

APPROVED

**Board of Selectmen
8 October 2009 – Work Session
Minutes**

4:00 p.m. – Chairman Rachel Hatch called the meeting to order. Present were Chairman Hatch, Selectmen Betty Ann Abbott and Don Guarino, Town Administrator Tim Warren and Clerk Lois Dionne. Also in attendance were ZBA Clerk Annette Andreozzi and Planning Board Clerk Desiree Tumas.

Chairman Hatch explained that the purpose of the meeting was to discuss the status of the request to use Mary Butler Lane, off Allens Mill Road, as access to property purchased by Michael and Yvette Gordon.

Tim distributed packets, which included RSA 674:41, which governs the issuance of building permits on Class VI roads, a copy of the assessment card and map of the property that shows where the existing house, that was torn down was located, correspondence from Laura Spector, from Town Counsel's office, regarding building with frontage on a Class VI road, a copy of the septic design for the new home the Gordons wish to build, and the proposed location of the new house and septic system. Also included in the packet was the driveway permit that was issued by Road Agent Bryon McSharry for the barn (Curriers barn) on Rte 140 end of Mary Butler Lane. Tim stated that the reason for the inclusion of the driveway permit was that there had been a question as to whether it had been issued by the town or the state. The town issued it because Mary Butler Lane is a town road. Chairman Hatch asked if the issue had been brought before the Selectmen when the permit was issued. Tim replied that it had not.

Selectman Abbott asked the relevance of that. Tim stated that Brett Currier felt that it set a precedent that Mary Butler Lane was used as an access for a driveway.

Another item included in the packet was a copy of the Planning Board meeting of Thursday, June 12, 2003 explaining the reason for Mary Butler Lane being used as access to the residence on the other side of Rte 140.

Chairman Hatch stated that it was either use Mary Butler Lane, or have a shared driveway. Selectman Abbott noted that at Monday night's Selectmen's meeting, when she had told Mr. Currier that she had thought that DOT had given him a choice of having a shared driveway or using Mary Butler Lane, he had said that wasn't true, but according to the planning board minutes, it is true. The planning board minutes state "Mr. Currier informed the Board that he met with Randy Talon from DOT and learned that the State does not recommend the proposed access due to its close proximity to the existing

driveway. He suggested that the applicant have a shared driveway or use Mary Butler Lane to access the new lot. Mr. Currier stated that he is not interested in a shared driveway so he will most likely use Mary Butler Lane as the State recommended.”

Selectman Abbott stated that the reason the planning board said he had to use Mary Butler Lane was because Brett said he didn’t want a shared driveway. Tim added that it should have been the choice of the Planning Board, not Brett.

Tim said the real question is whether or not we give the Gordons permission to use Mary Butler Lane as their driveway, or require them to put in a new driveway that comes out on Allens Mill Road. He said that either way, they need to ask the Planning Board for their review and comment. Selectman Abbott noted that it wouldn’t be to use Mary Butler Lane as the driveway, but, rather, as access to his driveway.

Selectman Guarino said if the Selectmen decided tonight that the Gordon’s have to put in a driveway from Allens Mill Road (Class V Road) we wouldn’t need any approval from the planning board.

Chairman Hatch was concerned that, without knowing it, the planning board might have set a precedent in the past by allowing the usage of Mary Butler Lane. She said the road agent, at the time, should have come to the Board of Selectmen before issuing the driveway permit. Chairman Hatch said we have zoning in place today; if they had bought the property and gotten a permit for renovation of the building, there would be no issue, but they didn’t. She said the house had been demolished; it is a whole new configuration for the house they are putting up, and she didn’t feel using Mary Butler Lane should be an option.

There was discussion about advice received from town counsel regarding consistency and reducing nonconforming lots.

Tim said the fact that nobody lived in the house for a number of years is a difference. He said the road had deteriorated, until it had been recently upgraded. Chairman Hatch and Selectman Abbott noted that the road had been substantially upgraded. It was much more than repairs.

Desiree Tumas asked how long the house had been abandoned, and if the abandonment of use of that driveway applies, if the house was abandoned for the statute required number of years, then that use of Mary Butler Lane would go away with that. Selectman Abbott asked what the number of years was in the statute. No one was certain.

There was much discussion on the RSA, whether a precedent had been set, the access safety issue, the need to upgrade the road to a Class V standard and the possibility of opening the property up for further subdivision. Other issues of discussion was whether the ordinances say you have to access your property from a Class V road, or just need

road frontage on a Class V road, and that the new house couldn't be built on the same footprint without going before the ZBA because it would not meet the setbacks for the current zoning. Selectman Guarino said he had previously spoken with Mr. Sanderson

from LGC, and was told that as long as we follow the rule of having the planning board look at it, and with the approval of the planning board and Board of Selectmen, access could be gained from a Class VI road, but the property owner would have to sign a waiver of Municipal Responsibility. There was concern about setting a precedent if they should allow access from Mary Butler Lane.

