



2. Christopher Carpenter, Trustee of the Christopher Carpenter Trust (175-13)  
(62 Sticks 'N' Stones Road) Appeal from an Administrative Decision

Mr. Stephens stated that this was an application for an Appeal from an Administrative Decision. The decision to be reviewed is the Board of Selectmen's November 17, 2011 decision to deny applicant's request to "unmerge" two tracts of land, pursuant to RSA 674:39-aa.

Regina Nadeau, Esq. from Normandin, Cheney & O'Neil, PLLC presented the appeal. She noted that the appeal was pursuant to RSA 674:39-aa, and that it was a new statute. Ms. Nadeau provided the board with a copy of the statute, 674:39-aa Restoration of Involuntarily Merged Lots. Atty. Nadeau explained the process, pointing out section II (b) in which states "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots." Atty. Nadeau stated the Town has taken the position that there never were two separate lots that they merged, and that it has always been one lot. The basis of her appeal was based on the chain of title, and the plans on record, were the two tracts of land historically separate tracts, or were they described for some other convenience by the prior owners.

Atty. Nadeau argued that due to the fact that Tract 1 and Tract 2 were described in the deed as separate entities, that they were in fact two separate lots that must have been merged by the Town. Atty. Nadeau presented plans prepared by surveyors in the 1960's showing Tract 1 and Tract 2 in support of her argument. She recounted the history of the division of the original parcel of land into development lots and the right-of-way.

Atty. Nadeau noted the applicant's reasoning for trying to separate Tract 1 and Tract 2 is that the current owner would like to rebuild the house on Tract 1. The total acreage of Tract 1 and Tract 2 is greater than 5 acres, and there is a section in the Zoning Ordinance that requires a setback of fifty (50) foot setback from wetlands. If they separate out Tract 2, the lot will be less than 5 acres and they will be exempt from the setback requirement.

At the request of Atty. Nadeau, Surveyor Dean Clark, of DMC Surveyors presented testimony as to the meaning of the delineation line on the plan (R. B. Merriman, Surveyor, dated July 10, 1967) between the two Tracts, citing other examples of surveyor's plats and plans.

Town Planner, Bruce Woodruff presented the case for the Board of Selectmen by noting that RSA 674:39-aa mandates that the burden of proof resided with the Town, and to that end, a technical review committee met and researched all Town records and performed a limited title search, subsequently submitted to the Board of Selectmen for their review and deliberation. Said records revealed that there are no documents on record that show the Town notified the owners that the tracts were being merged. Additionally, the review by the Tax Collector shows that the Town has never issued more than one tax bill and a title search reveals one deed throughout the claim.

Mr. Woodruff testified that customarily tracts named in deeds for one parcel were worded that way because each tract had a different purpose within the parcel. In this case, it is clear from reviewing the deed language that the intent for Tract 2 was that of right-of-way land for Tract 1, the development lot, and other adjacent lots. This parcel and specifically, Tract 2 is the subject of a reservation of a right for the use of a private road by others, which fact bolsters the idea that this was intended to be a narrow strip of land for access only.

Mr. Woodruff spoke to the dashed lines and solid lines shown on the Merriman plan. There was no legend on the plan that explained the difference in the lines. Tracts 1 and 2 were separated by a dashed line, while all of the boundary lines on the plan are depicted as solid lines.

Mr. Woodruff testified about the reason why a municipality would merge non-conforming (as to Zoning dimensional requirements), contiguous in same ownership lots in the first place. He noted this was the so-called Doctrine of Merger, and that the Town would have no interest in this prior to the date of first enactment of a zoning ordinance in Town. That date, October 15, 1985, came long after this lot was shown as one and taxed with one bill in Town. Mr. Woodruff offered examples of letters sent to land owners who owned contiguous, non-conforming lots explaining that the Town was treating them as one henceforth. Staff found no such letter for the subject parcel.

Atty. Nadeau stated that the Town could have lost or misplaced such a document for the subject lot.

Mr. Stephens opened the floor for public input at this time. Abutter, George Burns gave a history of the original parent parcel dating back to 1963. He stated that originally Sticks 'n' Stones Road came in off Moultonboro Neck Road, made a 90 degree turn and became an access driveway that bisected the original parcel. Upon the development of the waterfront parcels, the access was moved to the rear of the lot, creating Tract 2, which remained part of the Kretschmann's lot as a dedicated right-of-way, and was never a separate lot.

The board went into deliberative session 8:23 PM to discuss testimony presented and came out at 8:28 PM. Mr. Stephens asked if there were any additional questions from the applicant or the public, it was noted there were none.

**Motion:** Mr. Hopkins moved to continue the Public Hearing for Christopher Carpenter, Trustee of the Christopher Carpenter Trust (175-13) to January 18, 2012, and to direct staff to draft a Notice of Decision upholding the Board of Selectmen's November 17, 2011 decision to deny the request to "unmerge" two tracts of land, pursuant to RSA 674:39-aa, seconded by Mr. Zewski, carried unanimously.

Ms. Roseberry returned to the board at this time with full voting privileges. The Board took a five minute break from 8:28 to 8:33 to allow members of the public present for this hearing to leave.

3. Rock Pile Real Estate, LLC (44-13)(84 Gov. Wentworth Highway)  
Variances from Article VI, Paragraph C, (F)(2.a) & (F)(6.a,e & g)

Mr. Stephens stated that the application submitted by Rock Pile Real Estate, LLC was for three separate variances.

