

Town of Leicester Zoning Board of Appeals
Meeting Minutes

Minutes of January 7, 2015

Hearing on the petition of Kerry Scola of 25 Barnes Ave, Worcester, Ma. for a Special Permit for a Limited Frontage Lot for building lot #2 on property located at 42 Tobin Road, Cherry Valley, Ma.

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

Alternate members present: Paul Schold, Jim Reinke

Meeting called to order at 8:15PM

Instructions were given on the hearing procedures.

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

Mr. Buckley read the Notice and Application into the record.

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

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

Mr. Orth opened the hearing to the applicant to present his petition.

Mr. Kerry Scola said he has owned this property since 1997 and in 2002 he carved out 4 lots prior to the zoning change. At that time, the lots size requirements were 20,000 and 125-feet frontage. In 2006; he sold two of the lots that had sewer hooks up available for both lots.

In 2007, the property reverted back to the old zoning of 20,000-lot size and 125-frontage. He wasn't aware it had changed back and he's been paying taxes on this property for the last 8 years not knowing that.

So, what he did was double the size of two lots to 40,000-square feet, and the lot in question is land locked between the two properties having 125-feet of frontage.

Mr. Hathaway asked if sewer and water hookups were available there. Mr. Scola said yes.

Mr. Hathaway asked for clarification. The property was originally bought in 1997 and at that time, the lot size requirement was 50,000 square feet. Mr. Scola said yes and the zoning change was in 2002 or 2003.

Mr. Hathaway said typically a plan like this is grandfathered. Mr. Scola agreed and said he had sold two of the lots, one in 2005 and one in 2006 with no problems. The remainder of land just sat there and when he started inquiring about what can be done with the land, he found out that after 5-years it reverts back to its original zoning.

Mr. Hathaway asked Mr. Scola if he could explain why it's noted on the plan "Not to be considered a building lot".

Mr. Scola explained that was what he was told to have his surveyor put, but it is a buildable lot. If he receives approval from the Zoning Board tonight, he will need to go back to the Planning Board with a new ANR plan with those words removed.

Mr. Hathaway said he was trying to figure out when this plan was done and asked if it was done when the property was first purchased.

Mr. Scola said no, this is a copy of an ANR Plan that was before the Planning Board last month. These lots were originally cut out in 2002.

Mr. Orth questioned why the plan noted "Not a buildable lot".

Mr. Hathaway explained that at the time the lots were created, it was not a buildable lot.

Mr. Kirwan asked if houses were already built on lots 3 & 1. Mr. Scola said yes.

Mr. Kirwan asked when they were built. Mr. Scola said in 2005 & 2006 and at that time the frontage was adequate.

He noted that when the sewers came up the street, hookups were put at each lot.

Mr. Orth asked if the Board can grant a permit for something that isn't buildable.

Mr. Hathaway explained that every limited frontage lot that comes before the Board isn't buildable, until the Board approves a Special Permit for that lot. After the Board approves the permit, it becomes buildable.

Mr. Hathaway said for any contiguous property that is owned by the same owner; those parcels may need to be combined and that maybe why it didn't fall under the grandfathering.

Mr. Scola pointed out that the other two houses were already there on each side.

Mr. Hathaway asked if the same person owned all the property. Mr. Scola said yes and all the land behind.

Mr. Hathaway noted he understood now why this did not fall under the grandfathering. It's because the property was in common ownership and considered one parcel.

Mr. Orth opened discussion to the public.

Mr. Fran Bergin, 30 Tobin Road said when they dug the hole for the foundation to lot #1, he called the Building Inspector wanting to know what was going on and he was told to check with the Planning Board. He contacted the Planning Office and was told they didn't have any information to what was going on there. He went back to the Building Inspector and was gruffly told those lots were grandfathered lots.

He was confused as to why those lots could be grandfathered when the Planning Board, before Mr. Scola owned the property, said they were not grandfathered.

He said he was not upset with anything that was going on there, but after receiving the public hearing notice, he wanted to try and understand how and why things got crisscrossed as they have.

Mr. Orth confirmed that Mr. Bergin wasn't against the project and that he just wanted to hear what was going on. Mr. Bergin agreed and said he just wanted to try and understand what was happening, because if the Town passed a bylaw for 150-feet of frontage, he wanted to know why there were exceptions to that.

Mr. Hathaway explained that when Bylaws are amended, things that were done prior to an amendment get grandfathered.

Mr. Orth explained that grandfathering usually depends upon when that something is done and what the Bylaw states at that time.

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

MOTION: Mr. Kirwan moved to approve the Special Permit for a Limited Frontage Lot for building lot #2 on property located at 42 Tobin Road, Cherry Valley, Ma.

SECONDED: Mr. Buckley – Discussion: None

VOTE: All in Favor – SPECIAL PERMIT APPROVED

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

MOTION: Mr. Hathaway moved to adjourn meeting

SECONDED: Mr. Kirwan – Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:40PM

Respectfully submitted:

Barbara Knox

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