The fact that the property has not been used for a dwelling for a number of years, that it has frontage on a Class V Road, and that RSA 674:41 prohibits building permits on a Class VI road were also items of concerns. Tim stated that Mr. Currier, as the previous owner, had gone to the planning board to have the zone for that lot changed. At the 2007 Town Meeting, it was voted to have the road-front access determine the zone that the lot was in. The lot was 2/3 in the rural zone, and 1/3 in the village zone when it had originally been subdivided in the early 1980s. The zoning has changed since then which required the frontage to be in the rural zone, therefore, all that lot should have been determined as rural, not village. Rural zoning requires more frontage, so he would have had to go before the ZBA to obtain a building permit.

Annette stated that if the Selectmen allowed Mr. Gordon to access from Mary Butler Lane, they should indicate that he could not subdivide his lot, because then he would have a non-conforming lot because he would be subdividing the 125 acres on a Class V road. She felt they should make this very clear to him.

There was a brief discussion about Annette's statement. It was clarified that the subdivision couldn't happen if access was from Mary Butler Lane, but Mr. Gordon could go to the planning board to get permission to build a class V road off Allens Mill Road and to subdivide the property. Annette agreed, but said he couldn't subdivide the property and make his house lot a non-conforming lot.

Desiree Tumas felt that if the Selectmen allow the Gordons to access from Mary Butler Lane, based on the regulations, they would be setting a precedent.

Selectman Abbott asked what the arguments are to support the Selectmen insisting that the Gordon's driveway access Allens Mill Road.

Chairman Hatch stated that Mary Butler Lane, in the past, was used for a dwelling that has been demolished and before that had not been lived in for over ten years. Therefore, Mary Butler Lane had not been used for 10+ years. The property owner has sufficient frontage on a Class V road to build a single-family dwelling. Tim added that RSA

674:41 prohibits the issuance of a building permit or construction of a building or buildings if the access is on a Class VI road.

Chairman Hatch stated that she knows the question of why a driveway was allowed to be installed on Mary Butler Lane on the right hand side of Rte 140 would be brought up. She said that is because the planning board made that decision; Mr. Currier did have an option of a shared driveway, which he did not want, and the planning board, for whatever reason, gave him permission to do that. Rachel stated that Mary Butler Lane was paved up to the driveway; the rest of the road is dirt. It was stated that Brett had requested and received permission from the Selectmen to pave that section of the road.

Desiree was unsure of the RSA number, but stated that there is an RSA that does address abandonment of use, and how that, whether it is the same person that owns it or a new owner, if you have abandoned the use of the property for the required amount of time that the statute outlines, everything is void, and you have to comply with the current regulations. Desiree was asked to try to find the RSA.

Selectman Guarino said if we could find the RSA that discusses abandonment and losing the access, then that is a major reason for denial of the request to use Mary Butler Lane. Don asked if Mr. Gordon had a year in which to rebuild his house from the time it was taken down in the same footprint. Annette said that doesn't apply in this case, because the Gilmanton ordinance says you only have those rights if the house came down in a fire or a natural disaster. Continuation of rights does not exist except for fire or natural disaster; it does not apply to demolition.

Chairman Hatch said the Selectmen are upholding our zoning ordinance by following it. There is not a problem with the property; Mr. Gordon has a valid building lot for which he could apply for a building permit with access from a Class V road.

Chairman Hatch stated that Mr. Gordon purchased that lot knowing that the lot was correct to be able to get a building permit to build a single-family dwelling. The Mary Butler Lane access issue came after the property owner purchased the lot. He has asked us if he can access it, and we have discussed it for over an hour, have researched the zoning, have dissected all the information we have been given, and she thinks they have come to a point where they need to make a decision.

Selectman Guarino said he did not feel comfortable making a decision unless he knows that rights have been lost because the building was abandoned.

MOTION – Selectman Abbott moved to vote in favor of sticking to the ordinance and causing them (Gordons) to build a driveway off the Class V portion of Allens Mill Road, subject to our confirming from legal counsel, that the rights associated with the prior location are gone due to abandonment.

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Don said if they find Mr. Gordon has rights, then they would have to readdress this, but agreed that if they find the rights are gone, they will require access from the Class V road.

**Selectman Guarino seconded the motion with the stipulated contingency.
Motion passed 3-0.**

5:10 p.m. -MOTION – Selectman Abbott moved to adjourn the meeting. Selectman Guarino seconded. Motion passed 3-0.

Respectfully submitted,

Lois Dionne