

RANDOLPH BOARD OF ADJUSTMENT

Minutes of Meeting
December 14, 2022

Members Present: David Ruble, Guy Stever, Robert Onacki, Paul Cormier, Robert Leclerc, and Robert Harris

Members Absent: Bill Parlett

Public: John Scarinza, Cameron Schaen, and Gerard Hamanne

David Ruble called the meeting to order at 5:01 pm.

It was noted that Paul Cormier would be the alternate filling in for Bill Parlett, and that Robert Leclerc was in attendance as an alternate, but would not be voting.

On a motion by Guy Stever, seconded by Robert Harris, the Board voted unanimously to approve the minutes of October 4, 2021.

Public Hearing

David Ruble called the Public Hearing to order. Mr. Ruble advised that the hearing is for a variance for a driveway for Mr. Cameron Schaen, and that the variance was needed for both length and grade.

Cameron Schaen advised the Board that he has been fighting the grade and pulled it down as much as he can. Mr. Schaen advised that he has spent a lot of money, more than expected. Mr. Schaen noted that there is ledge and bedrock on the property and that the road is based on where it is best to build. Mr. Schaen advised that the surveyor did test pits and that the current plan is what they believe is the best use of the property. Mr. Schaen advised that the grades have been pulled down, and that he has two pull-offs. Mr. Schaen advised that he has had trucks with gravel get up the driveway, turn around, and come back and that he understands it is his responsibility to have it plowed and sanded. Mr. Schaen stated that it will get sun all day, so any snow will melt off quickly. The area that will hold the most snow will be by the road where it is flat. Mr. Schaen stated the driveway is 1,163 feet long and that the highest grade is 18%.

Robert Harris asked about the leach field and how this would affect the Bowman Inn down below. Mr. Schaen advised that the person doing the septic design is aware of the Inn and has walked the property. Mr. Schaen noted that it will be about 800 feet away. Guy Stever noted that the septic design will need to be approved by the state. Mr. Schaen stated he is waiting on the septic design to be finished and they will need to bring sand in to fill around the septic.

Guy Stever asked who advised him on the place to locate it, and Mr. Schaen advised the septic designer did. Mr. Stever asked if he ever considered another location for the house, and Mr. Schaen stated he originally considered a location closer to the road, but

there is bedrock and traffic. Mr. Schaen also noted that there is a spring, a stream on the left border, and the Bowman Inn on the right, so there is not a lot to work with.

Guy Stever noted that although Mr. Schaen had a permit, the Land Use Ordinance only allows a length of 750 feet for the driveway, and Mr. Schaen went ahead and built the whole thing. Mr. Schaen stated he was only aware of the restriction after work had started, as he already had the DOT permit. It was suggested that the contractor should have been aware of the requirements. Mr. Stever also suggested that there were other solutions to the grade issue. Mr. Schaen stated that the work has already been done, and Mr. Stever noted that it was done illegally. Mr. Schaen stated that if was starting again today, he would request the same variance.

Paul Cormier asked why the ledge or bedrock was a problem to build lower down, and Mr. Schaen advised he wanted to avoid a financial issue. Mr. Cormier stated that he built a home two years ago, and that the ledge was blasted where needed.

Mr. Stever suggested some options to address the grade, by coming around to the left in front of the house, then making a right hand turn. Chairman Ruble reminded the Board that they are there to consider the request for variance for the driveway as presented, not to fix the problem or offer alternative sites.

Paul Cormier advised that they have a maximum allowance for the length of the driveway and the slope to be sure that emergency services, such as Fire and Ambulance, are able to reach the property. Mr. Cormier noted that these are services that the Town is obligated to provide. Mr. Cormier asked Mr. Schaen if he would be willing to sign a waiver for the services, with the understanding that they cannot respond to the property, and Mr. Schaen advised he would be. Guy Stever noted that the bigger problem is that the Town is obligated to provide a school bus for transportation for any special education students that may live at the property, and a bus would not be able to with the driveway as it is. Mr. Stever noted that Mr. Schaen may not always own the property and is looking at the issue in perpetuity. Mr. Schaen stated that if the property was sold, this could be disclosed to the new buyers.

John Scarinza, Chair of the Planning Board, noted that the requirements for length and slope are in the Land Use Ordinance for public safety. Mr. Scarinza stated that although he has sympathy for the amount of money Mr. Schaen has spent, he noted that Mr. Schaen applied for the variance retroactively, and that is a mistake the Board of Adjustment cannot fix. Mr. Scarinza noted that the lot is grandfathered as far as road frontage, as it was approved in 1989. Mr. Scarinza suggested that the ZBA cannot grant a variance, as you cannot say there is no place on the property that would be in conformance to build, as there are other places lower to put in a house more easily. This would eliminate both the length and grade issue. If the landowner can use the property in conformance, then there is no good reason the Board would grant the variance. Mr. Scarinza also noted that if there was an emergency at the property, first responders would still want to try to respond, which puts them at risk. Mr. Scarinza re-iterated that the other issue is the town's responsibility to provide transportation for a special needs child.

