

ZONING BOARD OF ADJUSTMENT MEETING
AUGUST 4, 2016

PRESENT: Wendy Juchnevics-Freeman, Chairman, David Lage, Edwin Somero, Joanne Meshna

The meeting was called to order at 7:00 p.m. at the Town Office. Joanne was appointed to fill the vacancy of Stanford Long.

John Heywood – Submission of a variance application: Mr. Henry Kunhardt was present to represent Mr. Heywood. Mr. Heywood owns lot 12/103 on Old Country Road. The variance application is to permit construction of a driveway with three crossings of forested wetlands and one crossing of an intermittent stream in order to access a site where he plans to build a home. The Board discussed the need to show wetlands on the lot so they can evaluate if the best route was picked. Wendy noted the question of the wetlands may be answered by the site visit.

David made a motion to accept the variance application as complete. Edwin seconded the motion and it passed unanimously. The public hearing was scheduled for September 1 at 7:00 p.m. and a site visit was scheduled for August 27 at 10:30 a.m.

Greg Somero – Public hearing for a variance application:

Wendy offered Mr. Somero the option of postponing the hearing until a full Board was present or continuing with the public hearing this evening. Mr. Somero chose to continue with the public hearing this evening.

Mr. Somero owns lot 7/87-1 on Wheeler Road. He submitted a variance application to allow a driveway for the lot on Will Drive. Will Drive is a private driveway with four driveways. Mr. Somero submitted a decision letter from the Planning Board when he subdivided the lot in which it states the driveway is to be built on Wheeler Road. Mr. Somero explained the driveway off Wheeler Road to reach the house site will be approximately 400 feet long while coming off Will Drive will only be approximately 100 feet long. The driveway off Wheeler Road will be costly to build.

Mr. Somero further explained the plan he first presented to the Planning Board which was not approved had frontage of 210 feet on Will Drive. The final plan approved by the Board has 133 feet of frontage on Will Drive. He noted Mrs. Kivela who is the abutting property owner had not been in favor of the driveway off Will Drive but had since told him she would support it if he went back to the original plan. Mr. Somero would have to do a lot line adjustment with the Planning Board.

The Board reviewed Mr. Somero's deed, and the deed from Kivela to Goodrich which states "The conveyance of this drive is subject to the rights of abutting land owners to pass and repass with motor vehicles and otherwise over said drive." The Board agreed Mr. Somero does have the right to pass and repass on Will Drive. Also discussed was who maintains Will Drive and Mr. Somero's obligation to that maintenance. The road is currently maintained by the Kivelas and Goodrichs. It was suggested Mr.

Somero's approval could be conditional upon a maintenance agreement for Will Drive. Enforcement could become an issue.

The five criteria for granting a variance were reviewed:

- 1) The proposed use would not be contrary to the public interest - Mr. Somero stated Mrs. Kivela had told him she would support the driveway on Will Drive so it would not be contrary to the public interest. He would change his lot lines so the frontage on Will Drive lot would not be so tight so the Kivelas would have more privacy. The Fire Department had given their approval of the original plan. Will Drive was discussed. It is about 12 feet wide so two cars cannot pass without one pulling over. Mr. Somero noted it was his intention to build a house on the lot and occupy it but that plan has changed; he now plans to build a house on the lot and sell it.
- 2) The use is not contrary to the spirit of the ordinance – All abutters on Will Drive have the right to pass and repass. Another driveway will not alter the overall character of the neighborhood.
- 3) Granting the variance would do substantial justice – It would require not putting a long driveway near wetlands. There are forested wetlands on the lot. The woods would have to be cleared for the long driveway off Wheeler Road. Mr. Somero added he could put his driveway off Wheeler Road but it is not the easiest route.
- 4) The proposed use would not diminish property values – A new home would be built therefore increasing the value of the neighborhood.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner... - The driveway would be 400 feet long off Wheeler Road and only 100 feet off Will Drive. When putting the driveway off Wheeler Road more trees would have to be cut down.
 - a) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision – No relationship exists.

Abutters were invited to speak:

Mrs. Linda Kivela stated she had changed her mind because Mr. Somero was not going to live there and there is already an issue with another homeowner on the road. It was her fear that people would move in that would not care about the neighbors. Mrs. Kivela questioned if the Town makes an ordinance to make the Town a better town and then a Board makes an exception, why make the law; if the Town says not more than four driveways on a private road, then that is what should be. She added if the Board sets a precedent that will happen again.

Wendy stated a condition of approval could be Mr. Somero has to do a lot line adjustment. The building envelope by Mrs. Kivela would have to be bigger which would push whatever is built further off the boundary. As it stands right now they can put a driveway in off Wheeler Road, build and just stay the twenty feet off the property line. If it was a condition of approval that Mr. Somero does the lot line adjustment that gives more room to build a home and the Kivelas a larger buffer. Mrs. Kivela asked why the Town passed the law. The Board did not know the answer. David replied that a developer when constructing a subdivision finds it more economical to put in a driveway and shorten the length of the roadway. Also, Wendy noted that adding more driveways to a private road makes the maintenance of the road more expensive.

