, See Chapter 2. Politically, it may be futile to ask the town to pay to build a highway for just one person. One possibility would be to do a conditional layout under RSA 231:23. See discussion in Chapter 5. If Owner B had refused to give Owner A a private easement, this might be the best option.
- If Owner A intends to construct a new driveway or "alter in any way" the manner in which his driveway enters the town highway, he also needs a driveway or curb cut permit under RSA 236:13, as discussed in Chapter 6.

Deeded Easement. Consider the same facts as in the example above, except that instead of wanting to build a cabin, Owner A submits an application to the planning board for a seven-lot subdivision. All lots will have access via a new road he wants to build on his 25-foot wide deeded easement, which he has obtained from Owner B.

The planning board cannot grant subdivision approval for buildable lots if Owner A's survey plat doesn't show the full length of the easement. A roadway can't count as approved under RSA 674:41, I(b)(2) unless its full length (to the nearest approved street) is shown on an approved plat.

RSA 674:41 would be satisfied if Owner A's plat showed the entire road including the

easement across Owner B's land. But this approach may raise other problems for Owner A:

- The subdivision regulations may require a street wider than 25 feet. If so, Owner A's subdivision must be denied unless and until he can show that he has a legal right to dedicate the proper width of roadway. *Nadeau v. Town of Durham*, 129 NH. 663 (1987).
- Even if Owner A's easement over Owner B's land is wide enough, that easement may be described in the easement deed as access to only one lot, not seven. Owner A's easement rights as against Owner B may not include the right to subdivide.

sent to me by Brian Phillips 4/3/13

From Chapter 7 of "A Hard Road to Travel: New Hampshire Law of Local Highways, Streets and Trails", LGC 2004

Minimum Road Access Requirements Under State Law

RSA 674:41 has been characterized by some as zoning on the state level. It is a law that applies in all towns and cities, unless the municipality does not have a planning board with subdivision approval authority. Under RSA 674:41, no building permit can be issued, nor can any building be built, on any lot unless that lot has access from one of these five types of streets:

- A Class V or better public highway, including one that has been previously laid out, or one that has been accepted by the municipality (RSA 674:41 I(a), I(b)(4)); or
- A road shown on a plat approved by the planning board - either a subdivision plat, or a street plat (RSA 674:41, I(b)(2) and (3)); or
- A Class VI highway, but only if the governing body, after consulting with the planning board, has adopted a policy allowing building on that particular Class VI highway, or portion thereof, and then only if the owner has recorded a notice in the registry of deeds acknowledging that the town is not liable for maintenance or any damage that might occur on that road (RSA 674:41, I(c)); or
- A private road, but as with Class VI roads, only if the governing body, after consulting with the planning board has adopted a policy allowing building on that particular private road, or portion thereof, and then only if the owner has recorded a notice in the registry of deeds acknowledging that the town is not liable for maintenance or damage that might occur on that road (RSA 674:41, I(d)); or
- A street shown on a subdivision plat that was approved by the zoning board of adjustment or governing body before the planning board was granted subdivision jurisdiction. The Street must already have at least one building on it and must have been constructed prior to July 23, 2004 (RSA 674:41, I(e)).

HOW TO INTERPRET RSA 674:41

Applicability. RSA 674:41 applies to all lots, including those in older recorded subdivisions never approved by the planning board, as well as new subdivisions under the jurisdiction of the planning board. The only circumstance under which this law does not apply is in a municipality that has not granted subdivision regulation authority to the planning board. In *Vachon v. New Durham*, 131 N.H. 623 (1989), the Court held that the statute applies to all building permit applications not just those related to new subdivisions. The statute also must be considered if the erection of any building is proposed, even where the municipality requires no building permit.

RSA 674:41 applies to new buildings, as well as to remodeling, additions or conversions to year-round use of already existing buildings. The statute provides that "no building shall be erected... nor shall a building permit be issued for the erection of a building" unless the proposed building complies with the statute. Also, the first sentence of paragraph II speaks of the "structure or part thereof," implying that any physical expansion of the structure must comply.

