

## **Zoning Board of Appeals Meeting Minutes**

Minutes of March 1, 2017

Hearing on the petition of Southwest Holdings of 6017 Pine Ridge Road, Suite 255, Naples, FL for a Special Permit for a Limited Frontage Lot as required under Section 1.3 of the Leicester Zoning Bylaws on property located on Auburn Street, Cherry Valley, MA (Map 35/Parcel C12)

Members present: David Kirwan, Chair; David Orth, Jim Buckley, Clerk; Paul Schold and Vaughn Hathaway

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

Meeting called order at 7:38PM

Instructions given on hearing procedures

Voting at tonight's hearing: Jim Buckley, David Kirwan, David Orth, Vaughn Hathaway, and Paul Schold

Mr. Buckley read the Notice and Application into the record. The reading of a letter from Brian MacEwen of Graz Engineering was agreed to be waived.

Correspondence received: Site Consideration from the Building Inspector and a memo from the Board of Health read into the record by Mr. Kirwan

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

At this point, Mr. Kirwan opened the meeting to the applicant to present their petition.

Mr. Brian MacEwen of Graz Engineering in attendance, representing the application.

This is an existing piece of land having frontage along Stafford Street in a couple of locations and continues over to Auburn Street with frontage, as indicated on the Assessor's Map 35, Parcel C12.

The original owner, since the 1950s, owned all of the land there and started cutting off the frontage lots. They maintained a couple of frontage areas on Stafford Street and one on Auburn Street.

There was a proposed right-of-way across from this limited frontage lot on Auburn Street and his assessment was, the original owner had considered doing some type of through road from Auburn Street to Stafford Street and developing new frontage lot off the new roadway.

What exists there are some extensive wetlands, which are fed by an intermittent stream that feeds through, along the back of the limited frontage lot being proposed. A good central portion of the main part of this parcel would be remaining, if they were to cut off the finger lot.

The wetlands are a wide flat area in certain spots with fingers spreading out in several directions and probably why it's never been developed as a single family lot.

Staffordshire Country Estates, located across the street, had a septic system in failure. DEP required them to upgrade their leaching facility and treatment facility to the complex. The property owner happens to own both these properties, Staffordshire and Auburn Street, and was able to develop an off-site treatment facility and pump to the leaching facility constructed on the other side of Stafford Street, across from Staffordshire Apartments.

The combination of the wetlands, the topography and a good portion of the site being the leaching field for the complex, it was basically deemed an unbuildable site for a residential development.

Mr. MacEwen continued. This is a finger of land that crosses wetlands and because the Town has a Limited Frontage Lot Bylaw, the owner wanted to see if that piece could be separated off to develop as a single residential lot, like all the other lots along that street in that location. The remaining frontage to this lot has been there since the mid-1950s and the lots that were already cut off dictated that frontage. This lot is sub-standard, because it has less than 200-feet of frontage required for today's development.

The Town Planner directed them to submit this as a special permit request. Although it appears to him that it should be a variance, but the way the Bylaw was written, the Town Planner indicated submitting it as a special permit.

They were here for a special permit for a limited frontage lot. Then a full ANR plan will go before Planning for an endorsement, having the special permit endorsement. They will move forward with the soil testing, a well, development and getting a building permit for the lot.

Mr. Kirwan asked how the right-of-way played into this lot.

Mr. MacEwen said the lot just to the north was cut in 1955 and when that lot was cut, on the end of that deed states, they granted a right over to the proposed right-of-way. There are no maps or records found showing this other than what was stated in the deed.

He was able to get a copy of a plot plan from the homeowner next door, not a recordable or record plan, but it shows the location of the house relative to the property line at the corner where there were discrepancies between the deed and the plan on record.

He said there is a plan on record for the land from the current owner when they purchased the property. The complete outline of the land shown on the plan is a combination of the light blue and the single lot out to Auburn Street. For all intents and purposes, this lot stayed the same on the recorded plan and what is being carried forward, as well as on all the deeds subsequent to the current owner on the application.

