

**BOARD OF ADJUSTMENT MINUTES – MAY 19, 2005**

Present: L. Harten, Chairman  
K. Bauer  
B. Levenson  
K. Taylor  
R. Westergren  
Shirley Carl, Recording Secretary

Excused: K. Maher

Note: Two prospective alternates were in attendance: Fletcher Seagroves and Ron Pieper

Case # 11-05 - Paul Kerouac, 32 Mossman Rd. – Map 57, Lot 9 - Variance – Article V, .  
“R”, Article V, Para. 5.044.A to create a residential lot without frontage on a principal route of access.

Motion to approve \_\_\_\_\_

Seconded by \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

45 Chairman Harten opened the meeting at 7:30 PM by stating that the hearings are held in  
46 accordance with the Town of Milford Zoning Ordinance and the applicable NH Statutes.

47  
48 The notice of hearing/abutter list was read into the record. Present – Paul Kerouac, Brian  
49 Kerouac (son); abutters – David & Priscilla Wheeler. A note was received from Jim  
50 Mossman (see file).

51  
52 B. Kerouac commenced with the presentation:

53 1. His dad P. Kerouac owns approximately 30 acres and has consented to let he and his  
54 family subdivide out approximately 2.2 acres in order for him to construct a single-family  
55 residence.

56 2. The property is situated at the Hollis/Milford Town line, one-half mile west from  
57 Laurel Hill Rd. (off Rte. 122). Access will be from Laurel Hill Rd. to Mossman Rd.

58  
59 P. Kerouac explained that he has maintained the road for approximately 30 years at no  
60 expense to the Town. In 1988, P. Kerouac was granted all the necessary permits to build  
61 a conservation pond. Brian would like to build a house at the top of the hill. Reference  
62 was made to several plans showing the location. L. Harten questioned the existing  
63 private way/right-of-way and if it only goes to access Paul's house. P. Kerouac  
64 responded in the affirmative but it goes beyond his house about 200' and will have to be  
65 extended in order to reach the proposed lot. The extension would have a surface such as  
66 Mossman Rd. now has. K. Bauer asked how many houses now exist on Mossman Rd.  
67 Response being there are now three homes and this would be the fourth.

68  
69 The property owned by the Wheelers is located in Hollis – Map 41, Lot 10. They were  
70 asked if they had any concerns/issues with the request and their response was no.

71  
72 B. Levenson asked if there is a written recorded agreement regarding this road and that it  
73 is shared by three people and indicating the responsibility of maintaining the road. P.  
74 Kerouac responded in the negative. He has a 50' right-of-way up the road and believes  
75 everyone does. B. Levenson continued by stating that this is a private way and the Town  
76 doesn't have the responsibility to maintain it but someone has the requirement to  
77 maintain it, people have right of access to it and pass over it. Presently, that is fine, but  
78 over time things will change and when the property has new owners, and if there is no  
79 agreement, that could create havoc. P. Kerouac stated that Mr. Morgan gave the deed to  
80 the road to Jim Mossman but there is nothing in writing regarding right of passage, etc.  
81 everything was verbal. P. Kerouac stated that both he and Jim Mossman maintain the  
82 road. Paul has actually upgraded the road and every couple years he grades it and puts  
83 crushed stone down. K. Bauer echoed B. Levenson's concern regarding the maintenance  
84 of the road. She then alerted them that this is a common driveway (formerly known as a  
85 private way) serving more than one residence. In our ordinance the common driveway  
86 definition states that you have to have frontage and serve no more than two residences.  
87 You are now requesting a fourth residence. She needs to be convinced regarding this  
88 matter. Regarding the definition of a common driveway, it was mentioned that private  
89 way isn't referenced. K. Bauer stated that she had spoken with K. Lynch, this is a private  
90 road and he is calling it a common driveway.

