

Remarks of Charles Estes – ZBA Deliberations of Appeal by R. Pescinski 07-23-2020

Appeal of Administrative Decision filed on behalf of Richard Pescinski, Poverty Pond Rd., Hill Map # R08 Lot 08.

Reasons for Denial:

INSUFFICIENT FRONTAGE – and “a second restriction imposed by the ZBA.” (Undefined)

- In Response to the question of the Selectmen’s Office - “What is the second reason for denial that appears on the application and is noted in the emailed sent to Richard Pescinski?” The Selectmen’s office responded;

“- I am told that the additional notation on the rejection was added at the request of Mr. Pescinski asking what document said he could not build. The notation, I am told, was made in reference to information found in the ZBA meeting minutes dated 26 October 2017 where it was noted that, as part of the Higgins case, the ROW was not suitable for building beyond the approval granted Higgins.” Email sent July 14th 2020.

To best consider the Appeal of Administrative Decision, I reviewed the history of the minutes and subsequent correspondences that have transpired between the respective parties and the Town of Hill boards. Noted below are the comments and directions from various Town officials.

Beginning with the Court Ruling that upheld the ZBA’s decision related to Kathe Higgins Appeal of administrative decision, the relevant part of the ZBA’s decision for the purpose of this matter is that the “Common Drive” determined to be considered a “Street” pursuant to NH RSA 674:41 Section I (B) (2) was restricted to the section of Common Drive that services Lot R15. The remainder of the ROW required significant upgrade and approval prior to issuance of a building permit. Thereafter – the Selectmen’s office and Planning Board have muddied the waters related to who’s responsible for oversight and approval/denial of such an application for upgrade.

RSA 674:41 prohibits the erection of a building or issuance of a building permit for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed is a Class V road, or:

- *The street corresponds in its location and lines with:
(2) A street on a subdivision plat approved by the planning board;*

The ZBA condition of approval for a building permit for lot 15; That no other construction would be approved or (READ MINUTES from October 26th 2017)

To Date – No application for approval has come before the ZBA AND no notice of Recorded Registry has been submitted to the ZBA regarding waiver of liability.

In a February 2019 Email the Chairman of the ZBA was contacted by Mr. Pescinski for direction to submit an application for Upgrading the Right of Way. In TResponse He was rightfully instructed to contact the Planning Board.

State of NH Definition - In the state's highway classification system, which is defined in **RSA 229:5**, Class VI roads are "all other existing public ways," meaning public ways not otherwise classified as Class IV or Class V roads. Class VI roads include those that have been discontinued subject to gates and bars, as well as those that have "not been maintained and repaired by the town in suitable condition for travel" for five successive years or more. (See **RSA 229:5, VII.**) The two important keys to this statutory definition are that Class VI roads are public ways, and they are roads that the town has no duty to maintain.

Kathe Higgins was told by the Chairman of the ZBA to seek Planning Board approval – Bob Helmers told her it was not a planning Board issue.

Mike Brady also directed Kathe Higgins seek approval of the Planning Board – Again Helmers said not a planning board issue.

Richard Pescinski, following the same path as Kathe Higgins, was also told to submit to the Planning Board.

In November 2019 Helmers fabricated the condition of a Variance on the property to relieve himself, as Planning Board Chairman, of dealing with the issue. Helmers was/is wrong in all three cases.

Mike Brady said – “ NO MATTER – The planning Board has no role to play in this.”

The fullness of the Emails between Helmers, Brady and the ZBA Chairman didn't surface until this application was submitted. No "notice," as it is referred to in the emails, was provided to Higgins.

The ZBA Meeting was brought to order by Stephen Thomson Chairman, at 7:00pm.

Attendance: S. Thomson, M. Labonte, D. Stevenson, and C. Estes, Absent - Ian Gardner

Visitor - State Representative David Testerman

Order of Business –

To address the administrative appeal by Kathe Higgins under RSA 674:33, I(a) and RSA 674:41 from the decision of the Board of Selectmen to deny her building permit application with respect to Map R8, Lot 15.

After careful consideration, the Board determined the grounds for its decision must be confined to the basis of the denial stated in the letter of administrative decision. Specifically, the building permit was denied for lack of adequate frontage. The Zoning Board wrestled with the ambiguous language of both the ordinance and state statutes, but concluded, by majority vote, that the “common drive” shown on several maps presented to the Board accompanied by supporting deeds, does satisfy the requisite standard under the Town of Hill Zoning Ordinance and RSA 674:41, I(b)(2). In this case the portion of the common drive shown on the plan meets the standard to be considered a street shown on an acceptable plat that was approved by the Planning Board.

