

DEERFIELD PLANNING BOARD
P O BOX 159
DEERFIELD, N.H. 03037

APRIL 13, 2022

MINUTES OF MEETING

PRESENT; Board members Peter Schibbelhute. Fred McGarry, Selectmen's Representative, William Perron, Robert Cote, Donald Wyman. Also present Cameron Prolman, SNHPC, and Jane Boucher, secretary.

APPROVAL OF MANIFEST

Fred McGarry moved to approve the manifest in the amount of \$2,161.02 and a time sheet for Jane Boucher. William Perron seconded. Voted in favor. (\$2,161.02 SNHPC Contract, time sheet for 18 hours).

APPROVAL OF MINUTES

Fred McGarry moved to approve the minutes of March 23, 2022. Robert Cote seconded. The following correction was made to the minutes:

. Page 4 Last sentence Correct to read "Pending Approval of the Planning Board." Voted in favor.

CROSS SUBDIVISION/RANGE ROAD

Board members reviewed a copy of a letter from the Board of Selectmen to the Board of Adjustment applying for a motion for rehearing by the Board of Adjustment. The Selectmen believe that the Board was in error in issuing the variance for Sandra and Edward Cross for property on Range Road (Case 22-02), A copy of the letter is attached to these minutes.

MASTER PLAN

Cameron Prolman advised that the Master Plan Committee has representatives from the Conservation Commission, Heritage Commission, Parks and Rec, Planning Board and School Board. He noted that next week he will be sending out information regarding the first meeting.

7:15PM INFORMATIONAL MEETING; GEORGE KELLEY, RIDGE ROAD
George Kelley was present.

Mr. Kelley advised that he was present to discuss the Ridge's End Christmas Tree Farm on Ridge Road, which he will be closing on on Tuesday, April 19. He provided copies of plans dated 1981 depicting the property. He noted the current right of way from Ridge Road that extends in past the three developed lots. The right of way actually extends all the way to the extreme property line. Mr. Kelley noted that the roadway has been graveled. He has a statement signed in 1995 by David

Twombly that the gravel was put in and met all the Class V Roadway specifications. Mr. Kelley said that , at this point, he no exact intention as to what he will do with the property and is here to get feedback from the Board.

Mr. Kelley said, at this point, he would like to re- market the property as a Christmas Tree Farm. If that does not happen he would like to discuss options.
He questioned what the Board would want to see regarding the road.

There is a pond on the property which is 40 feet wide and 80 feet long. He has been told by the family that it is 10-14 feet deep.

Mr. Kelley said there may be up to six lots. He said that he may want to do a Smith Road Ordinance with three lots.

Mr. Kelley noted a current situation regarding 911 and he has a copy of the form to name a road and will submit it to the Board of Selectmen. He mentioned "Christmas Tree Lane, Balsam Way, Evergreen Lane.

He also mentioned an "in law apartment" and they could find to reference it in town records.

Mr. Kelley also noted that the property could be used as a "wedding venue". Board members said that would require a site plan review but was a possibility.

Mr. Kelley said the first step is trying to sell it as a Christmas Tree Farm and next step would be to do a Smith Road Ordinance.

Chair Schibbelhute said if he did decide to do a subdivision he would need to submit a road profile and a turn around/hammerhead would be at the end of the road.

SPM William Perron moved to adjourn the meeting. Donald Wyman seconded. Voted in favor.

Recorded and transcribed by Jane Boucher
Pending Approval by the Planning Board



TOWN OF DEERFIELD

Board of Selectmen

Fredrick J. McGarry, Chair ~ Richard Pitman, Vice-Chair
Cynthia B. McHugh ~ Alden Dill ~ William Huebner

April 12, 2022

Chairman Anthony DiMauro
Zoning Board of Adjustment
Town of Deerfield
Raymond Road
Deerfield, NH 03037

Dear Chair DiMauro:

In accordance with RSA 677:2 the Board of Selectmen (SELECTMEN) hereby applies for a motion of rehearing by the Board of Adjustment (BOARD) in the case of Edward and Sandra Cross (APPLICANT) for property on Range Road, Case 22-02. The SELECTMEN believe that the BOARD was in error in issuing the variance for several reasons including: inadvertently creating five non-conforming lots all without frontage on a road and incorrectly interpreting the Open Space Development Ordinance, Section 325.

