

Zoning Board of Appeals Meeting Minutes

Minutes of March 8, 2017

Hearing on the petition of Staffordshire Properties by Robert Richard of 6017 Pine Ridge Road, Suite 255, Naples, FL for a Variance to amend a variance issued by the Zoning Board of Appeals on December 7, 1972 in an effort to build the final (3) three structures in accordance with the originally approved plans, on property located at 503-505 Stafford Street, Cherry Valley, MA

Members present: David Kirwan, Chair; Vaughn Hathaway, Paul Schold,

Alternate members present: Mary Moore, Jim Reinke, Dick Johnston

Meeting called to order at 7:30PM

Instructions given on the hearing procedures.

Voting at tonight's meeting: Mary Moore, Jim Reinke, David Kirwan, Vaughn Hathaway and Paul Schold

Mr. Johnston read the Notice and Application into the record. The reading of a 4-page letter describing the project, from Brian MacEwen of Graz Engineering, waived.

Submitted into evidence: Registered Plot Plan, return receipts from the Certified Mailing to abutters

Correspondence received: Site Consideration from the Building Inspector and a letter from Michelle Buck, Town Planner that were read into the record by Mr. Kirwan.

At this point, Mr. Kirwan noted for the record that back in August 2016, the Board had a hearing regarding Staffordshire's request to raise the height of the buildings. One of the Zoning Board members, Paul Schold, had recused himself because his son was a member of the construction company for the project.

Mr. Kirwan said prior to this meeting, he had communicated with Mr. Schold to see if it would be necessary for him to recuse himself from this hearing. Mr. Schold told him that his son was no longer part of this project; therefore, there was no need to recuse himself as a voting member of the Board.

Mr. Kirwan opened the hearing to discussion.

Mr. Hathaway read into the record from the Department of Housing & Community Development, Commonwealth of Massachusetts General Laws, regarding amending decisions. It states, "The Zoning Board of Appeals cannot make an exception to an amendment which will change the results of the original decision and make it any different from what was originally granted."

He noted this was specific wording from the Massachusetts Government indicating that the Board cannot approve a substantial change.

In Attendance: George Kiritsy, Attorney representing the applicant and Brian MacEwen of Graz Engineering.

Mr. Kiritsy explained that this was an application to amend a variance issued by the Zoning Board back in 1972. At that time, the Board made the determination the site had satisfied the requirements for a variance, met requirements for a substantial hardship and granted a variance at that time.

The original variance authorized multi-family structures built there over the last several decades. His client, being the fourth owner of this property, has proposed this amendment in efforts to build out the site and complete the project under the original variance.

The contractors for Graz Engineering determined the layout in preparation for a site plan approval. In doing so, they viewed and documented the site as is today.

The site originally laid out in 1972, had the best plan available at that time. Based on several years later, this site can be improved.

Substantively, they are providing the same print, just field alterations that require an amendment of the variance. It is not a substantial change; it's a change in the position of the structures. It's a field change that is necessitated by two factors. The first was to provide access for emergency vehicles, because after review with emergency personnel, they indicated wanting through traffic lanes, turning lanes for the fire trucks, fire lanes, and increased access to all the buildings for the fire apparatus.

Graz Engineering reviewed the plans and recommended relocating the buildings, which required coming back to the Zoning Board for an amendment request.

Viewing the original plan that shows the original layout, access was not provided around the entire length of the building. To accommodate current fire safety standards and provide the best product to the Town, was to redesign the layout, move the buildings slightly, allowing for a travel lane that goes all the way through and allowing access to all the buildings.

They feel this new design was a much better design than what was laid out back in 1972.

Mr. Kiritsy felt this was not a substantial change, but more of field operations, a minor movement of the buildings.

Reviewing the overlay plan, dark magenta outlined the original location of the buildings. They were moving them to the best location on site and still be within the property setbacks. It allows fire lanes to come all the way through, more parking available in back and all will comply with current zoning.

This minor change should be considered a field change and won't have an impact to the neighborhood.

Mr. Brian MacEwen reviewed the engineering design.

The site was surveyed in preparation for site plan approval & developing the site. They overlaid the 1972 plans to the existing conditions currently there and amended the plan substantially locating the buildings to the original 1972 plan.

One of the key factors for the amendment was due to the installation of a public water supply well and pump house in the footprint of one of the structures from the 1972 plan.

The conditions of the site in general, the topography, the out cropping, and the high grades are where one of the structures was to be located. Behind that area is where the original septic system was located for the existing 40-units. That system was in failure and replaced with a new system, which is located on the opposite side of Stafford Street and the original system was abandoned. Looking at the site detail shows no contour in there hardly at all because it was a septic system already flattened out and all the earthwork has been done.