The frontage reads 174.66 and the plans in front of the Board is based on the best evidence found on the ground and information, up until they got the information on the plan from the homeowner next door and agree the frontage was at 147.6.

Based on their initial information there, they were fairly close to what that particular engineer did for his plan. Given the owner of the abutting land, that strip of land in addition to his original house foundation, they actually have a dimension indicated on that plan from the foundation of a foyer, seems to be property line. He came up with 37.3-feet and the plan indicates 38-feet. He will do more looking into his, if the permit gets approved on the lot and agreed to pin down exactly where that property line was located, because of the discrepancies.

Mr. Kirwan asked Mr. MacEwen to point out the exact location of the proposed lot on the plan. Mr. Kirwan noted the neighbor's house being situated very close to the property line and questioned the right-of-way being 40-feet.

Mr. MacEwen agreed it's a proposed right-of-way and not a roadway or a taking of land. All it did was grant rights to the abutter to go across that strip. That 40-foot would be inside the property lot line.

Mr. Kirwan asked if that would dramatically shorten the frontage.

Mr. MacEwen said no, because the current owner still owned that strip of land and it was like granting an easement.

Mr. Kirwan asked confirmation that the owner of the proposed project owned the right of way.

Mr. MacEwen said yes and the owner granted others the right to travel over that 40-foot strip.

Mr. Schold asked if there were any adjustments needed of which would cut them under by square footage.

Mr. MacEwen said no and explained that if they had to shorten the frontage, they would adjust the back line to gain more area in back if needed.

The only thing they are here for, no matter how the final property square footage comes out, would be for the frontage, because they meet zoning for setbacks and lot area.

Mr. Hathaway asked how wide the property was.

Mr. MacEwen said just under 150-feet.

Mr. Hathaway asked what size house was planned to go there, because the setbacks are 40-feet.

Mr. MacEwen explained the proposed right-of-way having a grass strip that has been there since day one when the house was built. It is a fairly flat piece of land, maintained and mowed and no trees on it.

If that 40-foot strip needs to be protected, it is already protected from building because that is the zoning setback, 40-foot.

There is 147-feet: there's 40-feet off one side and 40-feet off the other, which leaves them 60-feet of width to put a combination of garage and house, contingent upon sighting of the well and septic.

Mr. Hathaway asked if the lot had already been approved through the Planning Board.

Mr. MacEwen explained the process the Town Planner had asked them to go through. The plan went before the Planning Board as an ANR plan as a non-buildable lot because technically it doesn't meet frontage.

Mr. Hathaway agreed it didn't meet frontage by definition, because in order for it to be considered limited frontage, was having it labeled on the plan as being non buildable lot, but met all other requirements.

Mr. MacEwen explained that was the process the Town Planner directed them on how to handle it.

Mr. Hathaway explained that the Limited Frontage Bylaw was also called “Pork Chop Lot”, which means small frontage on a road and it opens up in back. He felt this lot was the widest up near the road and becomes smaller in back.

He questioned as to why the lots weren’t drawn to have more space in back, because then there would not be an issue with square footage.

Mr. MacEwen said he can only make assumptions on what the original owner intended to do. It is only 40-feet wide in back and he felt the intent could have been to develop some type of a roadway there.

Mr. Hathaway asked if the petitioner owned parcel 35-C4.0.

Mr. MacEwen said no. The plan submitted tonight, shows the 40-foot strip clearer relative to the property line. Also on that plan, shows the location of the house and the dimensions from the property line to the house.

Mr. Buckley asked if the same owner owned the parcels outlined in pink and blue and if so, he understood cutting off a piece wasn’t allowed.

Mr. MacEwen said the same person owns both parcels. He explained if the frontage was 200-feet or greater, this request wouldn’t be before the Board. This went before the Planning Board as a lot with enough area, no matter how they did the lines. The lot has the width, area and zoning that will support a septic and a well.

