

Town of Bellingham MA

10 Mechanic Street, Bellingham MA 02019

Zoning Board Meeting Minutes 07/06/2017

July 6, 2017
Minutes of Meeting

In attendance:

Present at Meeting:

Brian Salisbury (BS), Chairman

Arturo Paturzo (AP), Member

James Dunlea (JD), Member

Peter Gabrielle (PG), Member

James Jeschke (JJ), Member

Joseph Flanagan (JF), Alternate Member

Other Attendees:

James S. Kupfer (JK) – Town Planner & Zoning Compliance Officer

Laura Renaud (LR) – Zoning Clerk

Jason Talerman (JT) – Town Counsel

Timothy Aicardi (TA) – Building Commissioner

7:00

BS opened the meeting.

Continuation – 174 Maple Street – LMP Properties, LLC

Appeal of an order by the Building Inspector

Sitting In: BS, BW, AP, JD and PG

JK – Explained at June 1st meeting the board discussed proper permitting and at that meeting it was discussed that the town officials would work with the applicant. A memo was distributed in regards to the Development Plan criteria for the Bulk Storage and a statement of goals and objectives.

BS stated one member was not in attendance and JJ would be replacing that member (BW).

Attorney Gary Hogan stated that this was the first time he saw this document. He asked if the engineers saw this document. JK explained that the memo was distributed to the Applicant. GH stated he is not an engineer and is not qualified to comment on it. He stated it appears to be along the lines of what they were looking for. The Planning Board meeting is August 27th. He cannot agree to the terms in the above mentioned document. He felt they could all be incorporated. If his client has seen this and had reached out to him then he could move forward but without their consent he cannot JK stated he did have a meeting with their engineer and that is how the outline came to be. The Applicant has procured engineers. If the board chooses to move forward and continue that they can move forward with their Development Plan application. JD asked if the Special Permit elements can be covered with the items in the outline. JK stated it would be brought up to the Planning Board but it doesn't have the same weight in a Development Plan Review then in a special permit process. The cease and desist can remain in place until the requested actions take place. JT explained a Special Permit can add more discretion and a Development Plan cannot add specific elements unless the applicant agrees to that. It can be added by an enforceable agreement and the applicant must agree to abide by it. GH stated as soon as they get a conceptual plan they can submit it and move forward in August. They must meet with their engineer. JT explained that if the board continues then at the next meeting all can be agreed to in writing. The board agreed they are not against a compromise but want to be sure all items (traffic, noise, etc.) are to be reviewed. GH stated that he can have a draft by August and also the plan may even include all the requirements. He stated he just needs to meet with his client and engineers. The submission deadline is August 3rd for the Planning Board which is the next ZBA hearing. BS stated it is important for all Special Permit-like criteria be included. The board stated they had been under

the impression a to do list was going to be completed after 3 meetings. GH stated there should be a letter dated June 29, 2017 from their engineers that was sent to the ZBA. JK and LR stated they did not receive the letter. It was presented to JK by GH and he read aloud. The applicant is seeking a continuance to August.

BS motion to allow to continue with the requirements spoken about.

AP second.

All in favor to continue.

New – Old Farm Road – Brookstone Development, LLC.

Variance for insufficient frontage

Sitting In: BS, AP, JD and PG and JF

JK explained next is the Old Farm Road hearing which has been continued since April 6, 2017.

