

Town of Farmington  
Zoning Board of Adjustment Special Meeting Minutes  
Thursday, June 21, 2018

**Board Members Present:** Chairman Elmer "Butch" Barron, Vice Chairman John Aylard, Secretary Bill Fisher, Elise Haig, Warren Morgan, Joe Pitre

**Others Present:** Town Planner Dan DeSantis, Attorney Keriann Roman, Randy Orvis

**BUSINESS BEFORE THE BOARD:**

**Call to Order:**

Chairman Barron called the meeting to order at 7 p.m.

**Pledge of Allegiance:**

All present stood for the Pledge of Allegiance.

**Continued Case:**

Chairman Barron said this meeting is a continuance of the public hearing held on June 7, 2018 with two issues before the board: an appeal of an administrative decision by Randy Orvis and an application for a Variance by James Woodman.

Chairman Barron said he is conflicted for both cases having done business for Mr. Orvis and Mr. Woodman and recused himself from the board.

Mr. Aylard also recused himself due to current business ties with Mr. Orvis.

Chairman Barron asked Mr. Fisher as the board Secretary to step in and Chair the meeting.

Mr. Fisher said that he and Mr. Orvis both serve on the Conservation Commission and asked Mr. Orvis if he felt there is a conflict of interest if he continued to stand in for Chairman Barron. Mr. Orvis said he did not feel there is conflict with Mr. Fisher as acting Chairman.

Mr. Orvis said there were only four members sitting on the board and stated his right to have a full board to hear the case. He asked if there were any alternates available to fill the fifth seat on the board.

Mr. Fisher said there are no alternate members at this time.

Mr. Orvis asked if he requested a continuance of this hearing if there was a possibility of getting a full 5 member board for that hearing.

Attorney Roman said there is a statutory mechanism where alternates can be chosen for a one time sitting.

Mr. Fisher said the board would have to request that the Board of Selectmen appoint someone to the board as an alternate member.

Mr. Orvis said he would move forward with the administrative appeal at this meeting.

Mr. Fisher said that an appeal to the board of any administrative decision or requirement shall be taken within 30 days of the date of such decision or requirement. He said the board received a copy of a letter from Mr. DeSantis to Mr. Orvis that was dated October 19, 2017.

Mr. Orvis asked if the board was not going to accept his appeal.

Mr. Fisher asked if Mr. Orvis had received any extensions to the 30 day requirement as the board was unaware of any such extensions granted.

Mr. Orvis said he did not request or receive any extensions to the 30 day requirement to file an appeal and was not aware he needed to do so. He noted that this meeting is also not being held within the 30 day timeframe from when the application for appeal was filed because the abutters were not properly noticed of the hearing by the Town.

Mr. Fisher asked if the members had any discussion on this matter.

Mr. Pitre suggested the board recess and consult with Att. Roman on the matter.

**Motion:** (Pitre, second Haig) to recess the meeting to consult with Town counsel passed unanimously at 7:15 p.m. The meeting reconvened at 7:20 p.m.

Mr. Fisher said that after a discussion with counsel it was determined that improper notification went out to the abutters and called for a motion to waive the 30 day requirement.

**Motion:** (Pitre, second Morgan) to grant a one-time only waiver to the 30 day requirement to submit an appeal to an administrative decision and that tonight's meeting was properly notified passed 4-0.

Mr. Fisher noted that none of the abutters listed on the Certified List of Abutters were in attendance at the meeting.

**Appeal from Administrative Decision by Randy Orvis, Geometres Blue Hills LLC:** (Tax Map R57, Lot 13-1; James Woodman, owner) to appeal the decision of the Planner that the interpretation of zoning is incorrect. Parcel is located at 1173 Ten Rod Road; Agricultural Residential District.

Mr. Orvis displayed a copy of the site plan for the proposed subdivision and gave the board a packet containing the definitions of streets and street frontage as found in Section 1.14 of the Town Zoning Ordinances and the dept. head form from the subdivision application for the Technical Review Committee meeting. He said that Code Enforcement Officer (CEO) Dennis Roseberry signed off on the form saying the subdivision met the Town's zoning requirements. Mr. Orvis said the CEO is the person who makes this determination and that the Town Planner, the Planning Dept. Secretary and the Town Attorney do not make this decision.

He said the CEO made the determination correctly and then suddenly the plan was held up because there is different definition in the Town's subdivision regulations. He said that zoning does not derive its intent from the subdivision regulations but that the subdivision regulations derive their intent from the zoning. You can't change the zoning or the intent of the zoning by changing the subdivision regulations and any changes to the zoning ordinances must be put before Town Meeting in March he said.