In looking at the site conditions, along with a building overlaying a public water supply well and there is a maintenance building installed within another building outline. Outlined in blue on the map, indicated the structures existing on the ground today.

Mr. MacEwen did not have the exact dates as to when everything was installed, but his assumption was first, the original developer did the units, the strip mall and then the storage building. What they have is one structure of the 1972 layout laying over the well, another structure laying over the storage building and they couldn't make it fit.

With the conditions that exist there now and using the site as originally developed, this was the best plan in order to fit the remaining three buildings and minimize site disturbance.

This would also allow them to develop a loop road through there. When looking at the original layout, the back buildings are segmented out on their own and they are trying to create a loop that will allow access from three different directions.

The same access by the strip mall would remain, with a main access aisle and drive and parking off to the side. The buildings will be located in back, the drive will continue along to an existing gravel cart road that feeds through to an existing small parking lot. They will expand that existing parking lot out to get additional parking.

In essence, they will have created a loop allowing full access to the site and strip mall.

They were not here asking for additional relief under a hardship for a variance, they were before the Board asking to make a minor construction modification that would accommodate the site and minimize site disturbance and make an improved value to the Town.

Mr. Kirwan asked if the placement of the new buildings were any closer to the neighbors that would create a visual impact.

Mr. MacEwen said the only developed area in the neighborhood are the frontage lots along the south side of Stafford Street and those homes are all located close to the road. The remaining land in back is not developed and it is vegetated with hard woods and mountain laurel. Auburn Street is around 1000-feet southwest from Stafford Street. A lot of area around there is not developed.

Mr. Reinke asked if the square footage of the buildings remained the same.

Mr. MacEwen said the building footprints and height will meet all the requirements set forth from the project originally. The new configuration meets all setbacks and parking areas were moved 10-feet off the property line.

Mr. Kiritsy explained the current parking, under the original plan, went right up against the property line. They have increased the distance from abutting properties with the parking.

Mr. MacEwen pointed out on the 1972 plan how close the parking areas were to the property line.

Mr. Reinke asked if the parking spaces met current parking regulations.

Mr. MacEwen said the spaces are 10x20 and access aisles are set to meet code. They have met the requirements set forth in the original 1972 decision and current Town Regulations.

Mr. Reinke asked on meeting the standards on the width of the access around the horseshoe and fire apparatus.

Mr. MacEwen said no they have not met with fire personnel, but explained the access aisles were measured to 24-feet, which is the standard. The main drive coming off Stafford Street measured 32-feet wide, from 28-feet proposed and consistent with what was proposed on the 1972 plan. A lot of this detail, will be provided as part of an engineering analysis and reviewed through site plan approval with the Planning Board.

Mr. Kirwan asked the percentage of impervious coverage from the proposed changes.

Mr. MacEwen said it would be consistent with what already exists. The building envelopes aren't changing and the parking areas will meet the requirements for the number of spaces provided for the buildings. The only paving involved would be the addition to form the loop. He would estimate it to be a minimal increase if any. The intent would be to keep it within the envelope shown on the 1972 plan.

Mr. Schold questioned whether the last 72 units would fit in the three buildings proposed.

Mr. MacEwen said the three buildings were designed within the envelope and height requirements and the intent was to supply the final 72 units as stated on the original permit.

Mr. Johnston noted the only way to accomplish having 72 units, was to go up another story, which would be in violation of the height limitation. The three buildings proposed cannot support 72 units; they can only support 54 units.

Mr. Kiritsy said they were not asking for a change in height or a change in the size of the building. They understood there was only so much that can fit in there.

Mr. MacEwen agreed they were not looking for any additional relief from what was granted under the original variance, structure wise or parking requirement wise.

Ms. Michelle Buck, Town Planner was in audience and Mr. Reinke asked for her opinion.

Ms. Buck felt it was a bit complicated and the reason she sent this to Attorney Cove for opinion was because it's not very often someone comes along wanting to build off a 1972 variance.

Attorney Cove's comment, which was read into the record earlier, was brief and she had nothing further to add to that.

She questioned a request she received regarding a zoning interpretation on this parcel. The request was asking about zoning conformity on the commercial building, existing multi-family units, and splitting the property in two pieces.

Mr. Kiritsy said they had no connection to that request.

Mr. Reinke asked Ms. Buck if there were any concerns, as Town Planner, to how this was laid out, taking the amendment part out and putting aside the legal opinion from Attorney Cove.

Ms. Buck didn't have concerns with the layout and felt the design addressed zoning.

