

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
September 26, 2022
(ADOPTED)**

MEMBERS PRESENT: Bruce Kudrick, Chairman, Thomas Hebert, Vice Chairman, Dana Carlucci, Natalie Glisson (arrived late)

ALTERNATES PRESENT: Robert Bourque, Wendy Chase, Blakely Miner III,

EXCUSED: Paul Paradis

STAFF PRESENT: Paul Bacon, Code Enforcement Officer

Chairman Kudrick called the public hearing to order at 7:01 p.m.

Roll call was taken by the Reporting Secretary.

Chairman Kudrick appointed Alternate Member Chase to vote in place of Member Glisson and Alternate Member Miner to vote in place of Member Paradis.

Alternate Member Bourque recused himself from the case.

The Reporting Secretary read the first case aloud.

I. Public Hearing

Case 22-07-Z A request has been made for an **Appeal of Administrative Decision under Article XIV, Zoning Board of Adjustment, Variances, and Special Exceptions, §143-112, Appeal of a decision made by the Code Enforcement Officer.** The applicants, Stephen C. and Pamela D. A. Reeve, 35 Swan Rd., Winchester, MA 01890 are appealing the **Denial of a Building Permit** by the Code Enforcement Officer to build on a Class VI road. The applicant seeks a determination by the Board to establish that the lot is a buildable lot in accordance with §143-103. The property is owned by the applicants and is located at 733-749 Hardy Rd., Map 937, Lot 15-1, in the R-3 Rural/Agricultural-Residential District.

Applicant: Stephen C. and Pamela D.A. Reeve

Property Owner(s): 35 Swan Road, Winchester, MA 01890

Property Address: Map 937, Lot 15-1

Included in the Member Packets: Assessing card, Fee Schedule Worksheet, Plot Plan, Abutters List, and Property Tax Bill

Present: Stephen C. Reeve and Shawn Pieterse (builder).

Chairman Kudrick read aloud the rules governing the hearing: (1) Applicant will present its case; (2) Those in favor of the application will speak; (3) Those opposed to the application will speak; (4) Rebuttal by the applicant and those in favor of the application will speak; (5) Rebuttal by those in opposition to the application will speak.

He stated that anyone wishing to speak must first give their name, address, and interest in the case. All questions and comments will be directed to the Chairman. The Board will base their decisions on facts presented by the applicant. If any of the presented facts are found to be different than what was presented, the Board reserves the right to reconsider its approval.

Mr. Reeve said that he purchased the property in 2008, as a wood lot. He would like to build a barn on his property for storage. His property does not connect to the paved portion of Hardy Road. His permit application was rejected.

Mr. Reeve said that his understanding was that his lot was designated a “lot of record” prior to 2006.

Chairman Kudrick asked if anyone was in favor of the application.

Mr. Pieterse clarified that Pembroke’s ordinance is more restrictive than the State law. He was told that if the Board of Selectmen allow the Barn to be built, that the deed would need to reflect that Mr. Reeve waives all town services because it is a Class VI road. Mr. Pieterse also said that Mr. Bacon contacted Mr. Reeve and said that Town Counsel said that the Town’s 2006 law did not apply and, therefore, the denial was incorrect and they should appeal the denial.

Chairman Kudrick asked if anyone wanted to speak in opposition of the case.

Mr. Paul Bacon said that the town has had a long standing practice of taking requests for building permits to the Board of Selectmen wherein they ask for a road opening. Lately, there have been a number of people looking to build on properties located on Class VI roads which prompted an inquiry to Town Counsel.

Town Counsel advised Mr. Bacon that, in the 1990s, a court found that an applicant could receive a building permit on a lot on a Class VI road if it was a lot of record. Mr. Bacon said that “a lot of record” meant that it was approved by the Planning Board. Since this case is of a similar nature, Town Counsel outlined the process. The outline was given to the Board and the applicant.

He explained that Town Counsel advised that the best course of action was for the Zoning Board to overturn the decision to deny the permit at which point the owner would be obligated to follow the steps outlined in RSA 674:41.

Mr. Bacon said that he denied the permit based on the Town’s current zoning laws – §143-103, 3 (page 164 of the ordinance) and Note #3, on page 144 which states that building permits can only be issued on lots that are on Class V roads or better.

