

**East Haddam Zoning Board of Appeals
River House, 7 Main Street, East Haddam, CT
SPECIAL MEETING October 23, 2014**

Commission Members:

Stuart Wood, Chairman

Joseph Daigle

Diane Quinn

Richard Fiala

William Smith

Laurie Alt

1. **CALL TO ORDER:** Chairman Stuart Wood called the meeting to order at 7:04 p.m.

2. **ATTENDANCE:** Stuart Wood, Laurie Alt, Greg Daigle, Richard Fiala, Diane Quinn

ABSENT: William Smith,

Mr. Wood appointed Ms. Alt to vote for Mr. Smith this evening.

3. **MINUTES:**

Motion by Ms. Quinn, seconded by Mr. Daigle to approve the minutes of August 28 and September 25, 2014 regular meetings. Motion carried by unanimous vote.

4. **BILLS:**

Hartford Courant \$179.32
(legal notice)

Mr. Daigle, seconded by Mr. Fiala and carried by unanimous vote to pay the bill as presented.

5. **PUBLIC HEARING**

Ms. Alt read the call for the following public hearing:

Appeal #1065 – Barry and Winnie Edmonds, 174 Falls Road, requesting a variance of reduced lot area for seasonal to year-round conversion, under Section 24.1.1 of the East Haddam Zoning Regulations. Assessor’s Map 75, Lot 130.

Mr. Charles Dutch and Attorney David Sherwood representing Mr. and Mrs. Edmonds was here to ask for a variance to convert their residence from seasonal to year-round use. The problem with qualifying is that the lot is 7500 square feet, so they need a variance for the area requirement. The house is winterized, has heat, and has an approved year-round septic system.

Attorney Sherwood did not believe there would be any environmental harm. Mr. Wood asked if there was reserve septic capacity, to which Attorney Sherwood responded affirmatively.

Mr. Daigle asked the acreage. Mr. Ventres stated the requirement for seasonal conversion is one-half acre. Attorney Sherwood stated they have 7500 square feet. Mr. Daigle asked if the applicant had attempted to acquire any additional property. Attorney Sherwood stated the applicant acquired the driveway, which was a private road when the subdivision was developed. The applicant acquired this driveway at a tax sale. The applicant formed an association for the driveway to serve the other seven property owners who wish to join. If they merged this driveway, they would meet the requirement. Mr. Ventres suggested this could have been approved at site plan review application at the Planning and Zoning Meeting but the Planning and Zoning Commission said that the applicant should seek a variance first.

Mr. Daigle asked the location of the septic system. Mr. Dutch showed the location, which was in the driveway. Attorney Sherwood stated they had approval for this. Ms. Quinn stated they would be driving over the septic. Mr. Dutch stated this was an enclosed concrete structure. Ms. Quinn asked if this was a one-person association. Attorney Sherwood explained that anyone who uses the road and has property there has the ability to join.

Mr. Doug Tedford asked what would happen to the association members if they joined and there was later an issue with the septic system. Attorney Sherwood stated the Edmonds would be liable for the repairs. Mr. Ventres stated when an easement is granted, the easement owner would be responsible for the maintenance. In this case, the Edmonds' are the easement owner.

Ms. Delores Tedford has been an abutting property owner for 44 years. She understood that this was legal, but she asked in the unforeseen future, if it was conceivable that the two properties could be sold separately. Mr. Daigle stated if they were separate owners, they could be sold separately. Attorney Sherwood stated they could be. The LLC owns the driveway, and theoretically, it could be sold, although he did not know who would want to buy it. The association membership is limited to the seven property owners.

Ms. Alt stated even though it may be sold, the easement for the septic would still go with the property. Mr. Wood noted that if no property owners joined the association, he asked if that person could sell it. Attorney Sherwood stated they could. Mr. Wood asked if the other owners could traverse the road. Attorney Sherwood stated the association must provide access to the seven properties who have rights to these properties and lake. Ms. Alt asked if the rights of the individual property owners would remain, should this driveway be sold. Attorney Sherwood confirmed they could.

Mr. Wood asked if this would be maintained as a separate entity. Attorney Sherwood stated that someone has to own this right-of-way. The town does not want it. The prior owner did not maintain the road and did not pay taxes on it.

