

**Zoning Board of Appeals
Meeting Minutes**

Minutes of August 10, 2016

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

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

Hearing on the petition of CB Blair Development Corp of 87 Main Street, Rutland, MA for a variance from the minimum area and frontage requirements to build a single family home on property located at 182 Paxton Street, Leicester, MA

Meeting called order at 7:30PM

Instructions given on hearing procedures

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

Mr. Buckley read the Notice, Application.

Submitted into evidence: Reasons why a variance should be granted; list of hardships in connection with the petition for variance; request for Finding of Fact in connection with the petition for variance; the return receipts from the Certified Mailing to abutters and a Registered Plot Plan. All agreed that the reading of the evidence into the record could be waived

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

At this point, Mr. Kirwan opened the meeting to the applicant to address the Board.

Mr. George Kiritsy, Attorney for the applicant, made the presentation.

He reviewed the original subdivision application that was before the Planning Board in 1999.

All the lots within the subdivision had the minimum of area and frontage, including lot 1. At that time, lot 1 was a 50,000 square foot lot with 200 feet of frontage and approved as part of the subdivision.

The subdivision was built, the lots around this lot were sold and C.B. Blair no longer owned any of the abutting properties.

In 1999, the property line between lot 1, lot 3& lot 4 were found to be part of the Leicester Water District. They resurveyed the area and the water district surveyed the area, and it was confirmed that the boundary line had to be shifted over a couple of feet.

An ANR Plan was then generated in order to make the other lots down the road buildable lots. Lot 1 lost area and a small bit of frontage and that required it to be identified on the ANR plan as an unbuildable lot. He was not saying it's permanently non-buildable, he's saying it didn't comply with the minimum frontage requirement at that time, therefore the Planning Board was able to endorse the plan having that notation.

Since 2002, they have been looking at what to do with Lot 1 and discussed submitting an application for variance to make this lot buildable again.

Their application for variance will turn this once buildable lot, rendered unbuildable because of a small sliver of land that was shaved away, back to buildable.

This lot is the same as it was in 1998, with a very small sliver of land between lot 1 and the Leicester Water District, which when removed from lot 1, rendered it slightly under the minimum frontage and area. They are respectfully requesting a variance to make this lot buildable again.

Mr. Hathaway said he was having a hard time understanding why something that is almost 20-years old and non-buildable, can be buildable now.

Mr. Kiritsy said it was non-buildable because 20 years ago it was non-buildable and is still non-buildable. It's non-buildable because it doesn't have sufficient frontage or area. It was buildable when this plan was done back in 1999. It's non-buildable today and there's been no change in the buildability of this, but if you have non-buildable property and it's marked non-buildable, it doesn't exclude someone from coming in and asking for a variance.

Mr. Hathaway said he was having a hard time understanding that if Mr. Blair has known about this issue for almost 20-years, why he was now coming to the Board asking for the variance.

Mr. Kiritsy said at some point, someone would be coming before the Board to ask for a variance for that lot and they felt this was the opportune time to ask.

Mr. Hathaway said would it be more accurate to talk about the variance from 80,000 square feet not from 50,000 square feet.

He wanted to make clear what's being discussed and what the variance was actually being applied for, because this lot maybe only short a little bit on frontage, but it's a lot short on area. It would not have been as short on as much area if this was applied for 20 years ago, because now it is a lot more.

Mr. Kiritsy agreed it would have been better if they applied between 1999 and 2001 when the zoning was still at 50,000 square feet. This lot was fixed in area as of 1999 at the time of the zoning change. The increase in area may not even apply, because in 2001 when the zoning bylaw had changed, this lot was already fixed and was a lot in existence along with the other abutting properties in that development.

Therefore, the increase in dimensional compliment does not come into play, but they would still be asking for a variance on frontage.

Mr. Hathaway said the Town felt that 80,000 square feet is the minimum for Suburban Agricultural & was the right thing to do. That is why he felt the ZBA needed to consider this a request for a Variance from the 80,000 square footage to 50,000.

Mr. Kiritsy said they did apply for square footage and he was not arguing that. Every lot in that immediate area is 50,000 square foot lots and this lot would fit right in nicely.

Mr. Reinke asked the year the lot was fixed at 50,000. Mr. Kiritsy said it was part of the original subdivision back in 1998 and the lot size allowed was 50,000 and in 2001, minimum lot size was increased to 80,000.

Mr. Reinke asked when the mistake was found in the boundary lines. Mr. Kiritsy said 1999.

Mr. Reinke said in 1999 the lot went from 50,000 to 47,000 and just shy of the 200-foot frontage and in 2001 the Town increased the minimum lot size to 80,000.

Mr. Kirwan said looking at lot 3, it looks like the rear of that lot 1 meets lot 3 and the rear of lot 1 was adjusted, which left lot 3 intact with 50,000 square feet. He asked what happened with Lot 4. Mr. Kiritsy said lot 4 moved into lot 5.

