

**Zoning Board of Appeals  
Meeting Minutes**

Minutes of October 21, 2013

Hearing on the petition of Patricia Dykas of 305 River Street, Leicester, Ma. for a Variance to allow 41.4-feet of frontage on property located on River Street, Leicester, Ma., Assessors Map 42, Parcel 3.1.

Members present: David Orth, Chairman; David Kirwan, Clerk; Vaughn Hathaway

Alternate members present: Paul Schold, Jim Reinke

Meeting called to order at 8:15PM

Instructions were given on hearing procedures.

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

Mr. Kirwan read the notice, application and a letter from the Building Inspector into the record.

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

Correspondence received: Site Consideration from the Building Inspector read into the record by Mr. Orth.

Mr. Orth opened the hearing to the petitioner to address the Board.

Ms. Patricia Dykas said she purchased this land several years ago in a tax title auction. There are 171-feet of frontage that opens up to 107-acres on the River Street end of this property. The lot starts & runs along the side of the driveway to the Shannon Legion Post on River Street. The lot runs around 800-feet around the pond and ends at Scott Lane on the other side.

She had the land surveyed that shows 14+ acres, but the Town shows the acreage at 12.5, which is why her application differs from what the Building Inspector noted in his Site Consideration.

Ms. Dykas continued. When she bought the property, there was a stipulation noted on the deed that the lot was to be used as a single house lot or an over 55-community development.

For several years, she tried selling the property showing the access through River Street and it placed too much of a financial burden on people to try and put in a driveway that would be over 800-feet long. There are two intermittent streams that would have to be crossed and the grading in back has around a 30-foot drop. The driest portion of this property is located in the back off of Scott Lane.

She felt this lot met the section of the bylaw through the circumstances that made this lot unique by the grade in back and the financial burden if the access had to be from River Street.

Mr. Hathaway asked if there were any plans on changing the lot lines on this property.

Ms. Dykas said no.

Mr. Hathaway asked on accessing the property from Scott Lane, was there frontage on Scott Lane or was it through an abutting property.

Ms. Dykas said there are actual concrete posts at the end of the cul-de-sac where the access would go.

Mr. Hathaway asked if the jog-off shown on the plan was also part of parcel 3.1.

Ms. Dykas said yes.

Mr. Kirwan said this would be approved as a single-family lot, so there would be a few cars coming through Scott Lane potentially.

Mr. Hathaway noted that this was also stipulated for an over 55 development, so there could be a lot more cars.

Ms. Dykas said there really isn't a market right now for an over 55-development.

Mr. Orth opened discussion to the audience.

Mr. Kevin Dee, 3 Scott Lane said if this were approved for a single-family lot, in order for that to change for an over 55-development, would be another request.

Mr. Hathaway said yes, because it would be for something completely different and wouldn't be something the ZBA would hear, it would be heard by another Board.

The ZBA hearing is for a single-family lot.

Mr. Dee asked if there were an approval, was that transferable.

Mr. Hathaway said the variance would only be for a single-family and it could only be developed as a single-family lot.

Mr. Dee asked could someone else come along and subdivide the lot to put more houses in there.

Mr. Hathaway said they would have to go through the subdivision application process.

Mr. Orth agreed.

Mr. Schold said there wouldn't be enough of room to put a street in there.

Mr. Hathaway said if the Board were to approve this, it would not give someone automatic permission to do something like that. They would have to go through whatever process is required.

This hearing is for a single-family lot and whether it's approved or disapproved, would not have any bearing on an over 55-development.

Ms. Dykas said she wants to market the lot for a single-family home.

Mr. Dee said right now Scott Lane is a dead-end road and he would not want to see it become an access road to a development.

Mr. Hathaway said this could only be developed as a single-family if it were approved.

Mr. Kirwan said the Board is potentially approving a single-family lot. However, even if this wasn't before the Board, Ms. Dykas has every right to sell that just as a piece of land for anyone

else with the vision and extremely deep pockets, with a poor business sense that would be required to try and get that through as an over 55 community. There really isn't much that can be said about this, it's just a risk.