Mr. Wood asked if this property would be guaranteed access for any of the property owners adjacent to it. Attorney Sherwood stated this would be in perpetuity.

Ms. Tedford asked if an outsider could come buy the road. Attorney Sherwood stated they could not prevent these property owners from accessing their properties. Mr. Ventres stated that is a separate piece of property. If he wanted to buy this road and put in a dock, he could apply for a permit, and if approved, install a dock; however, the other seven property owners could still access it. Mr. Ventres stated this particular driveway has been an issue since the 1980's. The Edmonds' purchased the property. If they combined the lots, they would have over one acre. This is a unique situation.

Responsive to inquiry by Ms. Tedford, Attorney Sherwood explained that if a property owner wanted to join the association, if it came time to sell it, she would have a vote. Mr. Wood stated if someone bought the driveway property, it would come with a pre-existing access for the others to use it. Ms. Tedford asked if an outside person bought this property, they would have the same rights. Mr. Wood stated they would have access, but could not block the access of the others.

Mr. Daigle stated someone would not likely buy a road to property they don't own. Mr. Tedford stated they would have the access to the beach. Mr. Ventres stated whether this is an association or not, that is not this board's decision.

Ms. Geraldine Davis was confused by this application. She stated this road was unique due to the situation. She lives next to the house that owns the road. She understood that the association was going to buy a road, but the Edmonds' purchased it. Mr. Ventres stated this went to Planning & Zoning, and it could have been approved but it would not solve the association problem.

Mr. Wayne Gallagher, 68 Falls Road asked if this is granted that there is a full-time residence. He stated in the winter, there could be problems trying to pass with other vehicles. Sometimes in the summertime, it is difficult to pass through. In the winter-time, it would be impossible to pass. Attorney Sherwood asked how he gets to his house. Mr. Gallagher stated in years past, he has plowed it, but last year, he did not.

Attorney Sherwood stated the Edmonds' would be more than happy to plow the road.

Mr. Ventres stated this came to P&Z with a Code-complying septic system area. Planning & Zoning suggested that something be done for the other residence for a long-term solution. That is why the association should be formed. Attorney Sherwood stated the P&Z thought it would be better for the road to be owned by an association.

Mr. Tedford stated this is about regulations. They do not have the required amount of land. Attorney Sherwood stated this is why they were before this commission seeking a variance. If they join the lots, they have no association. The association would allow members to have a say in the maintenance, upkeep, etc.

Ms. Denise Gallagher stated someone could ask the Edmonds' why no one cared to join the association, but declined. Mr. Ventres stated that was not this commission's function.

Mr. Daigle asked about the association. Attorney Sherwood stated the Edmond's are the creators of the association. He explained that the association is its own entity. Mr. Daigle asked who pays taxes on the road. Attorney Sherwood stated the taxes are paid by the association. Mr. Ventres stated that no one could force the merger of two properties owned by two separate entities.

Mr. Daigle asked about two lots on the plan. It was noted that those two were seasonal. Mr. Daigle asked if this would create a precedent for the other two seasonal structures to build septic systems under the road.

Mr. Tedford stated there are many cottages on the lake that are seasonal. He believed this would be setting a precedent for others. He believed this was not a small variance, but would be a massive change. Mr. Ventres stated the P&Z kicked this back to try to do the right thing.

Ms. Quinn asked how the septic system got there. Mr. Ventres stated the LLC installed the septic. Attorney Sherwood stated they got proper approval. Ms. Quinn noted that everyone who owns property there is using this road. She noted that no one was maintaining the driveway.

Mr. Fiala asked who would be responsible for maintaining the driveway. Attorney Sherwood stated the association may maintain the driveway, but is not required. Typically, the association meets once per year and decides what projects to do. Anyone who has deeded rights to the driveway is invited to join.

Ms. Alt stated she is familiar with associations and septic.

Ms. Tedford stated all these years, the road was cleared by the people, until the last few years, when everything changed. Ms. Alt added that even if the Town or an association owns a road, you are not guaranteed passage. She noted that she lives on a scenic road, and the oil trucks could not get down her road in the winter.

Ms. Davis was concerned about how an emergency vehicle would get down a road. She did not know who would buy a road just to form an LLC. No one else wanted to join the LLC. Mr. Wood stated this was directed by one of the town agencies as something that seemed to be something practical for the property owners.

