

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of September 20, 2012 at 7:00 p.m. @ Harmony Hall, 1660 Lakeview Avenue, Dracut.

Continued 2012-20 @ 872 Hildreth Street – Inadequate frontage to accommodate subdivision of property to create one additional buildable lot. Locus consists of frontage on two streets. Variance is being sought relative to Sections 2.12.42 and 2.12.44 of the Dracut Zoning By-Laws. Petitioner: Gardan, LLC.

Attorney Malonis presented the subdivision plot plan for Lot 1 of 53,793 sq. ft. which had the required frontage and area approved June 12, 1996 as requested at the last hearing. The Planning Board meeting minutes for June 12, 1996 showing the approval was also available for the Board.

Attorney Malonis clarified that his clients are purchasing the lots and confirmed their plans are for single family homes on both of these lots.

Chairman Crowley reviewed that what the Board is looking at tonight is proposed Lot 2A which is 40,763 sq. ft. and the issue with this lot is since it is a corner lot, the frontage goes around onto Hildreth Street from Old Road and there is not enough frontage on Old Road. Attorney Malonis noted that Lot 2A has the required frontage, but the proposed Lot 2B would not have the required frontage on one street.

Abutters: Who came forward in favor or in opposition? None.

A motion to close was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously to close.

A motion to approve the Variance 2.12.42 and 2.12.44 was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. Chairman Crowley noted for the record that the petitioner stated these lots will be for single family homes only and this will be a requirement. The Board finds the petitioner meets the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. The Board voted unanimously to approve.

2012-24 & 25 @ 191 Eighteenth Street - Special Permit 2.16.25 and Variance 2.12.50 to demo fire damaged 20'x20' existing garage and replace with new 24'x28' two story garage with living space on second floor with insufficient front setback. Petitioner: Kossamo Sisowath.

Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated June 11, 2012.

Mr. Charles L'Heureux, 66 Manchester Street, Lowell is a friend and will be representing Mr. Sisowath. A previous variance granted in 2000 was passed out for review by the Board. Mr. Sisowath purchased the property in 2010. His family is growing and needs more space. The garage burned down so Mr. Sisowath has been researching his options. After reviewing his options, he has decided to rebuild the garage and add living space above. They have tried to move the garage back as far as they can, but because the way the house is positioned with the kitchen, there is no way to move the garage 25 feet

further back. They are moving the new garage 4.5' further back than the original garage at a setback of 5.1' to 9.6'. Mr. L'Heureux presented the plans for the garage and addition for the Board's review.

Chairman Crowley asked if the garage being proposed would be at approximately the same height of the existing house. Mr. L'Heureux verified the garage and addition above would be at the same height as the existing roof line. Mr. Hamilton asked if the garage would be attached. Yes!

Mr. Hamilton asked why the addition could not go further back so it is flush with the rear of the house. Mr. L'Heureux stated that the rear of the house is only one story high and they would not be able to tie in the addition as there is also a change of grade on the property. Chairman Crowley verified that the existing garage at 5.1' from the front property line is being relocated and squared off with the rest of the house and will be at 9.6' from the front property line. Yes!

Abutters: Who came forward in favor or in opposition?

Hank and Celeste Masse, 94 Seventeenth Street – was given an opportunity to review the proposed garage/addition with Mr. L'Heureux and Mr. Sisowath. Mrs. Masse asked if it would remain a single family home. Mr. L'Heureux stated it is a single family home now and will remain one. Chairman Crowley noted that if the variance is granted that will be part of the variance. Mr. Masse asked if there was going to be any fill brought in to raise the land. No! Chairman Crowley noted that the fill issue would be left for Engineering and Building Department to enforce and any questions would be addressed to them. The addition will not be any higher than the existing roof line. Mr. Hamilton asked how many rooms were going into the addition. Mr. L'Heureux answered bathroom and one bedroom. Chairman Crowley asked the Masse's if they were in favor, opposition or neutral. They answered neutral.

A motion to close was made by Mr. Scott Mallory and seconded by Mr. David Meli. The Board voted unanimously to close.

