

**Zoning Board
Goshen, NH
Minutes of January 11, 2023
Goshen Town Hall**

Attendance (*quorum* = 3): Alicea Bursey (Chair), Ray Porter (Vice-Chair), Judy Martz and Bruce Nadeau

Guest (s): Tom Dombroski

Meeting called to order at 7:04 pm.

Minute Review

Ray Porter motioned to accept the meeting minutes from December 14, 2022 'as is'. Judy Martz seconded the motion. All were in favor, minutes approved. Bruce Nadeau abstained.

Variance and Special Exception

Tom Dombroski, representing John and Erica Caron, approached the Board to further discuss the variance or special exception at the Caron's property at 163 East Mummery Road.

Chair Bursey had reached out to the NHMA regarding the discontinued road and she read the response aloud. At the NHMA's suggestion, the Board reviewed the original warrant articles from 1898 and compared them to the NH right of way data source records and found both documents to be matching.

However, the Board was still unsure what type of access the discontinued road would be qualified as. There was also some concern regarding the location of the property and the issue of being a land-locked parcel as it relates to right-of-way/easement. Mr. Dombroski thought that the road would be considered a private road, however, Ray Porter mentioned that once the road became discontinued, the road area may have gone back to the landowners which could have changed the access to the lot in question.

Mr. Dombroski noted that state approval has been received for both the septic and well (approval number eCA2020100734). The Board was in agreement that the applicant is looking for approval regarding the setbacks, however, before they make their decision, they would like to have legal counsel weigh in on the topic. The consideration to use legal counsel comes after consulting with NHMA. The Board drafted the following question that will be sent to the Town's legal counsel along with all related information of the project.

Question to be asked of town council: "The Goshen Zoning Board is reviewing a property at Tax Map 202-015-000 for a proposed dwelling which is situated on the discontinued portion of East Mummery Road. The Zoning Board is asking what type of access now exists (easement, right of way, private road, etc.). This section of the road was discontinued in 1898 by warrant article (see attached). If the current access turns out to be a highway right-of-way, the Board needs to know if they can grant the variance for a setback per our Town regulations. The property is land-locked and if the discontinued road is now a private road or right-of-way would a variance of the 50ft front setback be necessary?"

Mr. Dombroski will attend the next Board of Selectmen meeting to receive the Class VI waiver which the Zoning Board believes he should still acquire.

Judy Martz made a motion to send the above question along with all relative information to the Town's legal counsel for advice. Bruce Nadeau seconded the motion. All were in favor-yes; motion carried (4-0).

Member Discussion – Update

Additional alternates and board members are needed for the Zoning Board of Adjustment. If anyone is interested in becoming a member, please stop by at a meeting on the second Wednesday of any month. This will remain a standing item until filled.

Other Business

- **Transfer Station:** Judy Martz mentioned that she has additional information regarding the possibility of making more money at the transfer station and that she would like to present her findings to the Board of Selectmen. She asked the recording secretary to contact the Selectmen and ask if she and Alicea Bursey can be added to the agenda for their first meeting in February, February 13th.
- **Board Member Term Discussion:** The Board reviewed their terms; no members are up for re-election this year. There is one full member position available for anyone who might be interested.
- The next regular meeting will be the second Wednesday of February – February 8, 2023.

Standing Items:

- Transfer Station
- The Board would like to review the areas where septic design guidelines are posted.
- Broadband Internet Update
- Bike Path Discussion – Pending
- Member Discussion – seeking alternates and full-time members (Ongoing)
- *Budgets will be due 12/1/2023 (2022 has been submitted)*
- *Annual report is due 2/1/2023 (Report has been submitted)*

Bruce Nadeau made a motion to adjourn. Judy Martz seconded the motion. All were in favor; motion carried.

The meeting adjourned at 8:40 pm.

Respectfully Submitted,
Melissa Salinardi
Recording Secretary

Attachments:

- Email exchange with NHMA (see below)

From: Legal Inquiries <legalinquiries@nhmunicipal.org>

Date: January 5, 2023 at 11:46:30 EST

To: zba@goshennh.org

Subject: Goshen: Waivers to build on class VI

Hello Alicea,

As for your second question, I cannot advise you whether or not you should grant a variance for this individual. NHMA cannot provide a legal opinion on town specific ordinances and regulations and you would need to consult with the town attorney if there is confusion on how to interpret the towns zoning ordinance or what authority the ZBA has under the ordinance.

