

**Zoning Board of Adjustment**  
Monday July 5, 2005  
Council Chambers, City Hall, Claremont, NH

**Minutes**

**1. Roll Call:**

Present: Robert Woodman; Erwin Caplan; Deborah Snelling; Michael Hurd, Chair;  
Tracy Pope; Richard Dietz  
Absent: None

**2. Appointment of Alternates—None**

**3. Report of Secretary**

**Motion: To accept the minutes June 6, 2005 with the amendment of including the language in the deed.**

**Made by: Ms. Pope Second: Mr. Dietz**

**Vote: Unanimous**

**4. New Business and Related Public Hearing**

**Jim and Joanne Rodgers, 308 Jackson Road, Cornish, NH**—Request approval for an Area Variance on north side of Foisey Hill Road, Claremont, NH from Sec. 22-111 of the City Zoning Ordinance. Also request an Appeal of an Administrative Decision for denial of building permit due to lack of road frontage. Map 87, Lot 1, Zoning District: AR

*Mr. Woodman recused himself. Mr. Caplan was appointed for him.*

**Open Public Hearing**

**Abutters Roll Call:**

Applicant—Present  
Mr. Reinhardt Sarges—Present  
Mr. Terry Gould—Present

Application #1

Per Mr. Coogan, the parcel was created in the late 1960's, prior to the enactment of zoning. The lot lacked legal frontage. Mr. Rodgers acquired the property from his mother, Stella A. Rogers in 2004. The access to Foisey Hill Road is a 20' deeded easement that runs along the westerly edge of Mr. Reinhardt Sarges parcel. The lot is "land locked", as there is no frontage for access to a Class V. This is a basic requirement for a building permit pursuant to RSA 674:41. Mr. Walsh, Building and Code Enforcement Officer, denied Mr. Rodgers a building permit. Mr. Rodgers is appealing the administrative decision. Per Attorney Taylor, guidance, if the Board determines the applicant meets the requirements of RSA 674:41 II, the Board may override the decision. The Board has the option to overturn the Mr. Walsh's decision or if it determines that the inspector's decision is correct, the Board has the authority to grant an area variance from the zoning ordinance. Attorney Jim Feleen, representing the applicant, provided a summary of the denial for a building permit. He stated that the lack of a driveway presented a hardship for his client. Attorney Feleen explained that the property was purchased in March of 2004, prior to seeking a building permit and that the property should be "grandfathered". Ms. Pope reminded the Board that since emergency vehicles need to have access to the driveway via the driveway.

**Against:**

Mr. Sarges said the easement agreement was only for occasional use and terminated the agreement it on June 21, 2005. Five feet of Mr. Sarges' driveway is on Mr. Rodgers' easement. He questioned possible water problems, expressed concern for the lack of privacy and emergency vehicles access.

Mr. Gould stated he is in favor of the building inspector's decision to deny. Attorney Feleen said the original plan consisted of three homes to be located on the property. There is a total of 14.5 acres and is assessed at \$28,000. At present, the land is in current use.

**Public Hearing Closed**

Board Discussion

Mr. Dietz said the lot was created prior to the City's enactment of zoning and is classified as a preexisting non-conforming lot. To deny the applicant to build on this lot would be a serious infraction providing there is adequate access to it. He expressed concerns regarding drainage issues that should be addressed by the City. Ms. Pope disagreed stating that because the lot is a lot of record, does not make the lot buildable.

**Motion: To uphold the building inspector's decision to deny the building permit based on four of the items mentioned in RSA 674:41:II**

**Made by:** Mrs. Pope      **Second:** Mrs. Snelling

**Vote: For:** Mr. Hurd, Mr. Caplan, Mrs. Pope, Mrs. Snelling, Mr. Woodman

**Against:** Mr. Dietz

**Motion: To recess**

**Made by:** Mr. Caplan      **Second:** Mrs. Pope

**Vote:** Unanimous

Application #2

Applicant seeks an area variance from the required 50' frontage. In order to grant an area variance, the majority of the Board must make an affirmative finding on all of the set criteria. Chairperson Hurd reviewed the findings of fact procedure and reminded the Board that if the application fails on one criterion, the entire application will be denied. Mr. Coogan suggested that the motion be made in the affirmative. Mr. Coogan explained that the applicant lacks any legal frontage and seeks an area variance. The Board needs to determine if the right of way functions as a driveway.

Attorney Feleen stated that one driveway for one house would not have an impact on the public interest. Granting the variance and allowing the applicant to build on the property would provide substantial justice. He does not feel it is contrary to the spirit of the ordinance since the ordinance allows single family homes with driveways. Mr. Rodgers said that purchasing a buildable lot would be a financial burden. To the best of his knowledge, there are no regulations regarding emergency employees' response time for a single family home. He would consider fire sprinklers, if approval is granted. Chairperson Hurd asked if the Board were to approve his request, would Mr. Rodgers be willing to put in a road with drainage points that would withstand the weight of emergency vehicles. Mr. Rodgers responded that he would.

**Against**

Mr. Sarges stated approval would diminish the value of his property and create a hardship for him. He would be forced to move the driveway and it would create a visual impact.

Mr. Gould felt that the area variance is being requested without addressing issues of concern and suggested an engineered plan for the driveway be prepared. Mr. Coogan reminded the Board that the variance approval could be conditional.

Chairperson Hurd questioned Attorney Feleen on the owner's right to use the property. Attorney Feleen said that Mr. Rodgers' deed states "subject to a right of way 20' in length...runs along stone wall marking premises".

Public Hearing Closed

Mr. Dietz said the property in question is steep and will make it difficult to install a driveway. He is in favor of approval for building purposes, along with the required plans indicating the road, layout, drainage, the erection of the building, at the time applicant applies for a building permit and driveway permit.

**Motion: To deny the area variance because all five of the requirements are not being met. Granting the variance will have an impact on the surrounding properties and will be contrary to public interest of the abutters.**

**Made by: Ms. Pope Second: Ms. Snelling**

**Vote: 4-1**

Mr. Dietz said he voted to approve this request due to the lot being created prior to the enactment of zoning. He felt the lot should be "grandfathered" and it would not be right to deny the applicant the right to build on it. Chairperson Hurd told the applicant they have thirty days to appeal the decision of the Board.

**Adjournment**

**Motion: To adjourn**

**First: Mr. Caplan Second: Ms. Pope**

**Vote: Unanimous**

Meeting adjourned at 9:15 p.m.

Respectfully Submitted,

Tracey Hagerman  
Recording Secretary