

**ZONING BOARD OF APPEALS
MEETING MINUTES
May 1, 2019
86 Willow Hill Road**

Members Present: Vaughn Hathaway, Chair; Jim Reinke, Vice Chair; Mary Moore, Jim Buckley

Members Absent: N/A

Alternate Members Present: Richard Johnston

Staff Present: Michelle Buck, Town Planner

The meeting was called to order at 7:33PM.

The Board reviewed and discussed several revisions to the March 27, 2019 and April 3, 2019 meeting minutes.

March 27, 2019 Minutes: 103 Marshall Street

MOTION: Mr. Buckley moved to approve the minutes of March 27, 2019 for 103 Marshall Street with the discussed revisions.

SECOND: Mr. Johnston. Discussion: None.

VOTE: All in favor.

April 3, 2019 Minutes: 86 Willow Hill Road

MOTION: Mr. Johnston moved to approve the minutes of April 3, 2019 for 86 Willow Hill Road with the discussed revisions.

SECOND: Mr. Reinke. Discussion: None.

VOTE: All in favor.

Public Hearing, 86 Willow Hill Road, Special Permit Continued

Mr. Hathaway opened the hearing at 7:42PM and provided an overview of the hearing process. Voting members for this application as follows: Vaughn Hathaway, Jim Buckley, Mary Moore, Jim Reinke and Richard Johnston.

Mr. Hathaway explained that the Board requested input from Town Counsel and stated that as a courtesy, the Board made the letter available to the petitioner. He further explained that the petitioner submitted a letter to the Board and Ms. Buck stated that there were copies available for the public.

Mr. Hathaway opened the hearing up to the petitioner.

Mr. Norman Hill, Trustee of the Grafton Office Trust, addressed the Board and commented on Town Counsel's letter. Mr. Hill stated that from his perspective, the letter states that what they have done was legal and they had followed the bylaw. He said that the Board's decision should be based on whether or not the house would be detrimental to the neighborhood. Mr. Hill commented that the Board should only deny on that basis and said that if it was not detrimental, they should approve. He further commented that he thought this was a good bylaw because it

stops subdivisions and stated that because of this bylaw, he chose to build one house instead of a subdivision.

Mr. Hill went over the history of his company and explained that he has built 84 modest homes in seven towns over many years without any problems. He stated that he revised the site plan to add a drainage ditch and explained that it would run from Monterey to a ditch on the easterly side of the property to intercept a lot of the water. Mr. Hill stated that the installation of the ditch would be helpful to the neighborhood and explained that he had also moved the house 20' further away from Monterey.

Mr. Hill pointed out that Town Counsel mentioned that he put on his plan "not a buildable lot" and he stated that he puts that on many plans. He explained that just because he put "not a buildable lot" on a plan does not mean that he does not intend to build on that lot. Mr. Hill said that there was never an intention for deception and said that this was common practice. He stressed to the Board that he felt that he had been upfront with them from the start.

Mr. Hill reviewed his findings of fact with the Board and said that he had a large lot with 50' of vegetation as a buffer. He stated that there would not be any increase in noise or traffic and felt that this lot met all the regulations for a limited frontage lot. Mr. Hathaway commented to Mr. Hill that he leave the decision of meeting regulations for limited frontage lots up to the Board. Mr. Hill stated that he was asked to move the driveway and stated that he would not be able to because of the bylaw and read "Access must be across the front of the lot". Mr. Hill explained that he would print the revised plan on mylar and record it at the Registry of Deeds if the special permit is approved. He said that he would mark the no disturb zone on the plan and said that the language in the deed would state that the area was a no-disturb zone and would be protected forever.

Mr. Hill commented that the Board had three previous approvals and Mr. Hathaway stated that it did not mean that they had to repeat a mistake. Mr. Hill commented that his interpretation of Town Counsel's letter is different from the Board's interpretation. Mr. Hathaway stressed to Mr. Hill that the Board did not have to share the letter from Town Counsel with him and did so as a courtesy to him. Mr. Hathaway read from the letter saying "In my opinion, "[a]n endorsement under [M.G.L. c. 41 § 81P] does not mean that the lots within the endorsed plan are buildable lots." Mr. Hathaway stated that one thing that was unclear was that the conditions in the bylaws do have to be taken into account and that they also have to address whether there was an adverse effect on the neighborhood. Mr. Hill commented that he did not read the same thing that Mr. Hathaway read.

