

**NORTHFIELD ZONING BOARD OF ADJUSTMENTS  
MEETING MINUTES OF JANUARY 25, 2021**

**Members Present:** Kaitlin Lounsbury, Mark Hubbell, Manuel Pimentel, Lisa Thorne  
**Others Present:** Stephanie Giovannucci, Aimee Dearborn, Christine & John Raffaely, Daniel Durgin, Jason Durgin, Dan Bartlett, Kevin Waldron, Dan Desrochers  
**Present on Zoom:** Cathy Keyser, Ryan Colby, Amy Desrochers,

Meeting was called to order by Vice Chair Hubbell at 7:01 PM.

**Hubbell/Thorne** appointed Manuel Pimentel, as voting member for this meeting – **Motion Passed**

- **Minutes**

**Lounsbury/Thorne** moved to approve the meeting minutes as amended of November 23, 2020. **Motion Passed**

- **Daniel Durgin-** Application for a Variance to construct a single family home located on the discontinued portion of Ledge Rd (Map R06 Lot 21) in the Conservation Zone.

Kaitlin Lounsbury recused herself from her Chairman position because she is an abutter to the applicant, therefore Mark Hubbell will run the meeting as Chair.

Vice Chairman Hubbell reviewed the application addressing article 7 section 7.3 being the road frontage that required the special exception because the property sits on the discontinued portion of Ledge Road. Also Mr. Hubbell asked if all abutters have been notified, which was confirmed they were. Mr. Hubbell asks if there are any abutters at the meeting, Ryan Colby, Kaitlin Lounsbury, Dan & Amy Desrochers stated they are.

Mr. Dan Durgin explained the application stating he would like to build a small house on his piece of land. Mr. Hubbell asks if he filed a building permit, he stated yes and it was denied because it did not meet the road frontage requirement. Mr. Durgin states that he just wants what he got for his other property, he owns on Ledge Road which is also on the discontinued portion which he built a garage on it. Mr. Hubbell asks what he has done to improve that piece of property, Mr. Durgin stated he fixed the road, built a garage and has been logging. Mr. Hubbell asked for explanation of the process Mr. Durgin went through on the "other" property. Mr. Durgin to explain, he was granted a variance to build a single family home with a garage on the property which he did build a garage no house. Mr. Hubbell asks who is maintaining the road now, Mr. Durgin replied that he and Walter Wilson as there are no other property owners using the road. Mr. Hubbell asks if there are any houses on the discontinued portion of Ledge Road Mr. Durgin indicates he has one and Mr. Wilson has two. Mrs. Giovannucci explains on the map where everyone is located so the board can see more about the location of said property, she added that one house was built in the 1800's, a second house is from 1973, and the third house is from 1983.

Mr. Hubbell opens the floor for comments from the Board.

Mrs. Lisa Thorne stated she drove up to Ledge Road to get an idea of what was being proposed but only went to the mailboxes. Mrs. Thorne asks Durgin if anywhere in his deed it states or reference an easement or right of way, Mr. Durgin said no. Mr. Manuel Pimentel states he googled the road and noted that it looks like it splits off, Mr. Durgin explained where it looks like a fork is actually his driveway. Mr. Hubbell questions who owns the road, Mrs. Giovannucci explains each property owner owns to the center road on each side (approximately 16ft).

Mr. Hubbell is opening the meeting to the public for comments and questions at 7:16pm

Mr. Dan Bartlett owns a portion of the discontinued portion of Ledge Road, he states by law when a road is discontinued it ceases to exist, but does allow the land/home owners the right to pass over the road. He also noted where the road is discontinued the law states there will be no eligibility for building permits and added that in 2012 when Dan Durgin applied for variance was an error the town made, even after seeking legal advice. The state law states that if you discontinue the road you cannot re-open the road which he believes the Town of Northfield did in 2012 when Mr. Durgin received his variance for a single family dwelling and garage. He further explains Mr. Durgin did not build a family dwelling but a garage, now he wants to build a proposed house on a different lot. Mr. Hubbell refers to the law that any land locked property has to have access to that land. Mr. Bartlett states once you issue a building permit then a street address is issued, now Ledge Road become open to the public. He also states that once the town discontinues a road it is no

longer considered private or a right of way. According to state law that if the town issues a building permit it will not stand up in court. The town Selectboard and Zoning Board needs to consult with the towns' legal counsel. He is concerned he will spend money for legal counsel to fight this. Mr. Bartlett has no further comments.

Kevin Waldron stated that is he is not representing himself as the Selectboard Chairman, but as a resident. He added that he is aware of this issue and states this is not about access from Shaw Road. He feels this is simply about building a home, he feels Mr. Durgin as a land owners right to build. Mr. Waldron then refers to Mr. Bartlett who attended a prior meeting and was asked what Mr. Bartlett has an issue with, the road or the dwelling his response was access thru the road with no issues on the building permit. Mr. Waldron stated that Mr. Durgin already has access to Ledge Road and that there are other people that live on Ledge Road. He added that legal opinions are just legal opinions, if you hire 4 different attorneys you're going to get 4 different options. Given this roads history the town has already issues building permits prior to Mr. Durgin's request. Mr. Waldron states we are going to deny a resident to build on his own property, he hopes not and excuses himself.