Ms. Denise Gallagher, 168 Falls Road stated there was certainly a benefit for the Edmonds' to have a year-round home. She asked what would happen if the Edmonds' sold their house, but not the driveway. Attorney Sherwood stated they were not deciding about selling the driveway. This was done at the request of the Planning & Zoning Commission. Whether the Edmonds', the association, or the town owns the road, you

cannot guarantee that the property will not be transferred. Mr. Wood stated they could not sell the right to traverse the road. Ms. Alt stated whoever owned the road, the rights to others do not go away. Attorney Sherwood confirmed if people live there, or are guests, they have the right to traverse this road.

Mr. Wood asked if it would be possible to “un-ravel” the LLC. Both Attorney Sherwood and Mr. Ventres stated it could be done. Discussion ensued regarding the purchase of the driveway. Attorney Sherwood stated if people wanted to own the road together, they could join the association. It was noted that this property was purchased at a tax sale. Mr. Ventres stated the property was legally advertised and open to the public.

Mr. Dutch stated there are reasons why you would not want to combine these pieces of property. The property has been in the Edmonds’ family for a couple of generations. The road is a liability. If it was an association, it would take liability away from the homestead. If one of the property owners drove off the road, they could sue the Edmonds, if the Edmonds kept the property.

Mr. Tedford stated it seemed to be an attempt to get past a minimum requirement of land mass. He stated they did not have the required land, and it was not allowed in this town.

Attorney Sherwood stated this is similar to a condominium association. Mr. Daigle stated this road should never have been sold to one person. Mr. Ventres stated this was not the way the statutes work. Mr. Wood stated it went to public auction. Mr. Wood recalled that there was a similar situation with a flag shaped lot some time ago. Mr. Daigle stated in order to make this right, they would have to combine these two properties. Mr. Ventres stated the reason this is before this commission is because the Planning & Zoning commission requested it so an association could be formed.

Ms. Tedford stated it was agreed by the seven neighbors that they were going to purchase the property together. That is why they have been trying to sort this out. She stated that may not be relevant to this board, but that is the history.

Mr. Tedford asked the square footage of the lot. Mr. Wood stated it was 7500 square feet. Attorney Sherwood confirmed this. Mr. Tedford asked the requirement for a year-round lot, to which Attorney Sherwood stated it was 21,780 square feet.

Mr. Daigle asked the footprint of the house. Attorney Sherwood stated it conformed to all of the requirements except for the minimum lot size, but he did not recall what the square footage was. Ms. Alt stated it has a Certificate of Occupancy. Mr. Daigle believed it was more than 10%. Mr. Ventres stated it is not part of this discussion, because it already exists.

Ms. Davis stated this is a unique situation that was not done correctly.

Ms. Tedford thanked everyone for their patience in this process.

Motion by Ms. Alt to close the public hearing. Motion seconded by Mr. Fiala, and carried by unanimous vote.

Discussion: Ms. Quinn asked if they should go out to look at this property. Mr. Ventres noted that they could not, because they have already closed the public hearing.

Ms. Alt stated they have complied with the State Health Department requirements. They have enough property if they merged the land. They did not have to form the association, but chose to do so. In her opinion, it meets all of the requirements.

Mr. Daigle stated he was not a fan of septic systems in the road, nor is he a fan of building on this small of a parcel.

Ms. Alt noted that to have a Code-compliant septic system is important.

Motion by Ms. Quinn to approve Appeal 1065 – Barry and Winnie Edmonds as stated in the legal notice for the following:

- 1. This application was reviewed by The Planning and Zoning Commission and it was requested by The Planning and Zoning Commission for the property owner to create the road as an association.**
- 2. The septic system has been approved by State and Chatham.**
- 3. There is no other available land to purchase to make their lot bigger.**

Seconded by Ms. Alt. Motion carried by unanimous vote.

Mr. Wood stated there is a 30-day period. 15 days for ZBA to put in paper. 15 days for appeal. They will receive a certified letter. Until receiving the letter and filing the letter on the land records it is not an official variance.

6. ADJOURNMENT

Motion by Ms. Alt to adjourn at 8:43 p.m., seconded by Ms. Quinn, and carried by unanimous vote.

Respectfully submitted,

Holly Pattavina