
**TOWN OF HILL - ZBA
30 Crescent St Ste #1
Hill, NH 03243**

**Attention: Richard Pescinski,
C/O Christopher Swiniarski,
McLane Middleton, Professional Association
900 Elm Street
Manchester, NH 03105**

September 14th, 2020

RE: Motion for Rehearing Pursuant to NH RSA 677:2 – Appeal of Decision,

**Appellant: Richard Pescinski and Steven Burke, Trustees of the RFP Trust
Property: Town of Hill Tax Map R08 Lot 08 [Hill, NH]**

Introduction

This matter was brought forth by counsel on behalf of the Appellant - Richard Pescinski. The issue arises pursuant to the Town of Hill Zoning Board's recent Notice of Decision denying an Appeal of Administrative Decision of the Town of Hill Selectmen who previously denied the appellant a building permit on a parcel of land that is considered currently land locked. The ZBA upheld the Selectmen's previous decision of denial of a building permit on Map R08 lot 08 on the grounds of insufficient frontage pursuant to the Town of Hill ordinances definition of Frontage as follows:

Frontage The length of a lot bordering on a town-maintained class V highway, a state-maintained highway (not including limited access highways or class VI roads) or a street within a subdivision shown on a subdivision plan approved by the planning board. Frontage on different streets is not additive for meeting zoning, building or subdivision requirements.

Source: 1988 ZO. Effective 3/15/88

Amended 3/14/06

Amended 3/15/18

The Town of Hill ZBA held a properly noticed and timely convened public hearing on July 09th, 2020 which remains uncontested by the Appellant. Having closed the public hearing, but having questions preventing the board from reaching a decision on July 09th, the board recessed and reconvened a specially held meeting on July 23rd, 2020. With all questions answered, taking no further input from the public or from the applicant for appeal, and relying solely on the Board's considerate and careful deliberation – the Board voted unanimously to deny the Appeal of Administrative Decision upholding the Selectmen's decision of denial for insufficient frontage. Hearing and Meeting Minutes were prepared timely and Notice of Decision was timely served to Counsel for Mr. Pescinski.

The ZBA received notice of a pending submission of a Motion for Rehearing Pursuant to RSA 677:2. The Motion was submitted and was received as the parties stipulated. The ZBA took into consideration the submission of the Motion for Rehearing on September 10th, 2020 and reached its final decision on that night. The matter is now concluded within the jurisdiction of the Town of Hill.

Consideration for Rehearing

The Board finds the Appellant rightfully does not raise any issues of a technical nature and does not attempt to introduce <or> advise the ZBA of any new evidence unavailable to him at the time of the first hearing. The Appellant does not submit new evidence that the Board must first take into consideration. The Motion does not sway the Board's view based on Appellant's reasons 1-6 and therefore the Board determined it would not change its finding.

Responding to Appellant's Paragraph's 1-6 as follows;

Paragraph 1) The ZBA rejects the characterization the ZBA was unlawful and Unreasonable in its consideration of Physical Characteristics of the current "Common Drive." Appellant argues the Physical Characteristics of a street, road or other access have no bearing on whether or not a Building Permit should be granted. The ZBA replies, the physical characteristics must be taken into consideration when determining if a street, road, or other access provides adequate accessibility for Police, Fire and Emergency responders as just one example of the considerations that go into adequate frontage for a property to sustain residence.

Paragraph 2) The ZBA rejects the characterization the ZBA was unlawful and Unreasonable in its determination that a street existed only as shown on Plan 11177 and not shown on Plan 3280. The argument is moot as the ZBA's determination was based on the fact that plan 11177, showing the "Common Drive" (which ended before the boundary of lot Map 08 Lot 15) was the only approved plan by the Planning Board. Plan # 3280 has no Planning Board approval as required. The existence of a "Street" shown on plat 3280 is irrelevant to the ZBA as the plat bears no signature of approval by the Town of Hill Planning Board. The evidence produced to the ZBA was that the ROW known as the "Common Drive" on Plat 11177 terminates before the boundary line of lot 15. The ROW does not extend to Lot 8 on the plan bearing Planning Board approval.