Mr. Mark Goodrich stated his concern was that Mr. Somero was going to move away. Will Drive is already in bad shape and falling apart and to rebuild the road would be cost tens of thousands of dollars. Putting another driveway on the road will cause the road to further deteriorate. It becomes their undue burden. Mr. Goodrich stated he would prefer not to have Mr. Somero have a driveway off Will Drive as he was concerned about the road and responsibilities for maintenance.

Mrs. Jessica Goodrich noted there is already a neighbor on Will Drive that concerns them. Mr. Somero has approval to put a driveway off Wheeler Road so he does not need the variance to get in another way. Further she stated if there was no other way to get into the lot, she could understand a variance.

David stated without a variance Mr. Somero has a substantial cost to put in a driveway and asked if there was a way to pay something up front to make Will Drive into a better condition than what it is rather than putting in the 400 foot driveway. Mr. Somero responded it is an option but at the same time something has to be agreed upon, and he added he would be willing to help out with the maintenance. Mr. Somero stated either way a house will be built in the same place. Mrs. Kivela stated she did not care if the variance is granted to allow Mr. Somero to put his driveway on Will Drive if he is going to have a bigger buffer between her property and his. Wendy stated she did not think it was in the best interest of the neighbors to put the driveway on Will Drive and there is no agreement being made for the upgrade of Will Drive. She stated she was going to be a dissenting vote and offered Mr. Somero the option of going into deliberations or continuing the application to such time as a full Board is present. Mr. Somero stated he would like to continue tonight with the application.

At 8:35 p.m. David made a motion to close the public hearing and enter into deliberations. Edwin seconded the motion and it passed unanimously.

- 1) The proposed use would not be contrary to the public interest – David stated he did not think it was contrary to the public in general. To the residences on the road it could be considered contrary but they all knew going in that Mr. Somero has the right to use the road. Wendy stated at one time this was one lot with a driveway on Wheeler Road so there was no expectation there would be additional driveways coming off Will Drive? David replied there could have been expectations as only a two acre lot is needed to build a home and why would it be in the deed that there is a right to pass and repass on Will Drive. Going off Will Drive is much cleaner and less destructive. Edwin stated it did not make sense to come off Wheeler Road. Joanne stated with the road in such bad shape and the neighbors concerned about the road, it is contrary to the public interest to come off Will Drive; it is going to add to the traffic and have more wear and tear on the road.
- 2) The use is not contrary to the spirit of the ordinance – Wendy stated the Zoning Ordinance does not say why the limit is four driveways on a private road but she added with another driveway coming off the private drive the maintenance cost will increase. David stated he thought the reason was for the issue of roads and public safety.
- 3) Granting the variance would do substantial justice - Wendy stated Mr. Somero has an approval for a driveway off Wheeler Road and this variance was unnecessary. The common drive is a burden to those living on the road. David stated if there are more people maintaining the road the cost and burden is going to be reduced. Wendy noted there is no guarantee the abutters

will divide up the maintenance cost. David added the applicant was willing to help with the maintenance.

- 4) The proposed use would not diminish property values – Wendy stated she did not think it would diminish property values. Edwin and Joanne agreed.
- 5) Literal enforcement of the ordinance would result in unnecessary hardship to the owner – Wendy stated Mr. Somero has a long driveway but that is not a hardship. David noted the RSA excludes financial cost as a hardship. Wendy further stated the applicant does not need any other relief to put the driveway or house in. If Will Drive did not exist, the configuration of the lots would be different and both driveways would be on Wheeler Road. David stated the hardship is putting in the long driveway as opposed to coming off Will Drive.
 - a) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property - David stated the application has no effect on the public. Wendy stated how the lots are configured only impacts the abutters, not the public, because of putting the driveway off Will Drive. David stated it is only impacting the residents on the drive and not New Ipswich. It is asking about the public. Edwin thought the public referred to the whole Town using the road. Wendy did not think that was the case.

Upon conclusion of the discussion, David made a motion to conditionally approve the variance application conditional upon a written agreement for maintenance of Will Drive be created between the property owners and the applicant proceed with the Planning Board on doing a lot line adjustment to reconfigure the lots to match the original plan. Joanne noted there was no way to make the abutters enter into a written agreement and David withdrew the maintenance agreement condition. The motion then read - approve the variance application with the anticipation that the applicant will fully participate in the maintenance of Will Drive and that the applicant will proceed with the Planning Board on doing a lot line adjustment to reconfigure the lots to match the April 4, 2016 plan. The vote was two in favor and two opposed. The application was not approved.

Edwin made a motion to approve the minutes of the June 2, 2016 meeting. David seconded the motion and it passed with one abstention. David made a motion to approve the minutes of the July 7, 2016 meeting as amended (adding Walker Farrey to those present). Edwin seconded the motion and it passed unanimously.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Joanne Meshna, Town Administrator