

Town of East Kingston, New Hampshire
Zoning Board of Adjustment Meeting Minutes

June 25, 2015
7:00 pm

Motion for Rehearing for Case # 15-02

The East Kingston Board of Selectmen filed a Motion for Rehearing with respect to the decision of the Zoning Board granting the appeal of Maplevale Builders, LLC with respect to property located at Woldridge Lane, East Kingston, NH (Tax Map 3, Block 2, Lot3; Case # 15-02)

Members Attending: Chairman John Daly, Vice Chairman Catherine Belcher, Dave Ciardelli, Paul Falman, and Frank Collamore. Tim Allen was excused .

Also present: Mr. David Story owner of Maplevale Builders.

Mr. Daly opened the meeting of the East Kingston Zoning Board of Adjustment (ZBA) at 41 Depot Road (Pound School) on June 25, 2015 at 7:00 pm. Mr. Daly recognized Mr. Story was present and informed him he was not allowed to offer comment; he could only observe deliberation of the Board. Mr. Story acknowledged that fact.

Mr. Daly welcomed new alternate member Frank Collamore. Mrs. White will provide an Revised Statutes Annotated and an Ordinance Book for Mr. Collamore.

The meeting this evening is to consider the Motion for Rehearing filed on behalf of the Town by the Board of Selectmen and to decide whether the Board shall grant the rehearing requested.

Mr. Daly asked the Board if they thought they had made a mistake in their May 14th decision, which is the reason for this Motion for Rehearing. He opined the Motion did not appear to present any new information to the Board, but needs to include some information to convince the Board they had made an error in their decision..

Mr. Ciardelli noted that in the referenced case, *Trottier v. City of Lebanon*, not having frontage on a street, was not the same as the case they made a decision on. He did not feel the Board made a mistake in their decision.

Mr. Daly noted it appeared the Motion was confusing frontage with access. The statute deals with access, which is critical. If you don't have access as defined in the statute, you are out.

Mr. Falman noted the Motion references 674:38, which states "*Approval of a plat by the [Planning Board]shall not be deemed to constitute or result in acceptance by the municipality or the public of the dedication of any street or other ground shown on the plat.*" The plat constitutes what we call the subdivision plan. He did not understand how the argument applied as it was approved by Town meeting, which fact it appears the motion is ignoring.

Mrs. Belcher asked if anyone followed up relative to the warrant article in 2003 regarding the language when the road was accepted? Mr. Daly noted that when the Circuit Rider Planner left the Public Hearing in May, she noted she was going to look into that. The ZBA has heard nothing back on that.

Mr. Daly reiterated for the purposes of this hearing, they were only allowed to take into consideration what was before them (the Motion for Rehearing).

Mr. Falman noted that based on what they had in front of them (for the May 14th Public hearing), which consisted of the subdivision plan, copies of the deeds and notes of the meetings (minutes), they made their decision on the evidence provided to them.

Mr. Daly opined the reference to "bad policy and bad law" was meaningless and irrelevant; there was no policy involved. Half the paragraphs are conclusionary and do not present any argument or case or evidence.

Mr. Ciardelli noted that the two adjacent lots both have at least 200 ft. or better of frontage, so this was designed with a 50' access to the other lot. The last note states "*Parcel A - 50' ROW easement to be deeded to the Town as part of the roadway*". The whole thing in its entirety was accepted, not in pieces.

Mr. Daly opined the Planning Board has it within its authority to have notes on the plan revised or removed.

Mr. Falman referred to #6 on page 2, which states "*Indeed, the Planning Board never intended it to be a street at this time.*" He opined you can't start interpreting statements in minutes as what they intended at the time. If we are going to hold credible the record of meetings and what's documented, reviewed and accepted by the Board you can't then say "that's not what we really meant". He does not believe this is a valid statement.

Mr. Falman asked if it would ever be appropriate for the Board to run its decision by the Town Attorney. He made it clear he was not speaking about this particular case before them tonight. Mr. Daly said if the Board had thought they made a mistake, they could revisit it with the Town Attorney.

Mrs. Belcher opined they were transposing issues where they don't belong. We are looking at what the ordinance says, what the statute says, what's access and what's right of way. When she read the Motion for Rehearing she noted they were transposing and interposing these terms at different places along the way to make it "fit" to their position. Mrs. Belcher thought once the Zoning Board came to an understanding and agreement about what the definitions were for street, what the plan actually reflected versus what people are claiming someone intended or said, and what they were looking at in actuality on a plan, she does not believe the Board erred in its decision.

Even after reviewing the Trottier case, she did not change her opinion. It's a pre-existing, non-conforming lot so the frontage issue is completely off the table; there is no argument about the property having to have frontage. The only argument they had was whether or not that parcel, which in essence on the plan is an extension albeit an undeveloped extension of Woldridge Lane that is deeded to the Town and is accepted by the Town as part of the road although not developed. It's still what that is. (It remains to be seen) how the property owner and the Board of Selectmen resolve that and work out the liability and the upgrading of that or the selling or conveyance of that small piece, which would release the Town of any liability. She noted that what happens with Parcel A would need to go to Town vote. There is a means and a mechanism by which they can be done with this and not deny the property owner use of his property.