Mr. Hathaway said the description earlier sounded like when moving the lots it affected lot 1, 3 & 4 and only lot 1 was short.

Mr. Kiritsy explained they just move the line down the road. Looking at the map, the line parallel to the water district line moves over and when that moved over, all that area had to be made up to keep the remaining lots at 50,000.

Mr. Hathaway said Mr. Blair knew they had to cut into the abutting lot to make the others comply.

Mr. Kiritsy said the error was discovered after the subdivision was approved and the subdivision was approved with the original lot line intact.

He explained their engineers resurveyed and the water district engineers resurveyed and found they needed to move the line. They did what they could to try and save the original design.

Mr. Kirwan asked if any of the lots were already built on when the error was discovered.

Mr. Kiritsy said yes lot 2 had a house on it.

Mr. Orth asked when the water district property line was adjusted, were lots 1, 3, 4 & 5 were built on at that time.

Mr. Kiritsy wasn't sure. He said this came up as a surprise to everyone, so they went out there and reconfigured the lots to accommodate the error found.

Mr. Buckley asked who made that mistake when the subdivision was subdivided.

Mr. Kiritsy said the mistake was found in the process of closing. The engineer who did the original subdivision resigned and the developer was forced to close. It was a rather large parcel.

Mr. Buckley asked what it meant "forced to close".

Mr. Kiritsy said it's a term the engineers use. When they adjust the sizes of lots to meet zoning and they end up with one that doesn't, the creation of the one nonconforming lot is called "forced to close". They use ancient descriptions and when they get these bad descriptions that say, from an old tree to the stonewall; they do their best with what they had based on the old descriptions but sometimes end up with errors. Using new technology and new equipment, they find these errors and in the process of correcting them, they may be forced to close.

The water district plans were better plans and had better controls in place. When the water district used their controls, that pushed the water district lot lines into theirs, so Mr. Blair's engineers used the water district's controls and readjusted the lots.

Mr. Buckley said developers know there is that potential when they subdivide and the engineer who was hired by the person who owned the property, knew from experience that potentially this could be a problem.

Mr. Kiritsy said they did not know and when the engineers found out and the water district brought this to the developer's attention, they did not know.

Mr. Buckley said if the engineer made the mistake, then it should have gone back on the engineer. The developer made a financial decision based on the engineer's work and now they find they lost a parcel because of that mistake.

Ms. Moore asked if they had reached out to the water district to buy extra land.

Mr. Kiritsy said no.

Ms. Moore said it seems the developer was very creative in dividing the lots so that they were buildable. She felt it would be worth trying to reach out to the water district to buy enough land to make the lot buildable.

Mr. Kiritsy said they would not be able to buy any now, with having to meet 80,000 square feet.

Ms. Paula Davis, owner of lot 4 said she has the water tanks in her back yard and has the water district's right of way on her property.

Mr. Kirwan said if C.B. Blair no longer controls lots 2, 3 & 4, which means they were sold, would that have been post 1999?

Mr. Kiritsy said due to the fact that the lots had to be changed, it had to be post 1999.

Mr. Kirwan said at that point, the developer lost his ability to play with those lines.

Mr. Kiritsy agreed. He said at some point, they ran out of room to move and couldn't make any more adjustments.

Mr. Hathaway said there are signatures on the plan that show it's post 1999.

Mr. Kiritsy agreed and was recorded at the Registry of Deeds in May 1999.

Mr. Hathaway said he thought there was some discussion relative to that remark.

Mr. Kiritsy said these lots changed in 1999 and the zoning changed in 2001. At some point after 1999 when these lots were reconfigured, they were sold out and there was no place to pick up that 3000 square feet.

Mr. Kirwan asked Ms. Davis if she had an opinion regarding this application.

Ms. Davis said she wanted to see why the lot was never built on prior to this and how it would affect her property, because the water tank is literally in her backyard.

Approximately 10 years ago, because they kept building houses after hers, she had to put something on her water to increase the water pressure in her home. She was concerned that if they built another house, would it affect the water pressure again.

Mr. Schold said the Board has approved limited frontage lots that were smaller than this in the past.

Mr. Hathaway said this is not a limited frontage. Limited frontage lots have the required square footage, just not the frontage.

Mr. Buckley felt this was too much of a variance. The subdivision was cut up into 50,000 square foot lots and one came up short. It's unfortunate one came up short, but isn't that the nature of subdivisions sometimes that one lot might not meet the requirements.

Mr. Hathaway said he would have released that engineer due to such a big mistake and then having to come to the Town asking for a variance.

Mr. Reinke felt if the developers knew this would happen ahead of time, they probably would have split the lots up differently so they wouldn't lose an entire lot. Then there was the zoning changed and then the market changed. The engineer screwed up and he understood trying to find the mark in the field and missing that mark. Two survey crews went out and didn't hit the same point. This was all farmland at that time and especially because nothing was built on it previously, they went from a rock with a peg in it to now GPS with 3 point accuracy.

He understood the differences and they did what they could to make up the difference when they could at that time.

