

Zoning Board of Adjustment
August 4, 2020

Members present: Roger Whitehouse, John Russo, Michelle Cooper, Walter Baird, Jason Holder

Others present: Gail Turilli, Carol Baird, Ed Delorey, Kevin Hatch, Chris Stafford—present as a public member

Present remotely: Janet Denison, Sumner Kalman

Roger Whitehouse stated this is the continuation of the appeal from an administrative decision.

Roger read a statement that Walter, who previously had served as chairman for this hearing, had expressed a desire to not preside. The Board respects his wishes and nominated Roger to continue the hearing, acting as chairman. He stated that Chris, the chairman of this Board, is an abutter to the property under discussion and has recused himself from any involvement with the case. Walter will continue as a voting member for this case. He said the Board will not take any questions regarding this but invited anyone to speak if they had an issue with the revision in chairmanship for the case. There were no objections.

Roger reminded those present that the public hearing portion of the case has been closed and there will not be any further questions from the public. The Board will deliberate the case and the audience was welcome to listen.

Roger explained that he did more research on the purported triangular shape of the town lot. He has done a sketch, which he drew with the help from a magnificent lady friend of his who had given him some useful information last night. He also has copies of two old photographs, which he said show the front of the property kicks out, so we don't really have a true straight line for the property. He stated that personally, his only concern is that there is no way to know how that parcel was designed or where it is now. It is unknown where the road was in the 1700s. He said we don't have true lines for the properties. Walter said anyone can do this, but a licensed surveyor has done it and didn't come up with the same thing.

There was a discussion about math and triangles as decided by the court decision. Walter said factors are known from the court decision from which the hypotenuse of the triangle can be found. They include the 99-foot height at the back of the Meeting House, the post at the northwest corner of 75-1 at the entrance of the cemetery, and the one-third acre size. This puts the town parcel in front of the Delridge property along Main Street. Walter explained the size of the triangle mathematically. Roger said that no one can say where it is exactly. Walter noted there was only one survey of the triangular piece after the court decision and that was from Arago.

Referring to Roger's sketch, Michelle said if the Town's land stops here, then that would give over 200 feet of frontage to the Delridge lot and they have over 280 feet. Roger said if you go by his sketch, the Delridge lot has 189 feet and we're 11 feet off. Walter pointed out Roger was not a surveyor and there is a reason why you have registered surveyors do surveying. Roger said a survey should have metes and bounds. Walter said there are metes and bounds. There was discussion about the shape and lines of triangles. Jason stated the hypotenuse is not a straight line. Michelle said even if you go from the stone wall over on the Delridge plan that was originally submitted, #6 in the Delridge book, there is still

200 feet of frontage. Walter pointed out Arago did what the court said and used the monuments that the court gave. Roger responded if you're looking at the new survey that she did after the court was done, it does not exist.

Roger said this has come down to a matter of this Board being asked to decide property lines, which he stated this Board does not do. Roger said we don't dispute or resolve lot line disputes, that's for the courts to decide. If you're going off that new survey, that is new and it becomes a lot line dispute. That has to go back to the court for the court to decide and then it can come back to us if they want it to. Walter asked why the building inspector denied the permit. Roger said he would have to ask the building inspector, he's not here and I'm not going to talk to him. Walter said he denied it because Delridge did not have the 200 foot frontage and based it on Arago's registered plan. Roger said you don't do that because it is not the plan that was approved. The planning approved plan is the plan we should be looking at today. Walter agreed the original plan included a lot that was approved, but the Judge's decision changed all that and Arago did this new survey and recorded it based on what the Judge said. Michelle said that survey should have been done when the abutters were given notice of the subdivision plan. Walter pointed out the Judge's decision was made after the Quiet Title case.

Jason said if there is a lot line dispute then we are not in a position to determine a lot line dispute and he didn't think this is something we can make a decision on. Roger stated his example may have been a little too much.

Roger said he would like to make a motion to overturn the building inspector's denial and if the Town wants to go forward, they can take it back to court and get a lot line adjustment there. Roger gave an example of taking someone's land. Jason said he wasn't sure he'd agree with that synopsis. He said this could be debated but he didn't think that was going to do us justice. He feels we can make a decision once we know that the lot lines have been determined, and it's not up to us. Michelle said she feels we still have to overturn it and at that point the abutters have to decide if they are going to pursue it in court and continue for a cease and desist. Walter then passed out the fact of findings sheet and asked that it be attached to the minutes.