Mr. MacEwen noted on the plan he indicated meeting the requirements per the original 1972 variance, as well as the current Bylaws.

Mr. Schold asked how the owner planned to approach the build out, would it be one building at a time or all three at once,

Mr. MacEwen didn't have an answer, but would probably sit down with the owner to see how they wanted to move forward. Regardless, this property has been through several ownerships since the original developer back in 1972. The Zoning Board granted the 1972 variance that is still in force for the final three buildings. He felt it would be an asset for whoever owns this in the future.

Ms. Moore asked what relief the original owners were seeking in the 1972 variance.

Ms. Buck said for the use for a multi-family.

Mr. MacEwen said in the variance copy provided to them, it talks about site plan concerns more than anything else does. He would anticipate the variance request was for the use for a multi-family. Although that precise wording was not written in that decision, a typical variance decision would have.

Mr. Kiritsy said they were not seeking a change in use because the use will remain the same. They were simply looking to relocate the buildings.

Mr. Kirwan read what the 1972 variance states, "Therefore: All members present and voting, it was unanimously voted to grant a variance to allow Duquette Builders & Realty, Cin. to construct an apartment complex in a Suburban-Agricultural Zone as per plot plan."

Ms. Buck noted that area no longer being zoned Suburban-Agriculture and was now zoned Building Residential-1, which did not allow multi-family.

Mr. Hathaway said the change in the site layout did show a better flow through the site. Although, the statement that the buildings had to be moved because of the location of the well and storage building, he considered as a self-imposed hardship.

He remembered from the 1972 Variance the justification was on the amount of area being left undeveloped and now it seems more of the property is being proposed to be developed.

Mr. MacEwen said looking at the footprint on where buildings were to be developed and the developed area that will be used for the proposed layout had already been developed for a septic system. That was not shown on the deed plan and neither was the well location shown on the plan.

The well was required to be developed for a public water supply when the original developer built the original buildings.

He could not answer why the developer ended up putting the well where it is currently, knowing they had a layout such as this that overlaid where that well was going to go.

He understood Mr. Hathaway's notation on hardship. The storage building was another issue and could be something that can be relocated. A public water supply was another issue altogether, because that was something that had to go through an approval process with DEP.

Mr. Kiritsy said the buildings have been relocated to accommodate the location of the well and septic. The location of the well was required to be a certain distance from the septic. With the old system being abandoned and constructing a new system off-site, opened a portion of the lot that had to be dedicated to septic for development.

This was probably not a feasible alternative not knowing they would have limitations relative to well and septic. With those limitations gone, it brings the portion of the lot that was on septic available for better development.

Relative to a self-imposed hardship, that is not why they are here and was not suggesting that the well or building constitutes a hardship. Hardship already existed on that lot to qualify for the 1972 Variance.

They are proposing a limited change to provide a better product that is not subject to a variance, as much as it is an approval for a field alterations based on current conditions.

This is a better product and if they were to design this today, this is the design they would come in with. This is best location for these buildings on this site. It provides access, through traffic, parking and the best produce for the Town. This is what solid engineering produces in 2017.

Mr. Hathaway said clearly this variance is a use variance, which is no longer allowed in this Town and multi-family is no longer allowed in that zone.

He has a problem with the fact that the Board is talking about modifying a 1972 variance and in 45 years, a lot has changed.

Mr. Kiritsy said the question to the Board is, this plan being a better plan and if this is a better plan, the variance should be modified to accommodate the better design.

Mr. Reinke said regardless of the well, the project was going to be built the way it was originally proposed, but it won't be built to today's standards.

Mr. Kiritsy agreed.

Mr. Kirwan said the question to the Board at this point was is it a substantial change from the 1972 layout. He asked if changes can be allowed to a Use Variance.

Mr. Reinke felt there was a benefit by the amount of time this project has taken and for the safety of the residents. Regardless on the number of units there, there will be a lot of people who will live in that complex area. He felt this was the safest plan possible, to today's standards, utilizing today's technology, knowledge and engineering. Take the legal semantics out of this, the Town has actually benefited by the lapse in time that occurred. This design is more beneficial to the Town and is a much better plan.

He could see how the original plan dictated where the buildings went because of the septic and the amount of space the septic needed to accommodate the amount of units from the original layout.

Mr. Schold agreed with Mr. Reinke; by moving the buildings, it allows more space to make the design accommodate safety for the residents. The septic system design has the state of the art onsite treatment plant. The facility is kept up to date and well maintained.

The Town needs new revenue because we are not getting a flood of business coming into Town.

There are several projects going on in Town, with several more coming. Each project puts another \$100-\$200 added to each resident's property tax bill.