91 P. Kerouac explained that Mossman Rd. is a private right-of-way and there are many  
92 roads in Milford that have been private right-of-ways and this is probably maintained as  
93 good as many and has always been maintained and never cost the Town any money. Paul  
94 wasn't aware of the two dwellings being allowed on a private way/common drive.  
95  
96 Chairman Harten referred to a letter received 5/17/05, from Jim Mossman and was read  
97 into the record, and he refers to frontage on Old Farm Rd. P. Kerouac responded that the  
98 original name was Old Farm or Old Cart Rd. He believes it was Old Farm to the top of  
99 the hill and then Old Cart Rd. When Mr. Morgan gave Mr. Mossman the deed to it, he  
100 hung the sign up indicating Mossman Rd. and everyone had a right-of-way. When Mr.  
101 Mossman built his home in 1972 it was called a principal route of access. As an abutter,  
102 he has no objection K. Bauer then commented that a principal route of access is one that  
103 is maintained by the Town.  
104  
105 B. Kerouac does have some documents regarding rights to pass and will make copies for  
106 the file. B. Levenson advises P. Kerouac that a document should be made regarding the  
107 maintenance, etc. of the road and record it in the Hillsborough County Registry of Deeds.  
108 B. Kerouac was told by K. Lynch to go to Hollis to see if they had any problems with the  
109 response being in the negative. The Hollis building inspector will confirm this in writing  
110 to K. Lynch. B. Levenson stated that the only person that can grant/deny passage to the  
111 land is Jim Mossman, owner of the road. K. Bauer asked if there has ever been a request  
112 from either town to get this to be a town approved road and maintained as such.  
113 Response was in the negative.  
114  
115 K. Bauer asked if this is to be considered an area or use variance, response being "area".  
116  
117 P. Kerouac then addressed the five criteria (see file) with some further comments over  
118 and above the written ones.  
119 Additional comments  
120 #2 – he thinks it would be an injustice if it wasn't granted because of the availability of  
121 land and the location on the private right-of-way which has been maintained by the  
122 owners for 30 years without cost to the town.  
123 #3a – No hardship to the Town. The hardship would be that we have this property  
124 accessible by a right-of-way and it can't be used. B. Kerouac added that by granting the  
125 request would allow us to utilize the space.  
126  
127 B. Levenson further stated that without looking at the map, deed and metes and bounds,  
128 what shows on Paul's little plan as compared to the Town plan; the Town's plan shows  
129 the right-of-way ending just before his lot. Paul's plan shows it going into the front of his  
130 lot which, in actuality, is the Ciardelli lot. He doesn't know what it is like from Laurel  
131 Hill all the way up; now you are asking for further right-of-way which isn't even on your  
132 property. You can't even grant your son a right-of-way. He would need something  
133 further in his deed that would probably have to come from Ciardelli's. B. Kerouac stated  
134 he had another drawing that his father gave him and can't be found at this moment. He  
135 attempted to explain the situation. The old right-of-way used to be called Old Cart Road,  
136 he doesn't know anything about Old Farm Rd. as mentioned by J. Mossman but it

137 seemed like Old Farm Rd. stopped and Old Cart Rd. picked up. He went to the Town of  
138 Hollis in an attempt to clear up this matter but was told to go the Public Works Dept. B.  
139 Levenson advised that they go the HCRD and start to reference plot plans and work back.

140

141 3b. We would have to build a new road but it would be cost prohibitive and unreasonable  
142 for one person to accomplish. We have maintained the road without any burden to the  
143 Town for over 30 years.

144

145 4 & 5 – see file

146

147 K. Taylor had some questions regarding the amount of frontage – 598’ versus 400’. K.  
148 Bauer advised that it be kept in mind that the amount of frontage of Paul’s lot stays at  
149 200’ after the subdivision is completed.

150

151 L. Harten questioned if this minor subdivision would be hampered by the Interim Growth  
152 Management Ordinance? K. Bauer stated that she had spoken with K. Lynch and this  
153 subdivision would not be held up by the IGMO.

154

155 K. Taylor asked what the frontage would be on the new lot. P. Kerouac responded he  
156 didn’t know at this time. B. Levenson commented that there isn’t any road and he  
157 doesn’t know why any frontage is needed. K. Bauer feels it is an issue. B. Levenson  
158 stated that if we approve it, we are technically approving an illegal lot. Since there isn’t  
159 any road, frontage is not an issue; there is no road for which it has to conform to... K.  
160 Bauer asks if we should say that it should have the same frontage as if they were on a  
161 principal route of access.

