

Town of Hill  
Planning Board  
Minutes  
21 November 2019

In attendance: Bob Helmers, Marshall Bennett, Tom Whitman, Mike Brady (Charles Estes excused absence)

Public: Colin Brown, Denise Robie, Stephen Robie, Ellen Guild, Paul Guild, David Liberatore, Rick Pescinski, Carl Rider

Meeting opened at 7:07 p.m. Mr. Helmers introduced the board members to the public.

Mr. Brown, surveyor representing members of the Robie family presented a plat for a lot line adjustment located on Murray Hill Road in the rural residential zone. The plat showed lot lines of the existing Tax map R6 Lot 16-1 to be extinguished and the lot merged with portions of Lot 17 and Lot 16 to create a 12 acre lot with frontage on Murray Hill Road. The remainder of Lot 16 (approx. 23 acres) to be merged with Lot 12, both owned by Stephen Robie and that lot line extinguished. An existing right of way located on the eastern side of Lot 16 which provides access to the landlocked Lot 17 will be extinguished and a new right of way will be established on the newly defined Lot 12. No new buildable lots are created. The board reviewed the plans and found the plans to meet town standards. Mr. Helmers asked if there were any comments from the public. Being none he made a motion to approve the plat entitled "Lot Line Adjustment & Lot Merger for the George W. Robie Family Trust, Stephen G Robie & the Thomas & Gail Robie Family Trust" dated October 28, 2019. The motion was seconded and passed unanimously. Mr. Brown will register the plat.

All public except for Mr. Pescinski and Mr. Rider departed.

Mr. Rick Pescinski approached the board. He recently purchased a property accessed by a right-of-way (ROW) from Poverty Pond Road and would like to build a house. The ROW passes through an adjacent property which was recently granted a variance by the zoning board of adjustment (ZBA). Mr. Pescinski brought photo copies of portions of old plats and material from the court decision related to the variance. Apparently the ZBA had referred Mr. Pescinski to the planning board. He had recently upgraded the dirt road/drive from the Robinson's house to his property and for a distance into his land. He felt this sufficient and that a building permit should be issued, citing in part the court decision establishing the existence of the road and the easement as listed in the deed. The photocopies of the old plats were discussed. The older plat shows a vaguely delimited ROW. The more recent plat shows the ROW extending to the Robinson's house and up to the boundary with Mr. Pescinski's parcel, but not beyond. Mr. Brady stated the court decision was based on the latter plat. The ROW extended to the boundary and there was no road for frontage and that the selectmen could not issue a building permit. The general reaction of the board was that this was a ZBA matter and that the decision in the Higgins case should be clarified, specifically what they meant by upgrade to the drive and what portions of the drive were applicable. Mr. Pescinski would most likely need to seek a variance. Alternative options were discussed. Mr. Helmers suggested that the ROW could be upgraded to town road standards, creating a private road from which frontage could be obtained, the matter was complicated by the intervening stretch of ROW with the variance however. He also noted that the ROW would have to be shown on a plat approved by the planning board. Mr. Brady stated that a ROW could not be used for frontage. Mr. Helmers was uncertain about the use of the ROW as frontage. The RSA (get

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number) was consulted and suggested that a single ROW within a property could not be used as frontage. Mr. Pescinski noted that the ROW was shown on the plat. Mr. Brady and Mr. Helmers believed the ROW depicted in the photocopy was added later, perhaps as part of a lot survey, and was not on a subdivision plat approved by the planning board. Again followed some discussion of the ZBA decision in the Higgins variance and the need to refer this matter back to the ZBA for clarification of ROW. Mr. Helmers noted that this was a different property than the Higgin's variance and the ZBA decision would not apply to Pescinski's property. Mr. Pescinski asked if a lot line adjustment or a merger could be made to provide frontage on the portion of the ROW where the variance applied. Mr. Pescinski's brother currently owns the property granted the variance in the Higgin's case. After a brief discussion, the planning board thought that a merger of the two parcels would be okay and would probably satisfy the frontage requirement, but that would be a selectmen's decision. Neither property currently has a dwelling on it. Mr. Helmers was not certain, but he thought the merger would likely require a surveyed plat. He would check and get back to Mr. Pescinski. Mr. Pescinski departed.

Mr. Rider approached the board. Mr. Rider was also referred to the planning board by the ZBA. The ZBA recently held a public hearing on a request for a variance to allow two dwellings on a property in the rural residential zone that was less than 6 acres. It is not known if the hearing was closed or recessed, but a decision has not yet been rendered. The zoning ordinance allows by special exception two dwellings on properties of six acres or more. The planning board considered this a ZBA matter. The only role of the planning board in a special exception is to determine if the site is appropriate for the intended use. All other requirements are decided by the ZBA. Mr. Rider began by showing a drawing of the property which showed areas of seasonal wetlands, a stream, location of the buildings, the well and the septic. He indicated the only place a second building could be located. He is proposing a garage with a liveable loft. The dwelling would share the existing well and septic. He had been granted a building permit for the garage by the selectmen, who informed him he needed to obtain a variance for the dwelling portion. Mr. Rider has begun construction of the garage (dwelling portion ??). A number of concerns were discussed. The planning board could not approve a site for special exception if it fails to meet zoning requirements, so a variance is the likely the only way to proceed. During this discussion, Mr. Helmers gave his opinion that granting a variance in this matter would set a bad precedent as there are many properties in the rural residential that are less than 6 acres. Mr. Rider noted that the seasonally wet character of the property and layout of structures should be considered. He noted state regulations allowing for waivers in attached dwelling units. Mr. Brady noted that such waivers are not clear and that they may not be acceptable in our ordinance. Also discussed was the legal ambiguity of the ZBA granting a variance of a planning board decision. At present, the planning board determined that the matter lies with the ZBA. Depending on the wording of the ZBA decision, the planning board may get involved if a special exception is to be obtained. Mr. Rider asked if the two boards could get together soon to decide on this matter. Mr. Helmers answered that it would depend on the ZBA decision and if a new hearing would need to be held, allowing for proper posting of notices. Mr. Rider departed.

The board discussed a few ideas for zoning amendments, in very general terms. Any specifics could be drafted by members for the next meeting.

Meeting adjourned at 8:45 p.m.

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Robert Helmers  
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Draft