Paragraph 3) The ZBA rejects the characterization the ZBA was unlawful and Unreasonable with regard to the applicant's submission of a waiver of liability releasing the Town of Hill of any maintenance obligation for the Common Drive. This condition was imposed upon the former owner of Lot 15 for the purpose of a building permit. The condition having never been imposed on Mr. Pescinski the owner of lot 08, the ZBA can not be characterized as unlawful and unreasonable having not imposed such a condition.

Paragraph 4) The ZBA rejects the characterization the board was unlawful and unreasonable with regard to the Secretary's performance of a physical inspection of the site in order to render a decision on a Zoning Ordinance.

The Appellant holds that this assertion nevertheless, if true, is irrelevant. The ZBA, accepts this point is irrelevant. The opinion of one board member regarding the site inspection did not sway the final determination of the board as a whole. Therefore the site inspection is mutually deemed irrelevant to the decision that the property lacks the requisite frontage.

Paragraph 5) The ZBA rejects the characterization the ZBA was unlawful and Unreasonable because the Town of Hill violates its constitutional obligation to provide assistance to all its citizens. The ZBA emphatically disagrees with this mischaracterization. An Applicant seeking a building permit in the Town of Hill has some very basic but necessary responsibilities when seeking a building permit. The basics include, but are not limited to, a site plan. i.e. Scale drawings of the intended structure with number of rooms, number of baths, square footage, composition materials, septic design, driveway or other accesses application APPROVAL, (including ROW), utilities plan, consideration of boundary set-backs, etc. Mr. Pescinski has presented NONE of these to any of the 3 boards he has approached seeking approval of a building permit. When advised that he needed to address the conditions of the common drive with the planning board, Mr. Pescinski asserted the upgraded portion to the drive was complete. However, he has presented no proof of work done in order to obtain the final required APPROVAL of the common drive, nor did he present the planning board with drawings for approval showing the presence of a ROW to his property while at the Planning Board stage. He voluntarily moved on to the building permit application process with the Selectmen's office and was denied approval for insufficient frontage. To date nothing has changed. When appearing before the ZBA, Mr. Pescinski, by and through Counsel, was advised both before the hearing and during the hearing, that the ZBA had no jurisdiction in this matter to rectify the conditions that were preventing him from obtaining approvals. The Appellant was advised that he should re-raise his issue of required approvals of the ROW with the Planning Board and then re-submit his application for a building permit having the required approvals once obtained. That sound, reasonable and rational advice was rejected. Therefore, having done nothing to rectify his own dilemma, the status quo remains to no fault of the Town of Hill.

Paragraph 6) The ZBA rejects the characterization the ZBA was unlawful and unfounded, prejudice and unreasonably biased. The ZBA re-asserts as stated above, *the basics of a building permit application must exist for approval, such as site plans. i.e. Scale drawings of the intended structure with number of rooms, number of baths, square footage, composition materials, septic design, driveway or other accesses application approval, (including ROW), utilities plan, consideration of boundary set-backs, etc.* The Secretary's statement, of a personal observation related to the considerable logging performed that exposes a grand view of Ragged Mountain Ski Area coupled with a presentation by a long-standing Town resident's submission to the board presented the board with a question of credibility of statement. A town resident, whose family land holdings are considerable, and abut the Property in question, appeared before the ZBA at the public hearing and presented to the Zoning Board a sales ADVERTISEMENT advertising the land for sale as "Potential Development Property." The Board members of the ZBA, each and every one also being town residents formed a judgement based upon a preponderance of the evidence.

The statement that the ZBA's decision is fabrication, conjecture, arbitrary, unlawful, capricious, unreasonable and wholly transparent is INTENTIONALLY MISLEADING.

Final Decision

The Town of Hill ZBA Denies Appellant's Motion for Rehearing and again re-directs the Mr. Pescinski to the proper starting point which is rightfully seeking approval of the Planning Board with a Plat depicting the ROW and the plan for material upgrade to the ROW that will provide adequate access to the property, providing proper frontage as required.

Respectfully,

Stephen Thomson, ZBA Chairman
Frank Marsh, ZBA Member
Charles R. Estes, ZBA Secretary

Cc/ Chris Swiniarski, Town of Hill Selectmen's Office, Stephen Thomson, Frank Marsh, Charles Estes, Town of Hill - Town Clerk's Office,