Mr. Orvis said that he knew that when the plan goes before the Planning Board that he must request a waiver of the subdivision regulations but at this meeting they are discussing zoning.

Mr. Orvis said that this would not be the first time the Town has allowed two streets to make

up the required street frontage for a lot. He showed the board a subdivision plan done by Berry Surveying and Engineering for a 2005 Ten Rod Road subdivision where there was not enough road frontage so they created a "paper road" so that part of the frontage is on a private road and part of it is on Ten Rod Road. He said that the zoning definitions have not changed since then and there is no mention that the frontage has to be all on one street.

He also showed the board a four lot subdivision plan that he surveyed in 1997 where part of the frontage for one of the lots is on Dodge Cross Road and the remainder of the frontage is on Governor's Road.

He said if the Town wants contiguous road frontage it should be stated that way in the zoning ordinances. He cited Alton and Barrington as examples of towns where contiguous frontage is required and Strafford as an example of a town where it is not required by definition and a lot can meet frontage requirements on two streets.

Mr. Fisher thanked Mr. Orvis for his presentation and countered that the definition of street frontage is the distance between the side lines of the lot as measured along the front lot line of the street right-of-way limits. The "off shoot" proposed on the Woodman subdivision plans takes away that portion of land from the front lot line and adds it to the side lot line he said.

Mr. Orvis disagreed and said they propose to give the lot frontage setbacks on both streets.

Mr. Fisher said the definition could be interpreted the way that he read it and that he knows of no other situations where the Town has allowed frontage to be provided by more than one street other than the two cases Mr. Orvis mentioned.

Mr. Orvis said a change in the Planning staff does not change the way our zoning is interpreted.

Att. Roman said the form signed by the CEO is dated July 2016 and asked if the applicant is proposing the same plan now.

Mr. Orvis said the plan is exactly the same subdivision plan and that the application was accepted as complete by the Planning Board. The Planning Board wanted an engineer's stamp on the plan and it took a while to have that done. When they reapplied to get back on the Planning Board agenda the Town had a whole new Planning Dept. staff and they received Mr. DeSantis' letter saying they couldn't go forward with the plan he said.

Mr. DeSantis said his challenge is that it is two streets- Ten Rod Road and Jim's Way.

Mr. Fisher agreed but pointed out that Mr. Orvis identified two plans where two streets were used to meet the frontage requirements.

Mr. DeSantis said there is no binding precedence on what they do. He said if Ten Rod Road is a public way and Jim's Way is a private way that reinforces that they are two separate streets.

Mr. Orvis repeated the zoning definition of frontage does not say that it can't be met by more than one street.

Mr. DeSantis said it is implied that the frontage must be on one street.

Mr. Orvis said it is written in the subdivision regulations but that does not imply it in the zoning ordinances.

Mr. Fisher asked if the CEO is the “final line” (on determinations).

Mr. Pitre asked if Mr. Orvis would provide the board with copies of the plans he used to show the subdivisions where frontage on two streets was approved by the Town.

Mr. Orvis said the plans were recorded at the Registry of Deeds and that the Town already has copies of the plans he mentioned earlier in the meeting but he would submit them if needed.

Mr. Pitre asked Att. Roman for the legal definition of a right-of-way.

Att. Roman said that generally it is a way where the public travels and it sometimes can be an easement.

Mr. Orvis said that he understood that the right-of-way limits they are talking about is the frontage as measured not on the edge of the pavement but as measured on the Town’s right-of-way line for the road.

Att. Roman said the ZBA members are restricted on this issue as to whether or not they agree with the interpretation of the zoning ordinance and that it is not their role to make decisions about Mr. DeSantis’ and Mr. Roseberry’s opinions.

Mr. Fisher said he was having difficulty figuring out if they can use two different roads to meet the required frontage.

Mr. Morgan said the precedence has been set by the Town.

Mr. DeSantis said they are not bound by that.

Mr. Morgan said the Town may not be bound by the precedence but the courts would look favorably on it for the complainant.

Mr. Fisher said he read the definitions to say that it doesn’t specify that it must be a single street. It could be interpreted that way but it could be interpreted another way too. It is not clearly defined and is something we need to take a look at he said.

Mr. DeSantis said if the ZBA approves the appeal that Mr. Orvis would still have a big hurdle to go through with the Planning Board.

Mr. Orvis said he did not know what hurdle he has to go through other than a waiver of the subdivision regulations definition as it conflicts with the zoning definition.

Mr. DeSantis said they could not guarantee that the Planning Board would waive the subdivision regulation and if they don’t the plan is back to square one.

