

**TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, April 15, 2009, AT 7:00 PM AT THE DOVER TOWN HALL:**

**PRESENT:** Chair Marilyn VanMillon  
Member George Wittman  
Member Anthony Fusco

Also in attendance was Secretary to the Board, Maria O’Leary, and Attorney Michael Liguori of Hogan and Rossi.

Chair VanMillon called the meeting to order at 7:00 pm and began with the Pledge of Allegiance.

Chair VanMillon read the first item on the Agenda as follows:

DISCUSSION – **Ten Mile River LLC** – Z 2008-05 – The applicant seeks a reversal or modification of the decision of the CEO citing Sections 145-13; 145-14; 145-32, 145-35; 145-57 of the Town of Dover Zoning Law.

**MOTION:** Member Wittman made a motion to set a public hearing for the Ten Mile River LLC application for May 20, 2009; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye                      Member Fusco – Aye  
Member Wittman – Aye

**MOTION:** Member Fusco made a motion to set the escrow fee for \$250; seconded by Member Wittman.

VOTE: Chair VanMillon – Aye                      Member Fusco – Aye  
Member Wittman – Aye

Chair VanMillon read the next item on the Agenda as follows:

DISCUSSION - **PRENDERGAST** – Z 2009-03 – The applicant seeks to appeal Sections 145-30 B. and 145-11 B. of the Town of Dover Zoning Law. The requested 12.7’ area variance would, if granted, allow the applicant to subdivide a piece of land without meeting the required 50’ front yard setback for a corner lot in the SR District. This property is located at 48 Sprague Road on tax map #7059-04-810295 & 7059-00-820299.

In attendance were the applicants, Joseph Buschynski and Debra Kaufman of Bibbo Associates, LLP

**Mr. Buschynski:** We represent Michael Prendergast, the owner of a little over four acre parcel on Sprague Road. The property is two parcels, a smaller .4 acre parcel and the larger 3.6 acres, together 4+ acres; existing two bedroom dwelling with out buildings, barns. The proposal by Michael Prendergast was to subdivide the property into three lots, creating one lot around the existing residence and two new lots to be served by a new private road. We’ve discovered that the ordinance calls for a front yard setback to the structure from the standpoint that we created a corner lot; we now have this lot with

frontage on both Sprague and the proposed road, thus requiring 50' from the centerline to the house, which actually is provided on Sprague Road, but for this (new) road location, we wouldn't achieve that 50' setback. The reason for our road location is two-fold; right now there's a driveway, it's a pathway, into the property at this location (pointing to the map); secondly, and even more importantly, is we are creating a subsurface sewage disposal system in this area to serve our proposed Lot 3; otherwise, we would make that shift to comply with the 50', but we need this area for the septic system, and consequently we're asking for the Board's consideration. The justification that the offer was that in creating that setback deficiency of about 13', we really are still typical of the setback for many other homes in the neighborhood.

Member Wittman: Is there a reason why you discounted having the access up that part of the parcel (referring to the map).

Mr. Buschynski: The slope of that terrain.

Member Wittman: I think I know where this property is, it's very steep slopes in the back. I realize what you're saying about creating a corner lot, which you get involved with different setbacks for that, but I thought that was only for a public road, this is a private driveway.

Attorney Liguori: I have to take a look at that because I wasn't sure if it was going to be a public or private lane.

Member Wittman: I just wondered if the same requirements could be enforced upon a private driveway as for a public road.

Mr. Buschynski: Actually, we haven't looked into that because when we started the process, we were informed that there could be no public road created; the Town would not accept it.

Member Wittman: If that's the case and the Zoning says that that's what the intention is for a corner lot with two public roads, then it seems you can do what you wanted back there. I'm assuming that you went through the Planning Board and they must have looked at this, but then again, maybe they just assumed that it was a corner lot on two public roads.

Mr. Buschynski: We've been to the Planning Board on numerous occasions and the issue only recently came up that said, "You're creating a corner lot."

Attorney Liguori: A corner lot is defined as, "A lot at the junction of and abutting on two or more intersecting roads." It doesn't define "roads". And then it says, "front", which is, "The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides facing the street shall be considered the front."

Member Wittman: I'm not sure if that's even defined in the Zoning; they sort of assume any road.

Attorney Liguori: Joe, for the purposes of frontage for Lot 2, all of your frontage is in the "T", is that correct?

Mr. Buschynski: That is correct.

Member Fusco: 145-74, Road/Street, "A public or private way for pedestrian and vehicular traffic, including avenue, lane, highway, or other way, excluding a driveway or common driveway." And, this is a common driveway, correct?

Mr. Buschynski: It is a common driveway if I'm providing frontage for Lot 2 from its right of way.

Attorney Liguori: Let's go back to frontage because road frontage is, "Distance along a street line, measured at the front of a lot." We don't have a definition of a street.

Member Fusco: It says, "Road/Street".

Attorney Liguori: Joe, what standard is that private, whatever we're going to call it, built to? Is it going to be built to a common driveway standard or is it going to be built to a private...

Mr. Buschynski: It's fairly new, the rural road standards.

Attorney Liguori: If it's built to rural road standards, then it is a road. If it's built to common driveway standards, then it would be appropriate to characterize it as a common driveway. In a situation like this, the Town Board has a policy that it will not adopt any new roads, which means that, in theory, no new lot in this Town could acquire frontage, which means that no body could develop, which is an issue. So, the question is how do we characterize this road, street, lane, way, however it's going to be called? I think we really need to look at how it will be constructed. If it will be constructed to the new road standards, let's say it's a rural road or a street standard, or a thorough fare standard, these are criteria that are greater than a common driveway standard. Common driveways are generally 12' wide; if this is going to be built to a larger standard, then that would be the appropriate way to characterize it. I'll render an opinion before the next meeting.

Member Wittman: I thought about that when I read it over this afternoon, and said they've created their own road, it's not a public road, why should it have to go up to the same standards that a public road, which would be incurred on that property by being on two public roads.

Attorney Liguori: Before you said the distance from the side of the house to the centerline, just make sure, I believe it's the side of the house to the lot line for the variance.

Mr. Buschynski: The dimensional requirement is 50' from structure to centerline of the road; that's note 6 on the dimensional chart.

Member Wittman: This 17.3' from here (pointing to the map), is that from the end of the house or the end of the shed.

Mr. Buschynski: End of the house. There's a 40' right of way, so it's 20+.

**MOTION:** Member Wittman made a motion to set a public hearing for the Prendergast application for May 20, 2009, at 7:00 p.m.; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye                      Member Fusco – Aye  
          Member Wittman – Aye

**MOTION:** Member Fusco made a motion to set the escrow fee for \$250; seconded by Member Wittman.

VOTE: Chair VanMillon – Aye                      Member Fusco – Aye  
          Member Wittman – Aye

**APPROVAL OF MINUTES** - Approve March 18, 2009 minutes.

**MOTION:** Member Wittman motioned to approve the March 18, 2009 minutes; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye                      Member Fusco – Aye  
          Member Wittman – Aye

Chair VanMillon: On the May Agenda, we're going to start looking at the procedures that we follow for meetings, maybe eliminating the discussion and fees, and how we do things, but it's going to be in the discussion phase.

**MOTION:** Member Wittman motioned to adjourn the meeting at 7:20 pm; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye                      Member Fusco – Aye  
          Member Wittman – Aye

Meeting adjourned at 7:20 pm.

Respectfully submitted by:

Maria O'Leary  
Secretary to the Zoning Board of Appeals