



**Zoning Board of Adjustment
Town of Eaton
Evans Memorial Building
Eaton, NH 03832
603-447-2840**

June 20, 2016

The Zoning Board of Adjustment met on Monday, June 20, 2016 in the Town Hall. Present were Chairman Steve Larson, Carol Mayhofer, Robert Bridgham, Robert Malvesta and Heather McKendry. The meeting was called to order at 7:03 pm.

Robert Malvesta made a motion, seconded by Robert Bridgham, to waive the reading of the Minutes and to adopt the Minutes of June 6, 2016 as written. Motion unanimously carried.

Case # 201602 – George Diller – Appeal From Administrative Decision

Steve Larson reconvened the Public Hearing and asked Atty. Rick Sager to present George Diller's case. Atty. Sager explained that it is a complicated case and submitted a timeline for the Board's review. Atty. Sager stated that he asked the Selectmen if George Diller would be entitled to a Building Permit as the Town Zoning Ordinance states only two houses are permissible on a driveway. Atty. Sager submitted a 1999 Subdivision map showing Crystal Lake Road and explained that Ken McKenzie constructed the road from the cul-de-sac to his property. Atty. Sager explained that S&T Trust's (Dudrick) driveway is only partially on the cul-de-sac so the Selectmen took the stand that there are already two houses on the driveway and that an additional house would require the road to be brought up to Town specs. Atty. Sager stated that the issue only exists because the cul-de-sac was moved. Atty. Sager stated that the decision was requested from the Selectmen because George Diller was contemplating the purchase of property owned by Jill Evans. Atty. Sager noted that the Selectmen responded to the request and indicated that George Diller could obtain a Building Permit as long as all other requirements were met. Atty. Sager explained that George Diller purchased the property and then received a letter from the Selectmen revoking their previous approval and indicating that an appeal could be filed with the Zoning Board.

Atty. Sager stated that the recent Zoning Ordinance amendment permits an owner with a lot of record prior to 1973 to building on the lot even with changes to the lot approved by the Planning Board. Atty. Sager indicated that he has heard that the amendment is only prospective but has an issue with that stand as the amendment did not state that it is not retroactive. Atty. Sager stated that George Diller has filed the Appeal so that he can build without upgrading the road to Town specs. Rick Sager stated that according to Ken McKenzie, it is a safety issue and noted that George Diller would be willing to do something to address those safety issues.

Steve Larson referred to the letter from the Selectmen and noted that the Building Permit would be denied for two reasons and stated that the lot is no longer grandfathered because of the various transactions on the property. Steve Larson also indicated that the application

was filed under the 2015 Zoning Ordinance. Atty. Sager stated that there is no reason why the amended Zoning Ordinance cannot be applied to this case. Steve Larson noted that this application is an Appeal of the Selectmen's decision rather than a Variance for the road specs. Atty. Sager stated that he does not agree with the Selectmen's conclusions.

Steve Larson stated that the two reasons for denial are that the lot is not grandfathered and that there are safety issues on the access road and stated that he wants to make sure that both issues have been adequately addressed. Atty. Sager stated that he does not believe there is a safety issue as Ken McKenzie built the road and noted that emergency vehicles would have a difficult time getting down the road and turning around. Atty. Sager stated that Mr. Diller does not want to build a road to Town specs but would address safety issues when a Building Permit is sought. Steve Larson noted that the Selectmen withdrew their preliminary approval but formal application for a Building Permit was not submitted. Atty. Sager stated that the Appeal is on the November 17th revoking of the preliminary approval for a permit.

Bob Malvesta stated that the original lot was altered and no longer grandfathered. Atty. Sager noted that it was an exchange of land. Bob Bridgham stated that he reviewed the history of the property submitted by Ken McKenzie and noted that there is no continuous ownership of the land because it was sold back and then re-purchased. Atty. Sager explained that Mr. Diller purchased a larger parcel of land and conveyed back the original deed and noted that Mr. Diller has always owned the land. Carol Mayhofer noted that Mr. Diller does not own the original parcel that would have been grandfathered. Atty. Sager stated that he will dispute Town Counsel's definition of a "lot of record" as it is too restrictive and noted that he believes the method of the Town's application is unconstitutional.

Rick Young explained that Crystal Lake Road was built more than 30 years ago and it was when the Association petitioned the Town to take it over that the error in location was discovered. Rick Young stated that part of the 50-foot right of way after the cul-de-sac is owned by the Association and that Dudrick's driveway enters onto that section by about 80 percent. Rick Young further explained that another issue is safety and noted that the Selectmen are not demanding that the road be upgraded to Town specs, but that it must be wide enough for two vehicles to pass and safe. Rick Young noted that the third issue is road frontage. Rick Young noted that the Selectmen cannot waive those requirements but the Zoning Board can approve a variance for those specifications.

Ken McKenzie stated that it is complicated but that the road frontage is an issue and not the driveway as the Town road specs overrides any driveway definition. Ken McKenzie stated that the opinion being appealed was based on incorrect information provided to the Selectmen. Ken McKenzie stated that Atty. Sager's email to the Selectmen implied that all of George Diller's properties were grandfathered, which is not true as George Diller's property is comprised of five separate lots created after the adoption of Zoning and Subdivision by the Town. Ken McKenzie noted that the original lot was never again transferred in the original configuration and that deed description prior to 1973 makes it a lot of record. Ken McKenzie explained that all the lots are required to have 200 feet of frontage on a Town Road and that the lots were all created illegally, which the Planning Board has stated cannot be part of a lawful merger.

Ken McKenzie stated that denial of the Appeal does not mean that Mr. Diller cannot build on the lot but issuance of a Building Permit would require upgrading the road to Town

specs or obtaining a waiver. Ken McKenzie stated that he will agree to adjustment as long as it is a safe travel way and that emergency vehicles can access the properties. Ken McKenzie noted that State fire codes require a 20-foot access way for more than two houses. Ken McKenzie stated that his lot is grandfathered and that the road may not be adequate but is safe for one house.

Atty. Sager submitted a Boundary Line Adjustment plan approved by the Planning Board in 1999 between Burns and Diller and noted that the plan would not have been approved if the access was not adequate. Atty. Sager stated that the Planning Board did not make an issue of the lots having less than 200 feet and since the approval was not appealed, the documents are legal and the lots ratified as buildable by the Planning Board. Ken McKenzie stated that a Boundary Line Adjustment is a Minor Subdivision and not covered under the clause. Carol Mayhofer stated that the lots were approved by the Planning Board and that RSA 674:41 addresses plans approved by the Board. Atty. Sager stated that under State laws, a Boundary Line Adjustment is covered under the heading of Subdivision.

Bob Bridgham questioned the relevance of grandfathering if the Planning Board approved these lots. Steve Larson stated that the lot does not meet the road frontage requirement so a variance could be sought. Bob Malvesta stated that if the Planning Board approved these lots, then they are buildable and noted that the State statute makes provisions for road frontage. Carol Mayhofer stated that the lots were deemed buildable when the Planning Board approved this Boundary Line Adjustment.

Atty. Sager stated that George Diller is entitled to a Building Permit without upgrading the access to Town specs. Rick Young stated that the safety issues will still prohibit a permit from being issued as the Board has taken the position that the road must be upgraded. Bob Malvesta questioned whether the Selectmen can issue a permit with the condition that the road be upgraded. Rick Young stated that this issue needs to be decided by the Zoning Board.

Bob Bridgham stated that NHMA issued an interpretation of issuing a Building Permit on private roads. Ken McKenzie stated that State law states "subdivision plat." Bob Bridgham stated that he would like to have an attorney review this case. Carol Mayhofer noted that the Board must decide whether the Selectmen's decision to rescind their preliminary approval was okay or in error. Bob Bridgham stated that the issue of grandfathering does not matter as the Planning Board approved the lots. Carol Mayhofer stated that the Board should seek legal counsel on whether Planning Board approval of a Boundary Line Adjustment falls under the category of Subdivision for the application of RSA 674:41.

Steve Larson stated that the Selectmen and Ken McKenzie have stated that the access does not have to be built to Town specs but that it must be safe and noted that an agreement between the three parties would be preferred. Atty. Sager stated that this Appeal is relative to the Selectmen's decision and that they are asking the Zoning Board to not require the road be built to Town specs.

It was the consensus of the Board to send the Boundary Line Adjustment plan to Counsel to seek advice on whether it qualifies as a Subdivision that under RSA 674:41 would yield incontrovertible building lots.

Bob Bridgham made a motion, seconded by Steve Larson, to recess this Public Hearing until 7 pm on September 19, 2016. Motion unanimously carried.

Steve Larson made a motion, seconded by Carol Mayhofer, to adjourn the meeting. Motion unanimously carried. The meeting was adjourned at 8:45 pm.

Respectfully submitted

Lianne M. Boelzner

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