



Office of
The Zoning Board of Appeals
272 Main Street
Townsend, Massachusetts 01469
978-597-1700 X 1722 ZBA@townsendma.gov

RECEIVED
APR 18 2023
TOWN OF TOWNSEND
TOWN CLERK

William Cadogan, Chairman
Sean Pearson, Member

David Chenelle, Clerk
Vicky Janicki, Member

Darlene Sodano, Vice Chair
David Funaiole, Assoc. Member

ZONING BOARD OF APPEALS MINUTES

Wednesday, March 1, 2023 at 7:00 pm

272 Main Street, Townsend, MA 01469

Or remotely accessible via Zoom

Topic: Zoning Board of Appeals
Time: Mar 1, 2023, 19:00 Eastern Time (US and Canada)
Join Zoom Meeting

All are welcome to attend.

1 PRELIMINARIES: votes may be taken.

- 1.1 Call the meeting to order and roll call. David Funaiole motioned to open the meeting at 7:00pm. Vicky Janicki seconded. A roll call vote was taken as follows: YES – David Funaiole (remote), Darlene Sodano (in person), Vicky Janicki (in person), Bill Cadogan (remote). Chair Cadogan appointed David Funaiole a voting member for the purposes of the hearing.
Member Absent: Sean Pearson.
Member Recused: David Chenelle (in person and as an abutter)
Others present: Elizabeth Faxon, ZBA Admin. Asst. (in person), Hartley Pleshaw
TCAM meeting host.
- 1.2 Chairman's additions or deletions. None.
- 1.3 Approval of Zoning Board of Appeals meeting minutes February 15, 2023.
Deferred to the next meeting.

2 PUBLIC HEARINGS: votes may be taken.

- 2.1 **7:10 p.m. – Public hearing** on the application of **John Hussey and Darlene Hussey** for an administrative **Appeal** under Zoning Bylaw §145-64. The applicant is appealing the Building Commissioner's letter dated December 13,

2022, concerning the Building Commissioners decision to deny a Certificate of Occupancy for a single-family home located at 37 Burgess Rd.

Present: Jonathan Silverstein(remote) Esq., representing John and Darlene Hussey Applicants. Ed Howard (in person), David Chenelle (in person), John Hussey (in person), Darlene Hussey (in person), Dana Shattuck (in person), Stephen Marshall (in person). The legal notice of public hearing was read into the record. D. Sodano moved to open the public hearing. V. Janicki seconded the motion. A roll call vote was taken as follows: YES – D. Sodano, D. Funairole, V. Janicki, B. Cadogan. The motion carried. 4-0-0.

Mr. Silverstein presented the case as Attorney for the appellants John and Darlene Hussey, owners of 37 Burgess Road, hereafter referred to as the “property”. He informed those present that Burgess Road is partially public, with a discontinued segment. The property is about 15 acres in size and at the end of the discontinued segment of Burgess Road. The property contains a barn which has recently been converted to a single-family home. Initially, the barn was converted to a single-family residence without a building permit. He commented that the order that is being appealed with this application is a determination by the Building Commissioner that no certificate of occupancy for this residential structure can be issued until a full paved cul-de-sac in compliance with the subdivision rules and regulations of the Planning Board has been constructed. The basis for the Applicants appeal is that the Towns Zoning bylaws import the definition of a road for frontage purposes and Burgess Road is considered a “way in existence” being a road that predates the Towns adoption of subdivision control and has, in the opinions of the Planning Board, “adequate width grade and construction for the intended use”.

He noted that in 2016 the Appellants appeared before the Planning Board to request a determination as to whether the road is adequate for a single-family home. He contends that the resultant determination deemed the way to be adequate subject to construction of a turnaround to the specifications of the highway superintendent. He further stated the Applicants constructed a 25 by 50-foot extension turnaround of the roadway which was inspected by the Highway superintendent who certified in a memorandum dated August 9, 2017, that the requirements were met. An associated Memorandum issued by the Fire Chief in 2016 that provided pre-construction guidelines for the construction of a turnaround adequate to accommodate fire apparatus was also referenced by Mr. Silverstien. The Document was unavailable at the time of the public hearing for reference. D. Sodano asked for clarification of the date of the building permit application and issuance made for the conversion of the barn into a single-family home. Mr. Hussey said that it was the summer of 2022.

Chair Cadogan asked why the Applicant did not originally file an Approval Not Required (ANR) application with the Planning Board for this property. Mr. Silverstein explained that an ANR perimeter plan was not submitted in 2016 because it was not a division of land but rather one 15-acre parcel of which they were seeking a determination of suitability for a single-family residence from the Planning Board.

D. Sodano asked for confirmation that the Memorandum from the Highway Department dated August 9, 2016, was the final approval of the requirements under which the turnaround was constructed. Mr. Silverstein responded it was. It was noted that an occupancy permit was not sought by the Applicant, at the time approvals were received for the construction of road extension in 2016, because the Applicant had not yet built a single-family home and the property was in agricultural use with operation of a commercial Christmas tree sales barn.