162

163 B. Levenson asked the point regarding frontage – reduce density. K. Bauer continued by  
164 stating that by keeping the frontage even on a common driveway is in keeping with  
165 reduced density in the rural district. She doesn’t agree with his statement that there is no  
166 frontage required because it isn’t a road. L. Harten interjected that there is always the  
167 possibility it may become a Town road at some time in the future. P. Kerouac asked  
168 what the frontage would be if it was on a Town road – response being 200’. P. Kerouac  
169 stated that he will proceed to make a covenant regarding maintenance and will divide the  
170 lot so that we have the proper frontage if this ever becomes a Town road.

171

172 No further questions/comments – open portion of the hearing was closed at 8:25 pm

173

174

175 Board discussion regarding the criteria:

176 **1. Could the variance be granted without diminishing the value of abutting**  
177 **property?**

178 B. Levenson – doesn’t feel it would diminish the value of abutting property. K. Taylor,  
179 R. Westergren, K. Bauer and L. Harten agree.

180

181 **2. Would granting the variance be of benefit to the public interest?**

182 K. Bauer – no

183 K. Taylor – yes  
184 B. Levenson – public interest says we can, under certain circumstances, have residences  
185 serviced by a common driveway. These circumstances, in this case, are not met because  
186 we don't have a conforming lot. The Town has a regulation that a dead-end road should  
187 not be any longer than 600' due to safety reasons. He doesn't see where we are serving  
188 any public interest by putting another house at the end of a 1200' right-of-way. The  
189 Town isn't looking to have long dead-end streets any longer. The right-of-way is 1,000'  
190 long now and they are looking to extend it another 200'. He is opposed.  
191 R. Westergren – doesn't think it would be against the public interest and would vote yes.  
192 L. Harten – there would be no derogatory impact to the public interest if granted.  
193

### 194 3. Unnecessary hardship

#### 195 a. The area variance is needed to enable the applicant's proposed use of the 196 property given the special conditions of the property.

197 K. Bauer – there is unnecessary hard ship for the applicant to go ahead with the proposed  
198 use of the property because they don't have frontage on a principal route of access.

199 R. Westergren – definitely a hardship; it would be landlocked.

200 K. Taylor – yes

201 B. Levenson – We have a 20 acre parcel that the applicant is enjoying presently. The  
202 applicant is asking us to create a landlocked piece of land which is against the ordinance.  
203 No hardship because there already is use of the land; we are talking about creating a new  
204 lot which would not conform to any of the requirements of the zoning ordinance which is  
205 contrary to the ability to grant a variance for an illegal use. We are here to grant relief  
206 but his attitude would be different if there was not already a use on this property and not  
207 to create a second parcel. There is already a use for the 20 acres. Doesn't believe there is  
208 a hardship. K. Bauer referred to the criteria for a "use variance". The same question  
209 speaks to interfering with reasonable use. The criterion for "area variance" doesn't  
210 address it in the same way. It doesn't bring up whether the proposed use is reasonable or  
211 not. B. Levenson then stated that the lot doesn't exist as of yet.

212 L. Harten believes there is a hardship.

213

#### 214 b. The benefit sought by the applicant cannot be achieved by some other method 215 reasonably feasible for the applicant to pursue, other than the area variance.

216 K. Bauer – yes, she can't see how the applicant can achieve what he wants in any other  
217 manner.

218 B. Levenson. K. Taylor, R. Westergren and L. Harten are in agreement with K. Bauer.  
219

220

### 221 4. Would granting the variance do substantial justice?

222

222 R. Westergren – yes – they are creating an additional building lot.

223 K. Taylor - yes – his concern is the frontage but the way it is being discussed is that there  
224 isn't any road as it is being discussed at this time.

225 B. Levenson – it doesn't do substantial justice; there is a beautiful house, pond, there is  
226 use of the lot.

227 K. Bauer – doesn't see any substantial justice gained by creating a new lot on a non-road  
228 with no frontage.

229 L. Harten feels it would do substantial justice; it is a large piece of land. He is struggling  
230 with the road issue; there isn't any road. Granting the variance would be justified.

