

Minutes Meeting of June 15, 2005 – Moseley/Kelly, WCU, Platt, Blouin

Members Present: Stuart Schulman, Robert Cadle, Chase Duffy, Mark Mulligan, Cindy Maxwell

The Moseley/Kelly hearing was continued to 6/29/05 @ 7:45 pm, at the request of the applicant. An extension of time required to file was submitted.

The Chair convened the WCU hearing by reading the Legal Notice.

Atty. Collins, Agent for WCU, noted that the building could use some aesthetic improvement. He said that six months ago they wouldn't have needed a permit because the setbacks could have been averaged. He noted that now that the Wilson's building has been razed and is not right on the road, the setback averages have changed. He said that they only need a variance for a small portion being added to the bank building.

Mr. Cadle asked about the setback of buildings on the other side.

Atty. Collins said that they are more than 50 feet back and that is why they are here tonight. He said that the bank wants to take the existing building and reconfigure it by demolishing a small section to the left of the door, adding a small portion to the right of the door, adding a brick façade and an additional canopy to the drive through lanes. He said that the setback will be 25 ft. from Main St. for the overhang, noting that the structure itself is 32.5 feet and in compliance. He said that there will be much improvement of aesthetics, better landscaping (68 shrubs) and a significant curb to shield the building. He said that the lighting will be much better, noting that there are currently 3 yard lights. He said that the new lighting will be subtle building lighting, with uplighting within the shrubs and there will be significant drainage improvement. He suggested that the Board could view this as a non-conforming structure and the application could be refiled if the Board preferred. He said that a 6 foot canopy exists now, with a setback of 32.7 feet and the plan proposes an addition of 8 feet, creating a 22.5 foot setback. He said that the ATM is right against the building and the drive through teller is further out.

The Engineer explained that there will be two lanes for drive through, noting that they are adding a drive thought lane for a total of three lanes, which is why the canopy needs to be extended. He said that one more pole will be added.

Discussion ensued regarding the specifics of variance and what lanes are being added.

Atty. Collins said that by adding another drive through lane, a potential bottleneck when customers are waiting for either the ATM and/or drive through will be eliminated.

Tim Hess said that he is not familiar with the setback average requirement as explained earlier and asked for clarification.

Discussion ensued regarding whether a hardship case could be made that it conformed six months ago, before Palmer built his service station with an increased set back.

Atty. Collins discussed the drainage pipe that was incorporated into the building, making the moving of the building impossible. He noted that when designed and built in the 1960's this was a state of the art professional cluster of buildings/offices. He said that parking easements mean that they can't move the building and stressed that this is a minimal change.

Mr. Cadle asked about PB review.

Atty. Collins said that they have had one meeting and have another tomorrow night. He said that there is a precedence on site to issue permits for change to allow drive throughs.

Dr. Decoteau asked for an explanation of drainage changes as it relates to access.

Atty. Collins said that there is one pipe that connects the buildings that will remain, and noted that they are guttering the building and are dealing with runoff from the additional impervious cover with a new infiltration system. He said that the parking easement was a straight projection from Dr. Borden's building to a jutting of the WCU building and thus there is a slight change in the easement.

Dr. Decoteau said that his only concern is with any impediment to his site.

Atty. Collins said that there is no change in the parking and the changes will make the site prettier.

Mr. Cadle suggested reducing the overhang by half.

Mr. Mulligan noted no issues with the proposal.

Jeff Ryder said that they have already cut the overhang back.

Att. Collins said that the canopy currently covers ½ of the lane.

Mr. Cadle felt that the canopy looks larger in the workup than how it was explained.

Discussion ensued regarding the ramification of allowing setback variances.

Mrs. Duffy noted concern regarding how this could limit any possibility of widening Rt. 119 in the future, along with the problem of truckers parking on the street to pick up their donuts.

The Board moved to grant a variance from setback to allow the eave of the canopy to be 24 feet

from the front boundary, noting the hardship presented because of the pipe running under the building.

The motion was seconded and passed unanimously.

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

Tim Hess, architect, was present as agent for Platt, noting that he wants to build a portico at 214 Main St. He said that he wants to use existing shapes around the doorway and extrude them to make a portico. He said that the driveway belongs to the church exclusively and some parking spaces exist that have been used by residents of 214 Main for some years. He noted that the portico is in keeping with the church and would provide sheltered access for customers. He said that the present tenants will use the back vestibule and front lower part of the building will house Platt architectural offices.

Discussion ensued regarding the ramifications of any impact on the church.

Mr. Hess said that a slightly larger granite stoop is proposed that will offer protection and make the business entrance more obvious. He noted that they have approval from the PB and Historic District Commission.

Mr. Cadle said that the project looks nice and other Board Members agreed.

The Board moved to grant a variance as requested for a portico as show on sheet a102 of the plan dated 4/29/05 and being no closer than 5 feet to the lot line.

The motion was seconded and passed unanimously.

The Chairman convened the Blouin remand noting that in a letter from town counsel he suggests that the process start over.

Discussion ensued regarding how to proceed.

Atty. Vander Linden, Conservation Trust lawyer, noted that the first court case was criminal and brought by the BI. The BI agreed to dismiss charges because it was really a zoning violation and what led Mr. Blouin to the ZBA. He said that it was clearly proven that there was non-use and thus Mr. Blouin didn't have a lawful seasonal use. Thus, a variance was granted and was subject to appeal. He said that two issues could have gone to Superior Court: the variance, which was appealed, and the denial of the special permit, which was not appealed.

