

Wolfeboro Zoning Board of Adjustment

Regular Meeting

September 10, 2012

Minutes

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Page No.

WOLFEBORO, N.H. TOWN CLERK

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

Members Absent: David Senecal, Alternate

Staff Present: Rob Houseman, Director of Planning & Zoning and Robin Kingston, Administrative Assistant and Attorney Laura Spector

Alan Harding called this meeting to order at 7:00 PM in the Wolfeboro Public Library Meeting Room. A quorum was present. The procedures and rules for the public hearing were reviewed.

TM# 59-1

Case # 07-RSA-11

Applicant: Corey A. Eastman II

Remand - Court Order NH 674:41

Steve McGuire read the public and abutter notice for the record. A site visit was held at approximately 6:00 pm.

Pursuant to the July 18, 2012 Remand Order of the Carroll County Superior Court, the ZBA will conduct a public hearing on the Appeal from NH RSA 674:41 to allow the construction of a dwelling on a lot having no road frontage but having deeded access over TM# 59-2. The hearing will be limited to the issue identified in the Court's order, specifically, for the ZBA to hear evidence and deliberate regarding whether the circumstances require the proposed building to be related to existing streets.

Alan Harding reviewed the case and the original decision of November 7, 2011; "The Board voted by at least three members to grant the application for Case # 07-RSA-11 to allow for the construction of one dwelling on a lot having no road

frontage but a deeded access over TM# 59-2 from TM# 59-1, with the conditions that there will be no further subdivision or any subdivision of this property, the conditions indicated on the memo Deputy Fire Chief dated September 13, 2011 be added as a condition, the acknowledgement regarding the building permit on a private way be completed to reference this property and be filed the appropriate county office, based on the criteria being met, including practical difficulty."

On December 20, 2011 A motion for Rehearing was heard on the same case and the decision of the Board at that time was " *The Board voted by at least three members to deny the application for a rehearing based on the facts that the petitioner has not demonstrated a technical error and the petitioner has produced no new evidence that was not available to him at the time of the first hearing.*"

The petitioners Doherty and Lang appealed the November 2011 Decision to the Superior Court; a trial on the merits was held June 5, 2012 before Judge Houran. On July 17, 2012, Judge Houran issued an official order which reads in part from page 3; "The town adopted zoning in 1939 and the subject property, TM # 59-1 was created sometime before that. The lot is landlocked which would normally prohibit construction because the lot does not have any frontage as required by the ordinance; however, the subject property is grandfathered from application of the existing ordinance. This means that lack of frontage does not violate the ordinance or prohibit applicant Eastman from constructing the single family home he seeks. However the ordinance is not the only relevant provision governing applicant Eastman's right to build, RSA 674:41 applies.: on Page 5; "By a plain reading of RSA 674:41, III, the first two requirements concerning practical difficulty or unnecessary hardship, and concerning whether the circumstances do not require the structure to be related to the neighboring roads are threshold requirements that must be resolved before the ZBA may exercise its authority to make reasonable exceptions."

One Page 6, "The ZBA relied on the RSA 674:41, III in granting applicant Eastman's permit, but the record does not show they (the ZBA) addressed one of the critical threshold requirements for application of this exception, nor is the record such that a reasonable fact finder would necessarily find that this requirement was met. Accordingly, the decision of the ZBA must be reversed and Remanded. See MC Glenn 155 nh 105 also Chester Rod & Gun Club 152NH583 so ordered."

Alan Harding also noted that on page 8 of the Wolfeboro ZBA Minutes, 11/7/2011 it states clearly:

The Board deliberated on this application. The following criteria was discussed.

- 1. Denial would result in unnecessary hardship or practical difficulty to the owner.*
- 2. The circumstances of the case do not require the building, structure or part thereof, to be related to the existing or proposed streets.*
- 3. The issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based.*
- 4. The erection of the building or issuance of the permit will not cause hardship to future purchasers.*
- 5. The erection of the building or issuance of the permit will not cause undue financial impact on the municipality.*

The ZBA is here to hear evidence and then deliberate regarding whether the circumstances of the case do or do not require the building, structure or part thereof to relate to the existing or proposed streets, RSA 674:41, II.

