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Wolfboro Zoning Board of Adjustment

Regular Meeting

August 1, 2011

Minutes

John M. Water
WOLFBORO, N.H. TOWN CLERK

Members Present: Alan Harding, Chairman, Suzanne Ryan, Vice Chairman, Steve McGuire, Clerk, Kathy Barnard, Member, David Booth, Member, David Senecal, Alternate and Mike Hodder, Alternate

Staff Present: Robin Kingston, Administrative Assistant

Alan Harding called this meeting to order at 7:00 PM in the Wolfboro Public Library Meeting Room. A quorum was present. The Board was introduced.

Continued Public Hearing

TM# 80-2

Case # 06-RSA-11

Applicant: Sandra Pearson-King/Barry Caswell

Appeal From NH RSA 674:41

Alan Harding explained David Senecal would remain seated for the continued hearing as is customary and in the Rules of Procedure of the Planning Board.

A site visit was conducted on 7/11/2011 and the public hearing was continued from that date.

Sandra Pearson-King addressed the Board and explained she followed Suzanne Ryan's advice and talked with the Fire Department to see what was necessary for the driveway. Tom Zotti explained the width of the road was contingent upon a several things such as a sprinkler system, a pond and what type of house was planned. The Fire Dept. was helpful and explained the first step was to get ZBA approval and then meet with the Department for recommendations.

Suzanne Ryan asked in the request for an application permit to upgrade road to parcel 80-2 is the applicant planning to do something to parcel.

The applicant responded she is not building a road but building a driveway and upgrading it to Planning Board Specifications. This may include fixing culverts, protecting wetlands, and adding gravel.

Steve McGuire asked if the building permit was denied.

Suzanne Ryan responded that the applicant went straight to an appeal form NH RSA 674:41 first before applying for a permit according to Rob Houseman.

Alan Harding explained it is a foregone conclusion that the building permit will be denied so why apply for a permit.

Mike Hodder commented the upgrade to the road is clearly irrelevant and has nothing to do with the current application. He reads RSA 674:41 and disagrees with the Attorney. The RSA sets requirements and procedure for obtaining it. The reason why the applicant is here is because it is impossible for the applicant to satisfy this RSA 674:41 and so RSA 641:41 2 kicks in. The ZBA has a responsibility to hear the request.

Suzanne Ryan stated she disagreed with the Attorney and the ZBA does not know that the Selectmen would not give a building permit. RSA 674:42, I, was the way to go. The Planner has submitted this application as a variance and there has been no Administrative Appeal. The ZBA does not have jurisdiction. There has been no denial, and we do require building permits in all circumstances.

Alan Harding noted the applicant has applied and they are at the hearing it tonight. It is clear they are in the right place. If one wants to argue, they should have spent \$150.00 to apply for a building permit, that is ridiculous.

Suzanne Ryan stated they are setting precedence. The town had a process in the Creese case for the building permit on York Road. There was an Appeal of Decision of the Code Officer - Notice of ZD Denied in 2001. This case is not following the process.

David Senecal noted it was not a land locked parcel of land for the Creese. Their property was adjacent to York Road.

Suzanne Ryan said they have an easement to York Road.

Mike Hodder noted in that case it was inappropriate and they should have come to the ZBA instead.

Alan Harding asked Mr. Caswell about the gate that bars entry to his property.

Mr. Caswell responded it is an electronic gate by keypad with Codes to get in. The four landowners got together to control traffic on road that was becoming a racetrack.

Alan Harding asked if all public services have the codes to the gate.

Mr. Caswell believes Terry Biehl notified them.

Alan Harding noted that if this application is approved they should make a written statement with the codes to the public safety officials.

Suzanne Ryan asked about the two class VI Roads through Northline Road and Tuftonboro and asked why access could not be gained through them.

The applicant and Mr. Caswell responded there is not access.

Suzanne Ryan noted the perspective landowner should explore the two other Class VI Roads.

Mike Hodder asked whether there is fire safety access to the site.

Alan Harding noted it is in the building permit process and further noted the ZBA has been sensitive to liability to the Town.

Mike Hodder stated he feels the letter from Tom Zotti was an unwarranted.

Suzanne Ryan said that comment was for deliberations.

Kathy Barnard stated the applicant cannot speak during deliberations.

There being no further comment, the public hearing was closed.

Steve McGuire noted RSA 674:2 as outlined by Rob Houseman and commented if the applicant wants their house to burn down that is fine but what about future purchases. The non-availability of public services would be a hardship to future purchases of the applicant's property.

