

# Minutes of Sept 30, Oct 7 and Oct 14 ZBA meeting

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- Present:
  - ZBA members James Gleason, Dave Mason, Dave Matesky, Huntley Allen, & Frank Benesh
  - Andrew Kramp (Applicant), Andrew Fisher of Ammonoosuc Survey, Victor Allen (Abutter), Fran and Bill O’Shea, & Andrew Downs (Abutter).
- Meeting was called to order at 7:10 pm on September 30, 2020 and the public hearing opened. Andy Fisher summarized the proposed 2 lot subdivision of a nine acre parcel at 92 Thorn Hill Road and the rationale for the proposed variance from the frontage requirement of 200 feet in the Rural Residential District. It was noted that there is an alternative of creating a private road which would afford the necessary frontage to the two proposed lots and enable the subdivision without requiring a variance. Abutter Downs stated he was concerned about increased traffic on Thorn Hill Road. Abutter Allen stated he was concerned about the property being used for short term rentals.
- Moved by Frank Benesh and seconded by Dave Mason and voted 5 to 0 that granting the variance will not be contrary to the public interest – in this case the frontage requirement to manage density and curb cuts, and thus to maintain the master plan objective of preserving the rural character of the town. Specifically, that there is no harm if there is a 10 to 12 foot wide driveway vs. the alternative of a 60 ft wide right of way with a 18 to 20 ft wide traveled way serving two lots.
- Moved by Dave Mason and seconded by Dave Matesky and voted 4 to 1 (Gleason in the negative) that the spirit of the ordinance would be preserved if the variance was granted for the same rationale as cited in the public interest criterion.
- Moved by Dave Mason and seconded by James Gleason and voted 4 to 1 (Gleason in the negative) that the substantial justice would be done if the variance were granted, citing that the loss to the individual in requiring a private road is not outweighed by the gain to the general public in requiring a private road with the required ROW and greater width of traveled way.
- Noting Abutter Allen’s concern about short term rentals, there was concern among the Board that the presence of short term rentals here would diminish the values of the surrounding properties based on the Board’s general knowledge of the area and the current impacts of short term rentals in the town. It was then moved by James Gleason and seconded by Frank Benesh and the motion failed on a 1 to 4 vote (Benesh in the affirmative) that the value of surround properties are not diminished by granting the variance.
- Moved by James Gleason and seconded by Dave Matesky that the value of the surrounding properties would not be diminished with the condition to approval short term rentals (as defined in the zoning ordinance) on both lots of this proposed subdivision. After discussion, no vote was taken and the motion was tabled.

- Dave Mason suggested that we continue the meeting to another date to consult with Town Counsel about imposing this condition and appropriate language.
- There was discussion of the hardship criterion but no motion was made. James Gleason suggested a vote on the criterion but Dave Mason indicated that he was not prepared to vote at this time without more discussion. James Gleason then re-moved the motion and Dave Mason seconded that the value of the surrounding properties would not be diminished with the condition to approval short term rentals (as defined in the zoning ordinance) on both lots of this proposed subdivision, but no vote was taken given
- Frank Benesh then moved and Dave Matesky seconded and voted 5-0 to continue the meeting to Wed. Oct 7<sup>th</sup> at 7pm to allow time for members to consider the hardship criterion and to afford time to consult with counsel about the appropriateness and language of the proposed short term rental condition. At the conclusion of the meeting Andrew Kramp stated that he had no objection to the imposition of the short term rental condition.

### **Oct 7<sup>th</sup> continuation**

- The meeting reconvened at 7pm, Benesh immediately was dropped from the meeting due to a power failure, and then the meeting was “bombed” with intruders. Mason also had technical difficulties limiting his participation and the meeting ceased with a continuation to the following Wednesday.

### **Oct 14<sup>th</sup> continuation**

- The meeting reconvened at 7:00 pm.
- Present were
  - ZBA: Frank Benesh, Dave Mason, Dave Matesky, James Gleason, & Huntley Allen
  - Andrew Kramp (Applicant), Andrew Fisher of Ammonoosuc Survey, Victor Allen (Abutter).
- Dave Matesky moved, Dave Mason seconded and it was voted 5-0 to elect James Gleason as chairman
- Dave Matesky moved, Dave Mason seconded and it was voted 5-0 that Frank Benesh update the application forms on the ZBA portion of the town website.
- With the reopening of the continued hearing re Kramp variance, the Board took up the pending motion of James Gleason with a second of Dave Mason, and voted 5-0 to find that with the granting of this variance the value of the surrounding properties would not be diminished with the condition that short term rentals are prohibited, in the following form:
  - “Short Term Rentals, as defined in the Town’s Zoning Ordinance, shall not be permitted on these lots. This restriction shall be contained in any and all deeds to the subject lots from the current owners / applicants to subsequent purchasers. This restriction shall also be made a note on the subdivision plan to be recorded in the Carroll County Registry of Deeds, if the owners / applicants receive Jackson Planning Board subdivision approval following the granting of this variance.”
- It was moved by Frank Benesh, seconded by Dave Mason, and voted 5-0 finding that there is no fair and substantial relationship between the general public purpose of the ordinance provision on

