

**ZONING BOARD OF APPEALS  
MEETING MINUTES  
March 6, 2019  
86 Willow Hill Road & 6 Lake Shore Drive**

Members Present: Vaughn Hathaway, Chair; David Orth, Clerk; Mary Moore, Jim Reinke, Vice-Chair

Members Absent: Jim Buckley

Alternate Members Present: Richard Johnston

Staff Present: Michelle Buck, Town Planner and Wanda Merced, Department Assistant

The meeting was called to order at 7:31PM. The Board reviewed the minutes and made some typographical and other corrections.

**September 19, 2018 Minutes: 101 Huntoon Memorial Highway**

MOTION: Mr. Reinke moved to approve the minutes of September 19, 2018 for 101 Huntoon Memorial Highway.

SECOND: Mr. Orth. Discussion: None

VOTE: 4 in favor/1 abstention (Ms. Moore)

**Public Hearing, 86 Willow Hill Road Special Permit:**

Mr. Hathaway opened the hearing at 7:35PM and provided an overview of the hearing process. Voting members for this application as follows: Vaughn Hathaway, David Orth, Mary Moore, Jim Reinke, and Richard Johnston

Mr. Orth read the hearing notice and application into the record.

*Brief Description of Application:* The property is located in the Residential 1 District, which requires 150 feet of frontage and 40,000 square feet of area. The subject parcel has 50 feet of frontage and 104,014 square feet of area. A special permit is required to allow a 50' limited frontage lot.

Mr. Hathaway opened the hearing up to the petitioner.

Mr. Norman Hill, Trustee of the Grafton Office Trust, passed in certified mailings and addressed the Board. He stated that he and his wife own this property as trustees. He described the proposed lot as having 2.39 acres and only having 50 feet of frontage. Mr. Hill handed the Board a copy of Section 3.1 and reviewed each of the requirements of the Limited Frontage Lot bylaw. He stated that he believes that he has met all the requirements. Mr. Hill also handed out the relevant section of the use table and stated that the table shows he cannot build a home without a special permit.

Mr. Hill reviewed the proposed plan and stated that the neighbors will be screened by 50 feet of woods but they will be able to see the house during the winter. He stated that they will be tied into the existing town water and sewer. He said that he had thought about subdividing this parcel or selling for commercial use but stated that he believe this was the best use of the property. He stated that he is trying to have minimal impact on the site.

Mr. Hill handed out a copy of the zoning map to show that it is zoned R1. He said that the Building Inspector, Jeff Taylor, said this was permissible in the zoning bylaws. Mr. Taylor's opinion on the site consideration form confirms that information.

Mr. Orth asked what water and sewer district they were in and Mr. Hill said it was Cherry Valley/Rochdale water and sewer. Mr. Orth asked if Mr. Hill was aware of the issues with those districts and Mr. Hill said he was not. Ms. Buck stated that the water district is in severe financial hardship.

Ms. Moore asked how long they have owned the property and Mr. Hill answered that they purchase it in October 2018.

Mr. Hathaway commented that he liked that it has 51 feet of road frontage and also likes that Mr. Hill will be keeping a buffer of trees. Mr. Hathaway said that he looked at the property and is concerned about traffic along the road traveling at high speeds. He suggested that the driveway slope be lowered so that entering and exiting the driveway would be easier. Mr. Hill said the driveway was designed at a 6% slope so it would not be too steep.

Patricia Matos, 14 Monterey Drive, addressed the Board. She stated that she was speaking for herself and on behalf of fellow neighbor, Katie Shepard of 8 Monterey Drive. She commented that almost everyone who lives on Monterey Drive has four-wheel drive because they have a hard time getting up the hill. She stated that she can see through the trees to Route 9 and she strongly objects to having this area built up. Ms. Matos went on to say that her backyard dips down and is underwater in the summer. She said she is concerned about the wetlands and the disruption to wildlife.

Mr. Hathaway stated that the ZBA must consider petitions with respect to whether they meet the conditions as outlined in the Town of Leicester By-laws and asked Ms. Matos for her thought with respect to the By-laws. Ms. Matos commented that the law says that 150 feet is required and asked why they would allow it to go down to 50 feet. Mr. Hathaway said it is 150 feet but the bylaw says you can have 50 feet of frontage as long as the area is sufficient. Mr. Reinke explained that this had to be done through a special permit because this is a special circumstance. Mr. Hathaway explained the difference between a special permit and variance to Ms. Matos.

Peter Cusolito, 93 Willow Hill Road, addressed the Board. He stated that he was the property manager for 10 Monterey Drive and said that the owner is opposed to this proposed project along with him. He commented that the hill is sliding down and that he believes this disturbance will make it worse. Mr. Cusolito went on to say that there is already a water issue on his property and said what used to be just wetland is now a pond.