Ms. Moore commented that she had issue with Mr. Hill's use of the term detrimental. She pointed out that it said "possible adverse effect on the neighborhood" and stated that it does not say anything about detrimental. She explained that there could be an effect on the neighborhood that may not be detrimental but stated that it still would be an effect on the neighborhood.

Mr. Hathaway stated that his concern was that these lots were in common ownership and the land was clearly divided up into three parcels. He stated that the fact that the third lot was

created at the time that the bylaw had already been in existence for a long time is what he was having difficulty with.

Mr. Reinke commented that at no time was there enough frontage for three lots in accordance with 150' per lot. He went on to say that if they do not grant the permit for the second lot, there is still a lot that can be built on with no restrictions at all. Mr. Reinke stated that he felt that this [the current proposal] was a better option with less of an adverse effect on the neighborhood.

Mr. Hathaway commented that the goal of three lots was not a right and Mr. Reinke stated that they do allow limited frontage lots in their bylaw. Mr. Reinke said that he felt that he would rather have the ability to put stipulations to protect the neighbors with vegetation and a swale and stated that he felt this would be less adversarial than the alternative of one lot and clear cutting everything.

Ms. Moore commented about referring to it as one lot saying that he already had it as three lots and Mr. Reinke commented that before it was subdivided it was one lot held in common. Ms. Moore stated she understood that and added that Mr. Hill was the one who changed it to three lots with one non-buildable lot. She went on to say that it was still a non-buildable lot unless the Board approves this permit. Mr. Reinke stated that as a Board, they were allowed to put stipulations on what can be done and cannot be done and felt that Mr. Hill went out of his way to protect the neighbors as much as possible.

Mr. Hathaway commented that he understood where Mr. Reinke was coming from and said that they would be able to put conditions if they approve the permit. Mr. Hathaway went on to say that the Board had to adhere to what is in the bylaws and make sure there was no adverse effect and stressed that they could not ignore the bylaws. Mr. Reinke commented that he did not see anything in Town Counsel's letter that said anything to direct the Board one way or another. He stated that he felt that Counsel's language regarding a yay or nay vote should not have been included because that could sway members and stated that he felt that was not fair on the part of Counsel.

Mr. Hathaway stated that he was speaking from his many years of experience on the Board and said that he has a hard time thinking of throwing out the bylaws and only voting on adverse effect of the neighborhood. Mr. Johnston commented that he didn't believe anyone was suggesting that and said that he had read and reread the letter. He read out loud "The provision of this Section shall not apply to a lot which being owned in common with other lots could be configured to conform to the dimensional requirements of the zoning district" and stated that this parcel could never be configured to conform to the dimensional requirements. Mr. Hathaway commented that if it were two lots it would be able to be configured to conform to the dimensional requirements.

Ms. Buck stated that she spent time reviewing the legislative history on this amendment and said that it was quite clear that the intent was not what this application was about. She said that that sentence had been rewritten multiple times trying to narrow that and not allow new divisions of land like this application.

Mr. Hathaway explained to Mr. Hill that when the lots were created they were in common ownership. Mr. Hill stated that it was not commonly owned now and commented that the Board wouldn't want him to put in a subdivision or road. Mr. Buckley commented that if Mr. Hill wanted to put in a subdivision he could do that and told Mr. Hill not to use that as a threat. Mr. Hill stated that he was not making a threat. Mr. Buckley read from M.G.L. c. 40A § 9 and said "Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or bylaw" and felt this was clearly not in harmony. Mr. Hill asked what was not in harmony. Mr. Buckley answered saying that having ownership of one parcel and cutting it into three pieces, knowing that one would not have enough frontage to be a buildable lot without a special permit, and then selling one of the lots and then claiming not to have common ownership; that was not in harmony.

Ms. Moore asked if the Highway Department would take over the maintenance of the drainage easement and Mr. Hill stated that he still had not looked into that matter. He said that if the special permit was approved, he would be doing that.

