

Danville Zoning Board of Adjustment
Feb. 28, 2017
7:30 pm

Members present: Chris Stafford-chairman, Curt Springer, Tara Burkhart, Joe Luna, Roger Denison, Michelle Cooper, John Russo

Excused members: Jason Holder, Roger Whitehouse

Others present: Kevin Hatch, Atty. Sumner Kalman, Atty.. Matt Serge, Cynthia Boisvert-Arago Land Consultants, Walter Baird, David Knight, Carol Baird, Linda Roth

Chris suggested reviewing the February 21 minutes in two sections, the first dealing with the Gorton variance and the second dealing with the Old Meeting House appeal. Curt made and Joe seconded a **motion to accept the first part of the February 21, 2017 minutes as written.** John and Curt abstained. The motion **passed.**

Appeal from an administrative decision made by the Danville Board of Selectmen regarding a subdivision approval made by the Danville Planning Board on September 8, 2016 for Tax map 2 Lot 75, owned by Delridge Realty, which is adjacent to the Meeting House land (Map 2, lot 73) and cemetery (Map 2, Lot 74), which are lots in the Historic District.

Chris excused himself from the table and sat with the audience. Curt designated the voting members for the deliberation of the Meeting House subdivision appeal as himself, Joe, Tara, Roger, and John. Michelle participated in the discussion as a non-voting member.

The Board reviewed the second part of the February 21 minutes. The recording will be reviewed to clarify how Curt introduced the Meeting House discussion. The comment was made that all of the lots in the Historic District (HD) are also in the Residential Agricultural (RA) zone. Line 105 of the minutes mention that Kevin Hatch said no certified letters were sent for the meeting on January 24th. It was clarified that no certified letters were required for that meeting as it was not a public hearing. Joe made and Roger seconded a **motion to defer approval of the February 21, 2017 minutes until they are reviewed as requested by the Board.** The motion **passed.**

Curt reminded everyone that the public hearing was closed and this is the deliberation. Joe asked about entertaining responses from the audience and Curt said this Board will accept points of order but is not engaging in dialogue with the audience. It was agreed that if there are questions of legality, a list may be compiled and agreed upon to be sent to legal counsel.

Sumner Kalman introduced himself as the legal representative for Ed Delorey. He said that it was his understanding that the Board has not made any decision whether or not to rehear the case and that was why he was not at the prior meeting. He said he had a series of points addressing the appropriateness of granting a rehearing and asked for the indulgence of the Board to present

them. Curt said that if the meeting is open for testimony from one party it will have to be opened for all and stated again that the public hearing was closed.

Atty. Kalman asked what notice was given for the January 21, 2017 meeting, and stated that if the decision is not in their favor this is going to the superior court. Curt said that after this Board makes a decision, anyone who has standing can apply for a rehearing. Atty. Kalman said he has a document that he'd like to submit to the Board members. Atty. Serge said he objected to the document being submitted at this meeting. Curt said it was his opinion that anyone can submit anything to the Zoning Board as correspondence. Atty. Serge said that may be true but the document should not be part of the record for this application. Curt agreed and said it is correspondence.

Atty. Kalman asked if Delridge Realty received notice for the January 21, 2017 meeting. Curt said this isn't the forum for discussing this and there are methods of seeking redress. Atty. Kalman said he asked for the document to be part of the record to show that he was at this meeting and asked for it to be part of the record. Curt said a judge will decide what is or is not part of the record and the minutes will show that he was in attendance. Copies of the document were given to the clerk and not distributed to the other Board members.

The points of discussion brought up by Joe at the February 21 meeting were discussed. They are:

1. Was the 24 August 2016 letter read into the minutes

The letter was read aloud at the August 25, 2016 Planning Board (PB) meeting. It was noted that this Board decides on zoning issues. Curt noted that this letter does not seem to have any relevance to zoning issues.

2. What are the conditions given for conditional approval

The conditions were reviewed. None of the conditions appear to reference issues raised by the Heritage Commission (HC) or are zoning issues.

3. Would like to read the minutes from the meetings in which conditional approval and final approval were given

The August 25, 2016 minutes were reviewed. There does not appear to be any discussion about anything regarding zoning in the minutes. The September 8, 2016 minutes were reviewed. The discussion deals partly with lot 25-1 and frontage issues. This is the same lot that is the focus for this hearing.

4. Were the conditions met

It was noted that the PB discussed an issue regarding lack of sufficient frontage. It is unclear if that issue would necessarily be a zoning issue. The lots appeared to have at least 200' of frontage at final approval.

5. Was there any correspondence from the PB to the HC whatsoever

The subdivision plans were sent to the Conservation Commission for comments but not to the Heritage Commission. This supports the notion that the HC was not contacted formally by the PB as an additional town board to offer comment on the subdivision application.

6. Are there minutes for the meeting with Peter Loughlin and Kevin Hatch
No minutes were taken at this meeting. From those in attendance it may have been a discussion regarding title and boundaries.