Mr. Cusolito commented that Mr. Hill purchased property that was stamped "not a buildable lot" and said he cannot understand why the town would even consider this project. Mr. Hathaway asked Ms. Buck to explain and she said that the only way the Planning Board could sign the plan was to put "not a buildable lot" and then Mr. Hill could request a special permit. Ms. Buck stated that historically the ZBA has not granted these limited frontage lots and said that that

section of the bylaw is not worded as well as it should be. Mr. Orth stated that he believes they have denied this type of request in the past. Mr. Hathaway said that the ZBA has approved numerous limited frontage lots.

Ms. Moore asked if Mr. Hill had done anything to the property since he purchased it in October 2018. Mr. Hill handed out a copy of a plan that shows the entire parcel as purchased as a whole. He then handed out copy of the ANR plan that created three separate lots. Mr. Hill explained that Lot 1 contained the house that is now sold and said he still owns the other two lots.

Mr. Orth stated that Mr. Hill bought a piece of property then split it up and created a self-imposed hardship in the process of creating a limited frontage lot. He commented that Mr. Hill could have subdivided these differently. Mr. Hathaway stated that if the access to Parcel A was through Lot 2, Mr. Hill would not have needed a special permit for limited frontage. Mr. Orth again stated that it looked like this was a self-imposed issue. Mr. Hill said he did it because there is a deep ditch that they flagged as wetland so they couldn't bring the driveway closer. He said that the house on Lot 1 has an existing driveway that they wanted to leave intact.

Mr. Hathaway stated that he was not sure why Mr. Hill needed 3 lots instead of 2. He said 2 lots would have made it easier for Mr. Hill to build. Mr. Hill stated that he wanted to make use of all of the land as much as possible and he didn't want that land to go to waste. Mr. Cusolito commented that open land is never wasted land. He stated that he thinks Mr. Hill doesn't meet subdivision requirements and feels that Mr. Hill didn't look into the necessary requirements beforehand.

Ms. Matos stated that there is a drainage pipe at the end of her property and pointed it out on the plan to the Board. She said that the back of the lot is flooded and wished that the town would check it and declare it a wetland. Mr. Hathaway asked if Mr. Hill went before the Conservation Commission and Mr. Hill answered that he had and that it was approved.

Mr. Orth asked if the area had a perc done and Mr. Hill answered no because it will be public water and public sewer. Mr. Hill commented that he walked through the property in late fall and said it was not wet.

Ms. Moore asked Mr. Hill if Lot 1 had the house on it or if it was newly built. Mr. Hill said that the house was existing. Mr. Orth stated that Mr. Hill had the frontage he needed but by dividing it into 3 lots he created a limited frontage. Mr. Orth said that concerned him. Mr. Hathaway stated that he was uncomfortable with the creation of the limited frontage lot. Mr. Hill stated that he felt that he met all the requirements of the bylaw and hoped that the Board would grant the special permit.

Mr. Reinke asked what the total frontage of the original lot was and Mr. Hill answered that it was 431 feet. Mr. Reinke asked if Mr. Hill played with the placement of the lots in order to meet frontage requirements and Mr. Hill said that he tried to. Mr. Hill stated that felt that this configuration would be the least disturbance to the land.

Mr. Hathaway stated that he was surprised that the driveway was so close to the boundary line. Ms. Buck read from the bylaw on page 68, section 5, and number 2 quoting: "Driveways shall be located to the best advantage with regard to alignment with the way, profile, sight distance and the like. Unless conditions require it, a driveway shall not be located at the extreme edge of a property."

Mr. Reinke asked if there were any abutters present during the Planning Board meeting and Ms. Buck said that notices are not sent to abutters for ANR plans. Mr. Hill stated that he went before the Conservation Commission and that he believes there were abutters present. Mr. Reinke asked what the Board's concerns were and Mr. Hill said that once the Conservation Commission understood what he was proposing, he said that they were fine with it.

Ms. Moore pointed out the conditions section for a special permit and read "the use developed as a possible adverse effect on the neighborhood" saying that the public here have a concern of the adverse effect and said they should look at the whole picture including wildlife. Mr. Hill stressed that the drainage goes away from Monterey Drive and not towards it. He said that he thinks this is the best use and stated that this is in an R1 district that allows single-family homes.

Mr. Reinke asked Mr. Hill what he envisioned for stormwater management. Mr. Hill said that the runoff from the house will go into a leach field. Mr. Reinke asked what type of driveway will be installed and Mr. Hill answered that it would be paved. Mr. Hathaway asked about runoff to the abutters on Monterey Drive and Mr. Hill said there is a swale that directs water from the pipe to a ditch. Kathleen Dirs, 4 Monterey Drive, said that if it rains enough now she gets water in her basement. She stated that there are issues on Monterey Drive and she is worried about additional water runoff.