Attorney Walker, representing Corey Eastman addressed the Board. Corey Eastman has a goal to build a single house on 75 acres of land off of Cowper Road, which is connected by a 200' easement that is 50' wide. At the time Corey Eastman bought the property, there was already an easement. The easement was acquired two owners back between Foley to Graves and Fadden, they in turn sold to Corey Eastman. In 2011 the ZBA approved the application noting 3 things: 1. there will be no further subdivision or any subdivision of this property; 2. the conditions indicated on the memo Deputy Fire Chief dated September 13, 2011 be added as a condition; 3. the acknowledgement regarding the building permit on a private way be completed to reference this property and be filed in the appropriate county office. Also noted 674:41 generally allows building in a number of circumstances on Class 1,2,3,4,5 roads and a Class 6 or a private road in certain circumstances but because the is 200' between Cowper Road and the Eastman property it does not qualify for any of those and this is the essence of why we are here. There are many properties that are much farther away with much longer driveways. All Corey Eastman needs is a 200' driveway to get to the edge of his property. There are many houses on Cowper Road that close and set far back from the road. This is a town maintained Class 5 Road. Attorney Walker explained that he know no

circumstance what so ever that require a building to be related to the street on the Cowper Road, in particular the house Corey Eastman intends to build. He has looked through the ordinance and statutes and has found nothing that would suggest that there is any requirement what so ever. Open Space Preservation encourages homes to be close to the street and this would possibly require the buildings to be located close to the street. Some towns have a requirement that a house cannot be more than a certain distance away from the road. The subject property is not in an Open Space Preservation and there is no town requirement relative to distance to the road. Additionally, the ZBA is in receipt of a letter from Deputy Fire Chief Tom Zotti indicating the 200 access is not an issue for emergency access. In the memorandum Attorney Baldwin filed with the Carroll County Superior Court indicated on this issue, that if under RSA 674:41 a residential structure does not require frontage, what type of structure would? She reasons residences in particular have a greater need to have year round access for police, fire, EMT's, school buses, fuel delivery trucks, septic system pumping trucks and that kind of thing. All of that is resolved with the Deputy Fire Chief's letter. This ZBA has grappled with the issue of 674:41 for more than 20 years and has granted several recently.

Mike Hodder commented that when one tries to interpret the language of the statute, specifically the language we have been Remanded to look at, the circumstances of the case requiring the building the be related to existing street, how does one interpret such language and asked Attorney Walker of he could educate the Board

Attorney Walked responded he is not sure of the thrust of the question. Every Attorney he has talked to one this issue is afloat. There is no case law or cases before the superior court. This comes down to the ZBA exercising common sense as the do each time they hear a case.

Mike Hodder responded you look to the legislative history to see if there is anything in the history or what the legislature meant when they came up with this statute. In the absence of any legislative history then one goes to find case law. As Attorney Walked said there is no case law and we have heard from our attorney that there is apparently no legislative history to suggest an elucidation of what those words mean. Therefore, in the absence of legislative history and the absence of case law then I suggest one would do exactly what the court suggested that one should do in the Remand order to use and that is to "look to the language

of the statute itself, and if possible construe it to plain ordinary meaning." In other words look at the words and just find out what the words mean. When you look at the words of the phrase that we have been Remanded to consider, the condition we have been Remanded to consider, one looks at the circumstances of the case and when I asked myself and perhaps you can help because you are a lawyer and I am not, what that might mean. The first thing I thought of were the simple facts of the case, the location of the property, who owns it, where the abutters are, what the applicable zoning regulation might be, its history, the history of the use of the property and then the process that led to the appeal to the ZBA. I also think perhaps if there are one might look at any acknowledgements, affidavits, sworn testimony of the principals to the case and then perhaps any findings or determinations made by public safety officials such as Tom Zotti's letter that you alluded to earlier. Those are what I come up with as the circumstances of the case and that seems to me to be the essence of that phrase, what that phrase really means, what are the circumstances of the case, is there anything about the case that would lead one to say that this structure must be associated to a street. It seems to me that given Tom Zotti's acceptance of the structure of the access way to the property, providing for safe access for public safety vehicles, particularly fire trucks and given their size and weight, one can assume that any other kind of vehicle of a lighter weight and a smaller size can also proceed over that access way safely, such as your septic pumping trucks, food delivery trucks, furniture trucks, ambulances, that creation of that access way essentially creates a safe way to that property. Consequently, if I use the common language understanding of what circumstances of the case might mean, than that would suggest that access way is sufficient to provide access to the property and consequently the circumstances of the case do not require that that property have direct frontage on a road.

