

Jackson Board of Adjustment

July 17, 2013

UNOFFICIAL UNTIL APPROVED

Draft July 19, 2013

Members in Attendance: Frank Benesh, Joan Aubrey, Brian Walker, Jerry Dougherty. The Alternate attending the meeting was David Matesky. Martha D. Tobin is the Recording Secretary. Members absent: Dave Mason. Alternates absent: Martha Benesh.

Visitors: Ken Cargill, David Evans, Bea Davis, Bob Davis, *** other man***

Chairman Frank Benesh called the meeting to order at 7:00 p.m. and appointed Alternate Matesky as a voting member tonight.

Approve the Minutes of March 20, 2013 Chairman Benesh asked for corrections; there were no amendments or corrections. **Joan Aubrey, seconded by Frank Benesh, made a motion to approve the Minutes of March 20, 2013 as written. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).**

Approve the Minutes of May 15, 2013 Chairman Benesh asked for corrections; there are a couple of places where people are unidentified, such as the woman from Mulloon Road who spoke; as folks didn't give their names and the Board isn't aware of who they are, references will remain as noted. On page 3, paragraph six, regarding the hardship argument, the last sentence is incorrect; the minutes state, "The Board talked about this and thought there was nothing that distinguished it from other properties in that development." The Board had actually agreed there were things that distinguished it from other properties in that development. The Minutes are to be amended to read "The Board talked about this and thought there ~~was nothing~~ **were things** that distinguished it from other properties in that development." There were no further amendments or corrections. **Joan Aubrey, seconded by Frank Benesh, made a motion to approve the Minutes of May 15, 2013 with the one change noted on page 3. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).**

Approve the Minutes of June 19, 2013 Chairman Benesh asked for corrections; Jerry Dougherty noted on the top of page 3, the Minutes state, "Jerry wants to know who is liable if a \$50,000 excavator falls into the stream."; it is pounds not dollars. The Minutes are to be amended to read, "Jerry wants to know who is liable if a ~~\$50,000~~ **fifty-thousand pound** excavator falls into the stream." Chairman Benesh wondered if the Minutes were correct in reflecting that the Board didn't take specific votes on the different prongs but rather reviewed them as one; Joan noted that the Minutes are correct. There were no further amendments or corrections. **Joan Aubrey, seconded by Frank Benesh, made a motion to approve the Minutes of June 19, 2013 with the one change noted on page 3. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).**

Terry, John; 32 Frances Street (Map R18, Lot 45) – Continuation of Public Hearing & Deliberation regarding a variance from zoning ordinance concerning setbacks

and expansion of a non-conforming use in the Rural Residential Zoning District

Chairman Benesh reopened the Public Hearing at 7:04 p.m. Mr. Terry has withdrawn his application for a variance via e-mail, which has been shared with the Board. As was mentioned at the last meeting, Mr. Terry changed the design and got a permit. The Board will make a note that this has happened. Chairman Benesh closed the Public Hearing at 7:06 p.m.

Evans, H. David & Gail E. H. Evans, Co-Trustees of the Indenture of Trust of Edith P. Evans – Continuation of Public Hearing & Deliberation concerning an Appeal of an Administrative Decision denying a building permit for lack of compliance with RSA 674:41 regarding access to a street, on property located at Black Mountain Road, just above Dundee Road (Map R16, Lot 12) in the Rural Residential Zoning District