Mr. Cusolito pointed out that the topographic lines on the plans don't continue off the property. In addition, he said that they have serious traffic issues now and concerned that this will create more problems. Mr. Hathaway stated that he understood that this was a very busy area. He said that he was there for 10 minutes and almost got hit by passing vehicles. Mr. Cusolito stated that this was not good for the neighborhood and said that it would not be wise of the Board to grant this. He said that many of the neighbors didn't pick up the notice that was sent. Mr. Hathaway stated that the petitioner is not responsible to ensure that people pick up their mail. He said that by law, Mr. Hill did his due diligence and notified abutters appropriately.

Mr. Johnston asked Mr. Hill what he would do about stabilizing the area after the cutting of trees. Mr. Hill said that he would be willing to plant a row of arborvitae that grows 10 feet high to provide screening from the abutting houses and from Route 9.

Mr. Reinke stated his objection to a third house and suggested that Mr. Hill reconfigure lot lines so there will be more than 50 feet of frontage. He also suggested that Mr. Hill put the houses closer to Willow Hill.

Mr. Orth suggested that Mr. Hill move the driveway to alleviate the limited frontage lot issue and use Lot 2 as the frontage property for Parcel A. Mr. Hill reiterated that the Conservation Commission approved the driveway's placement and stated that he was not asking for a variance.

Mr. Reinke stated that there seems to be a potential way to put in a house with a special permit and Mr. Hathaway stated that if it's not a special permit, it would require going to other Boards. Mr. Cusolito said that he is not against developing the street. He said that his objection is the narrow access to the street and the way it was subdivided after purchase. Mr. Cusolito said he felt that this will change the characteristic of the neighborhood.

Mr. Reinke commented that he felt like the applicant put a lot of thought into the neighbor's concerns. Ms. Moore said she thought that Mr. Hill should have put more thought into this before he sold Lot 1 to figure out a better way to access the property. Mr. Orth stated that there is a wetlands concern with putting the driveway through Lot 2. He suggested a continuance and that Mr. Hill check with the Conservation Commission about the driveway on Lot 2. Ms. Buck noted that the Conservation Commission isn't likely to comment on something that's not an application.

Mr. Reinke asked Mr. Hill if he wanted to pursue this with the Conservation Commission or have ZBA make a decision. Mr. Hathaway stated that he would like to see this continued and Mr. Orth agreed. Mr. Orth stated that he would like Mr. Hill to come back and show the topography lines on the lot. Mr. Hathaway suggested that the topography lines on the abutting properties be shown at least 50 feet onto abutting properties. Mr. Johnston agreed with Mr. Orth and Mr. Hill said he would be willing to continue and provide that information to the Board.

MOTION: Mr. Orth moved to continue this public hearing to April 3, 2019 at 7:30PM to show topography and screening.

SECOND: Mr. Reinke. Discussion: None

VOTE: All in favor.

#### General Board Discussion:

*Meeting Times:* Mr. Buck asked the Board if they would consider moving the meeting time up so it can be earlier than 7:30PM. Mr. Orth commented that Wednesday's are no longer an issue for him. Mr. Johnston and Mr. Reinke both stated that they are flexible as well. Ms. Moore commented that she works until 6:00PM in Gardner. Mr. Hathaway stated that he would speak with Ms. Buck privately about this.

#### **Public Hearing, 6 Lake Shore Drive Special Permit and Variance:**

Mr. Hathaway opened the hearing at 9:15PM and provided an overview of the hearing process. Voting members for this application as follows: Vaughn Hathaway, David Orth, Mary Moore, Jim Reinke, and Richard Johnston.

Mr. Johnston stated to the Board that he knows the Applicant because he is the clerk of Cedar Meadow Lake Watershed District and he knows neighbors of the Applicant as well. Mr. Hathaway asked Mr. Johnston if it would impact his voting on this and Mr. Johnston answered that it would not interfere with his judgment.

Mr. Orth read the hearing notice and application into the record.

*Brief Description of Application:* The property is located in the Suburban Agricultural (SA) District. The proposed project involves demolition of an existing 1-story house,

reconstruction of a new 2-story house in the same footprint, and construction of a garage addition. A special permit is required to extend the nonconformity to allow the addition of the garage. This project also requires a variance for a garage being constructed 9.1 feet from the front property line.

Mr. Orth also notes a letter from Jeff Taylor, Inspector of Buildings, dated January 24, 2019.

Mr. Hathaway opened the hearing up to the petitioner.