Mr. Kirwan said his concern was that this has been on the table since 1999 and they are now applying for the variance in 2016. Another concern was, there is a lot that is pre-2001 changed to an 80,000sf lot that is not quite where it should be. He questioned if the best use of this land, to leave it vacant land that wouldn't do anyone any good, versus, putting something that can add value, for example, family living there; taxes to the Town.

He asked if it would be worth standing on something like this and leaving it as useless land.

Mr. Hathaway said there is still the requirement on the demonstration of a hardship.

Mr. Mark Antanavica, 479 Stafford Street, Cherry Valley said after listening to this presentation, this was originally a lot that was buildable. He works with engineers every day and he can count on both hands on how many times they screw up.

This was a buildable lot in the beginning, because the engineer screwed up they had to claim it an unbuildable lot. He knows from building subdivisions that lot would be kept until last. So now, it's been sitting there a while and they want to be done with it. If you go back to the plan that was approved, there's 50,000sf with the correct amount of frontage and he felt it should go back to the original plan, which all the surrounding lots are.

Mr. Reinke agreed it would be in harmony with the neighborhood, but he also agrees that 30,000sf is a lot to ask for, but it wasn't when this originally was proposed in 1999.

Ms. Moore felt the developers should have taken care of business when this problem was first realized. Zoning laws change all the time for a reason and then there is the hardship requirement. She asked what was the hardship to just leave the lot the way it is, non-buildable like it's been for 20-years.

Mr. Kiritsy said the hardship would be leaving the lot unbuildable and it would be a financial hardship leaving the lot vacant. Their only remedy was to apply for a variance.

Mr. Kirwan noted that if this does move forward for a motion, it would require 4 out of the 5 voting members for it to pass favorably.

Mr. Schold said we talk about developers' mistakes, some warranted some not and for Mr. Blair this lot is probably not a very big deal. On the other hand, Mr. Blair serves a lot of people and employs many people, provides many services and buys many products. All these people are part of building a house and selling it and in the end, there will be another family included in the tax base. He felt it would fit well with the neighborhood and would work.

Ms. Davis said her concern was the lot becoming a trash collection lot because it's a field. If there was a house there, trash won't be thrown there.

Mr. Reinke said he felt it would be in harmony with the neighborhood and unfortunately, it came up short on square footage because of an error. He considered that a hardship and not self-imposed, because he does not believe anyone planned to be short on the lot and lose whatever the property value there is on a buildable lot.

Mr. Hathaway asked if none of the property was developed, why couldn't they have pushed everything down.

Mr. Kiritsy said they moved it down as best they could to keep the remaining lots in compliance.

Mr. Orth said it was mentioned that lot 2 was already built upon.

Mr. Kiritsy said looking at the plan, it does look like the lot line was moved. They did reach a point where they couldn't move it any further because they didn't own all the land.

Mr. Orth said it is relatively a smaller lot than the others, but on the same token, it will be hooked into Town water and sewer and doesn't appear the lot would be that cramped.

Mr. Hathaway said if this was done before the zoning change, it would have only been a couple thousand square feet and now it 32,000sf.

Mr. Kiritsy explained Mr. Blair was mad when this error was found and they did the best they could to fix the error at the time.

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

MOTION: Mr. Schold moved to grant the variance for C.B. Blair Development Corporation of 87 Main Street, Rutland, MA from the minimum area and frontage requirements to build a single family home on property located at 182 Paxton Street, Leicester, MA.

SECONDED: Mr. Orth – Discussion: None

VOTE: 3- In Favor / 2 – Opposed -- **Motion Failed – Variance Denied**

Finding of Facts:

Mr. Schold voted in favor of the motion because he felt there was a hardship and was not self-imposed. It would be in harmony with the neighborhood.

Mr. Orth voted in favor of the motion because although it was less than the 50,000 square feet, he did not feel it would not be in harmony with the neighborhood.

Mr. Hathaway voted in opposition of the motion because he didn't feel the hardship was demonstrated. Maybe it wasn't a self-imposed hardship, it was a long time between when the error was found and applying for a variance. He was not comfortable approving a 32,000 square foot variance on something that could have simply been rectified 20 years ago.

Mr. Kirwan voted in favor of the motion because he felt it was the best use for this land and even though it was considered a little shy 20 years ago, he didn't think it was that significant that the Town wouldn't benefit from a home and a family living there. He felt it was not a self-imposed hardship and was a comedy of errors on the engineers' part. He felt the hardship was having a piece of land that will be used as a trash drop off place and felt it would be better to have a home built on this lot.

Mr. Buckley voted in opposition of the motion because he felt this did not meet the criteria of the Leicester Zoning Bylaws to grant a variance. He did not feel hardship was not demonstrated enough to fully defend a 40% variance on square footage.

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

MOTION: Mr. Orth moved to close the hearing
SECONDED: Mr. Buckley – Discussion: None
VOTE: All in Favor

Meeting adjourned at 8:25PM

Respectfully submitted:

Barbara Knox

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