As for your first question, there is a legal distinction between a discontinued and a Class VI road, however in many circumstances these terms are used interchangeably even though they are very different. If a road was truly discontinued, that means the property was returned to the original property owner(s). In this instance, the public would have lost any right to travel on the road and it would have reverted to being completely private property. In most instances, when a road has been "discontinued" it means that the town no longer maintains the road, however the public still retains the right to travel on the road. In this situation, the road is still a Class VI road. To determine which situation you find yourselves in, you would need to find the warrant article presented to the town for a vote to discontinue the road and look at the actual language of the article.

The term right of way legally means a way in which the public has a right to travel over. Therefore, a Class VI road would be a right of way, a discontinued road would not be a right of way. Either way, in order to receive permission to build on a lot it must meet the requirements of RSA 674:41. Here are the sections of RSA 674:41 that apply to Class VI roads and private roads:

From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed:

(c) Is a class VI highway, provided that:

- (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 class VI highway or a portion thereof; and
- (2) The municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof; and
- (3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or

(d) Is a private road, provided that:

- (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
- (2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and
- (3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought

Jonathan E. Cowal, Esq.

Municipal Services Counsel

NH Municipal Association

25 Triangle Park Drive

Concord NH 03301

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Zoning Board

Goshen, NH

January 11, 2023
Final

Email: legalinquiries@nhmunicipal.org

From: Zoning Board <zba@goshennh.org>

Sent: Wednesday, January 4, 2023 12:47 PM

To: Legal Inquiries <legalinquiries@nhmunicipal.org>

Cc: Zoning Board <zba@goshennh.org>

Subject: Waivers to build on class VI

Good afternoon,

I'm Alicea Bursey, Chair to the Goshen Zoning Board.

We are in the preliminary discussions of an application that would put a small two-bedroom home on grandfathered, non-conforming lot. The lot is accessed by what shows on the plat as a discontinued road.

There are two questions we are researching regarding this project.

1. Is a discontinued road considered the same as a Class VI road in terms of the waiver to build? Or is it a right-of-way (see highlighted non-conforming land language from regulations below)? We are trying to determine if the [waiver to build](#) (674:41) applies here.
2. Can a variance be issued to reduce a front setback to 24ft which is below the town regulation and is located at the edge of the discontinued road?

Our ZBA regulations and ordinances are available [here](#).

Setback language:

B. BUILDING EXPANSIONS Any and all non-conforming buildings, whether commercial or otherwise, may be altered but may not exceed the height limits as defined in Section III.D.3. Any proposed structural expansion that could not conform to provisions of the Zoning Ordinance shall require a special exception from the Zoning Board of Adjustment. No expansions along rights-of- ways shall be approved which decrease setback requirements, or the existing setback if already below minimum. In expansion on undersize lots the Zoning Board of Adjustment may reduce side and rear setbacks to not less than twenty feet (20') from a lot line providing, however, that no structure shall be expanded closer than thirty-five feet (35') of an abutter's building.

D. NON-CONFORMING LAND Any lots that existed at the time that this ordinance was originally adopted on March 10, 1970 and that were rendered undersized by this ordinance for building purposes are exempt from the lot size requirement and the length of frontage requirement for residential or commercial use provided that setback requirements are met, and provided that the lot has access and some frontage satisfying RSA 674:41. The Zoning Board of Adjustment may grant special exceptions to setback requirements on non-conforming lots; however, no building may be constructed within thirty-five feet (35') of an abutter's **building, or within fifty feet (50') of a highway right-of-way**. In no case shall the Zoning Board of Adjustment grant special exceptions to reduce side and rear setbacks to less than twenty feet (20') from any lot line. The Zoning Board of Adjustment may grant a special exception to reduce the setback between the right-of-way and a parking lot to less than seventy-five feet (75'), but not less than fifty feet (50'), following presentation of satisfactory evidence that public safety, noise, and visual impact will be adequately addressed.

Cheers,

Alicea