

Groton, NH Planning Board
Minutes 04/24/2019

Meeting opened 7:01 P.M.

Members Present: Deborah Johnson (Chair), Dave LeBar, Russ Carruth, John Rescigno

Members Absent: Kristina Brodie, David Madden, Ray Blake

The first order of business was for the Board to review the PB Findings from the 2-27-2019 meeting. Deb had emailed the finding to the select board in draft so they could respond to Mr. Kuplin at their next meeting. The Findings were also transmitted to members of the PB and if any member objected to the draft they were to contact Deb. No objections were communicated. The findings are below for official PB approval.

NOTICE OF PLANNING BOARD FINDINGS

On March 12, 2019, the Planning Board ("PB") received a request from the Select Board ("BOS") to consult on Mr. Kuplin's **Application for Septic Plan/Building Permit** pursuant to RSA 674:41, I (d). The PB previously reviewed an Application submitted by Mr. Kuplin at its 2-27-2019 meeting. Below are the PB's **Findings** from the 2-27-2019 review and the 3-27-2019 meeting.

FACTS leading to the PB March 27, 2019 Meeting:

In early November 2018, the BOS wanted the PB to review Mr. Kuplin's Application **for Septic Plan/Building Permit** before they made a decision. Aware that Mr. Kuplin would want a response before the scheduled 11-28-2018 Planning Board meeting, they asked the PB chair to look at the materials to provide preliminary comments. The chair agreed to attend the 11/13/2018 work session with the BOS, stating she could not speak for the Planning Board, although was willing to talk with the selectmen based on her experience. Those discussions identified several concerns:

1. The subject property, Map 5 Lot 46, has access to North Groton Road by Right-of-Way only, **RSA 674:41** prohibits building on any lot unless "the street giving access" is a Class V highway or better; is shown on a subdivision or other plan approved by the planning board; or is a Class VI highway or "private road" upon which the PB has been consulted and BOS has voted to authorize building permits under certain specified conditions.

The lot must have actual frontage on one of the five types of streets described in RSA 674:41, I. An easement giving access to a "back lot" over the land of another will not meet the statutory standard RSA 674:41, III.

2. The governing body (selectman) must first consult with the Planning Board and the owner must record a notice in the registry of deeds acknowledging that the town is not liable for maintenance or damage that might occur (RSA 674:41, I(d)). Mr. Kuplin has not completed this step.
3. Mr. Kuplin has not produced the granting document for the right-of-way.
4. Mr. Kuplin has not produced a Driveway Permit from the State.
5. Mr. Kuplin acknowledges part of his property is in the Floodplain but has not submitted plans, drawings or other materials to allow the selectman to be assured he complies with Groton's Flood

Plain Regulations. See Item VI of the Floodplain Regulations – The Regulation establishes a Permit system and review procedure for development activities in the designed flood hazard areas of Groton.

6. Mr. Kuplin has not produced any documentation stating that the DES of NH has approved the makeshift stream crossing. This bridge has washed out in the past and continually clogs with branches and other debris. The USDA reported on 4/15/2016 that the culvert stream crossing was insufficient.

At the BOS 11-13-2018 public meeting, following the work session, the Board's Chair told Mr. Kuplin they would not issue the Building Application.

Mr. Kuplin was advised to appeal the BOS decision to the ZBA. Mr. Kuplin never requested the appeal. Subsequently, by letter dated 1/29/2019, Mr. Kuplin submitted new documents.

The Town's Attorney comments in an email of February 2nd 2019, *"My understanding is that the BOS has already voted to deny the building permit for this lot.... Therefore, the applicant is forced to paragraph II—go to the ZBA for a waiver.*

The selectmen can certainly reconsider their decision, get the input from the planning board and grant the building permit; but they can also stand by their earlier decision and remind the applicant that his only avenue at this point is to seek ZBA approval under Paragraph II."

It is apparent that the BOS reconsidered their decision and reversed their decision not to issue Kuplins Building Permit because they requested consultation by the PB and transmitted the documents materials to the PB for review and discussion at the March 27, 2019 meeting.

PB FINDINGS

Right of way - RSA 674:41 provides mechanisms by which a building permit for a lot without road frontage can be approved.

Paragraph I allows the BOS to grant the building permit under certain conditions. The only one that would apply here is paragraph 674:42, I(d). That paragraph allows the BOS to vote to grant building permits on a lot served by a private road, after review and comment by the Planning Board, as long as the town assumes no liability.

However, can a right of way be construed, for purposes of the statute as a private road? Yes, although the construction/legal fiction that allows the R.O.W. to be viewed as a private road does not change or alter in any way its legal status from a R.O.W. to a private road.

Municipal Release – this has been filled out as private road/r.o.w. implying a change in the legal status of the right of way. In addition, it was completed and signed before consultation with the PB. The BOS might want to correct these errors prior to recording the Release.

R.O.W. Legal Questions – Answers to these questions are beyond the scope of the PB.

Mr. Kuplin has produced the granting document for the claimed right-of-way. Clearly, in a deed dated August 29, 1935 Elmer E Horn reserved a R.O.W. for himself and his heirs, for travel on foot and vehicle.

No width was mentioned. Mr. Kuplin's deed describes the R.O.W. "shall be a minimum width of 40 Feet" referring to a deed dated in 1986 from Aileen H Yinger to Carroll D Matthews and Vera C Matthews.

Both, instruments lack certain formal requirements of draftsmanship and raise the question, who does the R.O.W. benefit and does it run to future owners without the standard provision in a deed stating that the grant benefits/binds heirs, successors and assigns...

Do these grants run with the land ? Do they benefit subsequent property owners? Does the Yinger grant set the R.O.W. width to 40 feet? These are questions for the BOS to ask the Town Lawyer to answer.

Driveway Permit & Town Zoning – The driveway permit authorizes access to be used as a *Single Family Residential drive (see all requirements and restrictions)* This is consistent with his Application for a residential house and current Town zoning

Change in use, increase in use or reconstruction of the driveway requires reapplication.

Any change in property use from residential to business/commercial requires, additional application to the following: to the BOS (Building Permit for erection/alteration of a building/structure, along with possible Flood Management Permit for any other development as defined in that Ordinance) to the PB (consultation under RSA 674:41 and Statement of Property Usage and Site Review) and to the ZBA (for Special Exception).

Access over Punch Brook - Mr. Kuplin has not produced any documentation stating that the DES of NH has approved the make-shift stream crossing. This bridge has washed out in the past and continually clogs with branches and other debris. The USDA reported on 4/15/2016 that the culvert stream crossing was perched and insufficient. Both the ZBA and PB have denied applications for business/commercial use of the property due to the culvert crossing.

Flood Hazard Area - While Mr. Kuplin acknowledges part of his property is in the Floodplain/Flood Hazard area (he states in his application for Building Permit that it is 17 feet). He has not submitted a Plot Plan or survey to confirm this assertion. His submittal was of the Firm with a hand-drawn X marked where he intends to place his home. The plan lacked GPS coordinates or other specific measurement locators. When the Flood Hazard area is examined, he may be significantly off when considering both Punch Brook and the Cockermouth flood designations. This issue becomes more critical if property use changes or future development occurs.

After discussion, John indicates he and the other selectman were satisfied with the documentation designating the location of the house away from the Flood Hazard area and unconcerned with the perched culvert access, Deb motioned for a vote. Russ seconded the motion and the PB voted to accept the Findings, with three affirmative votes and one objection from John.

The Chair motioned to close the Meeting at 8:00 pm with Dave seconding – all voted in the affirmative.

Submitted,

Deb Johnson