



Hill ZBA

Meeting Minutes

November 22nd, 2022

Special Meeting of the Zoning Board of Adjustment.

Attendance: Stephen Thomson, Chairman, Steve Arruda, Dave Park and Charles Estes, Secretary
Excused Absentees: Frank Marsh Public Audience: Maria Merker

This special scheduled meeting, being properly posted in accordance with NH RSA 91 A, 2, was brought to order by Steve Thomson at 7:00 p.m. The purpose and scope of this meeting is to address a previously accepted application for variance submitted by August and Maria Merker of Bunker Hill Rd. Hill. The application was originally submitted to the secretary via email from the Administrative Asst. of the Selectmen's office. The application lacked an abutters list and a plat of the lot seeking a variance. The board initially accepted the application pending receipt of the abutters list and a copy of the lot plat. This was done in order to schedule the required public hearing and begin the public posting process. The Merkers were requested to submit the documents pursuant to application prior to the public hearing scheduled for December 8th, 2022 with a copy of the Selectmen's written notice of decision in denial of a building permit. The Merkers provided a lot Plat which turned out to be an original subdivision plat from 1983 bearing a signature of the Planning Board Chairman from that period. There was no notice of decision on the building permit.

Upon review of the documents received, Chairman Thomson noted that the plat bearing the signature of the planning board chairman in 1983 is a Subdivision Plat depicting an approved Right of Way (R.O.W.) to the Lot directly connecting to Bunker Hill Rd., a Town of Hill Class V road. As such and pursuant to NH RSA 674:41, Section B, 2., the lot is an accessible and buildable lot without the necessity of a variance. For this reason a special meeting was called by the Chairman as required under Hill ZBA rules and procedures.

The Zoning Board reconvened to review the documents received. Discussion ensued between the board members regarding a previously processed matter that resulted in a Merrimack County Superior Court judge upholding the ZBA's decision, noting in the ruling with specificity, the grounds of the board's findings in the Higgins matters of 2017/2018. The board assessed the two situations and concluded that the two are so similar in nature that the ZBA would likely rule exactly the same in this situation as it did previously. Mrs. Merker being present in the audience was asked if they had received a written Notice of Decision in denial from the board of Selectmen. She said they had not. They were told verbally the lot is not buildable, but received no written notice of decision.

Chairman Thompson made a motion to rescind the board's acceptance of the application for a variance as it is not required. The motion was seconded by Steve Arruda and passed unanimously. Charles Estes made a motion to return the matter to the Selectmen's office with a copy of the minutes of this meeting and a recommended action plan for the Selectmen to consider. The Motion was seconded by Steve Thomson and passed unanimously. Having no other business, the meeting adjourned at 7:45 p.m.

Respectfully Submitted,
Charles Estes, Secretary

**In the matter of
August and Maria Merker
ZBA Recommended Action Plan**

Attention Board of Selectmen:

In the matter of August and Maria Merker, it is the opinion of the ZBA that this matter very closely resembles the Kathe Higgins matter of 2017. The Higgins matter was finalized in 2018 culminating in the ruling by a Superior Court Judge upon appeal of ZBA's decision. The appellant argued the ZBA's findings were not just and proper. The Superior Court unequivocally upheld the ZBA's decision.

The Merker situation so closely resembles the Higgins matter that it is reasonable to assume the ZBA would reach the same conclusion and in turn, so too would the Superior Court. Therefore, the ZBA has rescinded its acceptance of an application for a variance and returns the matter to the Selectmen. The members of the ZBA also would like the Selectmen's office to know that it is understood - not all elements or circumstances of situations present themselves immediately. It appears the Selectmen were missing information that came to the ZBA assisting the ZBA in reaching its conclusion. It would be just and proper for the Selectmen to reconsider the application for a building permit having all the information available. The Court ruling of 2018 is available for the Selectmen's review. Should the Selectmen reject a reconsideration of the application, that decision should be conveyed to Merkers expeditiously.

The element required for the Merkers to move forward, if the Selectmen are unchanged in their determination, appears to be a simple oversight by the Selectmen's office initially. The Merkers require a written Notice of Decision denying their application for a building permit. Both State law and municipal procedures require the Merkers receive written notice of a decision in order to appeal. The 30 days for the Merkers to appeal an administrative decision begins with a notice being sent. Where no notice has been sent, the Merkers have not waived they're right to appeal an administrative decision. The oral statement by the Selectmen and restatement by the administrative assistant that the Merker's lot is a non-buildable lot does not satisfy the requirement. The Merkers are not seeking retribution. They simply wish to move forward expeditiously. They have already lost a significant amount of time due to improper process. The Merkers are aware they must submit a release of liability to the Merrimack County registry of deeds releasing the Town of any liability and responsibility of the upgrade or maintenance of the private R.O.W. They are prepared to do this immediately following the Thanksgiving holiday.

The recommended action by the ZBA is for the Selectmen to reconsider the application for building permit, make a final determination and send the Merkers a written notice of decision. The Merkers request this be done as quickly as possible.

Respectfully,

**Charles Estes,
Secretary
Hill ZBA**