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Wolfeboro Zoning Board of Adjustment

Regular Meeting

October 7, 2013

Minutes

Book No.

Page No.

WOLFEBORO, N.H. TOWN CLERK

Members Present: Alan Harding, Chairman, Kathy Barnard, Member, Mike Hodder, Member, David Senecal, Alternate, Fred Tedeschi, Alternate and Hank Why, Alternate

Members Absent: Suzanne Ryan, Vice-Chairman (Un-excused Absence), and Steve McGuire, Clerk (Excused Absence)

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

Alan Harding called this meeting to order at 7:00 PM in the Wolfeboro Town Hall Meeting Room. A quorum was present.

The Rules and the Procedures for the Public Hearings were reviewed.

Appointments

TM# 201-23

Case # 09-RSA-13

Applicant: Mandell Living Trust, Lynn Larson, Trustee

Appeal from RSA 674:41

Agent: Roger Murray, Esq.

Alan Harding appointed Hank Why and David Senecal for this hearing.

Kathy Barnard was appointed Acting Chairman and Alan Harding stepped down.

Mike Hodder read the Public and Abutter Notice for the record. A site visit was held at approximately 6:35 PM prior to the hearing.

Rob Houseman addressed an email from Town Council relative to "If this is a subdivision plat how does the statute apply?" The road was never constructed within the right of way to create frontage under this statute necessary to satisfy paragraph 1 of 674:41. It was decided further clarification was desirable from counsel and that is the purpose of the email. There is an added twist in which Attorney Mitchell, Senior Partner also provided guidance and according to the email he believes a second application would be necessary if the Board were to grant relief under 674:41. Since this lot was created through the subdivision approval process by the Town of Wolfeboro and is not a lawfully non confirming lot of record that predated the Planning Boards authority to plat subdivisions, it would also need a variance from the frontage

requirements if the intent of the applicant is to construct simply an access way over the current right of way and not create frontage .

Rob Houseman gave his recommendation to proceed with the hearing and if the Board concludes they need further clarification the public hearing could be continued to a date certain and clarification sought.

Attorney Murray addressed the Board and reviewed the application and plan as submitted. The parcel in question does have frontage on an undeveloped extension of Port Wedeln Road. The lot was approved May 11, 1966 and the parcel is assessed currently at \$180,000. The applicant is proposing to construct a single family dwelling and have sole access from the Port Wedeln Road. There is a deed that deeded the roads to the town but this property was not included. When the lot was offered for sale the purchaser required that Port Wedeln Inc. construct a driveway to the lot. The list of Town roads does not show Port Wedeln as a town road however there is a 1970 Deed by which the roads were conveyed to the town but they did not extend down by this property. An Appeal of Administrative Decision was also filed for this property.

Lynne Larson, Trustee explained the current driveway that was built when the lot was conveyed. It was in the original agreement dated May 10, 1969 to Julian Dore. (Submitted for the file). The driveway was placed to the property by Port Wedeln Association and in 1978 her father purchased the property and received permission to add stone and make it more passable. In 1996 Code Officer Keniston and Mr. Piper from the Public Works Dept. came to view and gave permission to repair and upgrade of the driveway. (Documents referenced will be submitted for the file)

Rob Houseman discussed and explained paper streets/roads.

Attorney Murray stated the purpose of the provision is that you are not blocking some proposed access or blocking some road. This is not negatively impacting existing streets. The proposal does not need to be accessed on street. The applicant is seeking relief from 674:41 II.

Acting Chairman Barnard Open the Public Hearing:

Wayne Alwick – 56 Port Wedeln Road addressed the Board. The property is like a path going down the road. Mr. Mandell put a road, fence and a gate in which the association wanted to keep. In 1996 he was on the Board and he has attended annual membership meetings and never heard any discussion about giving Mr. Mandell permission to upgrade the road. Former residents mentioned something about a Class VI Road for a ROW for the people. Another concern is the neighbor's property. There is a culvert that runs under there. All water runs downhill and floods the beaches.

Brian Arsenault and Dr. Arsenault live at 42 Port Wedeln have concerns about water coming down the hill. This is due to water issues on Port Wedeln. This is a continuously wet property.

If the topography of the lot is changed the water could come onto their lot. They have concern about the weight of a fire truck and also questioned if a wetlands study has been done.

Marcia Arsenault stated she has owned the property since 1986. The Aspen Lane lots are for the purpose of being granted beach rights and these are not building lots. This lot fits into that category. The lot has been owned by a beach front property and was purchased to protect the lot below it has been taxed as a regular lot.

Attorney Murray explained and discussed the owners have a right of way over the road and the strip going down to the lot. The subdivision would not have been approved for a lot with no access. It is not clear who owns the road. It is a 50' right of way/strip and they would like to keep it as narrow as possible. The distance from the corner of the lot to the paved portion of the road is about 75'.

Attorney Murray, rebutting Mr. Arsenault's comments; there is a 50' right a way and they are not up against their property doing anything. This has nothing to do with if the fire truck can travel over it and a culvert would require a wetlands permit. This is not the focus of today's hearing. The five criteria for the Appeal from the RSA is what needs to be addressed. The culvert that exists is taking water from the left side and has nothing to do with the lot owned by the Arsenault's. They would like to do the least amount possible for the driveway to keep it narrow.

Brian Arsenault commented that neither Attorney Murray nor the Mandell's have a vested interest in the area and should the dirt road be allowed it would end up in their house. The roadway would abut their basement. There has to be consideration given as to how it affects others. There are many existing families who are concerned what will happen. It is beyond belief that they can do what they want and take 50'.

Diane Alwick, 2 lots down has a ROW and access to the path to the beach as they all do. This does not mean the path can be taken over that belongs to the association. They have no frontage and could be land locked.

