

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of February 25, 2016 at 7:00 p.m. @ Dracut Town Hall Selectmen's Meeting Room, 62 Arlington Street, Dracut.

2016-2 @ 137 & 125 Donohue Road – Variance pursuant to Section 2.15.50 of the Dracut Zoning By-law for a lot of land with non-conforming frontage to construct one (1) single family dwelling. Petitioner: Kenneth A. Hall, Carmen Bellerose and Arthur J. Hall. Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated July 3, 2015.

Attorney Fadden will be representing the Applicants, Kenneth A. Hall, Carmen Bellerose and Arthur J. Hall. They are seeking a variance for a lot that has insufficient frontage according to the Dracut Zoning By-laws. Attorney Fadden gave a brief history of the family, a description of the properties and the surrounding area. Refer to the attached Narrative.

The entire property is in an R3 zoning district and contains approximately 7.46 acres of land with two (2) single family residential dwellings currently located on the property. The property consists of two (2) parcels. One at 125 with a single family home and 137 with a single family home. The existing 125 Donohue Road contains 15,000 square feet. The existing 137 Donohue Road contains approximately 7.12 acres. A Wetlands Survey was performed and approximately 40% of the site included wetlands. This impacts the soil conditions and limits the ability to fully develop the property for uses allowed in the R3 zoning district. The Applicants plan to sell the property for development.

Attorney Fadden stated the Applicants proposes to subdivide the property into four (4) building lots as follows:

- Lot 1 is non-conforming for frontage. Has 104.22 feet, needs 150 feet. Single family home proposed.
- Lot 2 is conforming. Duplex is proposed. Special Permit from the Planning Board will be required.
- Lot 3 is conforming with existing house #137.
- Lot 4 with existing house #125 will be enlarged and reconfigured to be less non-conforming.

Chairman Crowley inquired why new Lot 4 (#125) does not need a variance for frontage. Frontage increased from 100 to 125 feet, but still short of the 150 feet required. Attorney Fadden referenced the attached Proposed use Zoning Compliance Determination dated 12/15/2015 from the Building Inspector.

Mr. McLaughlin, Building Inspector responded that it is an existing lot with a home on it, not a new lot, with the change making it less non-conforming. He did not feel this required a variance.

Chairman Crowley noted that on the application there was a typographical error for the By-law referenced. The Section is 2.12.50 not 2.15.50. This was duly noted by Attorney Fadden.

Attorney Fadden stated if the variance is approved they will have to go to the Planning Board for a Form A Plan. Whether this will be done by his clients or a developer is unknown at this time. There was further discussion about Lot 4 needing a variance.

Abutters: Who came forward in favor or in opposition?

Amy Conway, 115 Donohue Road – She is concerned about developing an area where there is not a lot of open land left. May take away from the value of her home. She is a direct abutter to #125 Donohue Road and was wondering if there would be a separation between the properties such as a fence. Attorney Fadden showed her the proposed plan. She feels better seeing the proposed plan and does relieve her concerns.

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

A motion to approve the Variance for Lot #1 frontage, no further sub-division of the subject property and is not meant or intended to cover existing house #125 or new Lot #4 as far as frontage was made by Mr. Brian Lussier and seconded by Mr. Scott Mallory.

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.

2016-3 @ 1656 Mammoth Road – Applicant seeks a variance of the minimum frontage requirement. Parcel A's frontage is 127.40 feet, which is 47.6 feet under the minimum requirement of 175 feet, as set forth in the Table of Standard Dimensional Requirements, Town of Dracut Zoning By-Laws, Section 2.12.50 for R1. Petitioner: Paul Moran Sr., by his attorney, Roberto L. Di Marco, Esq.

Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated August 25, 2015.

Attorney DeMarco will be representing the petitioner Mr. Moran. Attorney DeMarco explained the original house on the property was refurbished. They went to the Planning Board with an ANR Plan to subdivide the property. Refer to attached narrative. The property was divided into two (2) lots and one (1) non-buildable parcel listed as Parcel A with insufficient frontage. Parcel A is conforming in all other dimensions. The existing single family home is on new Lot 1. The Applicant wants to build a single family home on conforming Lot 2. He would also like to build a single family home on Parcel A, but needs a variance for frontage.

Attorney DeMarco stated that Parcel A lot is fully buildable with 2 acres of land and no wetlands. The house would be built higher up in the property. It would improve the property with no detrimental impact to the neighborhood. It was noted the grade of the property is very steep. They would create a wide enough entry into the property for the driveway.

Chairman Crowley reviewed the attached Planning Board Minutes. He noted the back part of the lot is in Pelham, N.H.

Chairman Crowley, with the approval of the Board, would like to continue this hearing to the next meeting so he could contact the Planning Board for their opinion when they approved the ANR Plan relative to the notation "Not a Buildable Lot". The Board and Attorney DeMarco were in agreement to the continuance.

Abutters: Who came forward in favor or in opposition?

Timothy Sheehy, 1653 Mammoth Rd. – Opposed to the third lot. It is not a good thing for the neighborhood as it is a very busy street.

Richard Auger, 1597 Mammoth Rd. – Opposed to the variance for less frontage. He found a listing indicating that both lots are for sale. The lot has a very steep grade and it is a fast road in that section.

A motion to continue to the March 24, 2016 meeting was made by Mr. Mallory and seconded by Ms. Santiago-Hutchings. Attorney DeMarco stated the petitioner would be willing to allow the delay. The Board voted unanimously to continue.