Consequently, the Board, being presented with additional documentation, concludes that the approval of a building permit is warranted and remands this case back to the Board of Selectmen to issue a building permit based on the findings of Zoning Board of Adjustment.

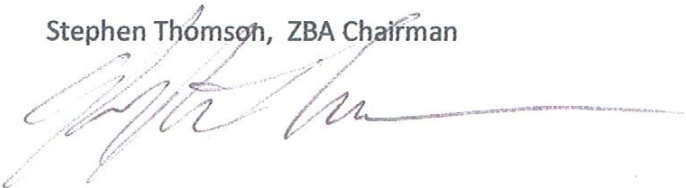
The Board notes that this decision is limited to that portion of the common drive shown on the plans presented to the Board. The common drive is not suitable for development beyond the existing dwelling and the single building permit sought by the applicant, without significant upgrade. Therefore, this decision is restricted to the approval of a single building permit on the applicant’s property. Further, prior to the issuance of a permit, the Board requires that a notice be recorded in the Registry of Deeds that the Town of Hill neither assumes responsibility for maintenance, nor liability for any damages resulting from the use of the common drive.

The Board, acting in the affirmative on the foregoing, voted to adjourn at approximately 8:30.

Respectfully submitted

Charles Estes, ZBA Secretary

Stephen Thomson, ZBA Chairman

A handwritten signature in blue ink, appearing to read 'Stephen Thomson', is written over a horizontal line.

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.

1 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

Town of Hill
Planning Board
Minutes
21 November 2019

3 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
4 believed the ROW depicted in the photocopy was added later, perhaps as part of a lot survey, and
5 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.

Town of Hill
Planning Board
Minutes
21 November 2019

Robert Helmers
Planning Board
Draft

TOWN OF HILL

SELECTMEN'S MEETING

January 8, 2019

Selectmen Present: Tom Seymour, Mike Brady, Bob Dupuis & Lisa Seymour (Administrative Assistant)

Selectmen Absent: None

Public: Kathe Higgins, Michael Limanni

Tom Seymour brought the meeting to order at 6:31 pm.

Fire Dept: Dee Ford passed her information to the Town Administrator to report to the board. The old generator has been removed and the new one should be installed this weekend. Dee has been working on the Hazard Mitigation grant. 25% is our portion and there is no money involved because our portion is labor and meetings.

Highway Dept: Dean Stevenson reported that they got the new plow and it's going to take a bit to get use to it because it's a little bigger than the other one. Keeping track of the mailboxes that have been hit this season and will replace in the spring. All of the equipment is running ok at this point in time. The grader is going to get work done on the front end, but this can be done by the department. Bob asked Dean if he looked at the Federal website for auctions, they had a 2010 John Deere for 40k. Dean said he did not.

Police Dept: Chief Williamson sent a note and is requesting permission to place an ad for part-time officers. Selectmen approved the request.

Town Clerk/Tax Collector: Shelly Henry no report.

PUBLIC SESSION:

Kathe Higgins came in to discuss lot R08/08 and R08/15. Ms. Higgins wanted the Selectmen to confirm that Lot R08/08 is a buildable lot. Mike stated that "It is the opinion of the Hill Selectboard that a building permit could not be considered for lot R8/08 at this time. This is based on the Hill ZBA decision that requires a substantial upgrade to the ROW (right-of-way) litigated for lot R08/15 before any additional building is allowed. Lot R08/08 was not a part of this litigation. Since this upgrade is not under the purview of the Selectboard, we would suggest that you contact the Hill ZBA to establish the specifications of the required upgrade and how this will be monitored and approved." It was stated that the Selectboard does not give opinions on suitability of future purpose. Tom stated that there were just too many variables that could change.

There was more discussion on this and Ms. Higgins had various paperwork which the Board declined to review. The Board of Selectmen said that the decision and release was for a single building permit for R8-15 and that R8-08 was not included in this decision. The Selectmen stated that R8-08 currently is not a buildable lot and they could not consider any permits for this lot at this time. The Selectmen stated that they did not know what specs the ROW would need to meet and exactly what portions of the ROW would be affected. Those would be questions for the ZBA. Once this issue is completed and finalized the Selectboard would review any permit application submitted for compliance with the Hill Zoning Ordinance and other legal requirements.

School payment discussion - the DRA confirmed that they didn't use the fund balance retained as it was disallowed in the state adjusted number to set the tax rate. However, the State Source (Keno) Kindergarten Aid was double counted once on the 2018 MS-24-R and then on the spreadsheet with the calculation for FY19 Revised payments.