Lynn Larson commented she has been living next door to the lot since the late 1950's and knows the history of the lot and how her father improved the driveway.

Attorney Murray rebutted and noted if any development is done there will be a need for permits; a building permit and a wetlands study would need to be done. They are not building on someone else's property. The applicant is seeking approval because five requirements have been met.

Attorney Murray noted some created lots could not get septic approval, and are not re-subdividable or buildable. The Applewood section does not have beach access so some people bought the non buildable lots to gain beach access.

Acting Chairman Barnard closed the Public Hearing.

The Board deliberated on the application.

Mike Hodder felt the applicants remedy does not lie with the ZBA but with the Port Wedeln Association.

David Senecal commented it is unfortunate the lot happens to be not on the road but thinks it was the original intent for the lot and road to be part of the subdivision. Town water exists and would be brought to the lot. Also he agrees if access is granted there are other hoops to jump through such as – Septic, Building Permit, Soil Scientist. There will be no negativity as this lot has been a building lot and is assessed at \$180,000. There has been a driveway in place which was reviewed and upgrades approved by Larry Keniston and Buddy Piper. There have always been water and drainage issues. The lot in question is larger than most and the driveway would be 100' -120' long.

Hank Why agreed and noted he had nothing more to add.

Fred Tedeschi commented he agreed with most of David Senecal's comments. The lot has been accessed and technicality it meets RSA 674:41, III, B. The lot was adopted and approved by the Planning Board. Clearly the applicant has met RSA 674:41, B, 2 and all issues raised tonight do not relate to this application and would be addressed by other approval processes.

Mike Hodder noted another paper subdivision on Jonathan Hershey Road. There is no practical difficulty just because a lot has not frontage but does not fulfill it to meet the requirement. Point # 1 fails, Point # 2 fails, and Point #5 fails. There will be a financial burden to the town fails as they cannot show the Fire Department has no certified their equipment can get up and down. This does not qualify under RSA 674:41.

Kathy Barnard commented the lot is in an approved subdivision and clearly was consistent with surrounding lots. The practical difficulty is in the narrowness to the existing lot. There is concern with Fire Department access and egress and the ownership of the ROW and have they received proper notice. All issues need to be dealt with in order to protect future owners.

Kathy Barnard and David Senecal agreed the applicant has a right to pass over and improve the ROW.

The Board reviewed the criteria under RSA 674:41:

1. Practical Difficulty: #1 - The lot is assessed at \$180,000; #2 – there is access to the lot as public records show there is access from the street that is part of subdivision and has been accessed for over 30 years never challenged. #3 - In trying to meet the town requirements for an improved road it is not realistic and practically difficult exists.

David Senecal, Kathy Barnard, Hank Why and Fred Tedeschi agreed on these points. Mike Hodder disagreed.

2. The circumstances of the case do not require the building, structure or part thereof to be related to the existing or proposed street: There is access over the driveway, at most 100' and there is no further relationship to the street that is needed.

David Senecal, Kathy Barnard, Hank Why and Fred Tedeschi agreed on these points. Mike Hodder disagreed.

3. The issuance of a permit will not tend to distort the Master Plan: All members agreed this is on an official plat.

4. The issuance of a permit will not cause hardship to the future property owners: The next step in this process is the building permit application and other requirements come into play and any future purchases would have information on file with the town. A condition that the Fire Department review this application before the issuance of any permit was recommended.

David Senecal, Kathy Barnard, Hank Why and Fred Tedeschi agreed on these points. Mike Hodder disagreed.

5. The erection of the building or issuance of the permit will not cause any undue financial impact to the municipality: The town will collect revenue from water and additional taxes if the lot is improved. The building permit will require septic system, drainage, approval from the fire department, water sewer and highway/ driveway review.

David Senecal, Kathy Barnard, Hank Why and Fred Tedeschi agreed on these points. Mike Hodder disagreed.

The Board discussed the owner being required to maintain by the driveway. Mike Hodder also suggested the ZBA require the Fire Department inform the ZBA they have inspected the road and feel their equipment can pass over this safely.

It was moved by David Senecal and seconded by Fred Tedeschi to grant the Appeal from RSA 674:41 for Case # 09-RSA-13, TM# 201-23, Mandell Living Trust, Lynn Larson, Trustee with the following conditions:

1. Only a single family dwelling be built
2. That health and safety be a concern. The Fire Department is to inspect the property prior to the issuance of a building permit.
3. The applicant is required to execute the Acknowledgement of Waiver of Liability and record it at the Carroll County Registry of Deeds.

David Senecal, Kathy Barnard, Fred Tedeschi and Hank Why voted in favor of the motion. Mike Hodder voted in opposition. The motion passed.

TM# 201-23

Case # 08-AAD-13

Applicant: Mandell Living Trust, Lynn Larson, Trustee

Appeal of Administrative Decision

Agent: Roger Murray, Esq.

Attorney Murray requested that Case # 08-AAD-13 be withdrawn.

It was moved by David Senecal and seconded by Mike Hodder to accept the request and withdraw Case # 08-AAD-13. All members voted in favor. The motion passed.

Alan Harding rejoined the Board.

Consideration of Minutes:

5 August 2013


Corrections:

Page 3 - 1st line change – “David Senecal was seated for his hearing.” to
“**David** Senecal was seated for **this** hearing.”

It was moved by Kathy Barnard and seconded by Mike Hodder to approve the minutes of 5 August 2013 with the correction. All members voted in favor. The motion passed.

There being no further business, this meeting was adjourned at 8:52 pm.

Respectfully Submitted,



Robin Kingston
Administrative Assistant