Attorney Walker commented that he absolutely agrees with Mike Hodder. Additionally there was nothing cited in either Attorneys memos to the court that there was any legislative history that they could find. Secondly, this is not a case where they are at the end of a Class 6 road and someone has to go down another mile or so down a Class 6 road and put a house in. The access to the property is midway down the road. There are houses to either side of this property.

Mike Hodder noted there are a couple of places in the statute itself where the legislature seems to suggest what it was driving at when it seemed to put down a blanket prohibition of any building permits on lots that do not have access on a

Class 6 or better road. Where it allows for building on a Class 6 or private road; one the conditions is the release of the municipality from any liability or responsibility to maintain it and also an acknowledgement of that fact by the applicant and the recording of that acknowledgement in the registry of deeds. The legislature also suggests when the ZBA comes to consider a case like this it makes sure that the Master Plan is not deformed and future purchases are not harmed by the allowance, consequently there is in undue financial impact on the Town. It seems the legislature is concerned with financial impacts on the town in granting waiver of 674:41 by the ZBA. As we have heard, if the easement is sufficient to satisfy Mr. Zotti's requirements, and the applicant as we know has agreed to sign an acknowledgement releasing the town to liability and has also agreed to include in the registry an acknowledgement and notification to future owners that there is a burden on this property, there can be no burden in my mind, financial or otherwise on the town or future buyers. That seems to suggest, to me at any rate, what the legislature was getting at and its concern was a financial burden on the town and future owners and in this case Mr. Eastman's acknowledgements and undertakings seem to have satisfied those apparent legislative concerns.

Attorney Walked stated he again agrees and Mr. Eastman is only building a single home. This is not a subdivision, just one house on 75 acres.

Mike Hodder also commented is this a single family home on 5 acres in a 75 acre lot. This is not a property swap with the intention to potentially subdivide this land by getting some frontage on the road which could under other circumstances be done and consequently this solution seems to preserve the Master Plans intention to preserve unfragmented lands much better than denying the application tonight and leaving the property open to perhaps future development.

Alan Harding noted we are her to discuss the second threshold.

David Booth asked the Board if any member or alternate can suggest plain English, any circumstances that would require proposed building be related to existing roads as he cannot think of any.

Steve McGuire asked Attorney Walker what his definition of related was

Attorney Walked responded he does not have a good answer to that. He looked for one and could not find one. His supposition was is it had to relate to distance;

it is more how far away from the road can the house be? Related to the street in proximity. He said he feels it is related to distance but has no legal support for that.

Fred Tedeschi commented it uses the word building or structure. Is it possible that different types of buildings or structures might require a different result. This is a residence, if it were a gas station would it be different.

Attorney Walker responded it would be more restrictive if it were commercial. Tool shed and things like that would have less impact. It came down to distance.

Paul Panniconne, abutter to the Eastman property, living on Trask Mountain Road addressed the Board. He did not attend the initial hearing of this case as he felt it was a simple no brainer case. When he read the minutes of the meeting, he was surprised to see some of his neighbors had spoken so violently against the Eastman proposal. He thinks their opposition was mean spirited, selfish, and unreasonable. He was surprised this case was tied up in the courts as long as it was. He supports this application and has tried to find some sense of what relationship to the street means. He has looked at the RSA, elsewhere, and he to found nothing. It seems that common sense tells you the relationship of this property (an eventual house) to the street is the same as the relationship as all of the other new properties on Cowper Road. It has 10-11 newer properties (over the past 20 years) and a few antique homes. It is the mostly the antique homes that are farther off the street although a there are newer homes have long driveways. He also knows the importance the fire department places on width of driveway. The longer the driveway is, the wider it needs to be in order to carry the emergency vehicles. Given all of that, he cannot see any reason what the relationship of this property to the street should be any different than the neighboring properties. This is a dead end street, fire vehicles have gone down this street before, and they will continue to do so. It is plowed by the town and well maintained by the town. He thinks the real reason the suit was brought is they are concerned about things like electric wires and rather bizarre objections that they have had. He supports this application and sees no reason it should be turned down based on relationship to the street.