Staffordshire pays a good share of taxes to the Town now and adding three more buildings, would create some additional revenue the Town needs.

Ms. Moore said she was unclear as to what the Board's responsibility was and didn't want to give an opinion without the correct knowledge.

She asked Ms. Buck, after hearing testimony of the applicant and the developer's plans, if the Board's legal obligation was any different.

Ms. Buck wasn't sure how to answer that. She felt that the Zoning Board will need to make that call on whether they felt this was consistent enough.

Mr. Kirwan noted the Board would need to make a decision based on the testimony heard and what has been seen, to the best of their ability.

Mr. Reinke felt if they proposed a change to the square footage of the buildings or something that would create a break in the harmony of what was originally proposed or to have something set outside the setbacks, would be a substantial change. Moving buildings around was part of what happens in the construction world.

He felt the change benefited public safety by allowing better access and a better layout for emergency vehicles throughout the site.

Mr. Kirwan explained currently under review was a plan proposing a better use of the land and was it safer for the future inhabitants of those units, as well as providing better egress for the fire department apparatus. Was there a substantial change to where the three buildings were to be located?

An earlier point made was, they weren't increasing the number of stories, the number of units or the size. The bottom line was whether this plan made good sense.

On the other hand, he didn't want to hear nine months from now, having a hearing looking to put in a 4th building and go up to 3 ½ stories, etc.

Ms. Moore felt that was the story when the original project was built. At the last meeting, there was discussion on how they could get a 4th story.

Mr. Kiristy said they didn't know what happened back in the 70's and what they proposed a few months ago on a height increase wasn't being considered now, because they understood the Board's feelings on that.

Knowing the limitations of the site and what the Bylaw provides, allowed them to put together a better product.

Mr. Mark Antanavica, 479 Stafford Street felt the Town needed these buildings built in order to bring in additional tax money. There will be 54 units built and families living there, who will contribute to the small commerce in Town, being a local businessperson.

He felt the plan presented made it safer for the people living there and provided better site access for emergency personnel. The original plan did not provide that.

He urged the Board to do their job and allow this plan to go forward, for the benefit of the Town.

Mr. Kirwan explained the Zoning Board's job was to encourage the right thing to be done, by the proper rules and regulations set forth by the Town.

Mr. Hathaway further explained the Zoning Board, as a whole, did not look at improving taxes. Although, this Board is strict when looking to see whether or not applications meet the Bylaws. The Zoning Board is not accountable for allowing or not allowing taxes.

Mr. Antanavica felt the Zoning Board was the first step, because the project doesn't go any further unless they get approval from this Board.

Hearing no further comments or questions, Mr. Kirwan asked for a motion.

MOTION: Mr. Reinke moved to approve the petition of Staffordshire Properties by Robert Richard of 6017 Pine Ridge Road, Suite 255, Naples, FL for a Variance to amend a Variance issued by the Zoning Board of Appeals on December 7, 1972, in an effort to build the final (3) three structures in accordance with the originally approved plans on property located at 503-505 Stafford Street, Cherry Valley, MA.

This approval will allow the best configuration for the buildings, as shown on the plan dated 2/8/2017 and prepared by Graz Engineering, with the stipulation that the size of buildings do not change from the original footprint or square footage, as originally proposed in 1972.

SECONDED: Mr. Schold – Discussion: None – VOTE: 3-in favor / 2-opposed (Mr. Hathaway & Ms. Moore)

-Motion failed-

Findings of Facts:

Jim Reinke voted in favor of the motion because he felt this was the best possible plan for the site. An entire area, within that parcel, has been made available due to the increase in technology. Having to meet stormwater regulations and waste-water management has taken into account safety measures for the residents and emergency vehicles.

David Kirwan voted in favor of the motion because he felt the change was not significant from the original plan in a substantiated way. It provides a better flow for emergency vehicles and safety for the residents.

Vaughn Hathaway voted in opposition of the motion, because even though he can appreciate the changes to the plan and agreed the improvements to site were good, his problem was with discussing a variance approved 42 years ago and seeking a decision from this Board on that.

Paul Schold voted in favor of the motion because he felt the Board could take part in this process because they voted in favor in 2014 that the variance was still viable and wasn't abandoned.

They come to the Board with a better plan by moving the buildings around a little bit and improving safety conditions within the site.

Mary Moore voted in opposition of the motion because she felt the egress and access could still be obtained under the 1972 configuration of the site. She was not comfortable making changes to what was already approved, without a better understanding or reason for hardship and a significant need to change.

Instructions were given on the appeal process and filing of the Decision with the Registry of Deeds.

