

Minutes
Hill Zoning Board of Adjustment
07 November 2007

Board members present: Robert Helmers, Dave Kane, Shaun Bresnahan
Gerry Weinert was disqualified because he is a water commissioner, not present.

Applicants: Helen Smart, Dorothy Reinert (Caroline Robie Trust), Catherine Currier (Century 21 CLR)

Public: Gerard Desrochers

The public meeting to deliberate on the Caroline Robie Trust request for a variance was opened at 7:03 p.m.

Mr. Helmers stated the board had not drafted the findings of facts at the last meeting and the board should do so now.

Findings of Fact:

1. the 2.5 acre lot does not meet the 3 acre minimum of the rural residential district
2. the lot has sufficient frontage on Murray Hill Road
3. the lot existed prior to the enactment of the zoning ordinance, but there is no grandfather clause in the rural residential district
4. the lot is adjacent to the town well
5. the 400 foot sanitary buffer of the town well extends across over half of the property
[note: Mr Helmers had originally said over most of the property, but the applicants objected, so the board agreed to state about half]
6. applicant is looking for permission to build so that they can sell the property
[note: applicants interrupted, noting that the intent is to build a home, sale of the lot could result in other uses of the site; they cited an example that the horse farm across the road could purchase the lot and store manure there; Mr. Helmers then added ...] as a residential lot
7. the lot is located in the Wellhead Protection District

The board had recessed the last meeting to look into a few matters. Mr. Bresnahan had met with the selectmen. The selectmen had requested the power to swap or buy land at the last town meeting, but the warrant article was rejected. The warrant article had been made in general terms and did not specify this property, although the warrant article was, at least in part, a response to the posting of this property for sale. The selectmen had not proposed a warrant article specific to this property. Mrs. Reinert commented that the posting of the warrant article came after they had met with the selectmen. Mr. Bresnahan finished by noting that a warrant article specific to the purchase of this property by the town could still be made at a future town meeting.

Mrs. Smart then asked if the water commissioners could start the process of holding a town meeting for the town to decide on the matter. Mr. Desrochers noted he could not speak for the water commission. There was a brief discussion between Mrs. Smart and Mr. Desrochers on how to start the process. Mr. Helmers stopped the discussion as it was a matter between the applicants and the water board and was not relevant to the variance deliberation.

Mrs. Currier began discussing the 400 foot sanitary buffer around the well. Mr. Bresnahan noted that septic systems within the 400 foot buffer are not optional, even if an easement does not exist.

Mr. Helmers stopped discussion of the buffer zone, noting that this was a public meeting to deliberate on the variance request. The public hearing had been closed and he did not wish to reconsider all the matters that had been presented at the public hearing.

Mr. Helmers stated that it was not in the power of zoning board of adjustment to require a land swap or sale as a condition of the variance approval. The board has to act in relation to the zoning ordinance. Similarly, in matters of the well sanitary buffer and setbacks for wetlands and septic systems, the role of the zoning board is not to administer state regulations. The role of the zoning board is to determine how this particular property relates to the variance criteria set by the courts.

Deliberation began with Mr. Helmers asking for general comments from the board. Mr. Bresnahan stated that he was concerned that the board was being asked to increase the value of the lot. Mrs. Currier disagreed that the value of the lot would be increased and noted the lot is assessed as a buildable lot. There was a brief, tense, discussion between Mr. Bresnahan and the applicants regarding the value of the lot and the assessment.

Mr. Helmers noted that the hardship, as stated by the applicants, cannot be considered a hardship because they are designating the zoning requirement for which they are seeking a variance as the hardship. They needed to demonstrate something significant about the property. He added that what was unique about the property was its proximity to the town well and that there were concerns with the health and safety of the well.

Mr. Kane did not feel that all the alternatives had been fully addressed. Options for a specific warrant article to address the purchase of this property by the town and discussion with the water commissioners were still reasonable alternatives. Mrs. Reinert commented that it was the selectmen who had directed them to the zoning board and that they had been working with the selectmen's board for some time.

Mr. Bresnahan said he did not feel that the request meets the criteria that substantial justice be done.

Mr. Helmers noted that the general sense of the board was to deny the variance and the board agreed. The following motion was drafted.

Motion to deny the variance request by the Caroline Robie Trust for the following reasons:

- 1) the uniqueness of the property is its proximity to the well which represents a potential threat to the health of the well and the public that uses it
- 2) the variance is contrary to the spirit of the ordinance because the zoning ordinance clearly intends to protect the town well.

Mrs. Currier berated the board about actions the town should have taken in obtaining easements in the sanitary buffer and about how the applicants were treated by town officials and boards in being shuffled from board to board. Mr. Helmers noted that the matter has only recently come to the zoning board. Mrs. Currier continued that the applicants had been manipulated by the selectmen.

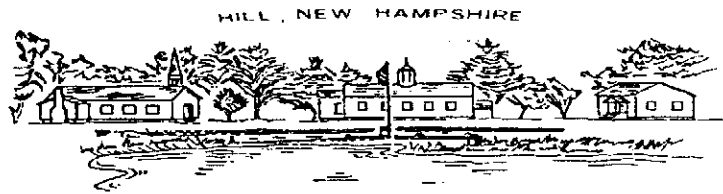
The motion was re-read, seconded and passed by a unanimous vote of the board.

Mrs. Smart asked if they needed to appeal to superior court. Mr. Helmers replied that he was not sure. The applicants could apply for a re-hearing, but that would bring the matter back in front of

the zoning board. Otherwise the matter would have to be appealed to the superior court. Mr. Helmers recommended that the applicants seek their own legal counsel as how best to proceed.

Public meeting adjourned at 7:35 p.m.

Town of Hill
Zoning Board of Adjustment
P.O. Box 236
30 Crescent St.
Hill, NH 03243



NOTICE OF DECISION

Case No: R10-08 Robie Trust

You are hereby notified that the request for:

a variance from Article V Section C of the Hill Zoning Ordinance to allow residential development on a substandard lot of 2.5 acres in the rural residential district (Tax Map R10 Lot 8)

has been **DENIED**, by a vote of at least three members of the zoning board of adjustment.

Reasons for Denial:

1. the proximity of this property to the town well represents a potential threat to the health of the well and the public that uses it should the property be developed
2. the variance would be contrary to the spirit of the ordinance because the zoning ordinance clearly intends to protect the town well.

Robert Darcuving Holmes
Chairman,
Board of Adjustment

10 November 2007
Date

Note: The selectmen, any party to the action or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677. This notice has been placed on file and made available for public inspection in the records of the ZBA. Copies of this notice have been distributed to: the applicant, Board of Selectmen and Town Clerk.