

**TOWN OF NORTHFIELD
ZONING BOARD OF ADJUSTMENT
June 25, 2012**

MINUTES

Members present: Polly Fife, Dave Liberatore, Keith Murray, Phil Cain, Kent Finemore and Brian Brown.

Daniel D. Durgin: Continuation of an application for a variance from Article 7 Table 2 of the Northfield Zoning Ordinance to allow construction of a 32'x30' garage and single family home on a lot that does not have the required road frontage on Ledge Road (Tax Map R6 Lot 15B-1) in the R1 zone. Keith Murray reviewed the history of the road which was discontinued by town vote in 1941 and the Durgin family purchased the property in 1954. Other developments/subdivisions have occurred on this section of the road since the discontinuance. Keith stated that he disagreed with Atty. Maher on the estoppels because the town placed a sign saying that it was a Class VI road. Dave Liberatore agreed that between the sign and the subdivision that occurred, Mr. Durgin would have believed that it was a Class VI road. Keith Murray was aware that approving the application could set a bad precedence for other lots with no frontage, however this is a unique situation where 2 abutting properties had built homes on this portion of the road and it is an issue of fairness.

Polly Fife commented that the time line is important and that mistakes were possibly made by the town. She added that the site walk clearly shows the road, but the current road frontage requirement may have become effective after the subdivision was approved. Recent regulations make this a different situation from when the land was purchased. Brian Brown commented that the Selectmen have had numerous discussions on the ownership of the road and at some point the Selectmen need to make a decision as there are drainage issues that impact the portion of road maintained by the town.

Kent Finemore noted that the Zoning Ordinance was adopted in 1973 and that the subdivision that occurred may have been ok at the time as frontage had not yet been defined. Polly Fife agreed that it appears to be fair to allow this building because there are already homes there, but they were built before the frontage definition which changed the rules so that now a building is not allowed. Brian Brown noted that the landowners can petition the town to create a road but Keith Murray did not feel that the Selectmen would approve an additional road at this time. Dave Liberatore reminded the Board that Atty. Maher's letter brought up issues that are pretty key to making a decision. Keith Murray replied that he wouldn't have a problem denying this application if the Class VI sign hadn't been posted by the town. Kent Finemore commented that no one has actually checked to see if the 1977 subdivision met road frontage requirements at the time. Phil Cain asked why the frontage was not an issue when the building permits were issued for the other homes.

Polly Fife agreed that the signage comes into play for the owner. The road was discontinued in 1941 and when the owner purchased the property in 1954 he would have an obligation to see what the regulations are, but why would someone question the Class VI road signage. Dan Durgin informed the Board that in fact the property was purchased in 1938 before the road was closed, however a deed was not presented.

Public hearing opened: Dan Durgin presented state laws relative to road frontage on a road shown on a subdivision, and a portion of “power of discontinuance” which states that no owner of land shall be deprived access without owner’s consent. He stated that he can find no evidence that the landowner’s were notified of the discontinuance or that they gave consent for the discontinuance. Kent Finemore noted that when a road is discontinued the land reverts back to the abutters. He asked where the road lies relative to the Durgin boundary line. Dan Durgin replied that it is all on the Durgin property north of the Wilson stone wall. He believes that the entire road was taken from the original Durgin property. Public hearing closed.

Keith Murray stated that if the property was purchased before 1941 then he is not as concerned with the sign. Dave Liberatore added that the road was discontinued after the purchase and the signage was incorrect. Keith Murray noted that in other situations the Board has made allowances for situations where the Zoning has changed making it difficult to meet the zoning requirements. Polly Fife asked if there is any evidence that the Durgin grandfather acknowledged or signed a release relative to the discontinuance. Dan Durgin has not been able to locate any evidence that that happened which makes him question the legality of the 1941 vote. He added that prior to 1943 the town needed the Court’s permission to discontinue a road as well as the town vote and he cannot find any evidence of the Court’s permission.

Brian Brown asked if Dan’s grandfather owned both sides of the road in 1941 and if so would he then own the entire road. Even if he did, the abutter now owns both sides of the road before reaching the Durgin property. Dave Liberatore noted that Atty. Maher’s decision that the application should be denied is based upon the land being purchased in 1954, but if in fact it was purchased in 1938 that makes a difference in the decision making. Dan Durgin cannot find the deed, but has been told that it was purchased in 1938 when his grandfather was 18. Kent Finemore stated that if we can prove that the land was purchased in 1938 then this should be discussed with Atty Maher again.

Keith Murray asked what conditions would the Board want to include if the application were to be approved. Polly Fife commented that the most important thing is to justify the decision based upon the unique aspects of this property so that we do not open up all back land without road frontage in town. Kent Finemore stated that a decision would not set a precedence. Polly Fife replied that the decision should clarify the uniqueness of the situation and that what separates this situation is the Class VI road sign. She added that she still has lots of questions and is not comfortable making a decision for the following reasons:

1. We don’t have the correct date of the deed or a copy of the deed

2. We don't know the circumstances of the subdivision that occurred and whether road frontage had been defined in the Zoning Ordinance at that time.
3. We don't know enough about road discontinuance and the proper procedure for following up. There is a possibility that the landowner's signed off on the road.

Dave Liberatore expressed concern about the purchase date and the Class VI sign, adding that as a Real Estate agent, he would not question a Class VI sign and the legality of it. Kent Finemore commented that if he were to hear that the town was going to discontinue his road, he would not give up his right to build on his land, but he added that the adoption of the 1973 Zoning Ordinance created rules that impacted lots. Kent added that one of the things that distinguishes this lot is that the road has been improved to the Durgin property and has not been maintained beyond at all. Keith Murray commented that his is not concerned about these issues because the property was owned prior to zoning. Dan Durgin commented that he would never have put the work and money into the lot if the Class VI sign had not been there. Keith Murray asked if the Board wanted to do more research and continue the application to July even though he doesn't think it is necessary. Brian Brown agreed with Keith, but added that he doesn't want to open up other lots without frontage. Keith Murray added that the Board needs to make it clear that this is a unique situation. Dave Liberatore agreed that this is a very unique situation and the applicant has tried to do it correctly. He added that Atty Maher's letter is based upon the 1954 deed rather than a 1938 deed. Keith asked if the town has a release of liability form. Polly Fife replied that this is different because there really isn't a road there and there are abutter issues. The difference is that the town normally releases their liability on a Class VI road.

Keith Murray moved, seconded by Dave Liberatore to grant a variance from Article 7 Table 2 of the Northfield Zoning Ordinance to allow construction of a 32'x30' garage and single family home on a lot that does not have the required road frontage on Ledge Road (Tax Map R6 Lot 15B-1) in the R1 zone with the condition that the applicant sign a release of liability with the town. Polly Fife stated that she cannot support this motion without more evidence. She stated that this is a big decision and the current evidence is based upon the applicant's statement only and there are inconsistencies between the applicant, the attorney, the abutters and the town. Keith Murray replied that he understands this, but the Zoning Ordinance came in 1973, the family has owned the property for 70 years, the Class VI sign was in place and we have clarified that this decision does not apply to other properties in town. Motion passed 3-1.

Kent Finemore asked Dan Durgin to submit the 1938 deed. Dan replied that he is afraid that the original deed wasn't recorded. Kent Finemore wished him luck and reminded him that the decision could be appealed.

Meeting adjourned at 8:30 pm.

Respectfully submitted,

Eliza Conde, Secretary

Minutes approved 07-23-2012