Virginia Panniconne, Trask Mountain Road, Abutter, addressed the board and noted the relationship of their property to the street is extensive. They have a relationship on Trask Mountain Road, Stoddard Road yet they are an abutter of

property on Cowper Road. She is supportive of the applicant and application. She feels it is essential that we use common sense and encourage a program like this to move ahead.

Attorney Caroline Baldwin, BCM Environmental & Land Law addressed the Board. Following the court hearing, I heard a lot of discussion and Iis hearing it here that people do not like 674:41. It is an odd statute, I will admit that. You are a quasi-judicial body not the legislature. If people do not like 674:41 the way it is written, talk to your legislatures. You do not have the authority to change it. What I am hearing from Mr. Walker is ignoring the very specific language in the third paragraph that says an easement doesn't count. It's not what the legislature meant and that change is the statute, putting in that very clear statement that an easement does not, is not a connection to a street, followed up on a decision by the Supreme Court back in the 90's that said an easement is ok. The legislature comes back within a year of that decision in 1995 and (cited in memorandums) no we did not mean an easement, we meant a street, something that complies with subparagraph 1. Paragraph 1 has a number of ways that people can create roads, private road, get approval from the Planning Board and so forth, that was not done here, he just wants to use an easement. Mr. Walker goes on and even he asked the question how long of an easement, 200', 300', 500'? Once you start on the easement game, where do you stop, even if frontage on easements was permitted. Attorney Walker says there is no legislative history but actually, I looked it up. The legislature heard the general wording structure. It could mean anything and the people who came before the legislature to ask what they meant by circumstances that don't require connection to a street, said well we have a sugar shack and asked if that counts. The Appalachian Mountain Club came along and said" well we have warming huts on the Appalachian Trail" and the legislature responded to that with this, particular structures that do not require connection to established streets. If a residential development, one, ten, any, does not falls under the definition of structure under this statute, what in the worle does other than a gas station, which someone mentioned. You are stuck with the statute and the court is very clear on its opinion. You have to read the statute as a whole, you cannot pick out the pieces here and there and ignore the parts that do not work.

Alan Harding noted there is an "or" between building and structure and asked what is a building.

Attorney Baldwin responded you would have to ask the legislature because they define it specifically but it is certainly a residential structure is a building, I think we would all agree on that, if it is not a building what in the world is it. So is a barn and a horse shed. I would argue that building and structure mean the same thing.

Mike Hodder asked for a citation for the legislative history.

Attorney Baldwin responded she went to the State Archives to look it up but did not take down the exact citation but it was in 2005.

Mike Hodder stated it is difficult to accept your testimony but non the less accepting what you say is correct and almost certainly it must be, when they took testimony regarding people coming up and asking what do the circumstances of the case require relationship to the existing roads mean; Did they take testimony, did they have hearings, and did they hear anything from people who were taking about houses.

Attorney Baldwin responded that they did not.

Mike Hodder asked that the publics concern was for buildings that were way off in the middle of absolutely nowhere and how 674:41 would affect them, warming huts, sugar shacks or sheds. If that is the case the testimony before the ZBA does not help defining what the legislature meant when it comes to what they wrote because the only information we have is from people who were concerned about places in the middle of nowhere, not places 100' of 200' off a town maintained road.

Attorney Baldwin responded you have to look at paragraph 3, which is very specific.

Mike Hodder responded the Board is not trying to pick the statute apart to find things it like and things it does not like. RSA 674:41 rules this case because it is a statute. It is the law and the Board is not attempting to get around it or ignore the parts we do not like. We are looking at Paragraph II, the judges statement on page 5 "The ZBA had fairly broad authority ("may make reasonable exception that's the wording from the statute") to grant construction permits that meet the full requirements etc, etc,. The court and the legislature both understood this statue might be somewhat restrictive and in its wisdom the legislature decided to offer the same safety valve, in this case as it does in many other zoning

requirements, and give the ZBA authority to find for an exception on certain circumstances and this is one we are looking at tonight.

Attorney Baldwin responded that is correct however, you need to look at the entire statute and not pull out a piece in § II.