231

232 **5. Could the variance be granted without violating the spirit of the ordinance?**

233 K. Bauer stated that by creating the lot on a private way/common drive which already has  
234 at least three dwellings on it and this would add a fourth. The intent of the ordinance is to  
235 allow two dwellings on a common driveway. We allow a house lot on a principal route  
236 of access with the required frontage. This lot is not on a principal route of access. The  
237 Town has been firm about the 600' maximum dead-end road length. It becomes a safety  
238 issue and would violate the spirit of the ordinance.

239 B. Levenson – he refers to the ZBA Handbook (Page 16) wherein it speaks to the spirit  
240 and intent of the ordinance and our questionnaire just speaks to the spirit of the  
241 ordinance. He feels intent also needs to be considered. He agrees with K. Bauer. K.  
242 Bauer stated that the spirit of the ordinance includes the intent. Our ordinance has no  
243 intention of developing private roads.

244 K. Taylor – agrees with B. Levenson and K. Bauer regarding the private way access. He  
245 has trouble with the frontage and our laws that say two houses on a common drive. He  
246 would vote in the negative.

247 R. Westergren – not granting this would be against the spirit of the ordinance. He feels  
248 that relief is justified to allow access that would allow another building lot that basically  
249 complies with the other criteria. L. Harten stated that the Board is here to grant relief.  
250 He ran into some opposition from B. Levenson, our primary responsibility is to uphold  
251 the ordinance and what it was designed to do. To him, the single most important aspect  
252 of the requirements isn't the amount of frontage, but rather the principal route of access.  
253 That says we want to be able to get to your house i.e. get ambulance, fire truck or  
254 whatever is required to your house and get out under any set of circumstances. It all  
255 comes down to a health and safety issue. That is the major reason the Town has stopped  
256 granting waivers for the 600' dead-end road issue is because they found out that with a  
257 dead-end road longer than the 600' problems have occurred.

258 K. Bauer stated that we are talking about a right-of-way and there isn't any guarantee it  
259 will be maintained in the future. We will be adding another family with more people and  
260 she sees nothing in the ordinance that encourages developing private roads. We have  
261 private roads that the Town doesn't own but do meet Town standards and can be  
262 accepted as same if requested.

263 L. Harten believes there is a hardship to the property but doesn't think it would diminish  
264 value of any abutting property but he doesn't feel it meets the spirit of the ordinance  
265 because of discussions that we have had.

266 B. Levenson stated that the hardship to the property is because it is in a spot that we don't  
267 allow development to occur i.e. more individual lots on a private way. The land has the  
268 hardship because of where it is located. It is a Catch-22. He added that if this request is  
269 approved, he feels a condition should be attached regarding the right-of-way and road  
270 maintenance agreements, etc.

271 R. Westergren attempted to propose a condition on a possible approval. After some  
272 discussion, the condition was dropped. It was brought up that Mr. Kerouac doesn't own  
273 the road, Mr. Mossman does.

274

275 A vote was taken on an area or use variance. By individual vote, the variance is an  
276 “area” variance unanimously.

277

278 Vote on request as follows:

279

280 **1. Could the variance be granted without diminishing the value of abutting**  
281 **property?**

282 K. Bauer – Yes                      B. Levenson – Yes                      R. Westergren – Yes

283 K. Taylor – Yes                      L. Harten – Yes

284

285 **2. Would granting the variance be of benefit to the public interest?**

286 K. Bauer – No                      B. Levenson – No                      R. Westergren – Yes

287 K. Taylor – Yes                      L. Harten – Yes

288

289 **3. Would denial of the variance result in an unnecessary hardship?**

290 K. Bauer – Yes                      B. Levenson – No                      R. Westergren – Yes

291 K. Taylor – Yes                      L. Harten – Yes

292

293 **4. Would granting the variance do substantial justice?**

294 K. Bauer – No                      B. Levenson – No                      R. Westergren – Yes

295 K. Taylor – Yes                      L. Harten – Yes

296

297 **5. Could the variance be granted without violating the spirit of the Ordinance?**

298 K. Bauer – No                      B. Levenson – No                      R. Westergren – Yes

299 K. Taylor – Yes                      L. Harten – No

300

301 **A motion to deny the request was made by B. Levenson, seconded by K. Bauer with**  
302 **L. Harten in agreement and K. Taylor and R. Westergren opposed.**

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304 **30-day appeal period – June 20, 2005**

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306 **Hearing was adjourned at 9:00 pm**

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