Mr. Orvis said that is why they have also applied for a Variance.

Mr. Fisher said the request for a Variance will be discussed as a separate issue. He read the definition of frontage again and asked if the proposed “hammerhead” to be known as “Jim’s Way” could be considered as part of the street frontage if it is a private road. If we do then it meets the criteria but if we don’t it doesn’t meet the criteria he said.

Mr. Pitre said the key word is “sidelines” and noted that it is plural not singular.

Mr. Orvis pointed out sideline one and sideline two on the plan and the sideline of the abutting lot. He said the proposed road will be built to Town specifications and is no longer a sideline.

Mr. Fisher called for a motion to approve or disapprove Mr. Orvis’ appeal.

**Motion:** (Morgan, second Pitre) to grant the appeal from Administrative Decision by Randy Orvis, Geometres Blue Hills, LLC (Tax Map R57, Lot 13-1, James Woodman owner) to appeal the decision of the Planner that the interpretation of zoning is incorrect. Parcel is located at 1173 Ten Rod Road; Agricultural Residential District;

Att. Roman asked if Mr. Orvis if he would be looking for approval of a private way by the Planning Board.

Mr. Orvis said that is correct.

Att. Roman suggested the motion be amended to include the condition that the private way be approved by the Planning Board in accordance with the provisions of Section 3.10.

**Amendment:** (by Mr. Pitre) to include the condition that the private way is approved by the Planning board in accordance with the provisions of Zoning Ordinance Section 3.10 Private Road Standards;

**Discussion:** Ms. Haig asked if this could be the last time this is done and the definitions are updated so this doesn't happen again.

Mr. Pitre said any changes must be made by a vote of the town at the annual Town Meeting. Mr. DeSantis said that in his letter of Oct. 19, 2017 to Mr. Orvis, he defined a street from the subdivision regulations and concurred with Mr. Orvis' argument that it shouldn't derive from them. He also wrote that street frontage as defined by the zoning ordinance is "the distance between the sidelines of a lot as measured along the front line of the street right-of-way limits. This contemplates a single street of frontage". He said his recommendation to the board is that the proposed hammerhead does not meet the criteria.

Mr. Fisher said it also could be argued that the definitions as written do not say that only one street can be used (for frontage).

Mr. DeSantis said that sometimes you have to infer things.

Mr. Fisher said that by inferring something it could lead them down a slippery slope.

Mr. DeSantis said the board is about to go down a slippery slope if this appeal is approved.

Mr. Fisher said the definitions state "between the sidelines" so that any part of the land between the east and west boundaries along the street could be considered as frontage. He said he believed that Mr. Orvis has made this case.

Ms. Haig asked if the dept. head form signed by the CEO is a legal document that could be grandfathered for this case.

Mr. Fisher said they cannot consider the form and must only consider the zoning ordinance and whether they agree with Mr. DeSantis' interpretation or Mr. Orvis' interpretation and how the board members interpret it. He asked her if frontage can be considered along only one street or two streets.

Ms. Haig said she sees the definition as only one street but also sees the CEO's document.

Att. Roman said as a ZBA member she can't consider the document signed by the CEO.

Mr. Fisher reviewed both definitions and the drawing of the proposed subdivision and asked if



the members agree with the Planner's or Mr. Orvis' definition of frontage.

**Vote:** The motion passed unanimously.

**Application for Variance by James Woodman:** to vary Table 2.02 (B) Space and Bulk Standards to reduce front setback requirements to allow subdivision of the lot. Parcel is located at 1173 Ten Rod Road (R57, Lot 13-1) Agricultural District.

Mr. Fisher asked Mr. Orvis if he would be presenting for the Variance on behalf of the applicant. Mr. Orvis said he will be doing the presentation but that he would like to have a full board hear the application and asked the board to continue the hearing to a future meeting. He explained that Mr. DeSantis says he may have a hard time getting a waiver of the subdivision regulations from the Planning Board but if he does obtain a waiver he won't need a Variance. He said he planned to go before the Planning Board before moving forward with the Variance application but that he is not ready to withdraw the application.

Mr. Fisher called for a motion to continue the hearing on the application.

**Motion:** (Pitre, second Morgan) to continue the hearing on the application for a Variance by James Woodman (R57, Lot 13-1) until a full board can be assembled passed unanimously.

Mr. Fisher thanked Mr. Orvis for his presentation and Att. Roman for her assistance.

**Adjournment:**

**Motion:** (Pitre, second Morgan) to adjourn the meeting passed 4-0 at 8:05 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary



Bill Fisher, Acting Chairman