Mr. Hathaway said when he looked at the lot; he was surprised at how narrow it was.

Mr. MacEwen explained the tree line was not the property line. The property line was closer to the edge of the garage than it appeared. The grass area did not go with the house and where the grade drops off from the garage, at the bottom of that slope going away from the garage where it’s built up to the garage, was the property line, which is 40-feet from there to the edge of the tree line.

Mr. Hathaway asked how long the property had been maintained by the abutter, because there was a law called Adverse Possession, but he understood there needed to be explicit conversation with the owner of the land to show this applied.

Mr. MacEwen said that would be up to the abutter to pursue that.

Mr. Orth asked confirmation that the plan was to put a single-family home there, as opposed to anything else.

Mr. MacEwen agreed it would be for a single-family residence that would be in concert to the neighborhood.

Mr. Orth asked if they plan to go back before the Planning Board to separate this parcel from the main parcel.

Mr. MacEwen said yes and the Town Planner laid out that process.

Mr. Buckley explained when someone has 599 feet of frontage and wanted to make three lots, they cut off 2 with 200 feet each and one was left over with 199 feet. His understanding was that

was not allowed. If there are other lots that are in common ownership that can be configured to give enough frontage, this bylaw doesn't apply.

This is one contiguous lot and the owner owns an abutting piece that has required frontage on that street.

Mr. MacEwen said the property is all one piece right now.

Mr. Buckley agreed it was all one piece and now the owner wants to cut off one piece to make another lot, but there is another piece that is an abutting lot.

Mr. Schold explained there wasn't any other frontage.

Mr. MacEwen said this piece of land is isolated due to the wetlands that cut through the middle.

Mr. Hathaway said on Stafford Street there are two parcels with an abundance of frontage, so Auburn Street isn't the only access to that lot.

Mr. MacEwen said the Planning Board always looks at when a lot is developed; the access is over the frontage of where the house will be constructed. Coming from Stafford Street it would be difficult going through the wetland for a driveway. There would also be constraints putting in a septic system with wetlands and constraints with topography. The grade goes up quite a bit where the septic is and drops down dramatically into the swale and the wetlands where the stream is and then it comes back up to the other side to Auburn Street.

Looking at this as a Variance, the issues of soil conditions, topography and site constraints were looked at. Viable access to that finger that hangs out to another street, wouldn't meet the requirements for developing that piece of land.

Mr. Kirwan confirmed this petition was for a special permit and not a variance.

He said if the petitioner owned all this land and divided it up resulting in this limited frontage, he would consider this a self-imposed hardship. In this instance, he felt these lots were not in common ownership.

Mr. Schold felt this application was identical to a previous application regarding a piece of property having frontage on River Street and frontage off Baldwin Street. The frontage on River Street would involve going through 900 feet of wetland for access, so the Board allowed a limited frontage off Baldwin Street.

At this point, discussion was opened to the public.

Ms. Kathy Prunier, 383 Auburn Street and owner of the property at 355 Auburn Street.

Her concern was that the property under discussion not meeting frontage requirements and the lot continues to be very narrow. Around 150-feet back, the lot starts becoming narrower.

By putting a home there, will take away their privacy and the privacy at 355 Auburn Street.

It would not be consistent with the neighborhood because the other lots have more space on their property.

Mr. Kirwan noted except the house to the immediate left who chose to build on the property line.

Mr. MacEwen explained the individual who built there, built it over like that because the owner was keeping options open to build another home next to his.

The house that sits close to this property, that owner indicated was for his protection in case things got tight and he needed to sell a building lot.

Ms. Prunier said that dwelling would end up being built more to the front and squeezed between 355 and the property in the application.

She noted the end of the house at 355 being roughly 130 feet back.

Mr. Kirwan said the structure couldn't go any closer than what the setbacks allow, so it has to be at least 40-feet away from each side line.