The specific issues are as follows:

1. The elimination of the primary access roads and replacing them with "driveways" no longer provides frontage as defined in the zoning ordinance, Section 602, which reads "The width of a lot measured along its common boundary with the street line." Consequently, elimination of the two roadways and replacing them with driveways creates five lots without frontage and makes those lots non-conforming which the planning board cannot approve.
- ✓ 2. The three driveways would increase the number of penetrations through the landscape buffer and is contrary to the spirit and intent of the ordinance, that is, to minimize the number of crossings of the open space/vegetated buffer. Section 325.4, E, of the ordinance specifically states "No construction with the exception of primary access roads, shall be permitted in the buffer, including . . . driveways and other roads."
3. The APPLICANT likely exaggerated the width (350') of the vegetative buffer that would need to be "completely eliminated." The ordinance, Section 325.4, E, reads "Whenever possible, the natural vegetation shall be retained. The (Planning) Board may require vegetative plantings to supplement or replace inadequate natural buffers." The Planning Board would likely call the APPLICANT to plant trees of sufficient size to replace the trees removed by the APPLICANT. The cost of those plantings will encourage the APPLICANT to minimize the extent of removal of that vegetation.

4. The BOARD's decision to grant the variance was contrary to the spirit and intent of the ordinance. The intent of the ordinance is to reduce the number of access points to the Town roadway and not result in driveways roughly every 200' as is present on the east side of Range Road. Some members of the BOARD, in answering the five criteria for granting a variance, stated that the variance would be more in line with the character of the neighborhood. The intent of the ordinance is to reduce the number of crossings of the open space/vegetated buffer so that there aren't driveways every 200'.
5. The BOARD clearly overlooked the option of reducing the number of crossings of the open space to one. The APPLICANT, if truly concerned with the effect on the buffer, should have proposed a single access roadway and have each of his five lots have frontage and access off the single access road. The BOARD could have told the APPLICANT this was his option and then denied his variance request.
6. The three driveways with an assumed width of 12' each result in a 36' width which is equal to the combined widths of the two access roadways.
7. The APPLICANT raised the cost of constructing the two access roads as did one of the members of the BOARD. The granting of a variance is supposed to be tied directly to "special conditions of the property" and not the cost of improvements to the property.
8. Based on the draft minutes of the March 22 meeting, the APPLICANT, in addressing the BOARD, failed to address each of the five criteria used to grant a variance. The APPLICANT did provide a response to each of the criteria in their application but did not discuss them in their presentation.
9. One member of the BOARD referred to the number of plans prepared by the APPLICANT that "... have made the property exceptionally difficult to complete." The plans have been prepared by the APPLICANT and his agents and were all his choices.
10. The date of the application for a variance was February 28. The date of the denial from the building inspector was March 3. How could the BOARD accept the application without the accompanying written denial from the building inspector?
11. The APPLICANT in addressing the five criteria for a variance did not provide sufficient support for his request. The following is a listing of the APPLICANT's responses to the five criteria for granting a variance and the SELECTMEN's responses. The full text of each of the criteria was omitted for brevity:
 - 1 The APPLICANT states "*The access to the lots would align more to the character of the existing neighborhood.*" The intent of the ordinance is to minimize the access points onto Range Road and not have driveways with the frequency of the existing neighborhood.

2. *"It's consistent with the purpose and objectives and less impact on the natural resources and it would blend in and be less visible."* The APPLICANT fails to consider a single access road across the landscape buffer which would have less impact on the natural resources.
3. *"Building additional roads would have a larger impact on the natural resources to cross the 100' buffer setback. The cost of construction would be much higher."* The variance if granted must be "owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance . . ." (The Board of Adjustment in NH, page II-10) The APPLICANT did not identify special conditions of the property as to why the variance was necessary. The cost of constructing access roads is not a reason for granting a variance.
4. *"The new lots would blend in to the existing neighborhood."* The variance request by the APPLICANT was for replacing the two access roads with three driveways and has nothing to do with the lots in the proposed subdivision. Consequently, the APPLICANT failed to adequately respond to criteria four.
- 5A. *"The ordinance would require a road to be built to supply access across the 100' buffer setback from the existing town road thus going against the purpose, objectives and spirit of the ordinance."* The ordinance was specifically designed to allow for access roads across the buffer, how else could access be obtained to the lots inside the buffer? The ordinance specifically prohibits driveways and other roads through the buffer. Access to the lots is intended to be by way of the access road(s).
- 5B. *"Building an unnecessary road would be impracticable and costly to build. It would also result in a much greater impact on the natural resources of the land itself."* The access road is the intended means of reaching the lots in an Open Space Development. Multiple driveways across the open space buffer were not intended for this type of development. The cost of building an access road should not be considered as a reason for granting a variance.

The SELECTMEN believe that the decision by the BOARD was contrary to the intent of the ordinance and ignored provisions in the ordinance which would mitigate the claimed impact on the vegetated buffer. Based on the facts presented in this letter, the SELECTMEN request the BOARD grant a rehearing to consider this information and deny the variance requested by the APPLICANTS.

Sincerely yours


Frederick J. McGarry, Board of Selectmen Chair