

## **Zoning Board of Appeals Meeting Minutes**

Minutes of November 19, 2014

Hearing on the petition of Paul Mirabito, Ross engineering Co., of 683 Main Street, Norwell, Ma for a Variance from the 50-foot width requirement between the front line of the building to the street line located at Lot 7, Conway Drive, Leicester, Ma.. Also for a Special Permit for a limited frontage lot on property located at Lot 7, Conway Drive, Leicester, 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 7:30PM.

Instructions were given on the hearing procedures.

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

Mr. Buckley read the Notice and Application into the record. Reading of the remaining material was waived.

Submitted into evidence: Registered Plot Plan, green and white return receipts from the Certified Mailing, the previous special permit and variance decisions approved in May of 2008.

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

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

### **Variance Hearing**

Mr. Paul Mirabito said he is seeking the Boards' approval for the same permit on the same property issued back in 2008. At that time, he needed to meet with the Planning Board to receive approval on an ANR Plan on this lot, which was received and recorded at the Registry of Deeds. They also received approval from the Conservation Commission, which is still valid from 2013 and the State's Extension Act.

The Variance request is because the width at the beginning of the drive is 37.58-feet and then widens to 50-feet going into the lot; the Bylaw requires a consistent 50-foot width.

Mr. Orth asked if the original plan was for a two-lot subdivision. Mr. Mirabito said the initial hearing spoke on a two-lot subdivision with a cul-de-sac, but that is not what is being presented now.

Mr. Hathaway questioned whether the driveway accessing the house in back was far enough away from abutting neighbors.

Mr. Mirabito reviewed the plan showing the setback lines. The driveway would have 25-feet in the rear and 20 feet on the side. The plan the Conservation Commission approved shows the home being in the back area and they had to make the driveway wide enough for emergency vehicles to turn around.

Mr. Hathaway asked if the driveway went right up next to the lot line. Mr. Mirabito said no it didn't.

Mr. Hathaway felt with the 37-feet being the narrower that would be enough for a 17-foot wide driveway. Mr. Mirabito agreed.

Mr. Hathaway questioned if there was a requirement in the bylaw for a driveway having a setback from the lot line. Mr. Orth wasn't sure.

Mr. Mirabito said because this is a special permit, the Board could always put a condition that from the center-line of the driveway, it can't be more than 10-feet off the property line at the beginning of the drive and as it moves back, it goes up to 25-feet off the property line.

Mr. Hathaway asked the applicant how this met the requirements for the granting of a variance. Mr. Mirabito explained that the unique shape of the lot does not provide a continuous 50-foot width from the street line to the front line of the house. For the first 115-feet in from the street, the lot is less than 50-feet in width. The narrowest point of the lot width is 37.58 and tapers to the full 50-feet width as shown on the plan.

Access could come from another portion of Conway Drive, but that would constitute a financial hardship, as access would require a wetland crossing, having unsuitable soils to build a driveway and would render the project uneconomical to build.

The applicant cannot build on this lot without a variance and it would deprive the applicant from any reasonable benefit from the land.

Mr. Reinke asked if Lot 6 was owned by the applicant. Mr. Mirabito said Lot 6 had been sold. Mr. Hathaway asked if there was a house on Lot 6. Mr. Orth said yes there was.

Mr. Buckley didn't understand how this lot was uneconomical to be built upon.

Mr. Mirabito explained that if the applicant couldn't put the access through that strip, they would have to come through the wetland in back and it would be very expensive to replicate. It would make the project cost prohibitive. Also, the sewer connection is right off that street.

Mr. Buckley noted that it was mentioned the property could be reconfigured into a two-house subdivision.

Mr. Mirabito agreed it could be reconfigured into a two-house subdivision, but felt by putting one house there; it would not be a detriment to the neighborhood and with only one house in that location would allow for a better setup with the street and would be a benefit to the neighborhood.

Mr. Buckley agreed that type of setup would not be detrimental to the neighborhood, but how is it a financial hardship? It's a financial hardship because it is now a one-house lot and the owner would have to cross-wetlands, but another option would be to make it into a two-house subdivision.

Mr. Orth asked where the access would be if this were a two-house subdivision. Would it be in the same area, or would it go through the wetland?

Mr. Mirabito said they would have to cross the wetlands.

Mr. Buckley said 50-foot seems to be very narrow for an access to a house.

Mr. Mirabito said there are 51-feet right at the street and at the skirt, it narrows down to 37.58-feet and because they are only putting the one driveway in, it would be less invasive then building a road.

Mr. Hathaway asked if this were to be a subdivision, how wide the road would have to be.

Mr. Mirabito said the road would need to be around 24 to 26-feet wide.

Mr. Hathaway said this is different from what the Board had previously approved for Limited Frontage Lots. The plan takes most of the frontage and most of the area from the driveway going back to the house. The lot is only big enough for one house and it's far enough back from the street, but the house can only be in one place to get the minimal area.

He asked if the 50-feet was by just the letter of the law where the concern was or was it with the impact it may have. Mr. Buckley felt it was the letter of the law.