Mr. Ciardelli noted that the Board responsibility in this case was to be a vehicle to try to solve this to everyone's benefit. He opined the Board had made the correct decision.

Mr. Daly noted in reviewing the Motion for Rehearing, he did not see any new evidence or any clear indication that the Board had made an error in their decision.

Mr. Falman asked what happens if the Board does not grant the rehearing. Mr. Daly explained that the procedure was that the Selectmen have 30 days (from tomorrow - June 26) to appeal to Superior Court. If that happens, the Zoning Board would need to get their own counsel as Town Counsel cannot represent both parties.

Mr. Falman asked about paragraph #1 of the Motion. He interpreted it, with their comments of bad policy and bad law, to mean the Selectmen did not object to the ZBA granting a waiver, but they didn't like the way they did it. Mrs. Belcher noted that instead of arguing the merits of the case, they were making negative statements about the Zoning Board's interpretation of the law and the actions of the Board.

At Mr. Falman's request, Mr. Daly directed they go through the Motion paragraph by paragraph and comment.

A copy of the Motion for Rehearing is attached to these minutes for reference.

1. The Selectmen are not opposed to the granting of a waiver, but they do not like the process the ZBA chose. Mrs. Belcher asked what waiver they were speaking of; a waiver from what? Mr. Daly noted it would be a waiver under that statute.
2. This is just a reciting of the statute, which the Board knew. Mr. Falman noted this was trumped by the fact it was approved by the Town.
3. Mr. Daly noted that #3 is a conclusion which does not follow.
4. That was not the evidence that was before the Board. The evidence is that at 2003 Town Meeting the Town DID vote to accept it. Mr. Falman corroborated that it was also stated in the warranty deed. Mrs. Belcher noted that because it was made part of the road, the acceptance of the road and the road language, and all the instruments including the warranty deed, it sealed to her it was an extension of the road even though that was not what they were calling it. Mr. Ciardelli and Mr. Falman both agreed the early minutes of the meetings showed the Planning Board was aware of the fact they did not want to land lock the parcel of the land. Mrs. Belcher noted that the Planning Board wanted to guarantee the development of that property by conveying that ROW to the Town so there would always be access to that parcel.
5. Irrelevant.
6. Mrs. Belcher noted that the motion spoke of a statement she had made during the board discussions before she had made her final decision.
7. Mr. Daly noted frontage is not a consideration here.
8. Same as #7.
9. States the statute overrides the local ordinance when necessary, but only when the local ordinance is less strict. Ours is more stringent and this is a grandfathered, non-conforming lot and does not apply here.
10. Mr. Daly noted this was not a consideration here. This preempts 9F; not applicable.
11. The Board had discussed this on May 14 that that case was overruled by the amended statute.
12. Not really sure what this is saying. Mr. Falman noted it was stated in the deed that it was accepted (as part of the road). He noted that the Board's interpretation of #12 is different than as stated in the motion.
13. Mr. Daly stated there was no basis for the statement "reservation of rights". Were they inferring they wanted Parcel A to be part of the road at some LATER date? Mrs. Belcher argued that by the establishment of that small parcel to connect the back lot and to Woldridge Lane, she opined that was exactly what they were saying. Mrs. Belcher noted if it was a private easement, they would have conveyed that to the backlot and then it would have been a private easement. But they maintained it as a public, Town-owned right of way; Mr. Falman interjected that the Town accepted it. Mr. Falman also noted that the last sentence inferring that the applicant asserted it was a private easement was not the case. On May 14, the applicant presented on the premise it was a public way owned by the Town.
14. Mr. Daly noted that it was the Planning Board that created the roadway to be longer than 1,000 feet by its decision, not the ZBA. There was some discussion on the 1,000 ft. limit for fire apparatus, but it appeared the Planning Board overlooked that fact when they approved Woldridge lane and Parcel A (making it longer than 1,000 ft).
15. This is incorrect and does not apply; there was no issue of a building permit; none has been applied for.
16. Mr. Daly agreed this was true but did not appear to have anything to do with the case.
17. States "It is also not a non-conforming lot because it does not have frontage. Mr. Daly stated this was not true. It is a legal pre-existing non-conforming lot. The rest of the Board agreed.
18. This is a repeat of number one, and is not the issue before the Board.

Mr. Daly's conclusion was that 674:41 is not applicable to the lot in question since it deals with access not frontage and the lot has access for the purposes of that statute. Section 41 is not relevant, the lot constitutes a pre-existing, non-conforming lot of record, and as such is not legally required to satisfy the frontage requirements of the Zoning Ordinance and is therefore buildable.

Mr. Daly asked if there was further Board discussion. There being none, he asked for a **MOTION**.

Mr. Ciardelli **MOVED** that upon consideration of the application, the Board deny the motion for rehearing filed by the East Kingston Board of Selectmen with respect of the decision of the Zoning Board granting the appeal of Maplevale Builders. Mr. Falman seconded; the decision was unanimous.

Mr. Daly closed this hearing.

The meeting was adjourned at 7:50 PM.

Respectfully submitted,

Barbara White

Barbara White
Recording Secretary

John Daly
Chairman