2016-4 @ 125 Forest Park Road – Appeal of the Building Inspector’s decision dated 1/7/16; failure to issue a building permit. Petitioner: Nikolaos E. and Stavroula Manolis.

Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated June 15, 2015.

Attorney Malonis will be representing the petitioners Mr. and Mrs. Manolis. They are before the Board for an appeal of the Building Inspector’s decision not to issue a building permit. Attorney Malonis passed out the attached packet of information as follows:

- Letter from Attorney Malonis to Mr. McLaughlin, Inspector of Buildings dated September 30, 2015
- Letter from Mr. McLaughlin to Attorney Malonis dated November 19, 2015 stating not a buildable lot
- Copy of Memorandum from Arthur L. Eno Jr. regarding Dracut zoning problem
- Letter from Attorney Malonis to Mr. McLaughlin dated November 25, 2015 in response to his letter dated November 19, 2015
- Letter from Mr. McLaughlin to Attorney Malonis dated January 7, 2016 regarding small lot submission
- Letter from Attorney Malonis to Mr. McLaughlin dated January 12, 2016 in response to his letter dated January 7, 2016
- Letter from Attorney Hall to Attorney Malonis dated January 25, 2016 regarding small lot submission
- Copy of deed dated July 14, 1986
- Subdivision plans dated September 28, 1962 and October 2, 1962
- Table of Zoning Amendments
- Copy of Appeals Court of Massachusetts Kimmett v. Town of Tolland decision dated July 26, 2011
- Copy of Section VII General Regulations for Non-conforming Uses and Structures dated November 15, 2005
- Copy of United States Court of Appeals, First Circuit Adamowicz v. Town of Ipswich, Mass decision dated September 12, 1985
- Copy of Massachusetts Land Court Dalkouras v. City of Brockton Zoning Board of Appeals decision dated January 6, 2012

Attorney Malonis noted the 1962 subdivision was built over a 10 to 15 year period. The small lot package was submitted in October 2015. The effective date of the Zoning By-law was in 1946 which included “no common ownership”. When the by-law was changed in 1958 it did not include that language. In 1987 the by-law changed to include “no common ownership” which aligned with the State. The lot has been held in separate

ownership since 1972 prior to 1987. Attorney Malonis contends the lot could be built on if on a prior subdivision plan. He reviewed the Table of Zoning Amendments. Attorney Malonis referenced his letter dated November 25, 2015 regarding the memorandum from Arthur Eno about grandfathering noting the case of Fercozo v. Board of Appeals in 1990. He stated the Fercozo case had been appealed and overturned in 2007 by the Mass. SJC. He also commented that the Kimmitt v. Tolland case referenced in Mr. McLaughlin's letter of January 7, 2016 was an unpublished summary decision. Attorney Malonis contends that the deed of record at time of zoning change (not 1946) should be used. This lot should be protected and is a proper grandfathered lot. He included the Adamowicz and Dalkouras cases for review by Attorney Hall and the Board. Mr. McLaughlin, Inspector of Buildings passed out the attached packet of information out as follows:

- Small Lot Application Narrative
- Dracut small lot “grandfather” provisions through the years
- Small Lot Chart
- History of ownership
- Subdivision plan dated September 28, 1962
- GIS drawing of property currently

Mr. McLaughlin, as noted in his narrative, questions if the Rourke v. Rothman (2007) case applies to this lot. Attorney Malonis contends the more liberal provision between 1958 and 1986 applies which did not require “separate ownership”, but he feels it does not apply. The Dracut grandfather provision between those years was intended to protect lots which existed prior to zoning or effective date of this by-law. Lots laid out after 1946 benefited from State law provisions beginning in 1957 which “froze” or protected land on subdivision plans from zoning changes varying from three to eight years. These lots were not granted perpetual protection. This lot was frozen until September 8, 1969, seven years after plan was approved.

Mr. McLaughlin feels the question before the Board to decide is: what is the effective date of this by-law referred to in the 1958-1986 grandfather provisions. He feels his decision is legally sound and defensible. The Board may decide that lots laid out prior to 1946 need not be separately owned to be buildable which 125 Forest Park does not qualify. If date of amendment, then this lot, having been protected up until 1969, remains protected and is buildable.

Mr. McLaughlin feels the grandfathered provision applied to pre 1946 lots. If this lot had been in separate ownership it would have been buildable. He referenced the Small Lot flow chart which all referred to separate ownership.

Chairman Crowley would like to continue this hearing to the next meeting so the Board and Attorney Hall would have an opportunity to review all the information presented. All were in agreement.

Abutters: Who came forward in favor or in opposition?

Attorney Malonis gave the Board the attached list of abutters in favor of a building permit being issued for a single family home.

Colleen Garry, 55 Chapman Street – in favor. This is a young family wanting to start their home in Dracut and the lot is consistent with the neighborhood. There was a good argument made on behalf of the family. She hopes this is looked at in favor of the petitioners.

A motion to continue to the March 24, 2016 meeting was made by Mr. Mallory and seconded by Ms. Santiago-Hutchings. The Board voted unanimously to continue.

Acceptance of Minutes:

A motion to accept the January 21, 2016 minutes was made by Mr. Scott Mallory and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to accept the minutes.

New Business:

None.

Next Meeting:

Thursday, March 24, 2016.

Adjournment:

A motion to adjourn was made by Mr. Brian Lussier and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to adjourn.

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, R. Scott Mallory

Absent
Clerk, Stephen Hamilton

Member, Heather Santiago-
Hutchings

Member, Brian Lussier

Alternate Member, Richard Ahern

Alternate Member, Scott McKiel