

NORTHFIELD ZONING BOARD OF ADJUSTMENT
AUGUST 27, 2012
MINUTES

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

Daniel D. Durgin: Rehearing 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: Glenn Smith, representing the Board of Selectmen, presented information answering questions the ZBA had at their June 25 meeting.

1. The legality of the discontinuance of Ledge Road: Research has shown that the discontinuance was done legally. The road was originally set out in 1797 by the Selectmen and a portion of it was discontinued by town meeting vote in 1941. Mr. Durgin argued that proper notification was not sent to abutting landowners at the time, and no documentation has been found. Mr. Smith commented that he found no correspondence or documentation for anything else either, so it cannot be concluded that notification was not sent for the Ledge Road closure.
2. When the property was purchased by the Durgin family: The first deed in the Durgin name is dated 1943 and included lots 15B-1 and 15B until 1954 when the lots were separated. The 1954 deed did not reserve the right of passage over 15B to reach 15B-1.
3. Whether the 1941 discontinuance effectively land locked Mr. Durgin's parcel: Closing the road did not land lock the Durgin property because when the road was closed the Durgins had access to the whole property from the open portion of Ledge Road. Separating the two lots 13 years after discontinuing the road created the back lot with no frontage.
4. The relationship of development activities since 1941 on the discontinuance: The record of the town's recognition of the status of Ledge Road has been mixed over the years. A subdivision was approved by the Planning Board in 1978 which effectively created a land locked lot. The plan shows Ledge Road as the access and does not indicate that the road is discontinued. In 1979 a building permit was issued for Lot 28A, the land locked parcel and an additional permit was granted for an addition to this building in 1990 with no mention of the status of the road.
5. Activities of the Town since 1941: There have been mixed opinions on the status of the road since 1941 including a sign at the end of the Class V portion of the road stating that the road beyond was Class VI.

Mr. Smith concluded that the Selectboard is not contesting the variance itself but rather the implication that the town has either granted or acknowledged that Mr. Durgin has the right to

cross the land of Mr. Wilson to reach the Durgin property. The Selectboard believes it is inappropriate to grant Mr. Durgin this right and that if the variance is upheld he asked that the variance clearly state that the status of the discontinued portion of Ledge Road is not a special circumstance justifying the variance.

Kent Finemore asked if the Selectboard has established a right of way for the Durgin property at this time. Mr. Smith replied that they have not and do not believe they have the right to do so. He added that the Board is not contesting the variance but is concerned about the implied right of way to the lot. Keith Murray replied that the ZBA was concerned about the road being designated at Class VI over the years and the issues about the activities on the road since 1941 with development being allowed to happen and then deciding that it cannot happen now. He asked for clarification of ownership of the road. Glenn Smith presented a copy of the tax map for this area showing the lots in question. Mr. Wilson owns on both sides of the road at the beginning of the discontinued portion of the road. Since ownership of a discontinued road reverts to the abutters, Mr. Wilson now owns the entire road at this point. The question is whether the town has the right to create a right of way across Mr. Wilson's property and if the town does not have the right to do that, conveying the right of way over property we do not own would be contested. Kent Finemore asked if the Selectmen felt that granting the variance created the right of way as he didn't understand that the ZBA was contesting the towns standing of the Ledge Road status. Kent asked why the Selectboard requested the rehearing. Glenn Smith replied that the town wants to clarify the status of the road as the status of the road was used as justification for granting the variance. He added that the town has recently received an email from NH Electric Coop asking if the town has a right of way to Mr. Durgin's lot and how wide that right of way is. At this time Glenn cannot state that there is an existing right of way. Keith Murray asked if the town is worried about the status of the road. Glenn Smith replied affirmatively but added that there is a larger issue of allowing a building on a back lot with no frontage. Steve Bluhm added that the ZBA had discussed the status of the road and the existence of the Class VI sign as a reason to grant the variance but the town does not have the authority to give away a portion of Mr. Wilson's road to allow a right of way for Mr. Durgin. Keith Murray noted that the ZBA stated that Mr. Durgin has to sign a waiver of liability but we've never granted one for a back lot. Steve Bluhm stated that Mr. Durgin's lot is a back lot and the town does not have the authority to grant him a right of way.