Mike Hodder responded he is not doing that. When the legislature came back and decided that easements didn't count, that was specifically in regard to paragraph § I of 674:41, not § II which talks about the ZBA's right to grant an exception. When the legislature said you cannot use an easement to your property and call it a street, they are talking about the conditions in § I, they are not limiting the ZBA's authority to grant exceptions, they are talking about what a street and access road mean. They are not saying the ZBA cannot allow access by easement because they have already given the ZBA the broad authority as recognized by the judge, to make exceptions in these cases. The legislature is rather saying that for purposes of access to a property, easements do not count.

Attorney Baldwin stated she disagrees. What you are doing is reading § II without taking into account the entire statute, which clearly restricts residential developments by easements. Look at it as a whole you cannot just take out the one piece.

Mike Hodder responded Attorney Baldwin would have to argue that because that is her client's position. You have to also admit § II gives the ZBA pretty broad authority under certain circumstances to come up with exceptions to the restrictions placed on properties off road in § I and also § III.

Attorney Baldwin responded that circumstances are much more limited than what you would suggest.

Suzanne Ryan commuted section III says there is relief if such easement or right of way also meets the criteria sub paragraph I, a,b,c,d,e which is not solely the a and b of the official map and all that stuff. It goes on and talks about c,d, and e talking about certain types of roads so there is that relief, and we did not discuss that part of that.

Attorney Baldwin agreed and stated it points out the part of § III references you back to other ways to get access. There are other ways to get access besides and

easement that would not put you in direct contradiction to § III and would allow you as Mr. Walker is familiar with to go through the planning board in § I but making a blanket permit for an easement sets you down a slippery slope and I do not believe any court will read § II 2 separate from the remainder as Mr. Hodder does.

Alan Harding commented that we are here to talk about addressing the Remand.

Steve McGuire asked Attorney Baldwin's definition of related.

Attorney Baldwin responded that it is the same as the courts and it needs frontage as it states in § I.

Steve McGuire clarified that Attorney Baldwin is saying that unless an individual with a back lot actually owns frontage on a Class 5, Class 6, private or an accepted state highway, it is Attorney Baldwin's opinion that no ZBA can grant for a back lot to have a building permit.

Attorney Baldwin responded if accessed only by an easement, then yes it is her opinion and is pretty clear in § III. If there had not been a case back in the 90's where the court had approved access by an easement, so much like this case it makes your hear spin. In 1994, the Supreme Court ruled the term access could be interpreted as a private easement *Belushci v Mooreland* 139 NH 55). It was as soon as 1995 the legislature came back and made the change. It was in direct response to that case, there is no question about it.

Fred Tedeschi noted the attorneys review of the legislative history indicated a lot of people came in who were concerned about sugar shacks and Adirondack warming huts. He has done a little hiking on the Adirondack Trail and does not believe the clubs own that land "in fee", at most they have some sort of an easement. If the legislature had that in mind when they revised #3 in 1995 and then in 2004/2005 when they added D & E, does that give us an indication of what they were thinking g, that it is not an absolute requirement that there circumstances for certain kids of structures that do not need to have frontage.

Attorney Baldwin responded that that was the essence of the discussion because a warming hut does not matter whether on an easement or owned in fee. The fact is you walk there.

Fred Tedeschi commented he is trying to say he is not sure the legislature did consider that there were some structures did not have to have fee ownership on a street.

Attorney Baldwin stated her sense from reading the 10-15 pages of discussion, they were looking at structures that were not occupied on a regular basis by people.

Steve McGuire commented that Attorney Baldwin's entire ascension in this entire issue are the most confusing words are structure and building.

Attorney Baldwin responded no, she thinks a structure and building mean the same thing.

Steve McGuire responded that in the exemption of the tool sheds, the sugar shack and the like are they buildings and structures.

Attorney Baldwin responded she is sure they are. That is why they made the exception for structures and buildings that are not occupied year round. Further, the ZBA should be aware that a case called Merriam ,Farms vs. Town of Surrey came down almost exactly like this one. It has been withdrawn and when she inquired with the Supreme Court they told her what is happening is there were only three judges left and at the time Judge Broderick had not been replaced. They can now hear it with the fourth judge and they are going to reargue it. It will come down again and she would be surprised if the outcome would be any different.