A motion to approve the Special Permit was made by Mr. Scott Mallory and seconded by Mr. David Meli. Mr. Mallory noted that the current unattached garage is much more impinging on the lot line and the proposed is further set back along the same line as the house and is less intrusive. The Board finds that the petitioner meets the following three requirements of the Special Permit: that the change does not (1) substantially impinge upon any public right of way that adjoins the lot on which the structure is to be constructed; (2) create a danger to public safety by reason of traffic access, flow and circulation; and (3) be out of character with the traditional settlement and construction patterns of the area in which it is to be reconstructed. The Board voted unanimously to approve.

A motion to approve the Variance was made by Mr. Scott Mallory and seconded by Mr. David Meli. Chairman Crowley noted that it is a single family home and will remain a single family home, the height line of the addition will be at or below the roof line of the existing home, the replaced garage and addition over will be in the new location clearly stated on the print submitted. The Board finds the petitioner meets the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. The Board voted unanimously to approve.

2012-26 & 27 @ 667 Nashua Road – Special Permit pursuant to the Dracut Zoning By-law, section 2.16.26(1) to reestablish the protected status of an abandoned or unused non-conforming use or structure. Special Permit and Variance pursuant to the Dracut Zoning By-law, sections 2.16.25 and 2.16.23 to reconstruct, extend or change a non-conforming structure and to extend an exterior wall at or along the same non-conforming distance at or within the required side yard setback. Petitioner: George Leclair.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Patrick M. Flaherty, Professional Land Surveyor dated May 25, 2012.

Attorney Fadden will be representing the petitioner Mr. Leclair, Trustee of JAAGA Realty Trust. The property is held in trust by JAAGA Realty Trust. Mr. Leclair has owned the property and has been the trustee since 2001. The property is a small lot of 4,400 sq. ft. in area and has not been used for many years. At the time he purchased the property in 2001 it was occupied and continued to be occupied for a period of time. Over the past twelve (12) years he has made inquiries of the town to improve the property by adding a 10'x15' addition to the rear of the property. The first inquiry was in 2001 and was advised that he was not able to reconstruct the structure as a Matter of Right, that he needed a variance and special permit. Again in 2005 he approached the town and was given the same news that he would need a variance and special permit from the Board of Appeals. In the interim the property became non-used, fallen into disrepair and requires renovation. Mr. Leclair now wishes to bring the property back to its full use as a single family residence. The property is located in an R-1 zone. He is asking for the permitted use and also put a 10'x15' addition at the rear of the property. The addition at the rear will not be any closer to the right side yard as the existing structure. His client lives directly to the rear of the property which is purchased six or seven years before he purchased this property. That property is in his name and his wife's name and not part of the trustee. The property beside is 665 Nashua Road that has been abandoned and is part of the Attorney General program to place the property into a receivership. The property is serviced by town water and he would have to tie into the town sewer which is available. He would like to build on the property and bring it back to its use as a single family home.

Mr. Mallory asked if the current structure going to be demolished and rebuilt or rehabbed and the addition added on. Attorney Fadden stated that if rebuilt it would be on the existing footprint. Mr. Leclair will have to do an inspection to determine what the extent of the damage to see if the property is rebuildable or if it needs to be torn down and rebuilt.

Chairman Crowley noted that this lot has 38 feet of frontage, less than 5,000 sq. ft. and in no way, shape or form this lot can be grandfathered. Attorney Fadden disagreed.

Chairman Crowley pointed out that Mr. Leclair owns this lot and the lot behind it and in his opinion this lot was abandoned to the underlying use and is no longer available without a special permit from the Board to be built on again and, in fact, has merged with Mr. Leclair's lot in the front. The overriding issue is power of control which he certainly has over both lots. He referred to the Doctrine of Merger as presented by Attorney Schmidt from the EOCD. Chairman Crowley considers this to be one lot not two and certainly would never vote in favor of a special permit in this case, nor would he vote to allow any further additions to any proposed dwelling should it pass the special permit.

Attorney Fadden stated that it was his understanding that the merger document applies to lots that are vacant and this lot is improvable. Chairman Crowley noted it has lost that improvement as seen by the section of the law being talked about that the special permit is being asked from is no longer a buildable lot. It has lost its use as a residential lot.

