

NEW DURHAM ZONING BOARD OF ADJUSTMENT

New Durham Town Hall

January 9, 2018, 7:00p.m.

Present

Terry Jarvis, Chair

Wendy Anderson, Vice-Chair

Stephanie Richard, Member

Art Hoover, Member

David Shagoury, Alternate Member

Paul Raslavicus, Alternate Member

Excused Absence:

Joan Martin, Member

Also Present

Laura Zuzgo, Administrative Assistant

Cory White, Applicant

Jennifer White, Applicant

Ron Gehl, Resident

Call to Order

Chair Jarvis called the meeting to order at 7:00pm.

Approval of Minutes

Meeting of December 14, 2017 –Edits were made.

Mr. Hoover made a motion to approve the minutes as amended. Mr. Shagoury seconded the motion. Motion passed, 6-0-0.

Continuation of Deliberations

Case 2017-007, Map 266, Lot 017 – Cory and Jennifer White

Chair Jarvis summarized the application which was requesting a variance to Article V, Section B.1 which requires road frontage on a Class V road and to allow Article V, Section C in its place which would bring the road to Class V standards.

Chair Jarvis stated the board had previously accepted the application as complete; board members to deliberate the case were decided: Ms. Richard, Mr. Hoover, Ms. Anderson, Ms. Martin and Chair Jarvis. At the beginning of deliberations it was determined legal counsel was needed and continued to 12/12/17 for counsel to be present. Due to weather, the meeting was postponed and due to miscommunications not all parties were notified of the rescheduled meeting of 12/14/17. On 12/14/17 the board met and discussed the questions with legal counsel in a non-meeting session. Neither of the applicants (Cory and Jennifer White) were present so the meeting was postponed to 1/9/18.

New Durham Zoning Board of Adjustment

January 9, 2018

APPROVED

Ms. Martin indicated at the first meeting that she would be unable to attend the January meeting and the applicants were notified of this and decided to continue with the four participating members who were also present at the November meeting.

Chair Jarvis stated the deliberations would be continued with Ms. Richard, Mr. Hoover, Ms. Anderson, and Chair Jarvis. She stated at the last meeting it was discussed whether the variance would be contrary to the public interest and determined the application would need to be granted to allow the Whites' to go before the Planning Board to remove the lot from wood lot status.

Chair Jarvis stated the deliberations are relative to a request of a variance: to build the road to Class V standards versus being built on a Class V road. The board reviewed the related ordinances and Town road standards. Mr. Hoover clarified they are dealing strictly with the variance and RSA 674:41 does not apply.

Discussion

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated granting the variance would simply allow the applicants to move on to the Planning Board to remove the lot from woodlot status. Mr. Hoover stated he doesn't believe it's contrary to the public interest, the road and lot are there and building the road up to Class V standards is in the public interest. Ms. Anderson stated it doesn't impose anything on the public at this point.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated granting the variance would preserve the spirit of the ordinance as it states building must be on a Class V road or a road built to Class V standards. Ms. Richard stated she disagrees because there's a contradiction in the ordinance. Ms. Anderson stated she also believes it is not in the spirit of the ordinance, particularly because there is contradiction as they are being asked to go with the lower standard and believes they should go with the stricter ordinance. The board discussed if a Class V road is the same as Class V standards. Ms. Anderson stated the road is currently classified as a Class VI road. Chair Jarvis referenced a letter from Don Vachon, Highway Department stating in order for building to be done on this road, it would need to be brought up to Class V standards with the exception of pavement and details of the standard were outlined.

Mr. Hoover stated the issue has repeatedly been addressed by the NH Supreme Court in which ordinances are conflicting, and the objectives of the ordinances should be considered. He stated the building on the road is something that would be addressed by the Planning Board. Mr. Hoover stated he believes the spirit of the ordinance is maintained as the road is being improved.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated granting the variance would do substantial justice as it will allow the applicants to move forward with the request to the Planning Board, although it doesn't mean a building permit would be issued or the Board of Selectmen would allow them to improve the road.

January 9, 2018

APPROVED

Mr. Hoover referenced case law and stated any loss granted to an applicant is a substantial injustice.

For the following reasons the values of surrounding properties would/would not be diminished: Mr. Hoover stated the lot is 10 acres so there's no close houses but there's no evidence that property values would be diminished, and noted there is only one letter from an abutter in support and suggested it may actually improve the value of the properties. Chair Jarvis stated she agrees it may improve the values with having a Class VI road built to Class V standards giving access to lots down the road. Mr. Hoover stated granting this variance does nothing for approving a building permit and is only the first step. Ms. Anderson stated she doesn't believe the property values would be diminished but improved as egress and access would be improved.

Unnecessary Hardship: Mr. Hoover stated it's difficult to say for sure but there is not a fair and substantial relationship between the general public purpose of the ordinance because they are not changing the use, that is up to the Planning Board. If they take the right away from the applicants, they would be able to build even if the woodlot status is removed. Ms. Anderson stated the purpose of the ordinance is to ensure people build on roads with standards that can be protected and emergency services can travel on. She stated that with this specific application there is not a relationship because the applicant is going to build it to the standards required. Chair Jarvis stated the road will be built to the Class V standards but the Town still isn't going to be required to maintain it. Ms. Richard stated when it comes to unreasonableness, she considers how the lot was purchased as a woodlot and isn't sure of its build-ability. She stated if you purchase a lot you are aware is unbuildable, is it unreasonable to expect to build. Mr. Hoover noted that is a decision by the Planning Board.

