

Minutes June 25, 2003 – Decoteau, Friedrich/Benson/Lyons, Library

Members Present: Dave Gandle, Mark Mulligan, Stuart Schulman, Chase Duffy, Bob Cadle

The Chairman convened the Decoteau hearing by reading the legal notice.

Three documents were submitted into record, one from the applicant/lawyer and two from abutters.

Atty. Collins, agent for applicant, noted that the board is familiar with the case and noted that the possibility of a variance was discussed in the past. He said that this is what he wants to pursue tonight. History: Lot 39, Longley 2 subdivision, .8328 acres; non-conforming to area and frontage lacking. 218-26f would be conforming re: frontage but not acreage under current special-permit statute. Atty. Collins said that the Board can grant a variance re: soil, shape, topography and there would be no detriment to public good, particularly because this locus in relation the statute needs to be considered. The lot would be conforming today under the current special permit subdivision by-law. He said that the site itself needed to be looked at. He noted attractive lot locations with open space set aside. He said that there are 24 lots varying in size but averaging about 1 acre. He said that the PB didn't want a Levittown look and that size and shape are dictated by the by-law. He said that 2300 sq. ft. is smaller than subsequent requirement but noted that this is not of consequence because some lots are smaller. He said that building on this lot would not detract from the neighborhood or the intent of by-law. He stressed that the lot was intended to be buildable. He said that soil conditions are unique; soils didn't cooperate until perk rates changed and thus the lot could perk. He noted that the Board needs to determine that this variance doesn't detract from the intent of the by-law. If the design was correct and the lot could be sewerred, lot size could be 10,000 sq. ft. This grant would allow building on the last lot of the subdivision. He said that this is fairly straightforward and marginally smaller than Sp. Perm. Flex. Dev. Lots.

The Chairman noted that he grew up in Levittown.

Discussion ensued re: impact of Levittown on zoning.

Mr. Cadle asked about septic issues from May 2000 and whether it is okay to hookup.

Mr. Decoteau said yes.

Mr. Gandle asked whether the perk regs changed rather than actual rate?

Discussion ensued regarding perk rates; it is better for perk to be slower. If used current standards in 1982 than the lot would have perked.

Mr. Gandle asked about frontage.

Atty. Collins said that 100 feet seemed acceptable, but noted that he hasn't heard from the Attorney General. He suggested that frontage could maybe go down to 20 feet, which would allow for more flexibility, as long as figures were based on a two acre, 225 feet frontage quadrant.

Mr. Cadle felt that the subdivision is creating the problem. He requested clarification that perhaps any subdivision grant would satisfy frontage, acreage, shape and topography issues.

Atty. Collins said that yes all variance criteria are met in subdivision permits.

Mrs. Duffy said that this issue is here is still in court, and that court needs to decide.

Atty. Collins noted that the last action was an appeal.

The Chairman said that the Board ruled to uphold the Building Inspector's opinion and thus the lots have merged and a variance is not appropriate.

Atty. Collins felt they could be addressed separately.

Discussion ensued regarding whether the lots merged.

Collins said that a variance was discussed last time around and he doesn't feel that the prior decision precludes addressing this here, even if the court determines that the lots have merged.

Discussion ensued regarding whether a variance could be acted upon. The Building Inspector has determined that the lots had merged.

Atty. Collins said that lots weren't owned together and noted that length of time, etc. were the issues of board members voting against the permit. Lot standing by itself meets the variance criteria.

Mr. Cadle said not if the lots merged.

The Chairman felt it was premature to grant a variance before the court decision. He said that the merger issue is independent and lots might not merge but the court could still uphold the Building Inspector's decision to deny. Feels variance appropriate if court finds other reasons to uphold.

The applicant's other attorney said that there are separate ownership/fee issues here.

The Chairman said that selling the lot doesn't guarantee a variance. He said that today's application would be the same one month from now, etc.