Attorney Lee Ambler, (LA) explained his client is looking for a variance of 45 feet. His client proposed a billboard a few years back at this property and it is currently in court. He felt like in the past the board was more against denying billboards, (reading the past decisions) and that the board felt it was a self-imposed hardship that the applicant bought the property as is. A part of the land was taken by imminent domain. He was left with 75 feet of frontage. (Passed out copies of examples of court documents) For an Industrial Zone, frontage required is 200'. If the lot currently has 75' and are looking for a 45' variance (75+45=120') . The applicant is still short 200'. LA stated his applicant didn't cause this to happen as the state took the land for the construction of Interstate 495. LA felt the hardship is to the land when the state took the frontage. The only person affected was the applicant, Mr. Bruce as he lost his frontage. The property is zoned Industrial so he should be able to use it as an Industrial use. The applicant produced a map. The frontage was reduced to 75 feet. He would like the permit based on: the other lands near him did not lose frontage, his circumstances are unique to him, it is not the actions of the applicant but the state, relief would not cause substantial detriment to the public good. A literal enforcement would cause a financial hardship and without the variance the Applicant could not use it in any way. LA stated it is well established that the taking of the land is a hardship, it's not self-imposed. He feels the conditions they have here, the parcel is 19 1/2 acres, taxed very low as is. The hardship is they cannot use the land at all because the state took the frontage. Without this they could put a business up close to the closest neighbor that is there. BS states just because the property lacks frontage then that is not a hardship. BS asked why would need grant

this if a road would go in anyway. Mr. Bruce stated would need access and not a full road. The board asked if the plan was for self storage and what. Mr. Bruce stated also a construction yard, the self storage up near the closest neighbor and further down would like the construction yard. Mr. Bruce felt that would have no impact to the neighborhood. He stated he felt a self- storage is quiet, better than a construction site. PG asked how close residents are. Mr. Bruce stated there are 2 on Old Farm Road, quite far back. The board asked about wetlands. JT provided a general location map of the wetlands from the first case. LA explained they only want frontage relief. Mr. Bruce was on site late fall in 2016 and the vernal pools were done a month ago. There is a letter from Conservation Commission from March 2017. JK provided it to the applicant. JD read for the audience. The board discussed the hardship requirements of the bylaw. JD felt it would be an impact to the area. JD felt that it was too broad of a discussion on what exactly the applicant wants to put there to tell if an impact. It would help to know the applicants' definite plan. LA stated without this there would be 19 1/2 acres of land that can't be used. JT stated it is a reasonable request. The burden is on the applicant. Some of the core issues, the standard of variances are very different, frontage and the hardship. Is it unique to size, shape or topography? The lot itself has to be unique in some way. It has to be owing to the unique size shape or topography. It is not the mere frontage. The lack of frontage has nothing to do with the uniqueness of it. This property was bought it in 1998 for \$75,000. You don't know if the owner knew anything of the taking details. Mr. Bruce stated he would like the self-serve storage, very little traffic, quiet, a few employees at intervals. He felt it was a good location for this. Extending the road is a hardship to him. It does have some conservation issues. He doesn't have any other plans other than the 2 ideas he stated. The applicant would have to go to the other boards such as Conservation and Planning. He would agree to limit uses in the decision if they wanted to. Lee Ambler stated this is a permitted use. The intent of the zoning bylaw is to use this land as an Industrial use. BS stated there are businesses on Farm Street. BS asked the applicant to prepare a memo of what he is thinking of and get it back to JK and come back next meeting. The board asked for a footprint, the number of self- storage units or the equipment site, how many pieces of heavy equipment? That would help the board picture it. BS asked to show detail. There were no public comments or questions. The applicant asked for a continuance.

BS motion to continue to August 3, 2017.

AP second,

All in favor to continue to the August meeting.

Continuance – 799-801 Pulaski Blvd. – John Wesylean, Jr.

Special Permit for Earth Removal

Sitting In: BS, BW, AP, JD and PG

JK stated they are requesting a continuance. The Applicant is before the Planning Board and requested continuances. They are seeking approvals from National Grid and reworking drainage. Their engineer should have everything ready for late August PB meeting. JK recommends continuing this until after the PB meeting and September would be good.

BS motion to continue to the September 7th meeting.

AP second.

All in favor to continue.

New – 6 Yvonne Road – Bryan Curren

Special Permit and Variance for accessory structure.

Sitting In: BS, AP, JD, PG and JF

JK read Public Hearing notice for 6 Yvonne Road.

AP motion to open the hearing.

BS second to open.

All in favor to open the hearing.