Roger made and Jason seconded a **motion to overturn the denial**. The motion **passed**, 4-1.

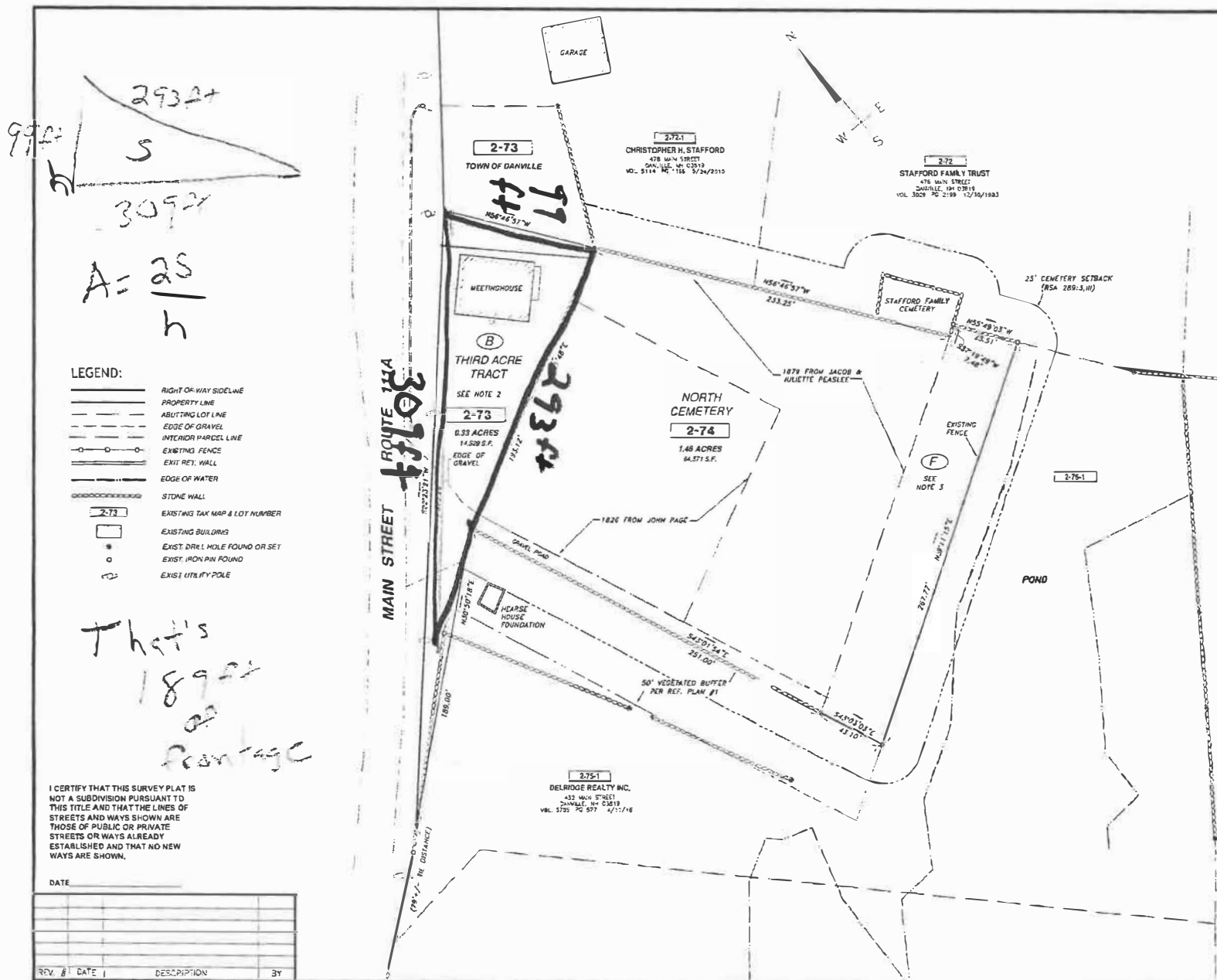
Roger said a notice of decision will be forwarded to the applicant.