Chairman Benesh reopened the Public Hearing at 7:07 p.m. Ken Cargill has put together a draft of what a Notice of Exception would look like; the Board has it for review. Chairman Benesh also went, via e-mail, to Engineer Burr Phillips, Building Inspector Andy Chalmers and Road Agent/Fire Chief Jay Henry; he described the situation and invited them to the meeting; he let them know the Board was likely to provide final approval for the exception, subject to certain conditions as discussed. Engineer Phillips is favorably disposed to the draft by Ken Cargill and will hold the bridge to AST standards; Inspector Chalmers offered no opinion other than that the bridge is subject to a building permit as a structure. Road Agent/Fire Chief Henry will be happy with whatever Engineer Phillips comes up with but he asked for the bridge to have a sixty-thousand pound gross vehicle weight capacity with a fifteen foot clearance, not including the guardrails. He also thought the Board should consider requiring posting the weight maximum on both sides of the bridge. The purpose of that would be to allow anyone coming up there with a fire truck to be able to determine if the bridge will be okay to hold what the guy is driving. Jerry wondered if there is a standard that calls for that and Chairman Benesh noted the Board could suggest the Selectmen alter the road standards if it is not specifically called for. Brian Walker thinks it would be overkill to post the sign; he wondered if the town will now be asking to have every bridge posted with a sign. Chairman Benesh noted Road Agent/Fire Chief Henry thought the Board should require posting on this one; he's not sure if it is required by the AST standards. Brian noted if it is not required this seems like a lot for these folks to go through.

Ken noted the signs would cost about fifty dollars for either side of the bridge and that isn't an issue for the Evans; his concern is about requiring the bridge to hold a sixty-thousand pound vehicle; there isn't a driveway in town that can handle that weight. Jerry noted this is because of the bridge; Ken noted a bridge is no different than a culvert. Chairman Benesh noted he is reporting what was recommended by the Road Agent/Fire Chief. Ken wondered what will happen if the Fire Department gets a seventy-thousand pound vehicle next year. The town will go with what its engineer says is appropriate; Chairman Benesh is trying to defer to Jackson's Fire Chief's request. He would like to finalize this tonight.

Jerry is very comfortable with what is recommended but wants to discuss limiting future subdivision. If the Planning Board is going to approve a subdivision they may require a second egress; there are benefits to having them review the plan. Chairman Benesh noted that the Zoning Ordinance, in the past, has limited building to one dwelling and an

accessory apartment per lot and driveway. Joan noted the Board isn't trying to bypass the Planning Board. Jerry noted this whole case could have gone to the Planning Board.

Chairman Benesh would like the Board to consider granting an exception with the conditions the Board is discussing. Jerry wondered if there are estoppel issues; Chairman Benesh noted this is not a final action yet but if the Board felt there were estoppel issues it could decide not to grant the exception. Chairman Benesh reiterated he'd like the Board to end up with a motion to grant the exception with the conditions it thinks are appropriate; he would offer Ken's document as an addition to the Board's decision subject to review by Town Counsel.

Joan feels the Board should write its own decision, that way counsel doesn't need to be involved. Chairman Benesh doesn't want to attach a document generated by someone else's lawyer without a review by Jackson's lawyer. Joan noted if the Board writes its own decision that won't be an issue; the document Ken generated will be a great help with the Board's wording and can be used as an exhibit.

Chairman Benesh would like to remind folks the Board has already voted on one of the three arguments originally offered. The argument was that the town was misapplying RSA 674.41 and the Board voted that is not within the ZBA's jurisdiction.

The argument that this lot is grandfathered despite 674.41 requires the Board to interpret the RSA and that is not within the ZBA's jurisdiction. **Joan Aubrey, seconded by Jerry Dougherty, made a motion that the issue of grandfathering will not be addressed by the Board as it is outside the Board's jurisdiction. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).**

The next step for the Board is to walk through the provisions to grant an exception. (Ken has generated a document he will email to Chairman Benesh that uses the wording out of the standards.) The Board will address these prongs out of order.

3. Granting the exception will not tend to distort the official map or increase the difficulty of carrying out the master plan. Jerry noted there is no official map; the Board agreed granting the exception would not impact the master plan. **Brian Walker, seconded by Chairman Benesh, made a motion that the third prong for granting an exception has been met. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).**
4. The erection of the building will not cause hardship to future purchases or undue financial impact on the municipality. Chairman Benesh noted that with the recording of the conditions and the deed it's hard to see any future liability; any liability is mitigated by any conditions this Board puts in place. The conditions are based on input from the town's engineer and its Road Agent/Fire Chief.