Frontage. The statute refers to the "street giving access to the lot." Generally, the lot must have actual frontage on one of the five types of streets described in RSA 674:41, I. An easement giving access to a "back lot" over the land of another will not meet the statutory standard unless the easement itself either is a public highway or is shown on a recorded plat

approved by the planning board. In *Belluscio v. Town of Westmoreland*, 139 N.H. 55 (1994), the Court approved a building on a lot whose only access was an unapproved deeded easement. But in 1995, reacting to the *Belluscio* case, the legislature enacted the second sentence of RSA 674:41, III: "For purposes of paragraph I, 'the street giving access to the lot' means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right of way, unless such easement or right of way also meets the criteria set forth in subparagraph 1(a), (b) or (c)."

Grandfathering. Some municipal zoning ordinances "grandfather" existing lots. However, such zoning clauses do not make existing lots exempt from the state frontage requirement of RSA 674:41. Paragraph III of that statute provides: "This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this Section." This sentence was added in 1989, and thus supersedes the holding in *Battock v. Town of Rye*, 116 N.H. 167 (1976), that a local grandfather clause exempts existing lots from road frontage requirements.

Streets and Driveways. A road is either some class of public highway or it is not. If it is not, then a lot fronting on that roadway does not qualify to be built on under RSA 674:41, I(b) unless that roadway is shown on a plat approved by the planning board. Otherwise, it must satisfy the requirements of paragraph I(d) or (e). Whether the roadway is colloquially referred to as a street or driveway doesn't matter with respect to this law. The word "street" as broadly defined in RSA 672:13 includes all-ways. So any roadway that passes muster under RSA 674:41 will count as a "street," no matter what it actually looks like, or whether or not it was intended to become public. The purpose of this statute is to give the planning board jurisdiction over access to all lots. The relevant construction standards are whatever standards the planning board decides to impose when the plat is approved. For example, many zoning ordinances or subdivision regulations have provisions for shared driveways. In a municipality with such a provision, a shared driveway, if shown on a plat and approved and recorded as part of that plat, would count as a street that satisfies this statute.

Street Plat. It is not completely clear how the term "street plat" as used in RSA 674:41, I(b)(3) is defined. However, this wording appears to be a historical quirk, rooted in the fact that the pre-1983 version of the subdivision enabling law - former RSA 36:19 - didn't use the word "subdivision" except in the title, but instead expressed the planning board's authority in terms of "empower[ing] the planning board to approve or disapprove, in its discretion plats showing streets, or the widening thereof, or parks..." Former RSA 36:21 provided that the planning board must adopt subdivision regulations before exercising the authority granted by RSA 36:19 and that, therefore, "plats showing streets" included subdivision plats. So the very concept of subdivision regulation began as the concept of regulating road access. In some states it is still common to omit subdivision review where all lots front existing streets. In these states lot size and other similar requirements are controlled solely through zoning. See Rathkopf's Law of Zoning & Planning, Section 64.03(I)(c)).

A street plat is the same thing as a subdivision plat, except that it doesn't show any new lots - just a new street. Since both former RSA 36:19 and current RSA 674:41 are part of the subdivision review authority, the planning board, if it is asked to approve a street plat, should

follow the same procedures it does for subdivision plats, including the notices and hearing required by RSA 676:4. Any new roadway shown on the plat, regardless of whether it is referred to colloquially as a street or driveway, should be required to be improved to whichever set of standards is applicable in the subdivision regulations, unless the board decides to grant a waiver to those requirements.

EXCEPTIONS TO RSA 674:41

RSA 674:41, II allows the zoning board of adjustment to grant an exception when a property owner wants to build on a lot that has no frontage on any class of highway and no frontage on any roadway approved by the planning board or other board prior to platting jurisdiction - for example a lot whose only frontage is on a private roadway not shown on any plan approved by the board - or when the planning board has failed to approve a street plat submitted by the property owner. The statute must be read carefully because even though an exception is possible, the standards the owner must meet are quite stringent. To grant the exception and allow the building to be erected, the ZBA must find all of the following:

- That the enforcement of the minimum frontage requirements in RSA 674:41 would "entail practical difficulty or unnecessary hardship;" and
- That the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets; and
- That the erection of the building will not tend to distort the official map or increase the difficulty of carrying out the master plan; and
- That erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality.