BS explained that the board has received their application and reviewed it. BS stated that there is no need to get into the personal history of the applicants' situation in a Public Hearing setting that the board read it over and will focus on the facts. The applicant, Bryan Curran (BC) explained they live in a slab ranch. It is small. They need to clear out a room for their mother in law as she can no longer live alone. They need this storage space of 22 x 22 for all their stuff. He explained they do not have an attic or basement. This is for storage only with electricity. BS asked why it couldn't go in a different place, as it is a small lot. BC stated aesthetically it wouldn't go and it would be in the center of the whole yard and they need to put it in the corner. Mrs. Curren explained that the driveway is on that side and we couldn't use snowplow or blower. She stated it would be the easiest place. We need to be able to get a snowplow in the storage area. JK explained there are 2 fronts and 2 sides, 10' and 10' as Land Planning has it incorrect on the proposed plan. There is no rear setback. BC stated they need a 5 -foot setback on one side and a 6 -foot on the other side. Mrs. Curren explained they need the stairs to get their stuff upstairs. BC explained they had a generator, mostly storage, no cars. If they put it closer it would impact other areas of the house. JD asked about shrinking it the 5 feet and if it would make a big difference. The applicants stated it would come too close to the house. BS asked about attaching it to the home. The applicants stated it is a financial burden. This proposal would have less of a financial burden. BS explained the variance criteria and felt that they may need to show more hardship as to why they need this size. He suggested more information is needed. The structure can be moved out of the setbacks but it needs to be aesthetically pleasing. BS explained changes could be made as not to encroach on the setbacks. It is a small lot with close neighbors and the board needs to be mindful of that. It needs to fit into the neighborhood now and in the future even if the current neighbors don't mind. The applicants stated they couldn't afford to move. They need to stay at this place. The mother in law must move in with them. BS explained the board is required to follow the bylaw and this proposal is more of a preference and not their only alternative. The applicants asked how it would intrude on their neighbors and that other people have large sheds in the area. BS stated they might not have been required to come to the board as they could have larger lots. BC asked how far they would have to move it? JK explained they didn't have to move it they just needed to meet the setbacks and that a 15' x 17' would be allowed. AP stated it would satisfy the setback requirements. BS asked TA if there is a size regulation requiring the stairs they are seeking. TA suggested they could go on the outside. The applicants stated it would be unsafe in the winter. BS explained the board understood why they were seeking this and felt sympathy for them but that the board must follow the bylaw. He explained that if the board denied their request then they couldn't come back for 2 years. They could also consult an attorney for advice or take what they (the board) made for suggestions to the project, come back in a month or withdraw without prejudice. The board is asking why they can't move it to another place? There are other possibilities. BS explained as a board they can only do so much on this particular proposal. BS stated this is not the only placement, there are other alternatives. There needs to be a hardship. JK stated that a 15 x 17 would get them out of the variance requirement but then would be the size of a one car garage. PG felt there are ways to work around it. BS explained that the applicants have not given any basis for the board to grant but if you need more time they can continue to another month to think about it. JK stated they could talk with Land Planning and perhaps get some creative ideas to move it. BS stated maybe they (applicants) can find a reason for their hardship and come back next month. The applicants requested a continuance to August 3, 2017.

AP motion to grant the continuance request.
 PG second.
 All in favor to allow a continuation to next month.

New – 17 Elaine Circle – Michael Goodspeed

Variances to allow an alteration to pre-existing non-conforming parcel
 Sitting In: BS, AP, JD, PG and ?

AP motion to open the hearing.
 PG second.
 All in favor to open the hearing.

JK read the Public Hearing notice.

The applicants, Michael and Beth Goodspeed of 21 Elaine Circle were in attendance. The board stated they read the narrative they included in their package and since it's of a personal nature and there is no need to discuss in an open forum. Mrs. Goodspeed explained that their plot lines are at a diagonal and due to their hardship they would like to build an addition to help their son. It currently is not handicapped accessible. They

