



BERRY SURVEYING & ENGINEERING

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January 3, 2024

NHDOT District VI
Attention: Jim Hewitt, PE
271 Main Street
PO Box 740
Durham, NH 03824

Jim,

Berry Surveying & Engineering (BS&E) has completed our road research on your project located at Route 9. This is in an effort to answer your question related to access rights to the road leading to the garrison on the project site. As you know old roads are a complicated issue so we have attempted to break this down into the simplistic portions to your relevant question.

BS&E Reviewed the following documents:

- A.) The original range maps of Barrington, NH (on file at this office)
- B.) The 1805 map of Barrington by John Cate (on file at NH state archives and this office)
- C.) The 1856 Chase map of Strafford County (on file at the Library of Congress and this office)
- D.) The 1871 Sanford and Everts atlas of Barrington (on file at this office)
- E.) The 1892 Hurd atlas of Barrington (on file at this office)
- F.) The road layouts of Barrington (on file at the NH state archives and this office)
- G.) Various deed references which include chain of title on the existing parcel, all abutting parcels, parcels across NH Route 9 and other important parcels in the area. (on file at the Strafford County Registry of Deeds – SCRD)
- H.) The Barrington town record books on file with the Town Administrator
- I.) Current Barrington Tax Map and the 1991 publication (on file at this office)

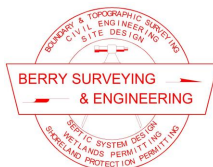
Findings:

- BS&E did not find a formal layout or abandonment for the roadway leading to the garrison. References to the road and its obvious physical nature are noted below.
- SCRD Plan 55-02 prepared by Orvis/Drew also indicates no layout was found.
- In 1833 the section of Route 9 in front of the project site was petitioned for layout and can be found in NH State Archives road layout records Book 2, Page 336. Though not stated in the layout the clear reason for this layout was to replace the road leading to the garrison whereas it is a flatter road with better geometry.

- In 1835 a road was laid out that now encompasses Brewster road, Smoke Street and Cate Road. This can be found in NH State Archives Road layout records Book 7, Page 32. In the Barrington Town record books for 1835 is the original layout for the same road with a full metes and bounds description which additionally mentions leading “across the old road”. Based on the position on the layout, this is referring to the road leading to the garrison in the location of Tax Map 234, Lot 27, currently owned by Lisa Bouchard.
- The Bouchard parcel was surveyed by Fred Drew and Associates and is recorded at SCRD Plan 26-27 dated September 1984. This plan shows the remains of the road leading to the garrison. The bounds of the lot are shown to the north side of the roadway implicating a claim to the road and a form of abandonment.
- Tax Map 234, Lot 30 is the abutting land to the subject parcel to the east. This parcel is commonly known as “Chapel of the Nativity” currently owned by the Roman Catholic Church. Research on this parcel discovered this to be the Oak Hill School building and was deeded to the Barrington School District #3 in two small tracts. The first in SCRD Book 229, Page 378, August 6, 1860 and the second in SCRD Book 229, Page 363, August 11, 1860. The first parcel describes the frontage along the “Old Road leading by the Garrison House” while the second transactions description describes the frontage along “The Road” These deeds are important in that they are likely referring to two different roads based on the date of the deed and the date which the portion of NH Route 9 was laid out along the frontage. The first parcel being directly adjacent to the old road and the second parcel having frontage on the newly laid out road.
- On December 30, 1905 SCRD Book 342 Page 296 the former owner in title to the subject parcel (Haley) purchased the land subject parcel. This description includes the land in the roadbed whereas it calls for the “southerly wall of the road leading westerly by the old Garrison Cellar” The former description of the same property in 1902 described the same boundary as “thence westerly by the old road”
- As noted above, SCRD Plan #55-02 is a plan prepared by Orvis/Drew of Tax Map 234, Lot 28 as the bounds were as of February 1999. The land is now owned by Kent. This plan notes that the parcel was bounded by the southern wall as noted in the abutting deed and also indicates ownership of the road lying with the northerly abutting (subject) parcel.
- SCRD Plan #57-59 is a plan prepared by Orvis/Drew that proposes a lot line revision between Tax Map 234, Lot 28 and the Subject parcel granting the road bed and beyond to the land owned by Kent. There is a second parcel (front triangle) that is also transferred from Kent to the subject parcel, creating the frontage along NH Route 9. Based on the two source deeds these revisions were done irrespective of the presence of the road.