They would need to be able to get a bus to the residence. Mr. Scarinza advised that it is important to remember that the Planning Board proposes regulations, which are voted on by the townspeople. The regulations are based on what is important to the town, including how things will look, and the safety for workers. Mr. Scarinza advised that he did contact the town planner to confirm that although the lot is grandfathered, any work done now still needs to conform to the current standards. Mr. Scarinza stated the contractor may have gotten ahead of himself.

Chairman Ruble noted that there are three possible outcomes of the hearing tonight. The Board could vote to grant the variance, deny the variance, or grant the variance with conditions.

Guy Stever noted that there may be erosion problems in the area that was cleared. Mr. Schaen stated that neither the contractor nor the septic designer brought up any concerns. John Scarinza noted that Mr. Schaen may have issues with the state concerning the erosion and steep slopes, and suggested that Mr. Schaen contact an engineering company, such as Horizons, to re-establish vegetation. Mr. Schaen noted that the stream is not present all the time.

It was suggested that if folks were renting the property, such as an AirBNB, you would have strangers using this long, steep driveway. Mr. Schaen stated it was not his intent to rent the property. It was noted that Mr. Schaen did have a rental property in Gorham that was recently sold.

Mr. Gerard Hamanne spoke, he was the prior owner of the property who designed the lot. Mr. Hamanne noted that DOT told them where the driveway needed to be. Mr. Hamanne stated that the further up you go, the better the view for the home. Mr. Hamanne stated that the Town is currently getting \$675 per year for taxes, and will get \$4,000 once a house is built. It was stated that although you could build lower, the best use is where it is currently planned.

Paul Cormier noted on the map a location for house about 350' in, that would not exceed the driveway length requirement and would avoid the steep grade issue. Mr. Cormier advised that he paced it from the brook and the sideline.

Guy Stever moved to close the Public Hearing at 5:41 pm, which was seconded by Robert Onacki. The Public Hearing was closed.

Chairman Ruble advised Mr. Schaen that the Board was required to notify him of their decision within 30 days.

Cameron Schaen and Gerard Hamanne left the meeting.

Chairman Ruble advised the Board that the issues to consider are: the lot is grandfathered, the public safety aspect, the Town liability, and that the state driveway permit only allows for a 15% grade. Mr. Ruble advised that he did contact the town

attorney to ask about a Waiver of Liability being added to a deed, and was advised that the Town would not be liable if unable to get up the driveway to respond. Mr. Ruble stated that the town attorney advised the Land Use Ordinance may be problematic and if this was to go to court, the Town may lose. Mr. Ruble suggested that the Board could have Mr. Schaen go back to the state concerning the driveway permit they issued, and have them approve the 18% grade. John Scarinza responded that at the time these regulations were enacted, it was vetted, and the Town was told to write it like this. It was noted that the state is only concerned with the first section of the driveway that would impact the state highway. Robert Leclerc asked why the Board would consider not enforcing this regulation, when other regulations such as setbacks, are enforced. John Scarinza advised that Gorham recently did grant a variance requiring a waiver. It was noted that the Land Use Ordinance states that the purpose is to promote the health, safety, and general welfare. It was also noted that it was the role of the Board to make a decision on what is in front of them, not whether the ordinance would hold up in court. If the variance is denied, the property owner can appeal to a higher court.

Guy Stever stated that he would approve the length of the driveway, but not the grade.

It was noted that Mr. Schaen was aware he was not in compliance when he applied for the variance. Although it would not be where he wants or provide the same great view, the Board noted that by building at 300-350 feet, which would take care of both the length and pitch of the driveway, you would still be able to have a house on the property.

Guy Stever made a motion to deny the request from Cameron Schaen for a variance for a driveway at his Route 2 property, Map R14 Lot 8, Sub 2, which was seconded by Robert Harris.

The Board noted that it would need to be a hardship to grant the waiver, which it is not, as Mr. Schaen can use the land to build a house without violating the Land Use Ordinance.

So moved, the motion passed with three in favor and two opposed. Stever – yes, Harris – yes, Cormier – yes

On a motion by Robert Onacki, seconded by Robert Harris, the meeting was adjourned at 6:10 pm.

Respectfully submitted,
Shelli Fortin