Chairman Kudrick stated that Mr. Bacon must follow the ordinance which states that the frontage shall be measured along a Town Class V road or better (§143-8). The Applicant's property is on a Class VI road.

Chairman Kudrick also read a portion of RSA 674:41 1, (c), 1:

(1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and

He said that the decision must be made by the "local governing body" which is the Board of Selectmen and not the Building Inspector.

Member Glisson reiterated that in order for the applicant to get a building permit, he would have to go to the Board of Selectmen once the ZBA denies him.

Chairman Kudrick said that the second question was whether the property is a "lot of record". The plan was approved by the Planning Board in 1987. The applicant provided all necessary documentation except a copy of the approved subdivision, plans, easements, deeds, planning board minutes, and other relative material from when the lot was created.

Mr. Reeve said that the plan was recorded at the Registry in 1987.

Mr. Bacon said that Town Counsel indicated that a plan is the gold standard.

Chairman Kudrick agreed but felt that the applicant must still prove to the Board that it is a "lot of record".

Ann Wytemare of 439 Pembroke Street, stated that, in the past, when someone wanted to build on a Class VI road the builder had to bring the road up to Class V standards.

Chairman Kudrick said yes, based on the present ordinance. He also said that the Building Inspector is not able to issue a Building Permit on a Class VI road.

Mr. Bacon said that the practice of doing so may have been practiced in error.

Ms. Wytemare asked if the applicant were granted a permit, if it would open it to a developer to build houses on that 28-acre lot.

Chairman Kudrick said no. Anything beyond this one lot would be an entirely different matter.

Ms. Wytemare said that the way that this road is handled has a direct impact on her 94 acres located on that road. She also asked how far the road would go if it was brought up to Class V standards. She did not want a large portion of Hardy Road to become a Class V road.

Chairman Kudrick said that it would be up to the Board of Selectmen and the Planning Board. It is not for the ZBA to decide.

Mr. Bacon said that, in order to build houses, the applicant would have to subdivide and would have to comply with today's zoning ordinance. If the barn was later turned into a house, the applicant would require another building permit to make that conversion and he may have to go through the same process.

He also said that if the applicant was allowed to build, he would have to sign a waiver with the Town of Pembroke to not hold them accountable to provide services (water, fire, sewer, police, ambulance, etc.). The waiver would then be recorded at the Registry of Deeds and proof of the recording would be provided to the Board of Selectmen.

Member Hebert said that the plan that was submitted to the Board shows 4.65 acres was added to Lot 15.1. He said that the Board should have proof of when and how Lot 15.1 was originally created in order to prove that it is a "lot of record".

Mr. Pieterse said that the Town told him that it was a "lot of record" and therefore did not need a variance.

Mr. Bacon said that his understanding from Town Counsel was that the map is proof that it is a "lot of record" because it was signed by the Planning Board and recorded at the Registry.

Chairman Kudrick disagreed. He felt that the Board should know how Lot 15-1 was created.

Member Hebert said that he does not see Lot 15.1 on the map. He only sees 4.65 acres being added to Lot 15-1. He also does not see bounds or dimensions in its entirety.

Mr. Reeve said that he has the original survey of Lot 15-1.

Chairman Kudrick suggested that the meeting be continued in order to allow the applicant to submit copies of the survey and any other proof that is needed to determine that Lot 15-1 is a "lot of record". By continuing the meeting, it would provide the Board members time to review all the documentation and also allow the Board time to confer with Town Counsel. He also said that the applicant would also need the information when he goes before the Board of Selectmen and the Planning Board.

Mr. Reeve was concerned that he would not be able to build the barn until Spring 2023.

Chairman Kudrick explained that the Board is not denying the decision, they are merely considering continuing the case in hopes of receiving additional information. He said that it is very important that the Board follow all procedures correctly.

MOTION: Vice Chairman Hebert moved to continue **Case 22-07-Z A request for an Appeal of Administrative Decision under Article XIV, Zoning Board of Adjustment, Variances, and Special Exceptions, §143-112, Appeal of a decision made by the Code Enforcement Officer** in order to allow the applicant time to prove that Lot 15-1 is a “lot of record” and to allow the Board to confer with Town Counsel. Seconded by Alternate Member Chase.