At 8:15pm, Michelle made and John seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully,
Janet Denison

Line 30, 35-39

Roger's map



REFERENCE PLANS:

1. MEETINGHOUSE SUBDIVISION PLAN, MAIN STREET - ROUTE 111A, DANVILLE, NH, PREPARED BY CORNERSTONE SURVEY ASSOCIATES, OWNER OF RECORD, DELRIDGE REALTY, INC., DATED APRIL 2013, LAST REVISED 6/22/2016, ROCKINGHAM COUNTY REGISTRY OF DEEDS PLAN D-39762.
2. BOUNDARY PLAN, MAP 2 LOTS 73 & 74, TOWN OF DANVILLE, NH, MEETINGHOUSE & NORTH CEMETERY BY ARAGO LAND CONSULTANTS, L.L.C., DATED JAN 31, 2017, ROCKINGHAM COUNTY REGISTRY OF DEEDS PLAN D-59980.

NOTES:

1. THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY OF CERTAIN PARCELS OWNED BY THE TOWN OF DANVILLE AS DETERMINED BY THE NOTICE OF DECISION, ROCKINGHAM COUNTY SUPERIOR COURT CASE: TOWN OF DANVILLE V DELRIDGE REALTY, INC. ET AL, CASE NUMBER 218-2017-CV-00513, DATED JULY 4, 2019.
2. PLACEMENT OF THE THIRD OF AN ACRE TRIANGULAR PARCEL, "B" FOR THE DANVILLE MEETINGHOUSE, IS BASED ON THE COURT'S DECISION THAT THE BELONGING PROPERTY LINE BEGINS AT THE SOUTHWEST CORNER OF THE STONEWALL OF NORTH CEMETERY. THE THIRD ACRE TRACT WAS DEEDED TO THE INHABITANTS OF HASBEC & BEACH PLAIN, BOOK 87 PAGE 242, DATED JUNE 12, 1755. THE ONE THIRD ACRE PARCEL WAS THE NORTHWEST CORNER OF JONATHAN SANBORN'S ELEVEN ACRE TRACT.
3. PARCEL "F" AT THE REAR OF NORTH CEMETERY, 3' NOT INCLUDED IN ANY RECORDED DEEDS. THE COURT FOUND THAT THE TOWN HAS TITLE OF PARCEL F THROUGH THE DOCTRINE OF ADVERSE POSSESSION.

BOUNDARY PLAN

MAP 2 / LOTS 73 & 74

TOWN OF DANVILLE, NH

THIRD ACRE TRACT & NORTH CEMETERY

470 MAIN STREET

DANVILLE, NH 03819

PREPARED FOR:

TOWN OF DANVILLE, NH

210 MAIN STREET

DANVILLE, NH 03819

SEPT. 13, 2019

ARAGO

LAND CONSULTANTS, LLC

31 Old Iosue Road, Suite 1, Amherst, NH 03031 (603) 732-2008

SUBMITTED BY WALTER BAIRD

Suggested Findings of Fact
Delridge Appeal

This is an appeal by Delridge Realty, Inc. (Delridge) from a decision by the Danville Building Inspector denying a building permit for Map 2, Lot 75-1.

Delridge Realty, Inc. applied for the building permit on January 8, 2020.

The Building Inspector denied the Delridge building permit application on February 13, 2020.

In denying the permit, the Building Inspector stated, "...the frontage total on the site plan submitted by Mr. K. Hatch is incorrect and therefore does not meet the required frontage for approval."

On February 24, 2020 Delridge filed an application for an appeal from an administrative decision with the Danville Zoning Board of Adjustment (ZBA).

A hearing was initially scheduled by the ZBA for March 3, 2020 but was continued by agreement several times because of New Hampshire's State of Emergency Order as a result of the Covid-19 virus pandemic.

A hearing was held by the ZBA on June 23, 2020, which included a public hearing. The public hearing was closed on that date.

The ZBA's task in this matter is to determine whether the Building Inspector's denial of the building permit was correct or incorrect for the reasons he stated.

The Danville Building Inspector is appointed by the Board of Selectmen.

The Danville Building Inspector provides a Building Permit Checklist for building permit applications. The Checklist is also available on the Town's website.

The Building Inspector's Building Permit Checklist requires particular plans to be submitted with a building permit application.

Delridge presented a copy of a one-page building permit application as evidence at the public hearing on June 23, 2020.