Analysis of Exception Standards. So far there has been no New Hampshire Supreme Court case construing this paragraph. Although case law gives good guidance on what "unnecessary hardship" is, at least for zoning variances, there is no New Hampshire case on what "practical difficulty" means. Clearly, though, the mere fact that a lot has no street frontage can't by itself constitute "practical difficulty," since if it did, every lot that applied would automatically qualify and the statute would be rendered meaningless.

Although the four standards listed above 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 a proposed year-round home because the "circumstances of the case" always require some relation to "existing or 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."

An alternative way to handle building requests on landlocked lots is through the street plat process described above. It gives the planning board the ability to consider the type of access road that ought to be required for the proposed use.

Zoning Ordinance Exceptions. It does not matter if the standards for a special exception in the local zoning ordinance are different from the four standards listed above. The zoning special exception does not apply. An exception under RSA 674:41 has nothing to do with a special exception under zoning. Paragraph III of RSA 674:41 provides that this law supersedes any less stringent local ordinance.

Towns Without ZBAs. In a town with no ZEA, the governing body (board of selectmen) must appoint five citizens to act as a special appeals board to determine whether an applicant qualifies for the exception under RSA 674:41, II.

THE TAKING ISSUE

If a town refused to allow any building on a lot, because of RSA 674:41, wouldn't that be an unconstitutional 'taking' of property?

A full discussion of the regulatory taking of land is beyond the scope of this book. However, in *Trottier v. City of Lebanon*, 117 N.H. 147 (1977), the owner of land with frontage only on a Class VI road had been denied approval of a proposed subdivision because of a local frontage requirement. The plaintiff claimed an unconstitutional taking, but the Court denied the claim, finding:

The facts show that prior to his purchase plaintiff made no inquiry as to the status of Old King's Highway, and the zoning problems posed by the deficient access route... It is undoubtedly true that plaintiff's land cannot be used for residential purposes without the expenditure of substantial additional sums to improve the Old King's Highway. Yet it is also true, as the trial court properly found, that the plaintiff carelessly 'purchased' this problem.

If a town's true motive for denying permission to build on a lot under RSA 674:41 relates to something other than the adequacy of the road - for example, because it wants the land to remain "wild" as some sort of preserve - then such a denial is indeed quite likely to constitute a taking. See *Burrows v. Keene*, 121 N.H. 590 (1981). Furthermore, the way to regulate density of development is through a zoning ordinance (see *Caspersen v. Town of Lyme*, 139 N.H. 637 (1995)), or through the prevention of "scattered and premature" subdivisions, not through RSA 674:41. This law provides a way to regulate road access adequacy and is not a back-door way of regulating or preventing development itself.

WHO ENFORCES RSA 674:41?

Every local official involved with land use issues can have some role to play in enforcing the state frontage requirements contained in RSA 674:41.

- If the town has a building permit system, then whoever issues the permits, whether it is a building inspector, code officer or selectmen, must refuse to issue the permit unless and until the lot complies with this law. If a town has no building permit system, it can still enforce this statute against an owner who builds without the required frontage through a citation, cease and desist order or court action under RSA 676:17, 17-a or 17-b. See the *Guide to District Court Enforcement of Local Ordinances and Codes* published by the New Hampshire Bar Association.
- The planning board has a major role in this statute under RSA 674:41, I(b). An owner of

- a lot with frontage only on a pre-planning board, unapproved road can apply to the planning board for approval of that road as part of a Street plat as discussed above.
- The planning board can also get involved if someone submits a subdivision or site plan application on land that has no frontage of any of the types listed in RSA 674:41, I. If so, the application should be denied until it complies with RSA 674:41.
 - The selectmen or town/city council will get involved whenever a lot's sole frontage is on a Class VI road or private road, because under the statute it is the local governing body that must decide whether the municipality's policy will be to permit buildings on that road, or portion thereof RSA 674:41, I(c) and (d).
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- Even if Owner A's easement over Owner B's land is wide enough, that easement may be described in the easement deed as access to only one lot, not seven. Owner A's easement rights as against Owner B may not include the right to subdivide.