Chair Jarvis asked if they determine the criteria in subparagraph A have not been established. Mr. Hoover stated he believes it has and it is not necessary to go to option B.

Chair Jarvis summarized the discussion stating: granting the variance would do substantial justice as it allows the applicants to move onto the next step with the Planning Board; the values of the surrounding properties would not be diminished as there is no evidence and there is a possibility the values of the surrounding lots may be increased; there is not a fair and substantial relationship in changing the use, they are simply saying the road can be built to Class V standards as opposed to being on a Class V road.

Chair Jarvis stated relative to the Findings of Fact: the applicants propose to build Libby Road to Class V standards in accordance with Article V, Section C for Map 267, Lot 017. The property is in woodlot status and granting the variance would allow the applicants to move on to the Planning Board. Documentation has been received from both the Police Chief and the Fire Chief regarding specific criteria that would need to be met if the variance was granted.

Art Hoover made a motion that case # 2017-007 of the applicants which is Map 267 Lot 017 to approve the request for a variance from the provisions of Article V

January 9, 2018

APPROVED

Section B.1 of the Zoning Ordinance which variance will permit the applicants to improve Libby Road from the Jenkins Road to the lot as shown on Tax Map 267 Lot 017 which is owned by the applicants. This variance is subject to the following conditions:

- 1. The Planning Board remove the woodlot status of the applicants' lot.**
- 2. The road to be improved by the applicants, which is Libby Road, must be built to Class V standards with the understanding the Town will not maintain the road. This must also be approved by the Planning Board.**
- 3. The applicants lot Map 267 Lot 017, may not be subdivided. Only one residential home and outbuildings necessary such as a garage or shed may be permitted on the lot.**
- 4. The road, Libby Road, shall be maintained by the applicants and its successors in title. Such maintenance shall be monitored by the Town of New Durham and the road must be built to Town standards which in this case is Class V standards, not to be maintained by the Town.**
- 5. The applicants shall sign and execute a waiver of liability confirming the Town of New Durham is not responsible for any injuries to persons or damage to property resulting from the use of Libby Road which will be approved by the Board of Selectmen.**
- 6. A certified copy of this decision, together with the removal of woodlot status of the lot as approved by the Planning Board shall be recorded in the Strafford County Registry of Deeds.**

Motion was seconded by Stephanie Richard.

Chair Jarvis made an amendment to the motion. She would add an additional condition to the motion.

- 7. The applicants must build a turnaround for emergency vehicles that complies with a November 14, 2017 memo from the New Durham Fire Department and mark the road in compliance with the conditions laid out in the June 27, 2017 emails between Mr. White and New Durham Police Chief Bernier.**

Amendment to the motion was seconded by Wendy Anderson.

Art Hoover stated a letter should be attached to the order. Chair Jarvis said she was going to take both a copy of the memo from Fire Chief Varney and the emails from Police Chief Bernier to be attached to the Decision.

The amendment to the motion passed with a 4-0-0 vote.

Discussion on the motion as amended: Stephanie Richard questioned condition 2 on whether or not the road was to be built to Town Standards or to Class V standards.

After a brief discussion:

Chair Jarvis made a motion to amend condition 2 of Mr. Hoover's motion to say the road will be brought up to Class V standards with the exception of the pavement consistent with the December 12, 2017 letter from Road Agent Vachon.

Amendment to condition 2 was seconded by Stephanie Richard.

The amendment to condition 2 was passed with a 4-0-0 vote.

New Durham Zoning Board of Adjustment

January 9, 2018

APPROVED

Motion as read by Mr. Hoover with condition 2 amended and with an additional condition 7 added was passed with a 4-0-0 vote.

Chair Jarvis stated the variance request (case 2017-007, Corey and Jennifer White) to allow the applicants to build to Class V standards with the exception of pavement not being required is approved with seven conditions. She asked if the applicants have any questions about the motion, approval or conditions. Mr. White replied, no.

Chair Jarvis closed case 2017-007.

Agenda Review

Chair Jarvis added review of the draft of the annual report, due January 16, 2018.

Final Review of Draft ZBA Procedures

Chair Jarvis stated the changes discussed at the last meeting have been made and the draft document was distributed for review. She noted the draft would still need legal review. The Board reviewed and discussed the edits made to the Procedures. Further edits and clarifications were made. Chair Jarvis stated it will go to Town Counsel for review next week and will hopefully be back for approval at the February meeting.

Edits to draft ZBA Application

The edits made to the application sheets were reviewed and discussed.

Annual Report

The draft ZBA annual report was reviewed and edits were made. Chair Jarvis will revise the report based on the ZBA's comments and submit the final copy to the Town Administrator.

Future Meeting

February 13, 2018, 7:00pm, New Durham Town Hall

Adjourn

Mr. Hoover made a motion to adjourn. Ms. Anderson seconded the motion. Motion passed, 6-0-0.

The meeting was adjourned at 8:56pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary