



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

December 4, 2017

The Zoning Board of Adjustment met on Monday, December 4, 2017 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 7:01 pm.

Robert Malvesta made a motion, seconded by Heather McKendry, to waive the reading of the Minutes and to adopt the Minutes of November 6, 2017 as written. Motion unanimously carried.

Case # 201702 and 201703 – Nancy Burns – Variance

At 7:03 pm Chairman Larson opened a Public Hearing on applications from Nancy Burns for a Variance to Article IV, Section B.8 and a Variance to Article XIV Definitions of the Zoning Ordinance for property located on Crystal Lake Road (R03-051). Chairman Larson read the public notice and applicable sections of the Zoning Ordinance. Chairman Larson reviewed the rules of procedure and noted that each application will be voted on separately but that testimony received will apply to both Variance requests.

All notices required by statute had been posted, fees paid and abutters notified. There were no conflicts of interest. Chairman Larson explained that there are conditions for granting a Variance and asked the applicant to address each condition.

Wes Smith of Thorne Surveys explained that the plan is based on input from all affected property owners, Board of Selectmen and Freedom Fire Chief. Wes Smith explained that there are three turnouts and a turnaround proposed to be constructed in order to make this section of the road safe for three residences.

Kenneth McKenzie stated that the Variance from the definition of a driveway is not necessary because all involved parties agree that it is a private road and that the Variance is necessary to waive the requirement that the road be upgraded to Town specifications. Kenneth McKenzie stated that an Equitable Waiver is required for the road frontage. Wes Smith stated that applications were submitted based on advice from Town Counsel. Chairman Larson read the letter from Town Counsel into the record.

The Board reviewed a vote taken by the Board of Selectmen to waive the Selectmen's Road Specifications for the privately-owned section of Crystal Lake Road. Robert Bridgham noted that the Selectmen refer to that section as a private road. Rick Young explained that a lot of work was put into the design of that section of road to make it safe and that this application does not meet the four legal conditions of an Equitable Waiver.

Wes Smith addressed the five conditions for granting the Variance. Wes Smith explained that it would not be contrary to the public interest and that the spirit of the ordinance would be observed as the road upgrade will permit emergency services vehicle access to all three properties and that construction of the turnouts and turnaround allow for safe sight distance and the ability to pass two vehicles safely. Wes Smith stated that substantial justice would be served as it will permit the property owners to construct a residence. Wes Smith stated that the surrounding property values would not be diminished by the construction of a single-family residence and upgrade to the existing roadway.

Wes Smith stated not granting the Variance would create an unnecessary hardship as this is the only access to the property and that the road will be upgraded to make it safe for all property owners. Wes Smith noted that if the Variance is not granted the property owners cannot build on their property.

Chairman Larson opened the hearing for public comment. Kenneth McKenzie stated that the lots in question were formed by an illegal subdivision and not approved by the Planning Board. Kenneth McKenzie stated that the Variance should be for the road being built to Town specifications. Chairman Larson closed the Public Hearing and conducted a roll call vote on each of the conditions:

1. Granting the variance would not be contrary to the public interest: Yes – 5 No – 0
2. The spirit of the ordinance would be observed: Yes – 5 No – 0
3. Granting the variance would do substantial justice: Yes – 5 No – 0
4. The values of the surrounding properties would not be diminished: Yes – 5 No – 0
5. Denial of the variance would result in unnecessary hardship: Yes – 5 No – 0

Robert Bridgham stated that the Town will not maintain this section of the road. Robert Malvesta stated that one condition of the approval should be that the plan is signed by all affected parties and recorded at the Carroll County Registry of Deeds.

Robert Malvesta made a motion, seconded by Carol Mayhofer, that based on the foregoing findings of fact, that Nancy Burns be released from the requirement of 200 feet of road frontage on a road built to Town specifications and that the requirement of building that road to Town specifications subject to the following conditions:

- 1. The section of privately-owned travelway must be upgraded according to the approved and signed Thorne Surveys plan showing the proposed ROW turnouts and turnaround on properties currently owned by George Diller and Nancy Burns as previously agreed to by affected parties, Eaton Board of Selectmen and Freedom Fire Chief Justin Brooks.***
- 2. No new Building Permits will be issued until the road upgrades are 100% completed, reviewed and approved by the Eaton Board of Selectmen.***
- 3. No new Building Permits will be issued to a property owner unless the owner is in full compliance with RSA 674:41.***

Motion unanimously carried.

Wes Smith stated that the next issue is the driveway and noted that the upgrade will provide a safe access to all properties. Carol Mayhofer stated that if everyone is in agreement that this is a private road, the Variance is not necessary. Kenneth McKenzie stated that he is in agreement that under RSA 674:41, this section of road is not a driveway.

Robert Malvesta stated that all property owners are in agreement with the access. Chairman Larson noted that the Selectmen will be reviewing and approving the road upgrade prior to issuance of any permits.

Carol Mayhofer made a motion, seconded by Robert Malvesta, that the Zoning Board, Board of Selectmen, Nancy Burns, George Diller and Kenneth McKenzie all agree that the section of road from the existing cul-de-sac to McKenzie's property line is a private road, not a driveway, and, therefore, no Variance is necessary to build two additional residences. Motion unanimously carried.

Case # 201704 and 201705 – George Diller – Variances

At 8:30 pm Chairman Larson opened a Public Hearing on applications from George Diller for a Variance to Article IV, Section B.8 and a Variance to Article XIV Definitions of the Zoning Ordinance for property located on Crystal Lake Road (R03-055/056).

All notices required by statute had been posted, fees paid and abutters notified. There were no conflicts of interest.

Wes Smith explained that George Diller has submitted a Notice of Voluntary Merger for the two lots and that the application will be addressed by the Planning Board next week. Kenneth McKenzie stated that once the lots are merged there is adequate road frontage but not on a road built to Town specifications. Kenneth McKenzie stated that since the lots were illegally subdivided without Planning Board approval, they are not grandfathered and must adhere to the Town road specifications. Robert Malvesta stated that approval must be conditional upon merging of the lots.

Chairman Larson opened the hearing for public comment. There being none, Chairman Larson closed the Public Hearing and conducted a roll call vote on each of the conditions:

1. Granting the variance would not be contrary to the public interest: Yes – 5 No – 0
2. The spirit of the ordinance would be observed: Yes – 5 No – 0
3. Granting the variance would do substantial justice: Yes – 5 No – 0
4. The values of the surrounding properties would not be diminished: Yes – 5 No – 0
5. Denial of the variance would result in unnecessary hardship: Yes – 5 No – 0

Steve Larson made a motion, seconded by Robert Malvesta, that based on the foregoing findings of fact, that George Diller be released from the requirement of 200 feet of road frontage on a road built to Town specifications and that the requirement of building that road to Town specifications subject to the following conditions:

- 1. Merger of the two lots (R03-055 and R03-056).***
- 2. The section of privately-owned travelway must be upgraded according to the approved and signed Thorne Surveys plan showing the proposed ROW turnouts and turnaround on properties currently owned by George Diller and Nancy Burns as previously agreed to by affected parties, Eaton Board of Selectmen and Freedom Fire Chief Justin Brooks.***

- 3. No new Building Permits will be issued until the road upgrades are 100% completed, reviewed and approved by the Eaton Board of Selectmen.**
- 4. No new Building Permits will be issued to a property owner unless the owner is in full compliance with RSA 674:41.**

Motion unanimously carried.

Steve Larson made a motion, seconded by Robert Malvesta, that the Zoning Board, Board of Selectmen, Nancy Burns, George Diller and Kenneth McKenzie all agree that the section of road from the existing cul-de-sac to McKenzie's property line is a private road, not a driveway, and, therefore, no Variance is necessary to build two additional residences. Motion unanimously carried.

Heather McKendry made a motion, seconded by Robert Bridgham, to adjourn the meeting. Motion unanimously carried. The meeting was adjourned at 8:54 pm.

Respectfully submitted

Lianne M. Boelzner

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