Mr. Cadle said that the status of the land doesn't change b/c the lot has been sold.

Stu doesn't feel variance right way to go. Ruling of record of board that lots have merged. Wants courts to clear up.

Mr. Cadle- agreed with the Chairman.

Discussion ensued regarding the ramifications of the appeal. A variance could be pursued after the court ruling.

Mr. Decoteau noted that town counsel determined that the lots had not merged.

The Chairman felt that there could be a real mess if the Board granted a variance without a court determination.

Mr. Mulligan asked for some clarification.

Three board members noted reluctance regarding a vote for a variance.

Discussion ensued regarding how long the courts could take.

Of note: the Board doesn't want to grant a variance until a court decision has been rendered.

Atty. Collins requested to withdraw without prejudice.

Board moved to allow the applicant to withdraw without prejudice. The motion was seconded and passed unanimously.

The Chairman convened the Benson/Friedrich/Lyons hearing by reading the legal notice.

Atty. Lyons represents Friedrich/Benson, noting that the Lot was purchased several years ago. He then described Chapter 40a section 10 variance criteria. He said that his clients propose to construct a 39,000 square ft. Acorn three-bedroom house. He said that they have Title 5 Septic approval. He said that due to the large number of eskers, and the orientation of the dwelling in relation to those eskers, the two-story house will seem smaller and lower. He noted that this was one time a lot of record, containing a building once used periodically as a residence. He said that the record is not clear and thus a variance is being sought. In the 1950s the property was owned by Fanny Kneeler; she had a will but the entire file has disappeared. In 1959 zoning changed but the lots were not owned together after that. The lot should be a lot of record but there is uncertainty from a record stand of view, primarily because there is no way to prove that the lot was legally transferred. Atty. Lyons noted that the Friedrichs' lived across the street, and obtained the parcel in 1970, which had a fuzzy history then. He further stated that there is no way to prove that the dwelling on the parcel in question was ever used as a residence b/c all utilities came from a meter

located across the street. He said that his clients will tear the storage buildings down as part of variance but if possible they would like to keep them.

The Board suggested a site walk would.

Atty. Lyons noted that the house being built will be used as a retirement home.

The Chairman asked for comments from the public.

Tom Kibler, abutter, said that he had no problem.

Mr. Rimkiss, abutter, had no problem but wanted to see what's proposed.

Atty. Lyons reiterated that the topography is very varied. He said that each lot seems larger b/c of trees, etc. and he said there are no wetlands; the BOH has signed off on the project. He noted that all sideline/front setbacks will be met.

Discussion ensued regarding the site walk.

The site walk was scheduled for 9:00 and 11:30 am on 6/28/03.

The hearing was continued to July 9, 2003 at 7:30 pm.

The Chairman read motions presented by Mark Bobrowski allowing the hiring of consultants. The Board recommended that Jennifer Connelly or Thorndike Associates be hired as traffic consultant. The motion was seconded and passed unanimously. All consultants will be hired.

The Chairman convened the library hearing by reading the legal notice.

Owen Schuman was present as representative for the library.

The Chairman read a letter from the attorney of the applicants into record, none of whom could be present.

Ms. Schuman noted that the projected was voted for one year ago at town meeting. She said that the property line is very tight. She said that they wanted to build the library first and then deal with the garage and moving it, and/or the lot line. She said that the condo owners were happy to give a slice of land for \$1 and have the Town pay attorney fees.

Discussion ensued regarding whether a variance or sp. Perm. was required. The Board felt that a variance was necessary because there is an increasing of the non-conformity of the lot to the right of the library. She said that currently there is no safe passage from Main Street to the playground.

Further, there is no sidewalk on Broadmeadow. There will be granite steps and a wall along lot line with plantings, which will provide a safe access. Of note: there will also be a children's reading garden created.

The Board moved to grant a variance to the library allowing the increase of a non-conformity. The motion was seconded and passed unanimously.

Meeting adjourned 9:15 pm.