frontage and the specific application of that provision to the property and the proposed use is a reasonable one, as there is minimal or nonexistent benefit to the public for a 60 ft right of way and 18 foot traveled way vs. a 10 foot driveway given the characteristics of this property and the ability to subdivide with no variance with a private road.

- After Frank Benesh commenting that our findings on the public interest, spirit of the ordinance, and substantial justice criteria were based entirely on the difference in width between a private road and a driveway and the findings did not address other aspects of the road standards, it was moved by Frank Benesh, seconded by Dave Mastesky and voted by a 5-0 vote that the ZBA condition the variance by requiring the existing driveway from Thorn Hill Road to the turnoff of the new driveway to the new lot must be upgraded to current standards for a driveway, in the following form:
  - “To meet the criteria of not being contrary to the public interest, that the spirit of the ordinance must be preserved, and the avoidance of unnecessary hardship, this variance is further conditioned on requiring the following:
    1. Given the increased traffic on the existing driveway, the existing driveway must be upgraded to current driveway standards between Thorn Hill Road and 20 feet beyond the location of the driveway to the new lot. The 20 foot extension anticipates this intersection will be used as a T to allow heating oil and other trucks to back down the driveway to the new lot. (See Sec.2.2 of road standards.)
    2. Deeded acknowledgment limiting town liability, given the characteristics of the remaining portion of the driveway to the existing house, should be recorded (see Sec. 2.3 of road standards)
    3. Stopping sight distances for the driveway entering Thorn Hill Road of at least 205 feet downhill from the driveway (Northwest) and, given higher speeds, 250 feet uphill (Southeast) should be imposed. Uphill distance is to be adjusted for grade. See sec. 8.6 of road standards.
    4. The centerline of the turnoff from the existing driveway to the driveway to the new lot must be at least 75 feet from the centerline of Thorn Hill Road and must be at a 90 degree angle. See Exhibit B of road standards.
    5. A twenty foot platform with no more than 3% downslope grade from Thorn Hill road is required at the point the existing driveway enters Thorn Hill Road. (See exhibit to TOJ driveway application).
    6. The driveway to the new lot must intersect the existing driveway where the existing driveway has a grade of no more than 6% (sec. 9.5 of road standards.).
    7. All other standards are required to be met, including without limitation, those concerning General Road Characteristics, Geometric Standards, Drainage, Erosion Control, Utilities and Material Standards, and Construction Standards.
    8. The driveway to the new lot must meet current driveway standards in all respects.
    9. Any proposed subdivision plat must show the design of the reconstruction of the existing driveway as detailed in the Subdivision Regulations as if it were a private road.
    10. This waiver requires the location of the reconstructed driveway to be essentially the same as the current driveway. A separate driveway to the new lot is not permitted as it will introduce too many curb cuts in a 230 foot distance on Thorn Hill Road.

11. In complying with these requirements, the existing driveway between the existing dwelling and the intersection with the driveway to the new dwelling may not be modified to be further out of compliance with the current driveway standards.
12. Any aspect of this condition to the variance may be waived or relaxed by the Selectman acting through the Road Agent. Further, this condition to approval of the variance is not intended to limit the ability of the Selectman, the Road Agent or the Planning Board to impose additional requirements or more stringent requirements than those cited above."

- Frank Benesh sought and received the consent of the Board to offer to meet with the Planning Board to explain our granting of a variance from the frontage requirement and to highlight the Board's perception of a possible gap in Planning Board's subdivision checklist in not identifying existing substandard roads and driveways in a subdivision application, nor the feasibility of constructing a conforming new driveway.
- Frank Benesh moved and Dave Matesky seconded and the board voted 5-0 to grant the variance from the frontage requirements subject to the conditions prohibiting short term rentals and requiring a portion of the current driveway be upgraded to current driveway standards.
- Andy Fischer and Andy Kramp both stated that it was not their intention to hide any deficiencies in the current driveway from the Planning Board and were following the requirements of the Planning Board application. Andy Kramp also cited a prior meeting with the Building Inspector and Road Agent. Frank Benesh stated that the ZBA was not suggesting that they in any way intended to hide any deficiencies.
- The meeting adjourned at 7:45pm