Kathy Barnard stated that would be addressed in the agreement.

Suzanne Ryan noted in RSA 674:41, I, the Planning Board would have had the authorization to put requirements together. The liability document should be sent to the Board of Selectmen for conditions of approval as they see fit. The owner should be responsible to maintain the road and the ZBA has noted they are willing to.

The Acknowledgement Regarding Building Permit private Highway carries no weight but an acknowledgement of what the applicant intends to do.

Alan Harding noted the review of conditions are similar to a variance minus the hardship.

Alan Harding stated he sees no problem with this application and the practical difficulty is clear.

Kathy Barnard agreed.

Steve McGuire asked;

1. Under RSA 674:41 D is a private road - what does this entail and did the applicant did get comments from the Fire Department?
2. Which parcels and how many are served by this private driveway. He does not know what the status is and he did not get an answer to this question previously in an email

Alan Harding responded that he did not respond via email because he did not want elicit a rebuttal, as this is not the proper thing to do. He did not want to go back and forth with emails.

Steve McGuire is concerned about other landlocked parcels that can be accessed off York Road.

Alan Harding said if the applicant wants a subdivision, he would apply for one.

Steve McGuire stated the Planning Board should comment on the application and the Town should have a policy.

Kathy Barnard stated the Planning Board would be discussing the issue but not this case in particular.

David Senecal read the standards that must be met before the permit could be granted. There are four standards and if the applicant meets them, the application should be granted. Only Class VI Roads should come before the Selectmen. He feels the applicant meets the criteria.

Susanne Ryan stated that Rob Houseman has concocted these standards.

Alan Harding disagreed and responded the standards are in the Statute.

Suzanne Ryan stated she is concerned this is against the Master Plan and creates scattered development.

Kathy Barnard stated this is a preexisting lot and not a new subdivision which the Master Plan references.

Suzanne Ryan does not agree with criteria #4.

Kathy Barnard asked which part of #4 she feels is not met.

Suzanne Ryan responded that different parties disagree and others come in and do not agree.

It was moved by Alan Harding to approve Case # 06-RSA-11 for a building permit on Tax Map 80-2 having met all 4 standards for approval by the ZBA pursuant to RSA 674:41, II.,

Kathy Barnard seconded the motion.

Alan Harding amended the motion with the following condition:

Concise written instructions from Barry Caswell to all Public Safety Officials allowing passage through the electronic gate at the entrance to his property on York Road, a private way.

Kathy Barnard seconded amendment.

Alan Harding, Kathy Barnard, and David Senecal voted in favor of the motion. Steve McGuire and Suzanne Ryan voted in opposition. The motion passed.

Suzanne Ryan asked for the email record be submitted for the file and the information and research she has compiled.

The Board noted they should have been submitted prior to the close of the hearing and the Chairman and staff will speak to Rob Houseman regarding placing them in the file after the hearing was closed.

Other Business:

Alan Harding notified the Board the will request the Rules of Procedure be amended to include language similar to the Planning Board's Rule of Procedure relative to an Alternate continuing to sit on an ongoing case.

Steve McGuire noted the Minutes from the previous meeting clearly state the Board was to forward their questions to the Planner in which he did. He did not receive a response from the Planner and finds this deplorable.

Alan Harding noted he would address revising the Appeal form RSA 674:41 Form with the Planner.

Consideration of Minutes:

11 July 2011

Page 1:

Last paragraph, first sentence. - add - I to RSA 641:41 and last sentence add II to RSA 674:41

Page 2 - last paragraph, next to the last sentence change "Cresse to Creese"

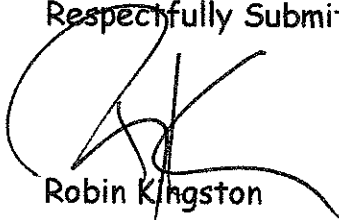
Page 3 - next to the last paragraph, last sentence - Change to read "He as well as the ZBA attorney do not fully understand this language and as a general rule statewide is generally disregarded."

Page 4 - 3rd paragraph from the bottom - strike the letter "t" after parcels. Last paragraph - add the word "a" after is

It was moved by Alan Harding and seconded by Kathy Barnard to approve the minutes of July 11, 2011 as amended. All members voted in favor and the motion passed.

There being no further business, this meeting was adjourned at 7:57 PM.

Respectfully Submitted,



Robin Kingston
Administrative Assistant