Attorney Fadden stated that the abandonment statute protects the use as an R-1 use that addresses structures and does not address area or frontage. Chairman Crowley noted the grandfathering does and as such, it cannot stand alone as a grandfathered lot because it is no longer allowed to be built in. A small lot package cannot be done as it is not a buildable lot, it has no grandfathering as it is too small and Mr. Leclair has control of both lots and as such it will merge to one lot.

Attorney Fadden still feels that the statute being relied on by the ZBA only applies to vacant land. Chairman Crowley noted that in order to have any type of protection it has to be at least 5,000 sq. ft. and have 50 feet of frontage.

Attorney Fadden asked if a situation like this has been anticipated and addressed by Chapter 41.81L which allows for a subdivision even with nonconformity, if there are two buildings located on a single lot that predates zoning. Chairman Crowley noted that the Board does not look at Chapter 41; it looks at Chapter 40, but does not think it is relevant. Mr. Hamilton questioned what Attorney Fadden said regarding the law being referred to by the Chairman that it only applied if it was a vacant lot and this lot has a building on it. But the use if the building has been abandoned, does that make it a vacant lot. Attorney Fadden stated that is a good question. There was further discussion regarding this issue.

Abutters: Who came forward in favor or in opposition? None.

A motion to close was made by Mr. Scott Mallory and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to close.

A motion to approve the Special Permit 2.16.26(1) was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. Chairman Crowley thinks that given the age of the lot, the condition of it and the issues that have already been discussed relative to its viability as a buildable lot, he will vote to deny the Special Permit. The Board voted unanimously to deny.

A motion to approve the Special Permit 2.16.25 by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board finds that the petitioner does not meet the following three requirements of the Special Permit: that the change does not (1) substantially impinge upon any public right of way that adjoins the lot on which the structure is to be constructed; (2) create a danger to public safety by reason of traffic access, flow and circulation; and (3) be out of character with the traditional settlement and construction patterns of the area in which it is to be reconstructed. The motion failed by a four (4) to one (1) vote of the Board.

A motion to approve the Variance 2.16.23 was made by Mr. Stephen Hamilton and seconded by Mr. David Meli. Chairman Crowley thinks that discussion during the review of the case indicates that this piece of property failed to rise to the level that the Board felt it would need to reestablish the Special Permit, it is deficient in both size and frontage, it is held in common ownership with Mr. Leclair who has control and ownership of both properties and as such has merged and he does not wish it to be subject to resubdivision. The Board finds the petitioner does not meet the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of

the zoning by-law, and it is not injurious to the neighborhood. The Board voted unanimously to deny.

Acceptance of Minutes:

A motion to accept the June 21, 2012 and July 19, 2012 minutes was made by Mr. Stephen Hamilton and seconded by Mr. David Meli. The Board voted unanimously to accept the minutes.

Old Business:

The Pines at Marsh Hill 2041 and 2083 Bridge Street Comprehensive Permit.

The Comprehensive Permit was signed by the Board.

New Business:

A letter from Citizens' Housing and Planning Association (CHAPA) dated August 20, 2012 for the annual income certification at Robbins Nest was passed out to the Board. A letter from Kathleen M. Graham, Town Clerk dated August 22, 2012 with an update from the Attorney General on open meeting law notices "Frequently Asked Questions" was passed out to the Board.

A copy of The Permit Extension Act Frequently Asked Questions – Updated August 8, 2012 was passed out to the Board.

Chairman Crowley read a letter from Dennis Piendak sent to the Board of Selectmen dated September 19, 2012 addressing the impact on the local housing market now that Allard's Grove is completed.

Next Meeting:

The next meeting will be Thursday, October 18, 2012.

Adjournment:

A motion to adjourn was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously to adjourn.

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, Stephen Hamilton

Clerk, R. Scott Mallory

Absent
Member, Ina Hakkila

Member, David Meli

Alt. Member, Heather Santiago-
Hutchings

Alt. Member, Michael Pagonos