Mr. Orth asked if there were trees that would have to be removed in order to put in the driveway.

Mr. Mirabito said they would probably have to cut a 10 to 12 foot strip on each side.

Mr. Orth opened discussion to the audience.

Ms. Janet Robbins, 354 Pleasant Street said her concern was on the impact this may have on her property. The stonewall shown on the plan and where the house will be, is right at her property line, so she felt this would have an effect on her.

Mr. Mirabito said from the street, if someone were to take the driveway and go way back to the house, it would not be visible to her property.

Ms. Robbins noted a concern with Conway Drive being very narrow and the area is heavily wooded, how safe was it for a fire truck to access the property if there were a fire.

Ms. Mirabito said he spoke with the Fire Chief regarding the access drive and the Chief felt the driveway met the access requirements of the Fire Department.

Mr. Kirwan asked where this house may potentially be positioned, will it become visible to Ms. Robbins even with the trees around it.

Ms. Robbins said right now if the trees stay there, she would not see the house, but the stonewall at the property line is a concern. She asked how far this house will be from the stonewall and her property.

Mr. Hathaway noted the Board could put a condition in the Decision, if they were to grant this, that the house had to be so many feet from the stonewall.

Mr. Orth asked if there was a plan to show where the house was to be located.

Mr. Mirabito said the Conservation Commission noted in their Order of Conditions that the house could only be placed in one certain spot on the lot.

Mr. Orth asked where on the lot the house will be placed. Mr. Mirabito reviewed the plan showing the house would be placed almost 100-feet from the wall.

Mr. Kirwan felt trying to put in a road anywhere back there, they will have to be deal with wetlands and the added costs on developing it. Mr. Reinke agreed.

Mr. Mirabito reviewed where the wetland was and the house would be within 100-feet and the reason the house's specific location was because where the driveway was going and garage. They would not have a problem putting in a 50-foot buffer on that side.

Mr. Hathaway said he thought Ms. Robbins concern was whether a 50-foot wooded buffer was being considered along the east wall of the lot. Ms. Robbins agreed.

Mr. Kirwan noted at one time, the same owner, owned lot 7, 6 and 5. He asked why lot 7 was kept a limited frontage when first mapping it out.

Mr. Mirabito explained these were all separate parcels the owner had purchased separately.

Mr. Reinke clarified that it wasn't subdivided out of one big parcel; it was single parcels bought over time. Mr. Mirabito agreed.

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

MOTION: Mr. Hathaway moved to approve the petition of Paul Mirabito, Ross Engineering Co., of 683 Main Street, Norwell, Ma. for a Variance from the 50-foot width requirement between the front line of the building to the street line on property located on Lot 7, Conway Drive, Leicester, Ma., with the condition that the driveway be no closer than 10-feet from the lot line and there be a 50-foot wooded buffer along the east wall side of the property.

SECONDED: Mr. Kirwan – Discussion: None

VOTE: 4 – In Favor / 1 - Opposed

### **Finding of Facts:**

Vaughn Hathaway voted to approve the motion because he felt owing to circumstances relating to the soil conditions, shape and topography of the land that it met the condition of having a unique odd shape and because the lot opens up in back big enough for a house. He felt a financial hardship was met because of the wetlands limitations.

David Kirwan voted in favor of the motion because of the shape of the lot and the unfortunate narrowing of the frontage, he felt it met the condition of a unique shape lot. And the only alternative was to bring the road in through a greater area of wetland, which would involve a greater disturbance to the environment than what is currently being proposed.

David Orth voted in favor of the motion because he felt that owing to circumstances relating to the soil conditions of the wetlands, and with the shape and topography of the land, it seemed unreasonable to go through the narrower area, which would have rendered that property useless.

Jim Buckley voted in opposition of the motion because he felt they didn't demonstrate that there was a hardship, financial or otherwise.

Jim Reinke voted in favor of the motion because of the unique shape of the lot and because of the environmental impact that would be caused by bringing the access drive to another location.

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

### **Special Permit Hearing**

Mr. Orth opened the hearing for the special permit for the Limited Frontage Lot.

Hearing no further discussion, asked for a motion.

MOTION: Mr. Hathaway moved to approve the petition of Paul Mirabito, Ross Engineering co., of 683 Main Street, Norwell, Ma. for a Special Permit for a Limited Frontage Lot on property located at Lot 7, Conway Drive, Leicester, Ma.

SECONDED: Mr. Buckley – Discussion: None

VOTE: All in Favor

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

MOTION: Mr. Reinke moved to close the hearing

SECONDED: Mr. Buckley – Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:10PM

### **General Minutes**

#### **Approval of Minutes**

9/24/2014, 22 Pleasant Street-Variance

10/15/2014, 35 Burncoat Lane – Variance

10/15/2014, 803 Main Street – Special Permit

MOTION: Mr. Hathaway moved to approve the minutes of 9/24/2014, 22 Pleasant; 10/15/2014, 35 Burncoat Lane and 10/15/2014, 803 Main Street, with noted corrections.

SECONDED: Mr. Reinke – Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:20PM

Respectfully submitted:

*Barbara Knox*

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