Although, he can understand why someone would be cautious about something like that happening in his or her neighborhood.

Mr. Orth said there are other areas in Town that have been deemed as over 55 communities and they never materialized.

Ms. Dykas said she was just stating what stipulations were put on the deed.

Mr. Vincent Gorgoglione, 1 Scott Lane said he understood the only access to that property would be from River Street and not from Scott Lane, what changed?

Ms. Dykas said she just learned about this process with a variance last week when she filed for her special permit petition.

She noted trying to market the property several times with the access from River Street and the same question always came up, how to get a road in there and how to get the utilities in there, it would cost someone a fortune.

Mr. Gorgoglione said we are all just being very cautious, because just one variance can open up to a major development down the road. He understood they shouldn't speculate on what may or may not happen in 5-years, but in 5-years down the road, this Board could change.

He also understood that this petition is asking for an approval for a single-family lot, but again things change.

He purchased his property knowing there were only 4 houses on the street and still has that country feel to it. To potentially have another house or several houses possibly go up there in the future, he would not be in favor.

Mr. Orth said in order for one house to go up, there has to be a driveway. In order for two houses, there has to be a road and that would require a whole different set of rules with another Board.

Mr. Gorgoglione said he understood that the cost would be prohibitive for anyone who would potentially buy the property to put in an 800-foot road.

When something is purchased, the buyer would look at all the aspects to see what kind of return they could get. Ms. Dykas should have known that she would need a variance or that the cost would be too much to go through River Street.

He respectfully asked the Board to deny this petition.

Mr. Orth said again the only thing that could go in through that area would be a driveway, so that area can't be developed any more than just one driveway for a single-family home. Forty-one feet is not wide enough to put an access road.

Mr. Gorgoglione asked what the requirements were for a road.

Mr. Schold said 24-feet with sidewalks on both sides and at the end they would want the flare to be at least 100-feet.

Mr. Gorgoglione asked if 41-feet would be wide enough for a road.

Mr. Schold said no, not for a subdivision road. Mr. Gorgoglione asked what the Town requirement was.

Mr. Schold explained that a subdivision road itself is 24-feet, but at the end of the road, which that would be and at the beginning of the road, because that would be a new road, there has to be adequate access from that opening. A subdivision can't go in with 41-feet, with a road at 24-feet, it can't happen and the Planning Board would never allow it.

Mr. Hathaway said most important that isn't pertinent to this petition.

Mr. Gorgoglione said that is everyone's concern, once this is approved; the possibility exists for someone to petition for additional variances or additional homes.

Mr. Schold said that's another game and this petition tonight is to hear for one lot.

Mr. Gorgoglione understood that and that's what he was saying, it opens up for more homes.

Mr. Orth said we can't predict what's going to happen in the future.

Mr. Kirwan agreed because you can never tell what someone may do in the future, but as far as this Board is concerned, if this petition does get approval, it would be approved as a single-family house lot and that's all that can go in there with this variance.

Mr. Gorgoglione asked if this petition is approved, what the next process would be if someone does want to put something there.

Mr. Schold said they would go to the Building Inspector and submit their plans to get a building permit.

Mr. John Martin, 4 Scott Lane said the power is between his house and his neighbors', so that would mean they would have to dig up the cul-de-sac to get to this property; will the road be altered?

Ms. Dykas felt they would just do curb cuts for the driveway.

Mr. Martin asked about the electrical box located in that area. If there were houses on both sides and they went all the way down, with six on each side, there would be a couple of electrical boxes put in, correct? There wouldn't be just one box?

Mr. Reinke said it would depend on what the road conditions are; there are a lot of things to be considered.

Mr. Hathaway said for a variance, there are certain conditions that need to be met, such as; owing to circumstances relating to soil conditions, shape or topography of the land or structures involved and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the bylaw would involve substantial hardship, financial or otherwise to the applicant.