Member Glisson said she felt that the Board had enough information because Town Counsel said that Lot 15-1 was a “lot of record” and, since the Zoning Board cannot issue a building permit and the applicant must go before the Board of Selectmen and the Planning Board, there are enough checks and balances to justify not continuing the case.

Mr. Reeve said that there was a title search done in 2008.

Chairman Kudrik said that the Board does not have that information.

VOTE: B. Kudrick – N T. Hebert – Y W. Chase – N
 B. Miner – N D. Carlucci – Abstained

MOTION TO CONTINUE CASE 22-07-Z A REQUEST FOR AN APPEAL OF ADMINISTRATIVE DECISION UNDER ARTICLE XIV, ZONING BOARD OF ADJUSTMENT, VARIANCES, AND SPECIAL EXCEPTIONS, §143-112, APPEAL OF A DECISION MADE BY THE CODE ENFORCEMENT OFFICER IN ORDER TO ALLOW THE APPLICANT TO PROVE THAT LOT 15-1 IS A “LOT OF RECORD” AND TO ALLOW THE BOARD TO CONFER WITH TOWN COUNSEL WAS DENIED ON A 3-1 VOTE WITH 1 ABSTENTION.

Chairman Kudrick summarized **Case 22-07-Z, a Request for an Appeal of Administrative Decision** as follows:

The applicant made his presentation. He purchased Lot 15-1 in 2008. He has used it for a wood lot and would like to build a barn on the lot. He went to the building inspector to get a building permit and was denied because the lot is not on a Class V road. The regulations (Page 44, No. 3) indicate that the frontage shall be measured along a Class V or better road and §143-103 “lot of record” must have frontage on a Class V or better road.

One resident asked about the road being changed from a Class VI to Class V road and the Board explained that it has to go before the Board of Selectmen and the Planning Board. The ZBA does not have the authority to do that. A Motion to Continue the Application was denied. The Board is now looking to approve or deny the Building Inspector’s decision. The Building Inspector received information from Town Counsel that the information provided by the applicant proved that it was a “lot of record”. There was discussion on that item.

There were no further questions by the Board or the public.

Chairman Kudrick stated that the Board will decide all cases within 30 days. The Notice of Decision will be posted for public inspection within 5 business days of the decision and will be sent to the applicant. The Board will either approve, deny, or continue deliberation on the case. No comments will be taken from the audience.

Chairman Kudrick officially closed the hearing at 8:11 p.m.

Zoning Board Member Deliberations:

Chairman Kudrick said that the Building Inspector did not err in not granting a building permit because he does not have the authority to give a permit on a Class VI road.

Vice Chairman Hebert apologized for delaying the meeting. He said that he assumed that when Mr. Bacon spoke of a certified plot plan, he was speaking in general terms and not that he was speaking specifically on the plan that was shown to Town Counsel.

Alternate Member Miner Blakely said that if the Board reversed Mr. Bacon's denial, then the case would go to the Board of Selectmen and follow RSA 674-41.

MOTION: With reference to **Case 22-07-Z, a Request for an Appeal of Administrative Decision**, Vice Chairman Hebert moved to reverse the Building Inspector's denial and ensure that the applicant must still comply with RSA 674-41 to obtain a building permit. Seconded by Member Carlucci

VOTE: B. Kudrick – N T. Hebert – Y D. Carlucci – Y
 W. Chase – Y B. Miner – Y

MOTION WITH REFERENCE TO CASE 22-07-Z, A REQUEST FOR AN APPEAL OF ADMINISTRATIVE DECISION, TO REVERSE THE BUILDING INSPECTOR'S DENIAL AND ENSURE THAT THE APPLICANT MUST STILL COMPLY WITH RSA 674-41 TO OBTAIN A BUILDING PERMIT PASSED ON A 4-1 VOTE

IV. Approval of Minutes – June 27, 2022

MOTION: VICE CHAIRMAN HEBERT MOVED TO APPROVE THE MINUTES OF JUNE 27, 2022 AS SUBMITTED. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

V. Other Business / Correspondence

Member Glisson said that she is requesting leave from the Board from December 2022 to March 2023.

VI. Adjournment

MOTION: VICE CHAIRMAN HEBERT MOVED TO ADJOURN THE MEETING AT 8:23 PM. SECONDED BY MEMBER CARLUCCI. UNANIMOUSLY APPROVED.

Respectfully submitted,
Jocelyn Carlucci
Recording Secretary