Kim and Michael Prause were present for the hearings. Ms. Prause stated that they have gone forward with the application, not including the land, ROW, in question. She questioned the procedure that the board wished to proceed. It was the Board's decisions to have the applicant give her presentation for the entire project to the board. They will then address and vote on each variance individually, starting with the use variance.

Ms. Prause opened her presentation with a brief history of the property, noting the existing building had been there since 1920. The proposed use is a retail bakery. It will not be a Dunkin Donuts, will not have a drive through, there will not be any table service, but will have table seating for 12. The first variance requested is for the use. She addressed each of the criteria for the granting of a variance.

Ms. Prause stated that in the prior hearing last fall, and during the technical review, there were several questions regarding traffic flow and the use for access and egress onto Route 109. She stated that the entrance to Route 109 will be closed and some form of berm will be contrasted in accordance with the requirements of the NH DOT.

The second variance requested was for relief from the vegetative buffer requirements, which at this time would not be required as there is a proposed amendment to change this requirement. So at this time it has become moot.

Ms. Prause then went on to address her last variance in which they are seeking relief from the requirement of a single parking space defined as being 200 square feet (10'x20') to allow adequate parking spaces of 162 square feet (9'x18'), to provide evidence of "adequate" parking, relief from requiring parking to be outside the setbacks, and to allow wood fencing, in conjunction with vegetation as buffer. The ordinance requires that all parking shall be screened from adjacent lots be either a vegetated screen or stone wall no less than four (4) feet in height, or a landscaped berm no less than four (4) feet in height, including the landscaping. Applicant proposed to open a retail bakery (fresh goods including breads, pies and custom cakes) with a small seating area (no more than 12 seats).

Ms. Prause referred to the plan, noting there is an existing stockade fence along the abutting property line which they will continue for screening. She believes that the fence will provide better screening than a vegetated screen, stone wall or a four (4) foot berm.

Ms. Prause had provided in her application an attachment which included language from surrounding communities regarding parking requirements, and noted in the past it has been the practice of the board to use a 1 to 3 ratio for parking. She reiterated that the proposed site plan was only taking into consideration land that is theirs, and not the area (a portion of the right-of-way [ROW]) in which they are currently working with and have an agreement with the Board of Selectmen (BoS) to purchase. The sale is contingent upon a vote a Town Meeting, and if passed, would add an additional two parking spaces.

Ms. Prause answered any questions from the Board at this time. Mr. Stephens asked for any questions relating to the use variance.

Mr. Hopkins referred to the plan, questioning where the existing property lines were at this time. Ms. Prause pointed out the existing lines, and also the approximate area of the ROW in which they are working with the BoS to purchase.

Mr. Stephens opened the floor for public input at this time.

Nancy Wright noted that this was a proposed bakery and asked if there had been any discussion regarding disposal, septic, well, or town water. Ms. Prause stated that there is an existing septic on-site, two grease traps and a private well.

There were many members of the public present who spoke in favor of the proposal. Their comments included the fact that the applicant has improved the appearance of the property, the site historically has been used as a business for ninety-two years, the need for small businesses in town, and that the property has never been used residentially.

There was an additional comment made, stating that there were a lot of people in favor of the proposal, therefore raising the question if there was adequate parking for the proposed use.

Mr. Stephens noted the board had received correspondence from two residents. Eric Taussig was opposed to the project, while Angela Smith was in favor.

There were no further comments or questions at this time. Mr. Stephens stated that the board would go into deliberative session at this time, only to discuss the use variance. They went into deliberative session 9:11 PM and came out at 9:33 PM

**Motion:** Mr. Stephens moved to continue the Public Hearing(s) for **Rock Pile Real Estate, LLC, (44-13)** to January 18, 2012, and to schedule an on-site visit for Wednesday, January 11<sup>th</sup>, 2012 at 3 PM.

Ms. Prause asked if she could respond to some of the comments and concerns raised during the Boards deliberative session. Mr. Stephens withdrew his motion at this time.

Ms. Prause reminded the board that they had previously approved the issue of parking in the setbacks for a prior application which was withdrawn. She believes the plan presented this evening is better than what had been previously approved. She respectfully requested the board keep in mind and consider the five part test for the granting of a variance. What Ms. Prause took out of the deliberative session was that there was not adequate parking, and that the site could not support the proposed use. As a result of this, it was the decision of the board to conduct an on-site visit. They have requested that the applicant stake out the property lines and depict the proposed parking spaces and travel lane on the ground, using marking paint if possible.

**Motion:** Mr. Stephens moved to continue the Public Hearing(s) for **Rock Pile Real Estate, LLC, (44-13)** to January 18, 2012, and to schedule an on-site visit for Wednesday, January 11<sup>th</sup>, 2012 at 3 PM, seconded by Mr. Crowe, carried unanimously.

## **VI. Correspondence**

1) Mr. Stephens noted a letter dated December 27, 2011, from Ken Bickford, expressing his interest in serving as an Alternate to the Zoning Board of Adjustment. Mr. Hopkins questioned the procedure in which the board appointed alternates, noting in the past they have requested individuals to submit a resume and a letter of recommendation, and then the board may conduct an interview. Due to the late hour, Mr. Hopkins requested Mr. Bickford submit such letter for board review at the next meeting.

2) Planning Board Draft Minutes of December 14, 2011 were noted.

3) Planning Board Draft Public Hearing Minutes of December 19, 2011 were noted.

## **VII. Unfinished Business**

## **VII. Adjournment**

**Motion:** Mr. Nolin made the motion to adjourn at 9:48 PM, seconded by Mr. Crowe, carried unanimously.

Respectfully Submitted,  
Bonnie L. Whitney  
Administrative Assistant