

**Town of Goshen
Planning Board
Minutes of September 16, 2021**

Planning Board members present (quorum = 3): Alicea Bursey (Chair), Steve Bursey, Kayla Frink, and Derek Tremblay

Other attendees: Kevin Bevilacqua (Road Agent)

Meeting called to order at 7:01 p.m.

Review of Minutes (9/2/21)

The Planning Board reviewed the September 2, 2021 minutes.

Kayla Frink motioned to accept the minutes of September 2, 2021 “as is”; Steve Bursey seconded the motion. All were in favor. Derek Tremblay abstained.

Review of Minutes (9/9/21)

The Planning Board reviewed the Special Meeting September 9, 2021 minutes.

Kayla Frink motioned to accept the special meeting minutes of September 9, 2021 “as is”; Steve Bursey seconded the motion. All were in favor. Derek Tremblay abstained.

Application for Driveway Permit

On Monday, September 13, Kevin Bevilacqua (Road Agent) provided Chair Bursey with an application for a driveway permit to Mr. John Hopkins II’s property on Brickyard Road (no house, no number). The parcel has access via a right-of-way from the farmhouse in front of the parcel to Brickyard Road. There is currently no driveway.

Ahead of this meeting, Chair Bursey connected with the New Hampshire Municipal Association to inquire about the permitting process for a driveway when the driveway is actually a right-of-way. In short, a true driveway in the sense of a connection to a true road (Class V or better) could not occur in/on the right-of-way.

The right-of-way access may be cleaned up, etc. but would not be considered a real driveway. Also, per the Goshen Town Driveway regulations a variance to the 175 feet of road frontage would be required as the property requesting the permit does not have road frontage of its own.

Additionally, and at the start of this meeting Chair Bursey called Mr. John Hopkins II to let him know that a driveway permit in this case would not be a true driveway permit and would require a variance. At that time, Mr. Hopkins II shared that the property was not subdividable. Chair Bursey informed Mr. Hopkins II that the property does not meet the standards required for buildability as there is no true driveway access to Brickyard Road and that even with cleaning up the right-of-way this requirement would not be met.

At the end of the conversation, Mr. Hopkins II asked the application be temporarily placed on hold as a potential buyer for the parcel may submit the driveway permit application if they choose to buy the parcel. Mr. Hopkins II will connect with the board at a later date with his desired next steps.

The full email exchange with the NHMA can be found attached to these minutes.

No actions were made at this time.

Chair Bursey noted that the Driveway Permit Application may need to be updated to make it clearer to applicants and the Road Agent what types of actions are permitted on Class VI and right-of-way access points. Chair Bursey will discuss this with the Select Board and work with the Road Agent to make any necessary updates.

Member Discussion (ongoing)

Alternate members are still needed for the Planning Board, this topic will remain a standing agenda item until filled. Anyone interested in becoming an alternate member of the Planning Board should stop by any of the Planning Board meetings at the first or third Thursday of the month at 7pm in the Goshen Town Hall. Applications for the alternate position can be found on the Planning Board webpage.

Other Business

- The next meeting will be the first Thursday of the month – October 7, 2021.
- **Solar/Alternate Energy Discussion:** The board will review the RSA and make possible edits to the Regulations during a future meeting.
- **Capital Improvement Plan:** The board will discuss the Capital Improvement Plan during a future meeting.
- **Newport Sand & Gravel-Pit Inspection:** The board discussed several dates for their annual Pit Inspection. Chair Bursey will reach out to Mr. Shaun Carroll, Jr. to see which dates work for the inspection. Tentative dates are October 2nd, October 9th, or October 16th.

Standing/Upcoming items

- Solar/alternative energy RSA and town regulation discussion
- Capital Improvement Plan – Pending
- Newport Sand & Gravel - Pit Inspection
- Member Discussion - Standing Item

Kayla Frink made a motion to adjourn the meeting. Steve Bursey seconded the motion. All were in favor. Motion passes.

Meeting adjourned at 7:14 p.m.

Respectfully Submitted,
Alicia Bursey
Chair



A Bursey <[REDACTED]>

Goshen: Question: Driveway access on a right of way

Legal Inquiries <[REDACTED]>

Thu, Sep 16, 2021 at 12:54 PM

To: "aliceabursey@[REDACTED]" <[REDACTED]>

Yes, but the lot is unbuildable because of the restriction put into place by RSA 674:41. What needs to be emphasized is that the lot is unbuildable because the "driveway" is merely a ROW providing access to the lot, rather than existing as some other status which would make it buildable.

Natch Greyes, Esq.

Municipal Services Counsel

NH Municipal Association

From: A Bursey <[REDACTED]>
Sent: Wednesday, September 15, 2021 10:57 PM
To: Legal Inquiries <[REDACTED]>
Cc: Alicea Bursey <[REDACTED]>
Subject: Re: Goshen: Question: Driveway access on a right of way

Hello Natch,

Just to confirm with your additional information. The proper process would be to request a variance to the road frontage, follow that process, then have recorded into the deed that the lot is unbuildable without proper driveway access to the class V road?

