

Zoning Board Minutes & Decisions 10/19/2016

ZONING BOARD OF ADJUSTMENT

Meeting Minutes
Recorded by Janice Pack
October 19, 2016

Members Attending: John Gryval, Conrad Dumas, George Rainier, Gil Morris, Loren White

Mail:

Receipt for \$151.75 collected from John Paradise on 10/13/16 for the zoning fees for Case 2016-02

Meeting opened at 8:00 PM

JGryval called the meeting to order.

Five members were present. Kevin O'Connell is not here tonight. (Note: KO'Connell came in at approximately 8:35 PM and so was not a voting member on this case)

Review: After the first meeting, we did not close the public hearing because we wanted more information. We tried to meet last week but did not have 5 people present, so moved it to this week.

JParadise asked if he had come in from the Bennington side, would he have had to do this. CDumas brought out the lot map so all could see exactly where the lot is. The actual road he would've come in on, Dodge Road, was not shown on the map. When JParadise came before the board in 1997, he owned the land beside this lot, but at this time, he does not own that land. JGryval said that if he had done the driveway within the 2-year period (by 1999) there would've been no problem, but now that he does not own that land, it's a moot point.

JGryval referred to 4/23/1997 minutes and read what was passed at that meeting. He stated that the permission had been given in 1997 and was good for 2 years, which has now expired, and secondly, that it stipulated that he exit through his property on Dodge Road, which he no longer owns. JGryval asked JParadise if he had anything further to present. He did not. JGryval asked if any of the board members had any questions.

GRainier made a motion to enter the deliberation session. It was seconded by GMorris, and all were in favor.

In order to pass a variance, we need to go through the 5 questions. We need an affirmative vote on all 5, by majority.

- **Granting the variance would or would not be contrary to the public approval.**

GRainier thinks that it would be because there is no frontage on a class 5 road, and it is historical that building permits have not been issued on a class 6 road in this town. GMorris asked if it mattered that the road was not a class 6 road previously.

Did we create a lot that could not be used? CDumas said you can create lots that are not buildable lots. He further says that when you go out there, it seems that the land does not have any boundary on a class 5 or better road. There are no homes up there currently. GMorris said were we to grant this, we would be setting a precedence for a class 6 road. JGryval said when he looks at the public interest what bothers him is that the future costs to the town could be great if Bennington decided they did not want to provide services. GRainier stated that we don't have an official notification of what they will or will not do.

The Board discussed the cul de sac mentioned in the letter from Bennington. GMorris said if we allow a section of Muzzey Hill Road to be upgraded, does that say that we have to allow all of it to be upgraded? JGryval said that we do not have that authority. CDumas says in his experience if your lot is on a class 6 road, the town expects you to have a class 5 road up to your driveway.

CDumas moved that granting the variance would be contrary to the public Interests, and GMorris seconded it. All 5 were in favor.

- **The spirit of the ordinance is observed.**

GRainier said again that all we have is a letter from the Town Administrator of Bennington regarding providing services; nothing official on letterhead from the Select Board, and no promise that it is forever. JGryval said the letter states that they have discussed the concept. He also disagrees with what is on the application as that it could be for open space, to prevent over development, or so the town did not have to take up the expense of road upgrades, not just for lack of emergency

services. CDumas said that when we discussed the application in the first place, the concern was frontage. The reason our ordinances speak to the frontage on class 5 roads is to set a minimum standard on where we want our houses to be. It would cost the town an enormous amount of money if we had to upgrade all of the class 6s to 5s so that we could build on them. CDumas moved that the spirit of the ordinance was not being observed. GMorris seconded it. The vote was unanimous with all 5 members in favor.

- **Substantial justice is done by granting the variance**

If it had been acted on back in 1997, GRainier could see where they could say that, but he can't see it now. LWhite said that if there was something in the document that clearly said who made that statement he could concur. JGryval said what tipped the scale for him was when he looked at what the land was valued at. Currently, it is valued at \$1,600. In his mind, if that land was valued higher, it would seem that was deemed a buildable lot, but with a value of \$1,600 it did not appear to be deemed a house lot. LWhite said that was a keen observation.

JGryval asked: Does the body feel that substantial justice will be done by granting the variance? – All 5 voted No.

- **Would granting the variance diminish the value of surrounding property?**

GMorris felt it could motivate others in the area, and values could go up. He does not feel they would be diminished. CDumas agreed. JGryval said that if someone were trying to sell a property and there was a house next door already, it could diminish the value of the property. GRainier asked who owned the abutting properties. Francetown Sand and Gravel has a gravel pit abutting (R1, Lot 1). Again the Board referred to the map to see the abutting properties. GMorris motioned that the surrounding property values would not be diminished, and CDumas seconded it. All 5 members were in favor.

- **Owing to special conditions of the property that distinguish it from other properties in the area, denial would result in substantial hardship**

GRainier asked what other use it could have. JGryval read from the Handbook that “the term hardship has caused more problems than anything else for the Zoning Board “ as hardship is subjective. GRainier said certainly the 2 abutting parcels are much bigger. The imposed hardship is a class 6 road. CDumas says that has been the reality for 30+ years. GRainier said that the hardship is shared by all of the abutters, not just that lot. GMorris said approving this could put the other abutters in greater hardship, but now the hardship is equal. CDumas pointed out for the record that JParadise said that he was officially assured that he could build on it and no other use would justify his purchase of the lot. However, there is no official statement backing that up. The original provision was for the proposed driveway to come in from a different road, but that is no longer possible as he doesn't own that property. And again, the permission granted to do so was POST sale, and expired in 1999.

GMorris made a motion that a hardship does not exist, and denying the variance would not create an unnecessary hardship. GRainier seconded it. 4 Board members voted in favor, and 1 opposed (LWhite).

The Board Voted No on 4 of the 5 points. (1, 2, 3, and 5)

GMorris made a motion to deny the variance based on the results of the review of the 5 items and the previous discussions. LWhite seconded it. All were in favor; the motion carried.

JGryval stated that the variance has at this time been denied. He reviewed a few options that JParadise had at this point, including appealing it to the Superior Court.

JParadise stated once again that he was given permission to build when he purchased the lot. JGryval said that the document that we saw did not indicate that.

JParadise left the room.

GMorris motioned to adjourn and CDumas seconded. All were in favor, and the **meeting adjourned at 9:07 PM.**

