

Town of Newington, NH
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – December 30, 2013

Call to Order: Chair Matt Morton called the December 30, 2013 meeting at 6:30 PM.

Present: Matt Morton, Chair; Ted Connors; Ralph Estes; John Frink; Planning Board Rep, Justin Richardson; Town Planner, Tom Morgan; and Jane Kendall, Recorder

Absent:

Public Guests: Troy Leedburg; Attorney Pelech; Blanche Abbott; Brenda Belonigan; Russell Cooke

Public Hearings:

A) Request by Troy and Lily Leedberg to construct a house on a non-conforming lot of record that has less than 200 feet of frontage on any on public road. The property is depicted on Tax Map 18, Lot 3A.

As an abutter, Mr. Frink recused himself.

Attorney Bernie Pelech came before the Board on behalf of his clients, Troy and Lily Leedberg. Attorney Pelech presented a letter from Jack and Luanne O'Reilly dated December 26, 2013 regarding the right of way through their property as described on the applicant's deed. Mr. and Mrs. O'Reilly stated that "forcing the adjacent property owners to use this right of way would reduce our property values" and asked that the variance be granted.

Attorney Pelech said his applicant purchased the lot as buildable land that was subdivided and granted a variance fifteen years before, though the Planning Board had recently tabled their decision on his curb cut application until they discussed the matter with Town counsel. Since then Town counsel, Attorney John Rattigan made a decision that the lot would not be grand-fathered as buildable because of a change in the ordinance requiring property to have 200 feet of road frontage on a public road. Attorney Pelech said adhering to the current ordinance would make the lot unbuildable and unusable for anything and would result in the Town taking the property without compensation. He noted that the other lot in the original subdivision had since been built upon.

Chairman Morton asked Town Planner, Tom Morgan why the lot couldn't be grandfathered as buildable. Mr. Morgan said the problem was that the Planning Board

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received a decision from Attorney Rattigan based on a 2012 amendment to the Town ordinance that said, "...if property has frontage on two roads the Planning Board must determine which..." but neither of the two roads had 200 feet of frontage. Mr. Richardson said he thought that wasn't the intent of the amendment and thought the road frontage on Hannah Lane and Nimble Hill Road could be added together to be interpreted as 200 feet. Mr. Pelech said with all due respect, he disagreed with Attorney Rattigan's interpretation and didn't think his decision would sit well with any judge, but instead of filing an administrative appeal that the lot should be grandfathered or vested, they were requesting a variance.

Mr. Frink said he lived across the street on Nimble Hill Road and was in favor of granting the variance to allow the applicant to build a home. He said the house proposal was in a sensible location, and he was sorry the applicant had to go through additional expenses of delaying construction and filing for a variance.

Ms. Brenda Belonigan of Hannah Lane said she would not object to the variance, but wanted written assurance that the 20+-acre lot would not be further subdivided using the right of way for frontage. Mr. Richardson said the statute says the Town cannot issue a building permit unless there is frontage on a Class A roadway for adequate access for emergency vehicles, etc. and the right of way would not be sufficient so all the back acreage would be unbuildable unless someone built a road to Town standards. Pelech said the O'Reilly's letter noted that the right of way was only wide enough for a team of horses and a cart. Mr. Russell Cooke asked if a Town road could be built through the right of way, and Attorney Pelech said the State says a right of way could not be used. Mr. Cooke asked if the right of way through the O'Reilly's was in effect useless because it was only wide enough for a team of horses, and Chairman Morton said it would be forfeited if it were not useable. Mr. Richardson said it was part of the recorded deed.

Mr. Richardson also noted high-pressure gas lines run along Arboretum Drive, which is supposedly maintained by the City of Portsmouth.

Chairman Morton asked the applicant if he had any intentions of subdividing, and Mr. Leedberg said he did not have any intentions of subdividing.

Mrs. Blanch Abbott of Hannah Lane asked how close to abutters' property a leach field needed to be, and Mr. Morgan said a leach field had to follow setback requirements of 40 feet from roads, and the applicant's plan met that requirement.

Justin Richardson moved to grant the request by Troy and Lily Leedberg to construct a house as shown on the Ross plans on a non-conforming lot of record that has less than 200 feet of frontage on any on public road with the stipulation that the right of way could only be used for personal use and not used as a Town Road. Ted Connors seconded.

The motion passed unanimously for the following reasons:

- It would not be contrary to the public interest.
- It was in the spirit of the Ordinance

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- Substantial justice would be served by granting and there would be no gain to the public in denying these variances.
- It would not be contrary to public.
- The value of surrounding properties would not be adversely affected.
The applicant would suffer a hardship from purchasing a lot listed as buildable, and not being able to go forward with building a home.

Minutes: A brief discussion on correcting phrasing and intentions on some of the previous month's discussions. After expressing some uncertainties on how to best phrase their intentions, recording secretary, Jane Kendall suggested they could submit their statements in writing if they were not certain on phrasing. Mr. Richardson said he would send an email to Mr. Morgan.

Ted Connors moved to table acceptance of the Minutes of the December 16, 2013 meeting. John Frink seconded the motion, and all members voted in favor.

Correspondence:

Adjournment: ***Ralph Estes motioned to adjourn, and Ted Connors seconded. All were in favor, and the meeting adjourned at 8:00 p.m.***

Respectfully
Submitted by: Jane K. Kendall, Recording Secretary