Mr. Hathaway continued. Basically what the bylaw is saying is there has to be something unique with the property, which is why there's a request for variance.

The second condition is that desirable relief may be granted without substantial detriment to the public good. That means if this were approved, it would make life worse to abutting properties. The third condition is, without nullifying or substantially derogating from the intent or purpose of the bylaw. So regardless on meeting any other condition, it can't go against what the bylaw states.

Mr. Kirwan said that section continues on to read, "The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership."

He felt that explains what the Board was trying to say that if this were approved, it's approved as a single-family lot and that's the limitation.

Mr. Orth agreed and said if that were to change, they would have to get another variance and meet the same requirements. If this variance was granted, the Board could consider adding a condition saying the variance is granted on the condition that it's limited to a single-family home.

Ms. Dykas asked if she can still sell the property for a single-family home. Mr. Orth said if the property gets sold, the variance will go with it, but there can only be a single-family home put there.

Mr. Hathaway said if the permit is granted, any construction or action taken on the land has to commence within one year from recording. It doesn't have to be completed, just started.

Mr. Kirwan read Paragraph H of Section 6.4.03, which states; "The rights authorized by a Variance shall lapse unless construction is commenced within one year of the grant of the Variance and is continued through to completion as continuously and expeditiously as is reasonable. In the event of such a lapse, the variance may be re-established only after notice and a new hearing."

Mr. Hathaway explained that even if the Board approves this Variance tonight and no action is taken in two years, Ms. Dykas would have to come back to the Board for a new hearing.

Mr. Martin said it would be whoever owns the property, correct? Mr. Orth agreed.

Mr. Reinke said the clock starts as soon as the variance gets recorded.

Mr. Orth asked for any further comments, questions or concerns; hearing none, asked for a motion.

Mr. Hathaway asked if the question was answered on what the hardship was.

Mr. Kirwan said what he heard was due to the nature of the topography of the land, gaining access through from River Street, causes a substantial hardship. He felt the Variance, through Scott Lane, based on it solely being limited to the development of a single-family home, does not really take away from the neighborhood, nor does it derogate from the intent or purpose of the Zoning Bylaw.

MOTION: Mr. Kirwan moved to approve the petition of Patricia Dykas of 305 River Street, Rochdale, Ma. for a Variance to allow 171-feet of frontage on River Street and allow 41.4-feet at end of Scott Lane for access to a single-family house lot located on River Street, Leicester, Ma. ; Assessor's Map 42, Parcel 3.1.

SECONDED: Mr. Schold – Discussion: Mr. Reinke asked to add the stipulation that the variance approval be limited to a single-family home. Mr. Kirwan agreed to add that stipulation.

VOTE: 4- In Favor / 1 Opposed (Vaughn. Hathaway)

**Finding of Facts:**

Jim Reinke voted in favor of the motion to approve because he felt the hardship was met due to the topography of the land, causing a financial hardship that would be imposed on anyone wanting to build on that lot. He felt there would not be a detriment to the public good and it does not take away from the intent or purpose of the bylaw.

David Kirwan voted in favor of the motion to approve because he felt the topography of the land would cause substantial hardship and it would not derogate from the intent or purpose of the Bylaw.

Paul Schold voted in favor of the motion for the same reasons stated, he felt the hardship was met due to the topography of the land and allowing access from Scott Lane would not be a detriment to the neighborhood or take away from Scott Lane being a residential neighborhood.

David Orth voted in favor of the motion because of the topography of the land and having access through Scott Lane would not be a detriment to the neighborhood by allowing for one single-family home.

Vaughn Hathaway opposed the motion because he felt the property did not meet the provision of being unique and he felt a substantial hardship was not proven.

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

MOTION: Mr. Reinke moved to close the hearing.

SECONDED: Mr. Hathaway – Discussion: None

VOTE: All in Favor

Meeting adjourned at 9:02PM

Respectfully submitted:

*Barbara Knox*

Barbara Knox