Mrs. Duffy said that the judge found that the Board did not find evidence of non-use.

Atty. Vander Linden said that Mr. Blouin represented to the court that he was going to reapply and this is why the judgement is written that way.

The Chairman said that the Board is looking at two things, either a variance or a special permit.

Mr. Blouin said that he doesn't want a variance.

The Chairman said that if he is not requesting a variance then he doesn't have a legal building lot.

Mr. Blouin said that the town never showed that Mr. Parmenter had non use and noted new evidence that the property was never abandoned. He stressed that taxes were paid every year.

Discussion ensued regarding what the court was asking the Board to do.

Atty. Vander Linden said that the judge had in mind that if a variance is considered, he wants more specific findings before any ruling. He noted that the special permit consideration is in response to Mr. Blouin's statement that he does not want a variance.

The Chairman asked what would happen if the Board denied the special permit request.

Mr. Blouin said he would appeal.

The Chairman asked what happens to the variance remand, which he felt was still open through the court.

Atty. Vander Linden said that the Board could represent in its decision that the applicant is not pursuing a variance.

Mr. Cadle said that the Board doesn't need to support a variance that isn't being requested.

The Chairman noted, that at the applicant's request, new evidence is being presented that there has been no abandonment.

Mr. Cadle asked about an updated abutters list. The administrator took care of the abutters list.

The Chairman went over how to proceed with a new application, noting that the applicant needs BOH approval and that is a large part of the process. He noted three issues: 1) legal lot status, 2) BOH, 3) special permit criteria.

Mr. Blouin said that he has people present who visited the property in the '90's, including his daughter, and presented a letter from Gloria Fucillo.

Beth Montgomery stated that she has lived there since 1992 and said that there was no activity until Mr. Blouin moved in. She stressed that it was an abandoned shack.

The Chair read the letter from Mrs. Fucillo into the record.

Mr. Cadle said that the only point of reference is Mr. Piper's death and that occurred in the 1970's.

The Chairman said that he wants more evidentiary evidence.

Beth Montgomery asked why these people were not present at the first hearing to support Mr. Blouin.

An abutter there since 2001, noted walking the path that went by Mr. Blouin's house every day and found it to be abandoned and unsafe. She said that the house would wobble on the foundation and said that he was only there as a camper.

Leo Petry, from lost lake, said that he has known Mr. Blouin his whole life, and has camped there himself. He said that this is not fair and that Mr. Blouin is a nice man.

Beth Montgomery said that there are other affidavits from neighbors that attest that the property has been abandoned. She noted a letter from Kick that over the years, no one lived there.

Atty. Vander Linden said that the central issue is coming back to non-use for at least two years. He said that the Board needs to look at prior the findings that clearly found the property to not be in use for more that two years. He noted that it would be arbitrary to reverse these findings.

The Chairman noted that the Board is supposed to be looking at more evidence.

Atty. Vander Linden asked whether there are any objective contemporaneous documents on this, such as PO box receipts, garaging of vehicles, utility docs., etc. He said that Mr. Blouin has not submitted anything and that GELD had no records of electric use back to 1990. He suggested that the Board listen to the BI about this, and pay attention to those who live in close proximity to the property. He said that these things are in the prior record and should be considered again.

Mr. Blouin noted displeasure with this.

The Chair asked him not to be inflammatory.

An abutter noted concern about how Mr. Blouin has kept the property, or lack thereof. She said that his son fell off the porch two weeks ago and broke his arm. She said that the property is hazardous. She noted that someone recently wanted to rent an abutting property and while waiting at Mr. Blouin's door, someone screeched at him and his son answered the door with a broken arm.

Mr. Blouin's daughter, Amber, said that her mom lets him see her on weekends and that he is trying to improve the property.

Christie Sheffield, friend, said that the property can be accessed. She said that he is trying to get a safe way to get down there and noted that he has two disabled kids and is trying to make due.

The Chairman said that this needs to be decided based on rules and the law. He noted that the audience needs to address only the Board.

Sarah Blouin, ex-wife, said that he grew up down there and even after she left, her daughter went down there. She said that it was a summer cottage and only has to provide shelter. She said that it was only used for camping and noted that her daughter was never in danger there and the property is now livable.

The Chairman noted action items, including needing BOH involvement.

Mr. Mulligan noted that the title was transferred to Mr. Blouin in 1999 and permits were applied for in 2002. He said that he wants clarification regarding what two year period of non-use applies.

Atty. Vander Linden said that he thinks the right interpretation is that if ever after zoning is in place there is a two year gap on non-use, the dwelling loses grandfathered status. He noted several periods of ten to 15 years from 1987 to 1999 during which there was non use.

Discussion ensued regarding what can happen if a property is "abandoned".

Mr. Mulligan said that he thinks it is unfair if the town collects taxes from a new owner and still considers the property abandoned.

The Chairman said that the situation is different now that a special permit is being asked for. He said that the Board needs any other evidence regarding continued occupancy or abandonment before the next hearing and suggested that it would be helpful if the BI is present then. He said that if it is clear that if the building was not occupied for two years, then no special permit will be granted.

The hearing was continued to 7/14/05 at 8 PM, a Thursday.

The Board moved to suggest that Cindy Maxwell be a permanent member. The motion was seconded and passed unanimously.

The meeting adjourned at 10:15 pm.