Mr. Kiristy asked for the Board's reconsideration of the motion and if the motion could be made to allow the design of the plan.

Mr. Kirwan said from what he heard on the no votes, had nothing to do with the design of the plan, but more to do with making changes from a 1972 variance.

Mr. Kiristy explained he would rather have this decided at the local level rather than going to court.

There has been no opposition received from the abutters. The talk he heard about money and how much the Town receives in taxes, an appeal would involve another \$40,000 in legal fees. He was asking the Board if they would entertain a motion to reconsider their vote.

Ms. Moore explained the Board was not denying the applicant from putting up the 54 units. There has been no changes made to that or the amount of taxes the Town will gain from those three buildings, no matter where they are placed at the site. The only difference was access.

Mr. Kiristy questioned why the Board would vote to deny better access. Everyone has acknowledged the proposed plan would have better access.

It was inconceivable that the Board would prefer a bad design because it was approved in 1972, rather than a good design because they can.

Mr. MacEwen asked Ms. Buck through the Chair, if the applicant was locked into the 1972 plan, would the process be the same and require site plan approval.

Ms. Buck said yes, it would require Site Plan Review through the Planning Board.

Mr. MacEwen said what he wanted to point out was, if they have to stick with the 1972 plan and go for site plan approval, all the entities of the Town will review this plan, and this plan will probably not make it through the site plan approval without modifications.

Emergency egress and access was one of the key components and he could see if this was brought to the Planning Board for site plan approval, there were going to have to be changes made.

Mr. Kirwan said the only thing he can do was ask if anyone on the Board wanted to reconsider their vote. If the answer was no, then there is nothing further that can be done.

Mr. Reinke asked about certain criteria to be met when placing a well and if that well has to be in that area and can't be moved, because then it can't be taken out for a house to be put there.

Mr. Kiritsy asked what would be gained by keeping the old design; the site will have bad access, lousy road, lousy site layout and lousy parking.

If the Board was not going to reconsider, he thanked the Board for their efforts.

Mr. Schold pointed out the variance was pre 1975 and would have had a start date. He said this variance was before a lock in date and why it was approved.

Ms. Moore noted the access being shown, was in the same place as the 1972 plan.

Mr. MacEwen said that access dead ends and most developments today discourage dead ends. The access and egress is mainly for emergency vehicles and fire apparatus. Using the topography out there will allow to make a loop road, which will give route all the through the entire site.

This whole purpose was to allow a better flow and better access, so if one access route was blocked by something, they will still have opportunity to get into that site.

Mr. Reinke said it's not just means of access, but also egress. Potentially, with the new buildings, there could be 100 more people living there and 100 more cars. Having just one means of access/egress, it can easily get jammed. In addition, in 1972, the emergency apparatus used were modified vehicles and not as big as the specialized vehicles today.

Mr. Hathaway said the discussion regarding the access road, the new access road was in the same spot as the old access road.

Mr. Kiristy said the access location is virtually the same, but once it gets to where the buildings are, it's significantly different.

He further explained the easy ability fire apparatus would have accessing the site under the new design.

Ms. Moore said the Board was not denying the applicant anything different than what was already approved and saying you can't put up 54 units.

Mr. Kiritsy said they are asking to amend the variance to relocate the buildings.

Ms. Moore said she understood that, but is it right to just say yes and just change it.

She asked what the hardship was, because they will still get 54 units regardless. All that was being presented here was for a better access for the clients and better access for the fire department.

Mr. Kiritsy said if the original variance had referenced, as per plot plan, they wouldn't be here. He didn't feel the Zoning Board in 1972 wanted to tie this Board or themselves into a corner to not allow to make changes that were better. There is a vehicle in the law, to present to the Board something better. Why be foolish and consistent to an old design, when a good design can be presented.

This is the exact procedure and the exact Board who can say they want a better design then their forebears have proposed.

Mr. Kirwan said after hearing some further explanation and discussion for consideration and without proposing an entire new motion, he asked the Board to move for reconsideration.

MOTION: Mr. Reinke moved to reconsider the original motion to approve.

SECONDED: Mr. Schold – Discussion: None – VOTE: 3-in favor / 1-opposed

Motion to reconsider passes.

Mr. Kirwan went back to the original motion to approve and asked the Board for a vote.

VOTE: 3-in favor/ 1-opposed (Mr. Hathaway) / 1-abstained (Ms. Moore)

-Motion failed-

MOTION: Mr. Reinke moved to close the hearing

SECONDED: Mr. Schold – Discussion: None – VOTE: All in Favor

Meeting adjourned at 9:00PM

Respectfully submitted:

Barbara Knox

Barbara Knox