Alan Harding responded they are aware of it but as far as the ZBA is concerned, technically the decision does not exist. Attorney Baldwin should not speculate as to what the Supreme Court may do or not do.

Attorney Baldwin distributed a memorandum and the Board took a minute to review it. She emphasized the court said we do not look at pieces of a statute, we look at it as a whole and do not take pieces out you do not like.

David Booth responded the ZBA looked at the statute as a whole. Apparently, the judge said we made an error and he laid out for us what the error was and what the ZBA is required to do and that is why we are here tonight. All the rest of this is

fascinating however, he thinks we have to just dwell on the one item to respond properly to the court.

Alan Harding noted the testimony according to the opposition is entitled to tell us what they are because the argument is that it is part of what we have to discuss ourselves in the Remand.

Attorney Baldwin agreed.

Alan Harding noted it appears as if what he said in his opening remarks, page 3 of the order the judge issued in July, "the subject property is grandfathered for application of the existing ordinance This mean that the properties lack of frontage does not violate the ordinance or prohibit applicant Eastman from construction the single family home he seeks"

Attorney Baldwin said he is correct as far as the local ordinance is concerned.

Suzanne Ryan disagrees with her counterpart, the judge does mention it in his Remand. On the last page he say's in the ZBA relied on Remand § II and § I but then he puts in italics "*see RSA 674:41 III*" and she does think this is part of their thought process, that we did not go through the exceptions that allow for access via an easement.

Alan Harding responded that she is missing a comma put that back into the first part of the order.

Mike Hodder said he supported the theory underlying Suzanne's statement. He thinks this is a good example showing the ZBA, when the Board makes decisions in cases, even simple one, it needs to spell out exactly 1,2,3,4,5 its reasons for each one of the decisions it comesto. If the ZBA had done that in this case, they would not be here today

Mike Hodder asked when the legislature went back and said easements do not mean streets for the purposes of this statute, what paragraph they referred that understanding to?

Attorney Baldwin responded she was not there but she would tell you that the statute has to be read as a whole and it does not refer to § I or II. If this only

referred to only I, where would II go? It just makes no sense to say the easement does not count for purposes of I but it does for II.

Mike Hodder responded that perhaps the legislature may not have been making sense because they say specifically, Paragraph III, This section shall supersede etc, etc, "for purposes of P I, the street giving access..... Does not mean an easement.: They are defining what a street giving access does not include. It does not include an easement. They are not saying for the purposes II, the ZBA cannot find that a property accessed by a private easement is not a proper use of the ZBA's ability to offer relief to applicants. They are not limiting the ZBA's ability to decide that an easement to Mr. Eastman's property does not qualify, they are saying for purposes of I you cannot automatically call an easement a street giving access.

Attorney Baldwin agreed but said you will find the wording of not needing to be related to an existing or proposed streets so clearly applies to § I & III together.

Attorney Spector addressed the Board and noted she speaks neither for nor against this application. § III does not apply to this application. Paragraph III by its very terms relates to only to § I. The 2005 amendments did not add in the language about it being related to the streets. The 2005 amendments allowed this town to exempt from the provisions of 674:41 any lot in town. The ZBA has to read the statute as a whole. The legislature did not intend to preclude the ZBA from authorizing the issuance of building permits on lots that have no frontage. The circumstances of the case do not require the frontage. If this true, do the circumstances of this case not require frontage on a Class 5 or Class 6, or private road. The arguments to the courts was that no, the circumstances in this case do not have that requirement because the access way provides the safe access that 674:41 is intend to provide. That is supported by the Deputy Fire Chief letters and she understands the police chief has also weighed in on the issue. What kind of circumstances would require it are the kind where you are a mile up a Class 6 road that has not been maintained in years and someone wants to build a house on the top of a hill and no car can get to, unless the road is upgraded. That is the kind of thing that you do not want to allow and has an impact on the town.

Attorney Walked reaffirmed RSA 674:41, I, sets forth the general rule, § III is more definition and relates only to § I. They are not here under § I, they are here under § II, which are exceptions to the rule. The town could have put restrictions

on these lots so you cannot build on them, Wolfeboro has not done this. There is nothing in the ordinance that restricts this property or requirement making it related to a street.

