

**TOWN OF HENNIKER
ZONING BOARD OF ADJUSTMENT**

March 17, 2010
Approved Minutes

Members Present: Doreen Connor, Chairwoman; Joan Oliveira, Vice-Chairwoman; Bob Stamps; Gigi Laberge; Jeff Connor; Bruce Trivellini, Alternate

Members Excused: Roni Hardy, Alternate

Others Present: Mark Fougere, Town Planner; Leon Parker; Peter Flynn, Town Administrator; Shawn Richard; Jennifer Astholz, Recording Secretary

Call to Order

Chairwoman Connor called the meeting to order at 7:14 pm. She stated that five full Board members are present as well as one alternate member.

Public Hearings

Case 2010-01: William Russell, Applicant (William Russell – Russell Forest Management, LLC-owner). The Applicant has submitted a Motion for Rehearing relative to the Zoning Board of Adjustment's decision of January 21, 2010 regarding an appeal from An Administrative Decision, pursuant to RSA 674:333, made by the Board of Selectmen dated November 17, 2009, in which the Selectmen denied the application for a building permit. After a hearing, the Zoning Board of Adjustment voted 5-0 to uphold the administrative decision of the Board of Selectmen to deny an application for a building permit for Map 1 Lot 741. The Board found no error in the Selectmen's decision because this lot has no road frontage and is accessible only by private easement. This property is located off of Bower road frontage and is accessible only by private easement. This property is located off of Bower Road (Class VI) and accessed via a private easement. The property is Zoned RR Rural Residential.

Chairwoman Connor stated that when discussing a Motion for Rehearing no evidence or testimony is heard. The Board will discuss the matter to decide whether the ZBA had previously made a mistake or to decide whether the motion raises sufficient new evidence to support reevaluation. She asked the Board members to discuss whether or not the arguments raised by the applicant justify a rehearing.

Bruce Trivellini read the notice of public hearing aloud to clarify the issue.

Gigi Laberge asked if Bower Road is being referred to as a Class VI road. It was explained that a portion of Bower Road is a Class VI road.

Dr. Trivellini referred to document #12 (court ruling of Timothy Hanson v. Shawn Richard) and asked for it to be recorded in the minutes that Mr. Richard is present this evening. He asked if having an easement gives Mr. Hanson any ownership interest in this property. Chairwoman Connor explained that he does not have any ownership interest in Mr. Richard's property but does have right of access over his property.

Ms. Oliveira stated that an easement does not imply ownership.

Dr. Trivellini stated that based on the court ruling, the owners of Lot 741 have the right over Mr. Richard's property and have the right to maintain the roadway on that property. Chairwoman Connor stated that she does not believe that the ruling says anything about maintenance of the easement property.

Dr. Trivellini asked if the right of access extends from Lot 741 to the connection of the Class VI road.

Chairwoman Connor stated that the court did not rule that the easement is considered a private road. She stated that she does not believe the ZBA should set that precedent.

Ms. Laberge stated that she understands that Mr. Russell has access to his property for logging and enjoyment of the land by access over Mr. Richard's property; however, she believes there is a big difference between that use and developing the property. She does not believe that this can be considered a private road.

Ms. Oliveira stated that an easement or right-of-way is just what it says, and no rights are granted beyond the stated reason.

Mr. Connor stated that in his experience, he has requested written permission from the landowner in order to upgrade a passageway.

Mr. Fougere stated that there was previously a road there, but it was discontinued by the Town in 1895. There was discussion that Lot 741 would probably never have been platted in the 1800's if the road had not been there. Relief is being sought by the owner of Lot 741 as the easement connects to a Class VI road; they are claiming that it is considered frontage on a Class VI road. Mr. Connor stated that Mr. Russell is arguing that the easement is a private road all the way through. Chairwoman Connor stated that the court ruling is very clear that it is not considered a private road. The easement doesn't elevate it to a private road which is what is needed for development.

Mr. Connor stated that the Town map clearly shows Bowers Road. Mr. Fougere stated that the dashes shown on the map should technically not be there. Leon Parker, Selectman, stated that even if Bowers Road was a private road, that does not give Lot 741 Class VI road frontage as there is no part of the land that runs along the Class VI road.

Ms. Laberge stated that she has experience with New Hampshire Timberland Association cases from many years ago. She stated that the court ruling may have origins from these cases when landowners with land-locked pieces of land went to court. The easements were created to grant access via an easement for natural resources.

Chairwoman Connor stated that there is a distinction between a private road and easement with respect to ownership. She stated that if Mr. Russell bought this piece of land, this case would be different.

Ms. Oliveira **MOVED** to deny the request for rehearing as described in Case 2010-01 for the following reasons:

- 1) The Board believes that they previously made the correct decision.
This is not a private road because Mr. Russell has no ownership of the property;
- 2) this is a private easement over the private land owned by Mr. Richard;
- 3) there is no road frontage on a Class VI roadway.

Ms. Laberge **SECONDED** the motion. Motion **PASSED, 5-0.**

Case 2010-02: Mr. Ethan Forns, Applicant & Owner. The Applicant has submitted a request for a Special Exception under Article V, Section 133-22A to expand an existing home rental operation from two apartments to three apartments. (There is presently a unit occupied by the homeowner and two apartments on this property.) The property lies at 9 Park Street, Map 2 Lot 449 and is Zoned RV Village Proper District.

The applicant called Mr. Fougere during the meeting at 7:40 pm. He stated that he had inadvertently noted the incorrect meeting date and was in New York. He asked the Board to either continue with the case if they deemed it appropriate or requested that the case be tabled to the next meeting. The Board discussed the matter. Dr. Trivellini asked if the property had three rental units before zoning. There were questions about whether a variance may be needed instead of a special exception.

Due to having questions about the case, Ms. Laberge **MOVED** to table Case 2010-02 to the next ZBA meeting on April 21, 2010. Mr. Stamps **SECONDED** the motion. He stated that he does not think it is right to make a decision without hearing from the applicant. The motion **PASSED, 5-0.**

Meeting Minutes – Review and Approve minutes from January 20, 2010

Minutes of the January 20, 2010 were reviewed and corrected. Ms. Oliveira **MOVED** to approve the minutes as amended. Mr. Stamps **SECONDED** the motion. Motion **PASSED, 5-0.**

Adjournment

Mr. Connor **MOVED** to adjourn at 7:56 pm. Ms. Laberge **SECONDED** the motion. Motion **PASSED, 5-0.**

Respectfully submitted,

Jennifer Astholz
Recording Secretary