Mr. Terence O'Coin passed in certified mailing receipts and addressed the Board. He stated that they plan to build a new two-story house on the existing footprint and will be adding a garage. Mr. O'Coin reviewed the plan and stated that the earlier drawing showed the garage being 11 feet from the property line but it's actually 9.1 feet. He noted that his wife has arthritis and needs easy accessibility to and from the house. Mr. O'Coin said that the septic system will be located across the street further away from the lake. He said that it is currently used as a seasonal home but they intend to make it year-round and move into it.

Jay Finlay, Finlay Engineering Services, addressed the Board and discussed the plan. He noted that the existing stairs on the north side of the house, which are 1.8 feet from the property line, are not be included in the proposed plan, thus increasing the setback from this property line. He also noted that the existing setback to the front stairs is 26.6 feet from the property line. The addition of the garage will reduce this setback to 9.1 feet, plus another 12.5 feet to the centerline of the 25 foot private road. Mr. Orth noted that the proposed plan did not further encroach on the property lines except for the garage.

Mr. Hathaway asked if the additional floor on the house will affect the view and Mr. O'Coin answered that it would not. He said the neighbors are too far away to be affected. Mr. Orth asked Mr. O'Coin how many cars they owned and Mr. O'Coin said they own two cars. Mr. Orth asked where they would park their second car and Mr. O'Coin said the other car will be parked in front of the house parallel to the road. Ms. Moore asked if the land across the street is owned by them and Mr. O'Coin said it is. Ms. Moore commented that they could park there too.

Mr. Hathaway stated that in his opinion the hardship has been met. He said that Mrs. O'Coin has mobility issues due to her arthritis and needs access closer to the house. He commented that the garage would not affect any neighbors. Mr. Orth stated that he did not have any issue with the house being in the existing footprint and said he was happy with the explanation for the hardship.

Hearing no further discussion, Mr. Hathaway asked for a motion.

MOTION: Mr. Reinke moved to approve the variance for 6 Lake Shore Drive.

SECOND: Mr. Orth. Discussion: Ms. Moore commented that there was another instance where the garage was denied but it was not attached to the house.

VOTE: All in favor.

### **Finding of Facts:**

David Orth voted in favor of the motion because he felt that the hardship was met and because of the topography, there was no place else to put the garage.

Jim Reinke voted in favor of the motion because he felt that conditions for the variance were met noting Mrs. O'Coin's medical issues and commented that the shape of the lot prevented the garage from being placed in another location.

Richard Johnston voted in favor of the motion because he felt that there would be no adverse impact and Mrs. O'Coin met the hardship requirement and needs the garage.

Mr. Hathaway voted in favor of the motion because he also felt that the hardship was met. He commented that this issue was unique and there was nowhere else the garage could have been placed.

Mr. Moore voted in favor of the motion because she felt that the hardship was met and the garage would not be encroaching on neighbors.

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

MOTION: Mr. Orth moved to approve the special permit for 6 Lake Shore Drive.

SECOND: Jim Reinke. Discussion: None

VOTE: All in favor.

MOTION: Mr. Jim Reinke moved to close the hearing.

SECOND: Mr. Orth. Discussion: None

VOTE: All in favor.

#### General Board Discussion continued

*Abutter Notification:* Ms. Buck asked the Board if they would allow Certificates of Mailing for notifications. She stated that the Planning Board and Conservation Commission have both switched to Certificates of Mailing instead of Certified Mailing because of the cost. Ms. Buck said that a receipt is given documenting the mailing. Mr. Hathaway stated that as long as the petition has proof that things were sent out to abutters he would be fine with that change.

MOTION: Mr. Orth moved to allow Certificates of Mailing as opposed to Certified Mail.

SECOND: Mr. Reinke. Discussion: None

VOTE: All in favor.

MOTION: Mr. Reinke moved to adjourn the meeting.

SECOND: Ms. Moore

VOTE: All in favor.

The meeting adjourned at 10:03PM.

Respectfully submitted,

Wanda Merced, Department Assistant

#### **Documents included in meeting packet or otherwise sent to ZBA in advance of the meeting:**

- Zoning Board of Appeals Agenda 3/6/2019
- Draft Minutes

- 101 Huntoon Memorial Highway 9/19/2018
- Hearing notice and Special Permit application: 86 Willow Hill Road
- Hearing notice and Special Permit & Variance applications: 6 Lake Shore Drive

**Documents submitted at meeting:**

- Copy of Schedule of Use table regarding Limited Frontage Lot
- Copy of the definition for Limited Frontage Lot
- Copy of zoning map showing zoned R1
- Copy of original 4.39 acre parcel (Willow Hill Rd)
- Copy of Lot 1, Lot 2 and Parcel A parcels (Willow Hill Rd)