

Town of Jackson Board of Adjustment

Notice of Decision

Case 2013-04: Evans Trust Appeal of Administrative Decision concerning Map R16, Lot 12 on Black Mountain Road

Decided July 17, 2013, Decision Published July 22, 2013

Background

- 1) H. David Evans and Gail E. H. Evans, as Co-Trustees of the Edith P. Evans Trust u/a/d March 11, 1990 (the "Applicant") is owner of an approximately 2.9 acre parcel located at Map R16, Lot 12 on Black Mountain Road.
- 2) A building permit for a 4 bedroom house on the subject property was denied by the Town of Jackson on March 26, 2013 citing the existing easement giving the lot access to Black Mountain Road does not comply with RSA 674:41 requirements for "a street giving access to the lot".
- 3) The property had a trailer and outbuildings and was used as a seasonal camp beginning in the early 1960s. The trailer was recently removed from the site.
- 4) Access to Black Mountain Road is on an easement over an adjoining property. The boundary line between the subject property and the adjoining property is, in part, Great Brook.
- 5) The Applicant has appealed this decision to the Board of Adjustment citing 3 arguments:
 - a) The denial improperly interpreted the word "street" in applying RSA 674:41 and argues that the parcel meets the requirements of RSA 674:41,
 - b) The applicant seeks an exception to the requirements as provided by RSA 674:41, and
 - c) The denial of the permit is unconstitutional given the grandfathered status of the lot and it's use as a seasonal camp.

Findings

- 1) The Board of Adjustment declines to consider the first argument in the appeal concerning the interpretation of the word street in RSA 674:41, as it relates to the interpretation and/or application of a state statute which is outside of the authority of the Board of Adjustment.
- 2) The Board of Adjustment declines to consider the third argument in the appeal concerning the grandfathered status of the lot under RSA 674:41, as it relates to the interpretation and/or application of a state statute which is outside of the authority of the Board of Adjustment.
- 3) With regard to the second argument in the appeal relating to an exception to RSA 674:41, the Board of adjustment finds:
 - a) with the conditions cited below, the circumstances of this lot are comparable to others in the area (where permits could be obtained) and the denial of a building permit for this lot would be an unnecessary hardship on the Applicant with no public benefit outweighing the hardship borne by the Applicant,
 - b) considering the expected level and quality of access to the lot due to the imposition of

the conditions cited below, the circumstances of this case do not require the proposed structure to be related to Black Mountain Road to any further extent,

- c) there is no evidence that erection of the structure will increase the difficulty in carrying out the master plan,
- d) with the conditions cited below, the erection of the structure will not cause hardship to future purchasers or undue financial impact on the municipality.

Decision

Given the findings cited above, The Board of Adjustment grants the requested exception to the requirements of RSA 674:41 by a vote of 5-0, with the following conditions:

- 1) Prior to the issuance of a building permit for any structure (including one for a new bridge over Great Brook), the town receive, in a form acceptable to the Town Engineer and the Building Inspector, an opinion signed by a Professional Engineer licensed in the State of New Hampshire supported by reasonable and appropriate drawings and engineering data indicating that the existing bridge or any proposed replacement will provide ingress and egress from the lot sufficient to support
 - a. equipment necessary for proposed construction,
 - b. all services reasonably required including, without limitation, delivery of heating fuels and septic pumping,
 - c. support access by municipal firefighting apparatus and emergency vehicles from Jackson and mutual aid towns, and
 - d. without limiting the preceding requirements, the bridge must also
 - i. support vehicles of 60,000 pounds gross vehicle weight,
 - ii. have guardrails,
 - iii. have a 15' foot clear width for the traveled way, and
 - iv. be posted on both sides as to capacity.
- 2) A waiver of municipal liability in a form acceptable to town counsel will be recorded prior to the issuance of a building permit.
- 3) This grant of an exception to RSA 674:41 applies to the building permit application for a proposed four bedroom structure or any replacement application for a substantially similar structure by the Applicant or subsequent property owner for a period of 5 years.

This decision relates only to the denial of the building permit for failure to comply with RSA 674:41 as to the street giving access to a lot. Any proposed structure must still comply with all other requirements and ordinances, including but not limited to the Town of Jackson Zoning Ordinance, Building Code Ordinance, Road and Driveway Standards and State septic requirements.

This decision may, for 30 days, be subject to a motion for a rehearing from any party of interest or the Selectmen. It should not be considered final until lapse of that period.

Copies of this decision are provided to the Applicant, the Planning Board, Board of Selectmen, Town Clerk, Assessor, and Building Inspector.

Frank Benesh, Chairman, Board of Adjustment