The Board reviewed the memo submitted by Attorney Baldwin.

Alan Harding closed the Public Hearing.

The Board deliberated on the remanded application.

David Booth stated there does not seem to be any circumstances that require the proposed to be related to existing street and would say the criteria has been met.

Suzanne Ryan handed out a definition of frontage to the board, which she said is different than what was in their packet. A copy was submitted for the file. There is a place for frontage. Cowper Road is dirt Class 5 Road, 14' - 16' wide. What the Board saw is wider than that as they town has enjoyed pouring more gravel down than what is required. Those records are old records so she assumes that is what the town's easement is. The 1994 Road Inventory Report has it at 13'. It is in an area of all dirt roads and she has looked into the mileage from the fire department and it is in excess of 8 miles. There was a house on Trask Road that burnt down because it took so long for the fire department to get there. She cannot figure out where Mr. Deputy Chief Zottie is coming from on these, what she considers to be lax provisions to say that these remote areas are suitable for passage. This is her opinion and embedded in her thought process. Just because he said it, don't make it so.

Alan Harding asked if there is a recommended distance from the fire department, a house should be built.

Suzanne Ryan stated that there is not but the fire department should not be sole in their recommendation either.

Alan Harding responded that is judgmental.

Suzanne Ryan said that is all she can do is judge. She can agree or disagree with any entity that we have to deal with and she strongly disagrees with what they have been saying.

Alan Harding stated the ZBA has received Deputy Chief Tom Zottie's seal of approval.

Suzanne Ryan said she is bringing to the Board's attention the width of the travel way, the deplorable condition of the roads thorough North Wolfeboro and sees it differently.

Steve McGuire commented they have consumed about \$1,000 worth of advice on what RSA 674:41 means and he is almost as confused as ever but agrees with Attorney Spector's opinion that Paragraph III only relates to I in which case, the fact it is related and that the easement is there, even though it says easement, it is not relating to the streets, he thinks it should be approved.

Alan Harding commented that this threshold requirement is a non-secatoe but is it is not, it is dam close to it. When the circumstances of the case do not require the building (the Eastman's single family home on a lot with no frontage) structure or part thereof to be related (connected) to existing (Cowper Road) or proposed streets, this request for a building permit to erect the Eastman's single family home, TM# 59-1 does not require it to be connected to Cowper Road.

Suzanne Ryan asked to talk about frontage and related. When they talk about huts and sugar shacks that are allowed it implies not occupied 24/7, 365 days a year. They were saying that structure that are not occupied are allowed but structures that are occupied full time year round should be related.

Kathy Barnard concurs with David Booth.

It was moved by Alan Harding and seconded by Kathy Barnard that to approve threshold condition #2 since the circumstances of this case do not require the building to be related to existing or proposed streets and therefore, satisfy Judge Houran's Remand Order dated July 17, 2012 and thereby reaffirm our original approval Case # 07-RSA-11 on November 7, 2011. All members voted in favor. Suzanne Ryan stated for the record that she voted in favor because we are hard pressed to say no, given what we have done and how we have done it. The motion passed.

David Booth objected to "we" are hard pressed.

Consideration of Minutes

6 August 2012

Page 4 - Change Kathy Barnard to seconding the motion and Suzanne Ryan making the motion.

Page 2 - Removed comma after application to read "David and Ann Corson addressed the Board, reviewed the application and plan to build the garage with the Board including the five points required for the variance as submitted."

Page 3 - 2nd paragraph remove the "s" from gains to read gain

It was moved by Kathy Barnard and seconded by Suzanne Ryan to approved the minutes of 6 August 2012 as amended. All members voted in favor.

Other Business:

Staff was asked to include the Conduct of a Meeting Section of the Boards Rules of Procedure in the application and notice to abutters.

The Board agreed that a copy if the rules shall available at all meetings.

Planning Board

The Board will hold a joint meeting with the Planning Board to review and comment on proposed changes in the ordinance.

Rob Houseman will schedule a joint meeting possibly the 3rd Tuesday of October so the ZBA can discuss any issues and then meet with the Planning Board.

There being no further business, this meeting was adjourned at 8:32 pm.

Respectfully Submitted,


Robin Kingston
Administrative Assistant