Sonny Couture

From: Burr Phillips [csolutions@roadrunner.com]
Sent: Wednesday, August 22, 2012 1:08 PM
To: 'Sonny Couture'
Cc: mnorman@horizonsengineering.com; Diane Falcey; 'Jay Henry '
Subject: RE: Jackson Driveway Requirements - UNOFFICIAL

Hi Sonny,

The town will need some sort of plan in order to provide any comments. I would suggest starting with two layout/grading sketches:

- 1) Per the driveway standards;
- 2) Your proposed alternative demonstrating that emergency vehicles can safely access and leave the home-site. If your proposal is reasonable, in the town's opinion, but doesn't meet the letter of the regulation, I believe the town would be receptive to a waiver. If you are trying to make it the top of the hill and the alternative is not safe/reasonable, a reasonable option may be to place the home-site at or near the bottom of the hill.

The key factors will likely be emergency vehicle access, site distance, and site disturbance.

Please note that you will need to file a driveway-permit application for this a site, as well as a site disturbance plan. Typically, driveway permits are reviewed by the road agent/fire chief. However, for this difficult site, the town will likely ask me to review it and you to pay for my time. Thanks.

Burr H. D. Phillips, PE, CPESC
Civil Solutions, LLC
PO Box 476, Bartlett, NH 03812
(603) 374-1899

From: Sonny Couture [mailto:arcouture@ne.rr.com]
Sent: Wednesday, August 22, 2012 12:05 PM
To: csolutions@roadrunner.com
Subject: FW: Jackson Driveway Requirements - UNOFFICIAL

-----Original Message-----

From: Michael Norman [mailto:mnorman@horizonsengineering.com]
Sent: Tuesday, August 21, 2012 9:45 AM
To: 'Sonny Couture'
Subject: RE: Jackson Driveway Requirements - UNOFFICIAL

Sonny,

It looks like we can either meet the radius requirements or the slope requirements, but not both for your driveway. We would need a waiver for one of them. By meeting the centerline radius requirements, the road length is shortened and therefore the slope requirements cannot be meet. I would suggest that you have a conversation with Burr to determine how flexible he will be on the road design requirements since it will only be for one house. Please advise. Thanks.

Mike

3/10/2014

Michael D. Norman
Chief Operations Officer
Horizons Engineering, Inc.
34 School St., Littleton, NH 03561



Phone: (603) 444-4111
Fax: (603) 444-1343
www.horizonsengineering.com

From: Sonny Couture [<mailto:arcouture@ne.rr.com>]
Sent: Thursday, August 16, 2012 12:51 PM
To: mnorman@horizonsengineering.com
Subject: FW: Jackson Driveway Requirements - UNOFFICIAL

-----Original Message-----

From: Sonny Couture [<mailto:arcouture@ne.rr.com>]
Sent: Thursday, August 16, 2012 12:35 PM
To: 'mnorman@horizonengineer.com'
Subject: FW: Jackson Driveway Requirements - UNOFFICIAL

-----Original Message-----

From: Burr Phillips [<mailto:csolutions@roadrunner.com>]
Sent: Thursday, August 16, 2012 11:58 AM
To: Claude Pigeon (arccc@ne.rr.com); arcouture@ne.rr.com
Cc: Diane Falcey
Subject: Jackson Driveway Requirements - UNOFFICIAL

Hi Sonny,

Attached is an unofficial version of the Driveway Exhibit (B), plus the body of the road standards. You should pick up a copy from the Town Office. Please note that Matt Hernick from Horizons should already have a copy since he used the same on the Shaw Driveway.

Also, I recommend that you also pick up a copy of the town's Site Disturbance Guidelines since your plan will be reviewed relative to them as well as the driveway regs. (Again, Matt Hernick should have a copy.)

Burr H. D. Phillips, PE, CPESC
Civil Solutions, LLC
PO Box 476, Bartlett, NH 03812
(603) 374-1899