Cheers,

Alicea

On Sep 15, 2021, at 15:29, Legal Inquiries <[REDACTED]> wrote:

Good afternoon Alicea,

So, this is a very odd circumstance, and one that is difficult to apply the existing law to. But, basically – It seems permissible to issue a driveway permit pursuant to RSA 236:13 with the

condition that it does not abrogate the requirements of RSA 674:41 or change the access status of the lot.

And, here's why that's the odd outcome -

RSA 674:31 is statewide zoning that applies when there is no frontage for a lot on a Class V or better road. So, the provisions of RSA 674:41 apply to Class VI and Private Roads. Note, of course, that that does not include Rights of Way. In fact, a Right of Way is insufficient as a road providing access to allow building under RSA 674:41. *Russell Forest Mgt. v. Town of Henniker*, 27 A.3d 651 (2011) ("an easement qualifies as a 'street giving access to a lot' only if it meets one of the criteria set forth in RSA 674:41, I(a)-(e)"). As such, this parcel, whose only access to the public road network cannot be granted a building permit per RSA 674:41.

Presumably, it could, however, be granted a driveway permit pursuant to RSA 236:13, as long as it is clearly understood that that permit did not change its access status relative to RSA 674:41. Strictly read, RSA 236:13 isn't really about "driveways" so much as it is about accesses to public highways. As such, what's really being regulated is the connection to the public highway and the quality of the connection such that that connection won't affect the road to which it is joined. The consequence, of course, is that any necessary variance is geared toward the sightlines and does not grant the ROW owner "frontage" for the purposes of RSA 674:41. As such, the lot remains unbuildable, but may have a "better" connection to the public road network.

That's the only way that we could think to harmonize the various statutes and caselaw pertaining to building on these lots. I hope that's helpful, even if a bit confusing.

Natch Greyes, Esq.

Municipal Services Counsel

NH Municipal Association

25 Triangle Park Drive

Concord NH 03301

Tel: (603) 224-7447

Email: natch.greys@nhmunicipal.org

<https://www.nhmunicipal.org/american-rescue-plan-act-2021-information-page>

From: A Bursey <aliceabursey@gmail.com>

Sent: Wednesday, September 15, 2021 11:14 AM

To: Legal Inquiries <~~legalinquiries@townofgoshen.org~~>
Subject: Re: Goshen: Question: Driveway access on a right of way

Hello Natch,

Is there any documentation that would be needed? Does the property owner need to be notified or does the variance process notifications cover all that would be needed and give sufficient voice to the primary property owner?

If someone does wish to build up there in the future it sounds like the right of way would need to be deemed a private road, raised to the specifications of a town toad, and municipal liability be waived, is that correct?

Cheers,

Alicea

On Sep 15, 2021, at 10:00, Legal Inquiries <~~legalinquiries@townofgoshen.org~~> wrote:

Good morning Alicea,

There's a presumption in the law that parcels should not be landlocked. So, typically, an implied easement will be granted over the parcel from which the landlocked parcel originated, if no easement is put into the deed. In either case, the right-of-way will provide access to the back parcel.

As far as the driveway permit goes, it sounds like the parcel will need a variance from the frontage condition in order to construct a driveway. However, that doesn't mean that building a residence or other structure can occur on that property. In fact, because the back parcel does not have frontage along a Class V or better road, RSA 674:41 would be triggered. Importantly, under that statute a ROW is insufficient to allow building if it is the only access to the property because the statute says that "street giving access" means "a street or way abutting the lot and upon which the lot has frontage." RSA 674:41, III. As such, any driveway would be a driveway to nowhere.

I hope that's helpful. Please let me know if I can be of further assistance.

Natch Greyes, Esq.

Municipal Services Counsel

NH Municipal Association

[25 Triangle Park Drive](#)

Concord NH 03301

Tel: (603) 224-7447

Email: ~~XXXXXXXXXXXXXXXXXXXX~~

<https://www.nhmunipal.org/american-rescue-plan-act-2021-information-page>

From: A Bursey <~~XXXXXXXXXXXX~~>
Sent: Tuesday, September 14, 2021 4:01 PM
To: Legal Inquiries <~~XXXXXXXXXXXXXXXXXXXX~~> Alicea Bursey
<~~XXXXXXXXXXXX~~>
Subject: Question: Driveway access on a right of way

Greetings,

I am the Chair for the Goshen Planning Board and I have come across a situation that I'm sure requires additional steps, if it can be done at all. I'm hoping you can advise.

There is a 15-acre parcel off of a Class V road and the parcel would technically be landlocked except for a right-of-way across another private property connecting it to the Class V road. The owner of the 15-acre parcel has used the right-of-way for years to access what appears to be a woodlot and is now seeking to put in a driveway. The 15-acre parcel is also for sale and the right-of-way is alongside a snowmobile trail.

The application is requesting that the existing right-of-way be upgraded/converted to a driveway, hence the permit application. The 15-acre parcel does not have the road frontage (175 feet) required by the town regulations. And though there is no application before our boards, there is the possibility that a new owner of the 15-acre parcel may wish to subdivide. Our regulations would require an access with two or more driveways to be upgraded to meet the road standards of the town.

Can the 15-acre lot be granted a driveway permit for one driveway on the right-of-way on the private land? What documentation would be needed? And does anything need to be filed with the State?

Thank you in advance for your help, I look forward to your response.

Cheers,

Alicea Bursey

Goshen Planning Board