David believes Road Agent/Fire Chief Henry and Engineer Phillips need to get together to talk about this. Chairman Benesh believes these folks have already discussed it and shared their input with the Board. Ken felt that David was asking for a discussion to be held outside of this Public Hearing; it was clarified that

there was no intention to do that. Chairman Benesh noted no one is talking about setting up a separate meeting. The Board could continue this Public Hearing and have both men present next month however; both have given their input already. Engineer Phillips is happy with a general approach that says whatever a registered engineer requires (AST Standards) while Road Agent/Fire Chief Henry is okay with that but wants the additional items. Chairman Benesh is comfortable moving forward without further input with the following conditions:

- There be a liability waiver recorded
- There be an agreement that the bridge, whether the existing one or a replacement, be signed-off by a professional engineer licensed in New Hampshire
- The bridge will meet AST Standards but will be rated to carry no less than sixty-thousand pounds
- The bridge travel-way will be fifteen feet clear, not counting the guardrails
- The weight limit will be posted

Joan Aubrey, seconded by David Matesky, made a motion that the fourth prong for granting an exception has been met. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).

2. The circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets. **Chairman Benesh, seconded by Joan Aubrey, made a motion that the ZBA has found, with the conditions imposed, the circumstances do not require the building to be more related to the street than it already is and therefore the second prong for granting an exception has been met. The motion passed unanimously.**
1. That the enforcement of RSA 674:41's minimum frontage requirements would "entail practical difficulty or unnecessary hardship". Chairman Benesh noted "practical difficulty" has not been defined while "unnecessary hardship" has been defined to mean that the property is being treated differently than other similar properties. He believes not issuing the building permit, with the conditions discussed, would cause an unnecessary hardship or practical difficulty. **Chairman Benesh, seconded by Joan Aubrey, made a motion that the ZBA has found that enforcement of the ordinance does cause a practical difficulty or unnecessary hardship for the reasons listed and therefore the first prong for granting an exception has been met. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).**

Chairman Benesh will write the exception with precisely what the Board found; it will be clear that this is a waiver to RSA 674.41 only; any work has to comply with all other regulations and ordinances.

Chairman Benesh noted this decision could be subject to an appeal so there is a thirty-day window for an abutter or the Selectmen to file one. An appeal would allow the applicant to argue that requiring the bridge to carry sixty-thousand pounds is way too much; the

ZBA could discuss that at another hearing; the applicant has that right. It was noted the AST Standards may well include that requirement.

Frank Benesh, seconded by Joan Aubrey, made a motion that the ZBA grant the exception. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).

Jerry hopes folks will go to the Planning Board with any situations like this in the future.

Chairman Benesh closed the Public Hearing at 7:40 p.m.

Chairman Benesh noted either the Planning Board or the Selectmen will have to develop a policy as to how they want to address these circumstances that exist all over town. Until then these will be addressed on a case-by-case basis.

Ken asked if the Notice of Decision would include the recording of a waiver of liability. It was clarified that is one of the conditions that has been specified.

Ken noted the ZBA can delegate a recordable Decision of Notice subject to Town Counsel's approval; Chairman Benesh noted everything that has to be worded will be subject to approval by Counselor Malia. David asked what that does to the thirty-day window; Chairman Benesh noted Counselor Malia needs to sign-off on anything that is recorded. Ken noted the Board can authorize Town Counsel to review or approve Ken's Notice for approval. It was reiterated all items are subject to Counselor Malia's approval. Ken noted a Lien Waiver has to be recorded; Chairman Benesh noted what needs to be recorded is up to Counselor Malia; the Board is not going to play attorney. Ken is comfortable working with Counselor Malia.

Chairman Benesh will endeavor to get out the decision by e-mail over the next day or two; he asked folks to let him know if any changes are needed or if he didn't capture something.

Other Business There are rumors of a variance request coming from Fritz Koeppel regarding the Wentworth however that has been rumored for three or four months now so it may happen soon or it may not. There may be a ZBA meeting in August or September; other than the Wentworth, there is no further business for the rest of the summer.

Joan Aubrey, seconded by David Matesky, made a motion to adjourn at 7:41 p.m. The motion passed unanimously (Benesh, Aubrey, Walker, Dougherty and Matesky).

Respectfully submitted by:

Martha D. Tobin

Recording Secretary