Abstract:

There was an exhaustive effort to locate a layout for the road that leads to the garrison. There was an equally exhaustive effort to locate a dissolution of the same. Neither document was



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found during the research efforts made. It is clear the use of the garrison was for a former community purpose and implies community access but without an express layout is an implied roadway.

In review of the book, "Easements and Reversions" by Donald Wilson, we find that roads that exist in the absence of layouts are eased by prescription. The doctrine of prescription is based on presumption of a lost grant or not grant at all. It is clear with the multiple citing of the "old road" in abutting deeds and new road layouts that the road has existed since the time of the construction of the garrison which is likely to extend to the incorporation of Barrington from 1722.

As noted above, research efforts were made to review town records on the dissolution of the "old road" with no document found. In review of the research, it is clear that the "new road" as referenced in abutting deeds, as petitioned in 1833, was to formally and properly connect the Legislature Road which comprises of portions of Oak Hill Road, Meetinghouse Road and portions through Smoke Street and beyond with a roadway that became Cate Road and the remainder of Smoke Street and Brewster Road.

In review of "Easements and Reversions", it is clear that roads and easements existing by prescription can be abandoned by nonuse. It goes on to say that a substituted way may be evidence of an abandonment. It is clear from the research that all abutting parties have claimed portions of the road over the years as it was functionally abandoned. Many of these claims were done with Planning Board involvement. In this case our plan notes and assumes that the public right to use the old garrison road has been abandoned, however any right that may exist to visit the garrison or gain access to the Kent parcel may still remain. In fact, the owners of the Kent parcel have asserted in the past that they maintain the rear and side of the parcel over the old garrison road.

Conclusion:

The original road in this area of town was the old road which led past the garrison and may or may not have been formalized as town road with a formal layout or abandonment. This would have been prior to the section of Route 9 being constructed and prior to the Kent house being constructed and it is clear the Route 9 connection replaced any need for the garrison road. The question of who might maintain access rights to the road is limited to those that may have historical interest in the garrison. All three of the parcels affected by the former road all have frontage along NH Route 9 and have no need for permanent access over the road and all three have claimed portions of the road. The owners of the Kent home, Tax Map 234, Lot 28 have used the road to maintain access to their septic system in the past, however the applicant has granted them easement rights over the new driveway as part of the subdivision approval process. The owner holds title to the both sides through a conducted lot line revision and therefore holds any reversion rights to the road bed if they were not already entitled.



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Sincerely,
BERRY SURVEYING & ENGINEERING



Christopher R. Berry
Principal, President



Kenneth A. Berry, LLS, PE
VP of Technical Operations



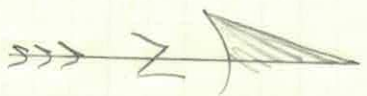
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OLD ROCHESTER ROAD

RANGE ROAD

SCAD BOOK 342, PAGE 296
CROSBY => HALEY
12-30-1905

OLD ROAD LENOIX BY GARISON CECIL
SOUTH WALL
ARTHUR M. CLARK



EDWARDS
HALL

WILLIAM S.
DAVIS

DON HILL
SCHOOL

P.O. B.

ROAD LEADING TO CLARKE'S MILLS

Back Road

± 38 Ac.

OLD ROAD LEADING TO GERRISON CELLAR

SCAD Book 329, Page 182
LYDIA L. HOWE → EVA E. H. CROSBY
5-22-1902

P.O.B.

WALL

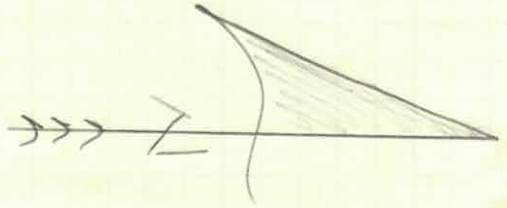
SCHOOL
HOUSE
LOT

TOMAS
WATSON

EDWARDS
HALL



SCAD Book 229, Page 378
 J. Smith => District #4
 8-6-1860



SCAD Book 229, Page 363
 E.H. Auston => District #4
 8-11-1860