The building permit application presented at the June 23, 2020 public hearing did not identify the plans that were submitted to the Building Inspector with the building permit application.

Delridge presented a page from a 2016 Subdivision Plan and a Deed Sketch dated June 2020 as evidence at the public hearing on June 23, 2020.

The Planning Board created a lot of record (Map 2, Lot 75-1) when it approved the Delridge subdivision plan in 2016.

The 2016 subdivision plan Delridge submitted on June 23, 2020 does not show the boundary lines or boundary line measurements for a parcel of land owned by the Town of Danville (now known as Parcel B, where the Meetinghouse is located) that abuts Map 2, Lot 75-1.

Though Delridge has claimed no appeal was taken challenging the frontage compliance with Lot 75-1, there was an appeal of the Planning Board's subdivision approval to the ZBA in 2016. It was ZBA Case #2016-06.

On May 11, 2017 the Town of Danville filed a Petition to Quiet Title in the Rockingham Superior Court.

The Town's Petition included a request to quiet title to a parcel of land owned by the Town of Danville, now known as Parcel B, where the Meetinghouse is located. Parcel B abuts Map 2, Lot 75-1.

On June 4, 2019 the Rockingham Superior court issued a court decision in a Quiet Title Action brought by the Town. No one appealed the court's decision.

The attorneys for Delridge and the Selectmen presented the 2019 court decision as evidence at the public hearing on June 23, 2020.

In September 2019 a licensed land surveyor from Arago Land Consultants (Arago) recorded a boundary plan depicting the shape, location and size of the town's Parcel B, as decided by the court. This boundary plan was submitted as evidence by the Selectmen's attorney at the June 23, 2020 hearing.

The Arago boundary plan indicates the 2019 Superior Court decision placed a portion of the Town's land (Parcel B) between the front boundary line of Map 2, Lot 75-1 and Main Street (Route 111A).

The 2019 Superior Court decision modified the lot of record for Map 2, Lot 75-1 that was created as a result of the Planning Board's subdivision approval in 2016.

The Court's placement of a portion of the Town's land (Parcel B) in front of Lot 75-1 reduced the road frontage for Map 2, Lot 75-1 that is required in the Danville Zoning Ordinance. Without the required frontage, Map 2, Lot 75-1 became a non-conforming lot.

As a non-conforming lot, Map 2, Lot 75-1 is eligible for a frontage variance application, which should be sought before submission of a building permit application.

DOT Right of Way

At the public hearing on June 23, 2020 Delridge presented evidence of a claim by the NH DOT that its right of way extends to the front boundary line of Map 2, Lot 75-1.

Delridge argued at the June 23, 2020 public hearing the DOT right of way qualifies as the road frontage required by Danville's Zoning Article VI, A. which states minimum frontage requirements shall be two hundred feet (200') on a Class I through Class V highway and Article VI, I, 1. which defines frontage as the distance along the lot line dividing a lot from either a public highway excepting limited access highways as defined by RSA 230:44 and Class VI highways.

The Selectmen's attorney testified Article II, Q of the Zoning Ordinance applies. That article defines Lot Line, Front as the lot line separating a lot from a street right-of-way from which legal access to the lot may be obtained.

The Selectmen's attorney testified the DOT right of way that is over a portion of the Town's Parcel B in front of Map 2, Lot 75-1 is a prescriptive easement for the benefit of DOT.

An easement is defined in the Merriam Webster Dictionary as an interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

A prescriptive easement is defined in the Merriam Webster Dictionary as an easement created by the open, notorious, uninterrupted, hostile, and adverse use of another's land for 20 years or for a period set by statute

The NH DOT would be the holder of the easement or prescriptive easement that DOT claims.

Article II, Q of the Zoning Ordinance requires legal access to the front lot line in order to qualify as frontage on a street or right of way.

No evidence was presented by Delridge that it has LEGAL access to the front lot line of Lot 75-1 as the holder of a deeded easement or a prescriptive easement over the portion of the Town's Parcel B that the Court placed in front of that lot.

The deed sketch dated June 2020 that Delridge provided as evidence at the public hearing shows an easement NH DOT claims it holds on the land in front of Lot 75-1, but does not give evidence of any easements Delridge holds that give legal access over the same land for the benefit of Lot 75-1.