Michael Limanni, Business Administrator, came to the selectmen's meeting for a discussion on the school payment and explain the reserve for encumbrances from prior year. He explained the (Keno) Kindergarten Aid and how the payment is calculated for the school district. After much discussion the Selectmen are in agreement with the revised payment schedule.

BOARD BUSINESS:

Building Permits: David Hurd for a HUD handicap ramp 19 Ferrin Street - Approved

Intent to Cut: Jason Curtis for Map R3 Lot 20 Cass Mill Road – Approved

Application for the use of the Town Hall by the Heather Bhagat Girl Scout Event on February 30, 2019 needs signatures – Approved

The Town of Hill will be receiving a Primex premium holiday distribution this was based on the 2017 financial results.

Health insurance for fulltime employees is carried through HealthTrust and is broken down as follows. Individual coverage for the employee only will be paid 100% by the Town. If you choose the two-person plan you will be required to contribute 15% of the cost and for family plan you will be required to contribute 25% of the cost.

Letter for Dennis Levesque for noncompliance with the building permit request was signed by the Selectmen and will be sent via certified mail.

Lisa will reach out to DuBois & King on the status of the Bunker Hill Bridge.

Lisa will contact Jamie at the DRA about the process to move funds from the school capital reserves that were deposited in error.

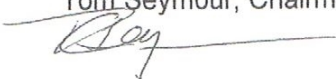
There will be a Public Hearing at 7:30 in the selectmen office to review the Junkyard zoning ordinances.

With no further business to conduct, motion was made and unanimously approved to adjourn at 8:51 pm.

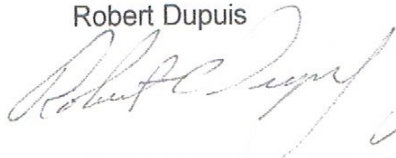
Respectfully Submitted,

Lisa Seymour

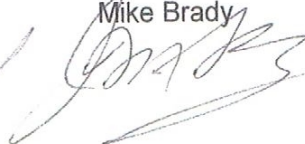
Tom Seymour, Chairman



Robert Dupuis



Mike Brady



Respectfully

bob

From: stephen thomson [mailto:sjtsds1980@hotmail.com]
Sent: Monday, February 11, 2019 11:46 AM
To: Kathe Higgins; Michael P. Courtney; Bob Helmers
Subject: Re: Looking for direction.....

The 2017 ZBA decision stated the road (common drive) was adequate for 1 home on lot R8/15 for Kathy Higgins. The plat which this decision was based on (#11177) only shows the common drive servicing R8/15. Nothing was ever presented to the ZBA board pertaining to lot R8/8. Any questions regarding anything further will have to be directed to the planning board. Thanks

Stephen Thomson

Sent from Windows Mail

From: Kathe Higgins
Sent: Monday, February 11, 2019 10:53 AM
To: Michael P. Courtney, sjtsds1980@hotmail.com, Bhelmers@normandeau.com
Cc: kathehiggins@hughes.net

Good Morning Mike, Stephen: and Bob:

I am not looking for legal advice.

I have a signed P&A for Lots R8/08 and 15, which abut each other. Stephen, in the 2017 ZBA's Decision, it states that further development would require substantial upgrading of the "common drive". Since I own both lots and the common drive, does the town require a permit if I want to improve the road to the current standards? I cannot find the answer in the NH Planning and Land Use Guide.

I have a friend who is a planning board member in Bristol. I explained the situation to him. I know that he goes by the book, so I knew he would give me the correct answer. He said that because I own all the land, I can make improvements on the land without a permit.

I realize that after the improvements are made, that the road agent will have to sign off on it and a waiver signed. We're all okay with that.

I just need to know if a permit for improving the common drive to the present specifications is required, and if so, please direct me to the appropriate department.

It is very difficult getting an answer from the town. Mike Brady is belligerent towards me and this has been on-going for years, and besides, he has given me mis-information many times.

At the January 8, 2019, selectmen's meeting, Mike told me that no other department has the right to speak about any town matter. This is not the case with other towns. How can I get answers when Mike doesn't have all the answers and he has a history of ignoring me?

Thank you.

Kathe

Please consider the environment before printing this e-mail.