Public hearing: Wayne Crowley asked if the ZBA authorized a building on a land locked lot and if so, did the Board consider how Mr. Durgin was going to get to his home. Kent Finemore replied that it was up to Mr. Durgin to figure that out. Wayne suggested that this will cause problems for the town in the future and this needs to be considered in granting the variance. Kent referred to the subdivision across the road that was allowed after the road was discontinued

and the fact that the Durgin family owned the property for many years and it was a question of justice. Wayne asked if a private road could be created between the Wilsons and Durgins. Dan Durgin contended that the road already exists and he presented excerpts from “A Hard Road to Travel” indicating that discontinued roads become Class VI Roads and therefore he has the right to travel on Ledge Road. He also noted the statement in this book that a road shown on a plan approved by the Planning Board creates frontage. Since Ledge Road was shown on the 1978 subdivision, he has frontage.

Jason Durgin stated that the literature talks about the discontinuing of a road meaning that the town releases its burden for the road but the road continues as a Class VI road. Dave Court agreed with Mr. Durgin on the status of Ledge Road and believes the variance should be granted.

Public hearing closed.

Kent Finemore commented that the Board has tried to provide justice while meeting the laws and he suggested continuing this application and seek legal opinion. He added that the Board would be delinquent in taking action without further opinion for the Atty. Keith Murray commented that the town is asking for clarification of the road not questioning the variance for the building. Polly Fife replied that there is still a lack of clarity on the status of the road and the ZBA should not be declaring the status of the road. That is the Selectmen’s responsibility. The town has not been clear about the status of the road, granting a subdivision, etc. It was treated at a Class VI road by the ZBA and now the question is posed of whether it is in fact a back lot. Until the clarification of the road is determined, she doesn’t believe the ZBA can make a decision as she is definitely opposed to granting permission to build on a back lot. Dave Liberatore agreed that if is a back lot then it is another issue. A big part of his decision to grant the variance was based upon the Durgins purchasing the property in 1938, but the deeds show it was purchased after the road was closed. He added that the status of the road has been questioned for years and it is time to get it straightened out by the Selectmen rather than the ZBA. Phil Cain also agreed that the ZBA should not be making the decision on the status of the road. Keith Murray noted that if in fact a discontinued road becomes Class VI as stated by Mr. Durgin, then this issue would not be before the ZBA. Dan Durgin commented that if the town discontinued the road and dissolved it in 1941 then they reinstated it by approving the subdivision in 1978 and the ZBA has the authority to grant the variance.

After further discussion, Dave Liberatore moved, seconded by Phil Cain to continue this application to Sept. 24, 2012 in order to seek the Attorney’s advice. Polly Fife requested that the Board ask very specific questions as we need straight forward responses since Atty Serge has already given his opinion on this application. Motion passed.

Steve Bluhm joined the Board at this time

Kent Finemore commented that the road is definitely a problem, but there is a substantial justice issue in this case. Because the Board has granted a rehearing, it has to consider the whole application which means clarifying the status of the road. Steve Bluhm stated that if the permit is approved it will be up to Dan Durgin and Mr. Wilson to work it out. Dave Liberatore commented that the ZBA was trying to straighten out the road situation but it is not the ZBA's role to do that. It was agreed to send minutes, Glenn Smith's summary, and Dan's highlighted excerpts from "A Hard Road to Travel" to Atty Serge and ask if the 1978 subdivision created the road by approving the plan with the road shown on it.

Minutes: Dave Liberatore moved, seconded by Keith Murray to accept the minutes of August 8, 2012 as corrected. Motion passed.

Other: Kent Finemore informed that Board that Mr. & Mrs. Edward Mitchell, abutters of the Kurt Marvin property has filed a letter with concerns about the Marvin's proposed new home. They presented information relative to a right of way and septic system that would be impacted by the new building. Steve Bluhm commented that the ZBA needs all information relative to properties when they are discussing applications. He suggested having someone research deeds, etc. when a new application is submitted. Kent Finemore and Polly Fife both replied that the onus is on the applicant to present the correct information. Dave Liberatore noted that the abutters were notified of the application and should have been at the meeting to begin with, not wait until a decision has been made. After discussion Dave Liberatore moved, seconded by Keith Murray to accept the request of Mr. & Mrs. Edward Mitchell to rehear the Kurt Marvin application on September 24, 2012. Motion passed.

Meeting adjourned at 8:45 pm.

Respectfully submitted,

Eliza Conde, Secretary

Minutes approved 09-24-2012