The occupancy permit that is now being sought by the Applicant is for a single-family home which has recently been created by the conversion of the existing barn. It was noted that a change of use

had occurred from a Christmas tree sales barn to a residential use of one single-family home. Mr. Silverstein described the turnaround as an extension of Burgess Road for 50 feet, 20 feet wide. The question was asked if the building is now completely converted for residential use, and this was confirmed.

Discussion ensued as to the document referenced by Mr. Silverstein as the Planning Board "Decision" and the validity of that document to serve as a Decision. In response Mr. Silverstein. He stated that a copy of this document was addressed to the Town Clerk and copied to the Town Administrator and the Highway Superintendent. The document contains findings and indication that the Board voted to accept 37 Burgess Road as a buildable lot with a condition of approval and signatures of Board Members. He contended that based on the presence of these elements this is to be considered a formal decision of the Planning Board.

Eric Chartrand, Building Commissioner spoke next and stated that he seeks written confirmation from the Planning Board that the satisfactory completion of the turnaround exists at the property. His next point pertained to the use of the property's private driveway as a functional element of the turnaround and should require a grant of easement for the Town from the owners. He could find no support or allowance for road extension and turnaround that includes the integral use of a private driveway in the Bylaw. He stated that the existing road extension at the property is not in the Fire Chiefs pre-construction Memorandum which established design criteria to accommodate fire apparatus. The criteria established by the Fire Chief allowed that the Applicant may either construct two 50 X 25' side by side lanes beginning at the end of the last driveway or, construct a turnaround in accordance with the turnaround specifications that are laid out in the subdivision regulations of the Town.

Members of the public who spoke were Stephen Marshall 35 Burgess Road who expressed his disappointment that he was not aware of the public hearings that occurred in 2016 and prior to the road extension construction. He informed those present that he was experienced in paving roads and expressed dissatisfaction with the quality of the road extension constructed in 2016 in terms of thickness, asphalt composition, and foundation. He expressed concern about the impact of increased vehicular use by residents using the end of Burgess Road which is narrow and adequate for one vehicle travel. He discussed his surprise about the unconventional process the Applicants followed with regards to the proper application and possession of building and occupancy permits on the property. He was surprised that the building is currently occupied with no certificate of occupancy. He expressed interest in having the road improved to a better quality of paving.

David Chenelle 27 Burgess Road confirmed the specific reason for the Appeal with Mr. Silverstien who confirmed that the Applicant is seeking a determination from the Zoning Board of Appeals overturning the determination of the Building Commissioner to not issue an occupancy permit for a single-family home at the property.

Edward Howard, former Planning Board member seated in 2016 spoke next and stated that what was presented by Mr. Silverstein in his Memorandum to the Zoning Board of Appeals and his presentation to this public hearing is a fair and accurate depiction of the intention of the Planning Board at the time (2016). He further stated that the Applicant did comply with the Planning Boards conditions of approval. He expressed concern that the Applicant may have to incur additional expenses to obtain the occupancy permit for the single-family home on the property.

John Hussey, Applicant described the turnaround as a hammerhead turn where users pass the driveway and then back into the driveway to turn. He stated that the highway department put up "No Parking" signs because they noticed activity of parked vehicles on this section of the road. Dana

Shattuck, 23 Burgess Road spoke about the considerable improvement of the condition of the end of Burgess Road in 2016 when the work was completed. He stated that the Applicant did the work according to the requirements that were made at the time and questioned why this is not acceptable today.

Eric Chartrand then added a few comments relative to the public safety concerns that support his determination. He mentioned that converting the building to residential use requires an adequate space for tuning of school buses, fire apparatus, commercial trucks and similar large heavy vehicles. He questioned the liability of potential damage or personal injury if an accident occurred during a turn in the private driveway. Mr. Silverstein rebutted that there would be no liability by the Town for a motor vehicle accident that occurred on a public road and that no easement is required. He noted that public safety vehicles are granted access to all property public and private by law.

D. Sodano asked about the status of using a private driveway if the property were to transfer ownership and the new owner obstructed the use of the private driveway. Mr. Silverstein responded that this would indeed be problematic however the Town could enforce the condition of the Decision and require the new owner to cease and desist. He added that the Applicant would not be opposed to recording the Planning Board decision document with the Middlesex South registry of Deeds.

The Board scheduled a site visit to the property on Friday, March 3, 2023, at 4:00pm. The following documents were requested by the Board: The Fire Department Memorandum referenced in the public hearing, the Planning Board minutes of December 12, 2022, October 17, 2016, and November 7, 2016.


D. Sodano made a motion to continue the public hearing for 37 Burgess Road Appeal application to Wednesday March 22, 2023, at 7:00pm. V. Janicki seconded the motion. A roll call vote was taken as follows; YES – V. Janicki, D. Funaiolo, D. Sodano, B. Cadogan. The motion carried 4-0-0.

3 ADJOURN: votes may be taken.

V. Janicki made a motion to adjourn the meeting at 8:24 pm. A roll call vote was taken as follows; YES – V. Janicki, D. Funaiolo, D. Sodano, B. Cadogan. The motion carried 4-0-0.

Items on file:

1. ZBA Application for Administrative Appeal 37 Burgess Road dated January 11, 2023.

Respectfully submitted, 

Approved on: April 12, 2023

Elizabeth Faxon

Zoning Board of Appeals Admin. Assistant