

## NELSON ZONING BOARD OF ADJUSTMENT MINUTES

### Continuance hearing for Ed and Rita Schillemat

May 17, 2022

Meeting called to order at 7:00 pm

ZB members present: Jim Newcombe, Robert Roland, Bill Dunn, Keenan Blanchard and Amanda Bedard.

Also present were Ed Schillemat, Brenna Kucinski, Maury Collins, Al Guida and lawyers-Tom Hanna and Chris Drescher.

Jim Newcombe opened the meeting with the ZBA members introducing themselves.

Jim Newcombe said he would get to deliberations shortly but having read the entire package presented by Attorney Hanna, he wanted to discuss the process he went through to try to further clarify the alternative development question as he feels it is key to this case. Jim states they had very little to work with at the first 2 hearings except the fact that Gordon Peery came to the first hearing with the information that the subdivision in 1990 was an alternative development. The 9/13/90 minutes were the final document available in the subdivision and it states all the requirements in granting the subdivision and it made it pretty clear being able to build depended on the quality of the road. There is also no evidence that any of the 6 lots needed or obtained a variance to build. There was no evidence that the 2<sup>nd</sup> building on the Svhillemat lot needed a variance. Jim said he had walked the property with Ed Schillemat and Jim had no density or population concerns as everything was very spread out. The location of the 5<sup>th</sup> proposed dwelling is spaced far away from any the other buildings. Jim referred to RSA 674:33 regarding zoning decisions not setting a precedent. Jim also said the other lots are probably not going to build additional structures because of location and acreage limitations. Jim then touched on the minutes of 10/10/89 and how the strip subdivision looked like it was about to be approved but neither party were happy with the plan. The minutes of 12/12/89 had proposed 5 lots with 180' of road frontage each. This was the 1<sup>st</sup> meeting to discuss an alternative approach. At that time Article 12 was Article 26. The back and forth discussions of the subdivision was still at an impasse. On 1/23/90 the PB discussed 4 lots with a private driveway and 4 lots with 2 private driveways. This was new territory for the PB so they enlisted the advice of the town attorney. There was a letter sent to the PB by the town lawyer but that record cannot be found. Section 25 equal to section 11 today, seemed definitely about alternative developments. Keenan discovered in the Nelson master plan on page 25 the

following: The Future- to date the only use of alternative development is the Lehi Lane property, where cluster homes sharing a common road and common conserved property behind them, was approved. The Planning Board believes this is a good concept, but will be examining the language and implications of the legislation to ensure that it most effectively serve the interests of the town, and in particular, as a device for the preservation of open space. The Master Plan was entered into the record.

Jim was reminded to read a letter submitted by the select board, expressing once again their concerns, to be entered into the case record. Tom Hanna received a copy of the letter which he read to himself and commented that he fully applauds the select board desire to change some of the zoning ordinances.

**Jim made the motion to go into deliberation at 7:26 PM. Robert seconded.**

Jim asked for the boards individual opinion on if the issue of this being an alternative development or not. Amanda, Jim, Keenan and Robert all agree the master plan has confirmed for them that it is an alternative development. Jim explained for him it explains all of the structures. Bill Dunn referred to 11:1 and 11:2 of the zoning ordinances and his interpretation of the last sentence where it states after the alternative plan is set up it is equal to a conventional plan which would mean it follows the zoning ordinances and at least needs a road frontage variance. Robert says he never thought it needed a variance and he has struggles with that from the beginning. Jim referred to the last sentence of the 9/12/90 PB minutes which changed his mind on the need for a variance. Keenan says the purpose of road frontage in planning is space preservation and safety components. The subdivision stated the road agent had to approve the road for the above stipulations before any building permits were to be issued. Keenan also says as far as a cluster development, Article 11 doesn't coexist with Article 12 and the PB and the road agent approved the road for building. There is no record of any of them having to get a variance for road frontage. In the 1/30/90 minutes Gordon Peery addressed the Schillemat subdivision road frontage and acreage. Gordon urged the board to think outside the box and just make sure they meet the acreage requirements where basically 2 acres fulfilled the separation requirement as well as lot 7 being common ground, which is owned by Ed Schillemat. Robert called for a **vote on needing a variance for road frontage. Jim- yes Amanda- no Bill- yes Robert- no Keenan- no**

- **DECISION- No variance required by a vote of 3-2**

**Amanda-**In reading Article 11 it states an alternative development will require the landowner to provide a minimum of 2 acres per dwelling unit. Ed has the 2 acres for this 5<sup>th</sup> dwelling unit and as Keenan stated he also owns the common ground. Amanda added based on how the road was built and there being nothing in Article 11 saying a variance is needed she has concluded no variance is needed.

**Keenan**-The records are clear to me this was an alternative development and according to the PB minutes I don't believe it needs to be a Class V road as in normal situations. As far as the issue of a variance for road frontage I don't believe Article 11 would exist if it needed road frontage.

**Robert**-Agrees with everything Amanda and Keenan said. The history shows no one having to get a variance to build. Pg 25 of the master plan pretty clearly state a common road and 2 acres were required per dwelling. With the cumulative acreage total taken into account no variance is needed. Article 11 and other Zoning Ordinances need to be examined and tightened up. Robert also wanted the record to show he took offense to the select board letter that was read earlier as it implied the PB, being all new members, made a willy nilly decision without understanding the facts. Also addressing the letter, Amanda commented on the select boards concerns of setting precedent, with the fact that Lehi Lane is the only alternative development in Nelson so no precedent is being set. Keenan said everyone needs to view what the PB was trying to create and not just the words on the page. He believes the PB had the towns' best interest in mind. Keenan submitted the master plan into the record referring to page 25. Keenan stated the ZBA went with the information they had before them and put a lot of effort into their previous decisions. Keenan believes no precedent is being set as road frontage is not an issue with an alternative development. He referred to the letter from Gordon Peery describing the private drive and how there was no history when this concept was developed.

**Bill Dunn**-because of Article 11 saying after the alternative development is approved the plan goes back to the ordinances. Bill believes because Lehi Lane is not a class V road a variance is needed. Bill wasn't saying he would or wouldn't vote for the variance but he thinks one is definitely needed.

**Jim**-Jim thought Tom Hanna's argument for no variance being needed was very powerful. Jim said he could see arguments for both sides, variance or no variance. Jim voted for needing a variance because if granted he believed it would be easier to defend in further court action.

**Chris Drescher suggested, referring to RSA 674:33 II, that the board take a vote to reverse the select board decision to require a variance to issue a building permit. Jim made the motion and Amanda seconded. Vote 4-1 in favor**

**Deliberations were ended at 8:14 PM**

Other ZBA business deferred to next meeting

Meeting adjourned at 8:15 PM

Respectfully submitted:

Karen Castelli, Zoning Board Clerk

Jim Newcombe \_\_\_\_\_

Amanda Bedard \_\_\_\_\_

Robert Roland \_\_\_\_\_

Keenan Blanchard \_\_\_\_\_

Bill Dunn \_\_\_\_\_