

APPLICATION FOR APPEAL FROM ADMINISTRATIVE DECISION
BOARD OF ADJUSTMENT
PO Box 268, Jackson, N.H. 03846

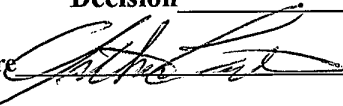
Revised July 19, 2006

Do not write in space below:

Case No. _____ Date Filed _____

ZBA Signature _____ Public Hearing _____

Decision _____

Applicant Signature  Date 3/28/14

TAX LOT NUMBER: R-13, Lot 19

Name of applicant: Arthur R. Couture

Address: 155 Sweden Street
Berlin, NH 03570
arcouture@ne.rr.com

Owner: Same

Location of property: Greenhill Road

Acres: 60

APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the New Hampshire Revised Statute §674:41.
Decision of the enforcement officer to be reviewed:

Email communication issued by Town of Jackson, NH Interim Building Official Bob Goudreau, CFPS notifying Arthur R. Couture (hereinafter "Applicant") that he would not be issuing a building permit. See attached email communication from Bob Goudreau to Applicant, dated February 27, 2014.

Mr. Goudreau's decision not to issue a building permit to your Applicant was ratified and memorialized in the Jackson Board of Selectmen meeting minutes. See attached page 3 of Board of Selectmen Minutes, dated March 6, 2014.

NUMBER: Unknown DATE: February 27, 2014

Section §674:41 of the New Hampshire Revised Statutes:

Pertains to the erection of buildings on streets and prohibits the construction of any building, and the issuance of any permit for construction of any building, on a lot within the municipality "unless the street giving access to the lot upon which such building is proposed to be placed" is either (a) a class V or better highway, (b) corresponds in location and lines with streets shown on the official map, subdivision plat or street plat approved by the planning board, or street located and accepted by the local legislative body, (c) a class VI highway with the detailed conditions, or (d) a private road with the detailed conditions. See NH RSA §674:41, I. The identification of "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 the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria" defined in the aforementioned sub-paragraphs. See *id.* at §674:41, III.

The statute also goes on to state that in evaluating an appeal *“the board of adjustment... may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would [1] not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and [2] if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality.”* See *id.* at §674:41, II.

The following additional information must be completed regarding the property in question:

Is any Use or Structure currently Non-Conforming? YES _____ NO X

If yes, explain in detail:

Does the property in question including all existing or proposed building, signs, driveways, and septic systems meet Jackson Zoning Ordinance requirements and applicable state regulations? YES X NO _____

If no, explain in detail:

ADDITIONAL INFORMATION: Summarize below any information from preliminary discussions with any state agency personnel in regard to the case. In addition, attach copies of any correspondence from state agencies, or Jackson officials and boards pertaining to the property.

NH RSA §674:41 was a subject of discussion at the time your Applicant applied for a building permit to construct the driveway from Greenhill Road to his sixty acre parcel of land. The parcel includes an easement from Greenhill Road to the parcel and there is an access road that has existed for a very substantial period of time. On April 4, 2013, the Board of Selectmen extensively reviewed the statute at issue. The meeting minutes note your Applicant’s property *“has a frontage issue; there’s no frontage on a town road; and the state RSA prevents building without road frontage”* and also mentions that your Applicant’s easement doesn’t create an exception to this rule. See page 2 of the Board of Selectmen Minutes, dated April 4, 2013.

However, after some consideration the Board of Selectmen went ahead and approved your Applicant’s application for a Driveway/Underground Cable Permit on May 16, 2013 (hereinafter *“Driveway Permit”*). Road Agent Henry saw no problems with issuing the permit and the Board of Selectmen unanimously voted to approve the permit. See pages 2-3 of the Board of Selectmen Minutes, dated May 16, 2013. Your Applicant was told after this meeting by the Building Inspector Andy Chalmers that the driveway building permit was approved because there was an access road that had existed for a substantial period of time, the Town had granted Applicant a Driveway Permit; therefore legal access to the property was found and the NH RSA §674:41 did not apply.

Your Applicant, having been provided a Driveway Permit by the Board of Selectmen and told by the Building Inspector Andy Chalmers that NH RSA §674:41 did not apply, went forward with building a driveway on the property. Construction of the 6000’ long driveway began on June 28, 2013 and it was substantially completed at the end of November, 2013. See Start of Construction Notification, dated June 19, 2013. Approximately \$250,000.000 was spent by your Applicant to construct the approved driveway in reliance on the Driveway Permit he was issued and the determination by a Town Official that NH RSA §674:41 did not apply. Your Applicant would not have invested such a substantial amount of money unless he had understood he could be issued a building permit. His reliance on the Driveway Permit he was issued and the determination of the Building Inspector, a Town official, that NH RSA §674:41 did not apply was reasonable.

ARTHUR COUTURE
155 SWEDEN ST.
BERLIN, NH 03570-3063

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3/28/14

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Harland Clarke