From: Stephen Thomson
Sent: Tuesday, February 12, 2019 2:00 PM
To: Bob Helmers
Cc: Mike Brady, Lisa Seymour

don't really see the confusion, it is extremely straight forward....."the common drive shown on the plan (#11177) meets the standard to be considered a street shown on an acceptable plat that was approved by the planning board." "The board notes this decision is limited to that portion of the common drive shown on the plans (#11177) presented to the board. The common drive is not suitable for development beyond the existing dwelling (R8 lot7) and the single building permit sought by the applicant, without significant upgrade." Meaning.....Kathy Higgins and only Kathy Higgins is permitted to build a single dwelling on R8 lot 15 using the common drive to satisfy the frontage requirement. The P&A she has will open a new situation, and subsequent plan which will need to be presented to the planning board. The ZBA's decision was based on Kathy Higgins's situation and desires alone.

Sent from Windows Mail

From: Bhelmers@normandeau.com
Sent: Tuesday, February 12, 2019 12:55 PM
To: stephen thomson
Cc: Mike Brady, Lisa Seymour

Hi Steve,

I have already sent my response to Ms. Higgins and cc'd you.

I would like to add this further explanation to you.

The planning board really does not have any powers in this case, nor do the selectmen. The ZBA decision is now the governing law on this matter. The condition that the right of way needs substantial improvement is vague and is creating a source of confusion in this matter. I suggest that the ZBA clarify its meaning. Specifically stating which portions of the private right of way need to be improved and the specifications for construction of the road, in terms of travel width of road, shoulder width, road width, ditching and materials and anything else you can think of.

I agree with you that the decision only applies to lot 15. However the two lots are affected by the same circumstances. Clarification of the substantial improvements of the ROW for Lot 15 will greatly impact future actions on Lot 8.



Charles Estes <charlesestes@oem-tech.net>

Fw: Looking for direction.....

1 message

stephen thomson <sjtsds1980@hotmail.com>
To: Charles Estes <charlesestes@oem-tech.net>

Fri, May 15, 2020 at 2:09 PM

Sent from Windows Mail

From: Bhelmers@normandeau.com
Sent: Wednesday, February 13, 2019 12:41 PM
To: Mike Brady, Stephen Thomson, Michael P. Courtney
Cc: Lisa Seymour

Hi all,

Actually Steve your comments helped clarify this for me. The only record I have seen regarding this matter was the minutes of the hearing and frankly I found the wording confusing. Your wording below helps. Essentially the ZBA decided that the existing driveway which meanders across Lot 15 to provide access to Lot 7 qualifies as a street. You requested no upgrade on that portion of the common drive and that Ms. Higgins could claim frontage from the driveway in its existing condition. I personally do not agree with that assessment because the existing driveway does not nearly meet town road standards. But what is done is done. Also a word of caution regarding your comments below (but not the minutes); ZBA decisions apply to the land, not the applicant. You cannot approve or condition a request for a single individual (disability variance is only exception). Ms. Higgins has no intention of building, she wants to sell the property.

Most certainly Ms. Higgins cannot apply those same standards to Lot 8. As the town is aware of this, I think it prudent to provide her notice before she or potential buyers spend substantial amounts of money. I agree with Mike that either the ZBA or the town counsel should provide her notice. If anything it will help when this matter ends up in court again.

Have a good day

bob

? Did anyone
o Notice R. Higgins

From: bradym@att.net [mailto:bradym@att.net]
Sent: Tuesday, February 12, 2019 2:20 PM
To: Stephen Thomson; mcourtney@upton-hatfield.com; Bob Helmers
Cc: Lisa Seymour
Subject: Re: Looking for direction.....

All,

We need to all get on the same page. This is my understanding of the conflict.

What she wants to do is upgrade the ROW for 200 ft on lot 08-8. This is frontage she deeded to herself as I understand it. We believe that the ZBA decision referred to upgrading the ROW from where it starts on Poverty Pond Rd to include lot 08-15 but not 08-8. This makes sense as you wouldn't have a goat path leading to a highway. Anything dealing with building frontage or permits on lot 08-8 is a totally separate and undecided question. **Nothing on lot 08-8 can be discussed until the upgrade is complete.**

This is all based on the ZBA decision. If I am correct this is what she needs to be told either by the ZBA or Town Counsel. Along with this would be the exact specifications, location and distance of the ROW upgrade. We could use the Town of Hill Street Specs. Basically 20 ft roadbed and 2 ft ditches with material tbd. The Planning Board can advise on exact specs. Also the abutters Whitman and Robinson and whoever else would need to be involved since I believe the ROW runs through their properties and I would think they have to authorize construction on their property.

Whatever is the correct interpretation is what she needs to be told with no ambiguity on our part. She also does not need a permit for any ground work on her own property but this would not constitute an official upgrade.

This can't come from me since I don't have all the answers.

Let me know what you think.

Mike Brady

She is certainly persistent. Does the Town of Hill have road standards we can refer her to?

-Mike