Mr. William Prunier, 383 Auburn Street said the frontage at the proposed property was very wet in the spring. He explained when they first built their house at 383 Auburn Street, every spring the property would flood and run across the lawn. He had to repair their lawn every year until he dug some trenches in order to get a handle on that water.

If they build a home on that lot and a driveway, it will open up all that soil and in the spring the water will wash out 355 & 383 Auburn Street.

Mr. Kirwan noted if the permit was granted, it will need to go back before the Planning Board and then it would go to the Building Inspector for a building permit.

He questioned who would review the concerns regarding the drainage, the wetlands and concerns with flooding onto neighbor's properties.

Mr. Schold questioned if the lot would need to go before Conservation.

Mr. MacEwen didn't think it would need to go to Conservation because the wetlands were so far back, but that would depend on where the septic and well were sited.

He said if the project stays outside the 100-foot buffer from the wetland, they won't need to file with Conservation.

Mr. Orth was concerned with how the other lots were divided, because it made this lot a leftover that is essentially worthless. For the Board to grant a variance, it would make this lot more valuable.

Although a hardship does not need to be demonstrated for a special permit, this would enable the property to be sold at a higher value than what it is now.

He questioned this being a self-imposed hardship.

Mr. MacEwen said he did not know what the zoning in that area was back when this land was originally divided in the 1950s. He can only surmise looking at the remaining 40-foot strip, the owner thought of having it graded out and putting a roadway through there, but still have a building lot beside it.

He noted this as an assumption, because the original owner had sold off the land in chunks and there were discrepancies in the deeds and records.

What was shown on the plan was almost a 30-foot of difference from what is on record and to what is physically on the ground out there. This was not a hardship brought on by the petition.

Mr. Hathaway said most Limited Frontage Lots are straightforward and this one starts out smaller in the back. He felt that was against the original intent of the Bylaw, although it doesn't specifically say that.

He was concerned with what it would do to the neighborhood because most of the lots there tend to be further apart and this would force the lots to be closer together.

Mr. MacEwen said there was nothing stated in the Limited Frontage regulation that stipulates what the shape needs to be.

Mr. Hathaway said he was questioning the original intent of the Limited Frontage Bylaw, because it doesn't reflect that in the wording and the Board has to go by what is in the wording.

Mr. Schold said it still is a 150' x 150' basic building lot that does taper down, but still a good house lot. This was land broken off back in the day and this was left, it's the way things happen. He had more concerns with pork chop lots, because there's a small strip in front, allowing someone to build a house behind someone else.

He felt this petition was a straightforward limited frontage lot on Auburn Street and should be allowed and contribute to the Town's tax base.

Ms. Lori Wilkesman, 1 Wildwood Lane said individuals need to consider buying property near someone else's right-of-way, because no one knows what is in store for the future.

Mr. Kirwan asked for any further comments, questions or concerns, hearing none from the Board or audience, he asked for a motion.

MOTION: Mr. Schold moved to grant the petition of Southwest Holdings of 6017 Pine Ridge Road, Suite 255, Naples, FL for a Special Permit for Limited Frontage Lot, as required under Section 1.3 of the Leicester Zoning Bylaws on property located at Auburn Street, Map 35/Parcel C12, Cherry Valley, MA

SECONDED: Mr. Orth – Discussion: Mr. Orth asked to have noted this use is limited to a single family residential dwelling.

Mr. Buckley said the Town does have a Limited Frontage Bylaw and what the Board has to work with, therefore this met the criteria for the granting of a special permit in accordance with the Town of Leicester's Limited Frontage Bylaw, Section 1.3.

VOTE: 4 In Favor / 1 Abstained (Mr. Hathaway)

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

MOTION: Mr. Buckley moved to close the hearing.

SECONDED: Mr. Hathaway – Discussion: None – VOTE: All in Favor  
Meeting adjourned at 8:34PM

Respectfully submitted:

*Barbara Knox*

Barbara Knox