Mr. Hathaway commented that the Board needs to decide if this met all of the conditions according to their bylaw and stated that they could not ignore the bylaw. Mr. Hill again asked what the conditions were that he was not meeting. Mr. Hathaway answered that he would read, the provisions again, and said "The provisions of this Section shall not apply to any lot shown on a definitive subdivision plan or to a lot which being owned in common with other lots could be configured to conform to the dimensional requirements of the zoning district". Mr. Hathaway explained that when this lot had been created, that was the case. Mr. Reinke commented that when Mr. Hill bought the lot that it was in common ownership.

Mr. Hathaway asked if there were any questions or comments from the public.

David Drapeau of 92 Willow Hill Road addressed the Board and stated that he agreed with the Board and did not have any problems. Peter Cusolito of 93 Willow Hill Road and asked if the attorney's letter was available to the public and Mr. Hathaway stated that it was only for the Board. Mr. Drapeau stated that if that letter has anything to do with the decision he felt that it should be made public. Kathleen Gaucher of 4 Monterey Drive commented that this house would be right in her back yard. Mr. Hathaway clarified to the public that if the Board does not grant the special permit, it doesn't mean that nothing will go there and Ms. Gaucher stated that she understood.

MOTION: Mr. Buckley moved to not grant a special permit for a limited frontage lot for the property at 86 Willow Hill Road.

SECOND: Ms. Moore. Discussion: None.

VOTE: 3 in favor/2 opposed (Mr. Johnston and Mr. Reinke)

MOTION: Mr. Buckley moved to grant the special permit for the property at 86 Willow Hill Road.

SECOND: Mr. Johnston. Discussion: Mr. Reinke stated that it should include the drainage ditch along the driveway, the swale to prevent water going to 80 and 92 Willow Hill Road and

the 50' vegetative barrier to be recorded at the Registry of Deeds to be a perpetually no-disturb zone.

VOTE: 2 in favor/3 opposed (Ms. Moore, Mr. Hathaway and Mr. Buckley).

Mr. Hathaway announced that the special permit had been denied [4/5 affirmative vote required for approval] and Mr. Hill thanked the Board for their time.

Mr. Hathaway stated that the Board typically did not provide findings of facts for denials but suggested that they do that for this particular application in order to be clear.

Findings of Facts:

Mr. Buckley voted not to grant the special permit because of M.G.L. c. 40A § 9 saying "Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or bylaw" and felt this was not in harmony. He explained that before the lot was subdivided, it was in common ownership.

Mr. Reinke voted in favor because he felt it was the best use of the property and with the stipulations suggested would have been the most advantageous for the abutters and most in harmony.

Mr. Johnston voted in favor because he felt that what was proposed was the highest and best use of the property. He said that he was particularly interested in the way the petitioner would divert water from 92 and 80 Willow Hill Road.

Mr. Hathaway voted against the special permit saying he felt that the property was in common ownership and stated that if the Board granted for self-created lots, that they would be setting a dangerous precedent.

Ms. Moore voted against approval because she didn't feel that it met the conditions for a special permit. She said she felt that it would have an adverse effect on the neighborhood and for neighborhoods to come.

Mr. Hathaway explained to Mr. Hill that the Board had 14 days to file a decision with the Town Clerk and that he would have 20 days to file an appeal.

MOTION: Mr. Reinke moved to close the hearing.

SECOND: Mr. Buckley. Discussion: None.

VOTE: All in favor.

General Board Discussion

Ms. Buck asked if the Board wanted to comment on Cultivate's parking expansion. Mr. Hathaway commented that this would be going in front of the Planning Board and said that the Zoning Board wouldn't have any vote on this. Mr. Reinke asked if they need the additional parking and Ms. Buck answered that she thought that they did. Ms. Moore asked if there would be a check list or something that everyone looks at before a decision is made and Ms. Buck answered that the Planning Board does distribute their applications to several departments for comments.

MOTION: Mr. Reinke moved to adjourn the meeting.
SECOND: Mr. Buckley
VOTE: All in favor

The meeting adjourned at 8:35PM.

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 5/1/2019
- Draft Minutes
 - 103 Marshall Street, 3/27/2019
 - 86 Willow Hill Road, 4/3/2019

Documents submitted at meeting:

- Letter to Leicester ZBA from Mr. Hill dated April 29, 2019 and revised plan
- Copy of plan showing the type of house to be built