7. Can this Board see a larger copy of the zoning map
The larger map was reviewed by the Board along with the Arago boundary plan.

8. A copy of the final approval for the Delridge Plan should be reviewed by this Board
A copy of the recorded plan was reviewed by the Board.

9. Delridge contends their application was submitted in May 2016 and the possible issues with the HD were made in July 2016
The PB minutes were reviewed. The subdivision application was first discussed by the PB on May 26, 2016 and the first mention of the HD was during the meeting on June 23, 2016.

10. Mr. Hatch intimated there were delays as a result of the HD issue. We don't know that but there was no testimony given by the town to refute that
Joe said this was simply a statement he made and not relevant to this discussion.

11. The Board members should familiarize themselves with the ZO and the HD ordinance
This was also simply a statement made by Joe.

12. The importance or lack thereof by Atty. Serge's assertion that the issue is only with lot 75-1—it is not known if that's important in this Board's decision making process
Curt said this Board is being asked to review an entire subdivision approval and if the approval is reversed, it affects the whole subdivision.

13. Will our decision have any implications on the other lots
This was answered with the statement above.

14. The issue regarding a split lot is not fully understood
Joe said that the term "split lot" may be confusing. He said the town is arguing that a lot is in the RA zone and, superimposed over that, may or not be the HD. This creates a strip of land that Delridge and the town are both claiming, but ownership is not up to this Board to decide. The HD is like an overlay district just like a wetland district is an overlay. Curt said an email from Atty. Serge was forwarded to the Board after the February 21 meeting. He said that the email claimed that if part of the lot was in the HD then the entire lot needs to be considered as if it were in the HD. Roger said this was mentioned during the February 21 meeting. Joe said he did not read the email since it came after the public hearing was closed. Curt said that the document should be considered as correspondence.

Michelle commented that it had been mentioned before regarding the lot being considered as if it were entirely in the HD. Curt said he understood it to have one strip in the HD but that is not under the purview of this Board.

15. There are a number of issues that this Board could deliberate on, including should the PB have formally involved the HC in their decision making process
Joe said this was also just a statement and may be discussed later.

16. There is some uncertainty regarding the encroachment of the plan and there may be more concerns regarding the impact to zoning
This is also just a statement.

The Board spoke briefly about the Request for Findings from Atty. Serge. Curt handed everyone copies of an email he received from PlanLink dated February 27 at 8:03pm. He said he read the email from Atty. Serge that came after the meeting on the 21st and wrote a generic question to PlanLink. He said the court case cited by Atty. Serge didn't say a party in the case can dictate what the findings are. He said the principle here is that this Board has to come up with what the findings should be. Curt suggested we proceed on developing the points to discuss.

Joe said he did not read the email but did read the request for findings and did not think this Board could determine if they are factual or not. He said this Board can speak about things relative to Zoning only.

Curt said that three allegations were made. 1) The PB failed to comply with the HD ordinance requiring consultation with the HC. 2) The approved plans have a well radius that is within the HD. 3) A septic box is shown going over the line into the HD. It had been mentioned in a prior meeting that if the PB had complied with the consultation part of the requirements, perhaps the other issues would have been taken care of. Curt said he believes that was the spirit of the presentation. It seems to be agreed that there was no formal correspondence from the PB to the HC regarding this subdivision, although the record shows there was involvement to some degree.

Curt suggested that this Board find that the PB didn't comply with the ZO regarding consulting with the PB but not specifically make a ruling regarding the well radius or septic box. This could then be remanded back to the PB with the instructions that the PB comply with the ordinance. No other requirements would be made and this would be left to the PB and the HC to discuss.

Roger said he could agree on certain points. He said even though it is mentioned that the HC was present at the meetings, there was no formal involvement on the part of the PB. He wondered if the PB didn't feel like the HC needed to be involved because the original plan presented was incorrect. He said he was surprised at the number of approximations, assertions and assumptions made during the PB process regarding the plan with nothing to corroborate the claims other than Peter Loughlin's similar assumptions.

Joe said that Atty. Serge said the title issue is not an issue for the ZBA to decide and that is something for the town to deal with elsewhere. He said he is not opposed to saying the PB did not follow the ZO procedure, citing Article 13.b.6.

There was some discussion about wording a motion. Joe said that it may be prudent to have the PB and the HC go through the process as outlined in the ZO. The project may or may not end up back to this Board, but that is not up to this Board to decide.

Curt made and Roger seconded a **motion to reverse the Planning Board's August 25, 2016 conditional approval and the September 8, 2016 final approval of the Delridge Meeting House subdivision, as the Zoning Board of Adjustment agrees the Planning Board failed to formally discuss the subdivision with the Heritage Commission during the decision making process in violation of the Danville Zoning Ordinance Article 13.b.6.** The motion **passed** unanimously.

At 9:16 pm Joe made and Tara seconded a **motion to adjourn.** The motion **passed** unanimously.

Respectfully submitted,

Janet S. Denison