

Minutes Meeting of September 29, 2004 – Sellars, Bulldog

Members Present: Stuart Schulman, Robert Cadle, Mark Mulligan, Chase Duffy, Jay Prager

The Chairman convened the Sellars hearing by reading the Legal Notice.

Atty. Rob Cohen as agent for Sellars, said his client is planning on demolishing the existing dwelling and digging out the foundation. He said that she wants to put in a new foundation/building in the same size footprint but moving it three feet to the left, and to convert to a year round dwelling.

The Chairman asked about frontage.

Ms. Sellars said it is 65 ft. and the dwelling will be approximately 35 ft. from abutters.

Of note: the only frontage is a shared driveway to Whiley Rd.

The Chairman asked about whether the abutting dwellings are seasonal.

Ms. Sellars said that they are all year round dwellings.

The Chairman noted that the right of way goes over other property.

The Board discovered that the same property was before them and was denied in March of 2004.

Atty. Deschenes was present as representative of Noyes, abutters. He said that his clients were allowed to renovate and are not opposed to this application. He said that they want to raise the question about access to Whiley Rd. for this lot. He said that there is a history of access for his clients and the Sangiolos since 1909 when a family named couples owned all of property. He said that they created a 20 ft right of way that still shows up on assessors' maps that didn't go anywhere.

Discussion ensued regarding whether deeds exist and how the Board should obtain them.

Atty. Deschenes said that he has copies of all deeds and will share them. He said that only the Sangiolos have deeded (Lot #23) rights to go out to Whiley Rd. He said that during last 100 years the Sangiolos and the Noyes properties have come into being. He said that residents of Lots 20,21 and 22 have used the Sangiolo Drive and his clients want that to continue. He said that they don't want anyone to use the Noyes drive and stressed that there is no deeded right to the Noyes.

The Chairman said that he doesn't see how the Board can grant a variance under these conditions. He said that it is unclear as to who has access to what.

Atty. Cohen said that access is a private, civil issue. He said frontage has been shown and there are grounds to issue a variance.

The Chairman said that the Sangiolos are not here but made a presentation that their driveway is not to be used by year round residents.

Atty. Cohen said that land court may grant an easement by necessity.

Atty. Deschenes said that the applicant may have prescriptive rights but there is no representation that they do at this time.

The Chairman felt that there are two issues:

- 1) The permit was denied less than one ago and ownership change doesn't change that status.
- 2) Even if the Board hears this, the permit won't be granted with the driveway issues so up in the air.

Atty. Cohen said that there is no definitive issue regarding access but thinks the other Board members disagree with the Chairman and that different ownership precludes the two year denial.

Mr. Cadle said that the applicant is asking for a special permit and the Board needs to make specific finds regarding traffic issues and neighborhood. He said that he does not think the Board can proceed under these circumstances.

Atty. Cohen said they have worked hard to come this far and asked what else the board wants.

Mrs. Duffy said that the Board wants an assurance that the driveway situation is resolved or at least resolvable. She said that she does not want to create a situation that needs litigation for resolution.

Some board members felt that the issue is up to homeowners to fight out and not part of the ZBA's purview.

Atty. Deschenes said that part of the request is for frontage and that needs to be provided safely via a right-of-way. He said that there is no right of way frontage here that is legal and safe, but only through private driveways that neither owner wants to allow. He said that it is in the power of the Board to require proof of easement/access.

The Chair noted that that is what happened during the last hearing.

Mr. Prager asked a hypothetical question about the camp, whether the applicant could ask for a seasonal conversion permit and then renovate without obtaining a variance.

The Board asked whether they could access the site for a walk via the Noyes driveway.

Mr. Noves said yes and noted that it is the first driveway after the park and the second is the Sangiolos.

Atty. Cohen said that some Board members want legal title deeds and he doesn't think any can be found. He said that he thinks that an easement via prescriptive rights is there and said that they don't want to start the legal fight now.

The Chairman said that he wants to discuss with town counsel regarding whether a change of ownership construes a different plan and thus can be heard after a denial.

Mr. Prager said that at the last hearing there was no evidence presented that there is some internal right of way and now it is shown that there is.

Of note to ask Town Counsel: can a new applicant apply after a denial six months ago and can the Board vacate a previous position so that the applicant can apply again.

A Site walk is scheduled for 10/9/04 @ 9 AM.

The hearing is continued to 10/13/04 @ 9 pm.

Of note: find everything related to this and other neighborhood applications.

The Chairman reconvened the Bulldog hearings.

Atty. Manugian asked for two withdrawals without prejudice.

Discussion ensued regarding whether the applicant should be able to withdraw or whether the Board should deny the two requests.

Mr. Cadle said that he wants town counsel's decision on record as part of the withdrawal requests.

The Board moved to allow the applicant to withdraw the two applications without prejudice but with the condition that the opinion rendered by town counsel be incorporated into the decision to allow withdrawal.

The meeting adjourned at 9:45 pm.