

Westmoreland Zoning Board of Adjustment  
Minutes of July 15, 2015

These minutes were approved by the Board on August 19, 2015.

The Westmoreland Zoning Board met on Wednesday, July 15, 2015 at the Westmoreland Town Hall.

Present: Peter Remy, Chairman; Barry Shonbeck, Vice-Chairman; Brian Merry; Nancy Ranson; Ernie Perham.

Chairman Remy opened the meeting at 7:00PM and asked the Board members to review the minutes of June 17, 2015.

Ernie Perham noted that the third paragraph should have read, 'it was the home of his mother, Marion Perham' and the last line of the paragraph should have read 'where Richard would live'.

Barry Shonbeck made a motion to approve the minutes as amended and Brian Merry seconded. All voted in favor.

Chairman Remy opened the hearing to discuss an appeal to the Board by Andy Russell, an abutter to the Derjue property located at Map R10 Lot 17, to reconsider its vote of May 18, 2015 to approve two Variances applied for by Mr. Derjue. Mr. Remy distributed copies of the appeal which was prepared by Attorney Tom Hanna. The Board members read the pages of the appeal which took approximately 30 minutes. (See attached appeal.) During that time Mr. Shonbeck asked the clerk for a copy of the map submitted by the Derjues at the May 18th hearing.

When the Board members finished reading the appeal Chairman Remy asked the clerk to read a page sent by the Town Attorney, Silas Little, from the New Hampshire General Court discussing the Voluntary and Involuntary mergers of lots. The page follows:

Mr. Shonbeck asked if the town had posted the notice as required by the regulation. Nobody on the Board knew the answer.

Chairman Remy opened the discussion by saying that the Board had been presented with a representation that the property in question consisted of four separate deeded lots which had never been merged either voluntarily or involuntarily. He asked the clerk to read the statute which had been provided by the town attorney Silas Little, NH Regulation 674:39-aa dealing with this subject. He said that the statute says that a person's actions can affect the status of whether lots are considered merged or not. The clerk read the following document aloud.

Chairman Remy called the Board's attention to part c of Section I, and said that there certainly was evidence that the lots had been voluntarily merged. Mr. Russell's appeal had raised three issues, the first being that a shed had been built on one of the interior lot lines; the second being that the septic system was designed for one 16 acre lot; and the third, which would need to be checked, that the town has given the property only one physical address. The owners may or may not have known that allowing the property to be treated as one lot would mean it could become one lot. He invited discussion from the Board members.

Mr. Merry said that his issue was whether there were four lots or one lot, as he had brought up at the reading of the previous minutes. He said that the Board had taken Attorney Davis' word that it was four lots and now the Board was being asked to take Attorney Hanna's word that it was one lot. He would like the town's attorney to clarify the issue for the Board.

Chairman Remy said that the statute that was read by the clerk had come from Attorney Little and was meant to clarify for the Board how they could decide the issue based on the evidence provided. The Board had voted to grant the Variances predicated on the 'fact' that the property consisted of four lots. Now the statute has provided new evidence.

Mr. Shonbeck agreed that the Board's vote to grant the Variances to Mr. Derjue was based on the idea that it was four separate lots.

Chairman Remy wondered if the Derjues had any inkling that their lots were merged either voluntarily or involuntarily.

Mr. Perham asked when the Zoning Ordinances were enacted. Chairman Remy said that it was some time in the 70's. Mr. Perham said that this land purchase pre-dated that so these lots would be grandfathered in.

Chairman Remy agreed that they were grandfathered but there are some other issues that the Board now knows about that must be examined in light of the discussion about voluntary and involuntary merging. For example the septic system that was put in was presented to the designer as meant for one lot. If it weren't, there might have been questions about how close it was to the lot line and would have needed to come before the Zoning Board for a Variance. Somehow it was presented to the septic designer as one piece of land. And that would have been the time to say, "No, it's only a two acre lot." But that was not said.

Mr. Merry asked if Chairman Remy was saying definitively that the property was one lot.

Chairman Remy asked the clerk to reread the section of the statute which pertained to actions by the owner.

The clerk read from Section 1.c "Voluntary merger" and "voluntarily merged" means a merger under RSA674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged, such as, but not limited to, abandoning a lot line."

Mr. Remy said that the fact that a shed had been built on the lot line and the septic system was designed for a much larger lot appeared to be actions which merged the lots. Mr. Merry said, that being the case he would have to recommend granting the rehearing.

Mr. Remy and Mr. Shonbeck questioned an issue raised by Attorney Hanna of 'unaffiliated ownership'. Neither was quite sure what it meant.

Mr. Shonbeck also questioned whether there was a tax advantage to having the property being taxed as one lot rather than four. His own experience as a property owner is that there is not.

Mr. Shonbeck said that there were strong arguments for granting a new hearing, especially on the issue of the septic system design. Mr. Perham also agreed.

Chairman Remy called for a motion. Mr. Merry so moved to grant the rehearing. Mr. Shonbeck seconded and all voted in favor.

Chairman Remy set the rehearing for the next regularly scheduled meeting, Wednesday, August 19, 2015 at 7PM for Board business and 7:30 PM for hearing to begin. The clerk was asked to notify all the abutters to the Derjue property about the rehearing.

Nancy Ranson moved to adjourn and Brian Merry seconded. All voted in favor. The hearing was adjourned at 8:10PM.

Respectfully submitted by Jackie Cleary, Zoning Board Clerk