Amy Desrochers stated she agrees with Mr. Bartlett 100% she states they are not denying Mr. Durgin the right to build a home, Mr. Durgin purchased this property knowing you cannot build on it knowing it was land locked with no access to it to build.

Mr. Durgin admits that his original intentions were to use the lot to dump wood chips on it, but he has changed his mind and just wants to build a quiet house with no access from Shaw Road. Mr. Durgin states he has blocked Shaw Road with logs to prevent public access onto Shaw Road. Mr. Durgin points out Mr. Bartlett is concerned when and if the property transfers to a different owner down the road they may open up the access to Shaw Road. Mr. Hubbell asks how far up the discontinued road does Mr. Durgin own where he wants to build a home and if the road is accessible for rescue and fire. Mr. Durgin states you can access the property as he has improved the access and has signed a waiver of liability for the property with the garage and is willing to sign off on another release for the parcel he wants to build a home on. Mr. Durgin added that he has a quote from a contractor to fix the road all the way up to the last lot. Mr. Hubbell expresses concern where Mr. Durgin has already received a building permit for his other property that was subject to a single-family dwelling with a garage, in 2012 and there were already three other houses on the discontinued portion of the road. Mrs. Giovannucci states one of the houses was built in the 1800's, one in 1973 and the third in 1983. The Zoning Ordinance was adopted in 1973. Mrs. Giovannucci added Mr. Durgin second property is about 1,600ft on the discontinued road. Mr. Durgin stated that the original plan to build a house on the first lot is over and he is backing down from accessing his second lot from Shaw Rd but he will not give up his right to build.

Mrs. Katlin Lounsbury stated Mr. Durgin's property is in the back of her property and she talked to about his intentions for the property, she is not concerned about him building, however she strongly suggests the Board consider doing this the right way thru warrants and such at Town Meeting.

Mr. Waldron states if we meet Mr. Durgin's request he still has to adhere to building setbacks and any other requirements allowing him to build.

Dan Desrochers asked the Board to take a walk on Ledge Road because he feels it's not a suitable road as it's more of a four wheeling trails not meant to be passable by car until Mr. Durgin upgraded the road. Mr. Desrochers again states the ZBA should walk the road before making a decision. Mr. Desrochers reiterates what his wife Amy Desrochers stated that Mr. Durgin did knowingly purchase these properties knowing they are not buildable lots.

There being no other public questions or comments Vice Chairman Hubbell closed public comment at 7:43pm  
Mr. Hubbell asked the board if they have any questions.

Mrs. Thorne believes Mr. Durgin should be able to build his house but stating she did not drive all the way down the road just to the mailboxes and has not walked the road. Mr. Hubbell state there has already been a NH Supreme Court case that references to a similar action by the Zoning Board in Henniker with Russell Forest Management LLC, where the town denied the variance the land owner took it all the way to superior court were the judge agreed with the Zoning Board and denied the variance stating you cannot build on a discontinued road. Mr. Hubbell asks about the legal documentation we have from the past. Mrs. Giovannucci states we have many memos and letters which she summarized into a memo for the board to review. Mrs. Giovannucci included an Exception to RSA 674-41 which came from NH Municipal Association which states you can go before the zoning board and must meet all four exceptions in order for the Board to approve the variance. Ms. Cathy Keyser asked if anyone else uses the road to the end, Mr. Durgin states he is the last person on Ledge Road.

Mr. Bartlett takes the floor again, states Mr. Durgin is running a business out of the garage. Mr. Hubbell states we are discussing the property in question. Ms. Keyser asks again does anyone else have to go past Mr. Durgin's property proposed and the answer is no.

Board reviewed each criteria for the Variance Application.

Criteria #1: No Comments or Questions from the Board.

Criteria #2: No Comments or Questions from the Board.

Criteria #3: No Comments or Questions from the Board.

Criteria #4: No Comments or Questions from the Board.

Criteria #5: No Comments or Questions from the Board.

. Mr. Hubbell asks about the liability waiver being signed and how does that work. Mrs. Giovannucci explains that if the road is not maintained and 911/Fire needs to gain access to the property town is not liable for the outcome, same applies to a residential driveway, and if it's not cleared 911/Fire cannot access the property. Mr. Hubbell discusses multiple roads with the same issue for example Bean Hill Road, Mrs. Giovannucci explained these are not discontinued roads by Town Meeting votes.

Thorne/ Pimentel moves to approve the variance with the condition that Daniel Durgin signs the emergency services liability waiver--.  
Motion Passed by unanimous vote.

- **Other business**

Mrs. Lounsbury continues the meeting as Chair.

Mrs. Lounsbury asks if Mr. Pimentel could be appointed as a full board member through the Selectboard. Mrs. Giovannucci stated that it would be best if Mr. Pimentel went before the Selectboard and requested his position be moved up.

Mrs. Giovannucci asks the board if they have no agenda items that they still meet and look over the Zoning Board policies because they are old and some things do conflict with current state statutes. Board agrees to review the policy.

There being no other business meeting adjourned at 8:17 PM

MINUTES APPROVED ON FEBRUARY 22, 2021 MEETING