need an entrance and a lift to get him to the 2nd floor. Their neighbor who is in attendance will give us the land. They chose that side due to the topography; it's flat and easier for mobility for our son. The other side is a hill. The first thing they did was try to do a parallel line instead of a straight line due to the frontage. BS asked if there were plans. Applicant stated no, that they wanted to see what the ZBA granted first. What they were hoping for is to extend the garage to get their son into the garage and put a lift to put him to the 2nd floor to where the kitchen is. They explained they would like to put a bedroom on the first floor and have him only go to the second floor to eat. BS asked if the addition is able to go elsewhere, maybe back. Applicant stated the gas line easement runs through the back of the property. And with the deck and the pool there, which they use for their son's rehab, could potentially be damaged if placed on the rear of the house as it would encroach near the placement of each. Additionally there are a number of large trees there. BS asked if there were any other places this could go. The applicants stated if we put it any other place it would take away the only place he can play. Acquiring the land would help keep the flat land. PG asked if they went back you couldn't add the lift. The applicants stated that was correct. They don't have enough room to build a 2 car garage. They need an area to get him in and upstairs. BS asked where the hill starts on other side. Mr. Goodspeed stated the hill is behind the deck. Mr. Correia of 17 Elaine Circle stated the hill was a dumping ground for rocks, trees, etc. They would have to put a retaining wall because they share the hill with the other neighbor. It would be very costly and it's a mess there. BS stated it appears that you have $\frac{3}{4}$ length of the house until you get to that hill. Mr. Correia stated it slopes up, an odd shaped lot. PG asked what they would do with the 2 sheds. Mr. Correia will gift it to them with the land. JD asked on the east side: why they couldn't put an L shaped structure. The applicants stated they have envisioned the addition with the lift to the right so we could put bedroom in back, keeping the flat area for him to have an area to walk on. BS asked if you would only need a 2 foot variance for setback. It does seem there is a lot of area around the property so you don't need to disturb lot lines. That is a big difference. We do see a topography issue. The board stated that maybe if a plan could be provided so they could see where hill is, etc. BS felt if they could see all the land around the house then maybe they could picture it better or also see the property. Mrs. Goodspeed stated they did not do any plans because of financial reasons, as they didn't know what the board would allow. They felt this was their first step. BS stated it might be easier for the board if they could show a plan with the encroachments, topography and it might be worth taking the time. He also stated a site walk would be a good idea. PG stated he would like to do a site walk in order to understand the circumstances. BS stated they need to understand why it couldn't be done on other sides of the house. The board needs to see a hardship. Mr. Correia stated they took his side due to the area of the kitchen, the logical location for an addition was off the side of the house nearest his property. He thought it needed to fit the neighborhood and an addition to that side would stay in kind with similar homes around the neighborhood.. BS stated it is commendable for you to offer your land. BS agreed that seeing the land would help. Mrs. Goodspeed asked how many feet would we need to be away from the lot line. The board stated 10 feet. The applicants asked if they just had a request for just acquiring the land. JD explained there are 2 nonconforming lots and they cannot be made more nonconforming. He explained that is why they need a variance. JD explained if they were seeking a variance closer to the setback then it wouldn't make it more

non-conforming (see 240-40 section a). PG stated they are roughly 24 feet from the property lines; figure out what you want for the addition and figure it out then. BS stated that the board doesn't know what you are looking for, side, back, need to give a better idea. BS suggested an engineer to help them. They already have a plot plan and can pencil it in. They don't need a professional architect. BS stated that is what they are suggesting and they can ask for a continuance. Also the board can do the site walk and they would be in touch with a date. The applicants asked for a continuance to August.

BS motion to continue to August 3, 2017.
 JD second.
 All in favor to continue to August.
 JK will be in touch for site walk.

New - 29 Squire Lane – Peter P. Fortier, II

Variance for Accessory Structure

Sitting In: BS, AP, JD, PG and JF

JK read the Public Hearing notice.

AP motion to open the hearing.

BS second.

All in favor to open the hearing.

JK explained the package details: application, plot plan and map showing neighborhood. The applicant, Peter Fortier passed out photos. He explained he would like to replace the existing shed which was destroyed a few years ago by weather, has repaired few times. JD asked it is in the same location. PF just 4 feet longer. (shown on plan) BS asked could it go elsewhere. PF stated it would be on top of my septic system and would limit use of my yard, and not ascetically pleasing. I have spent a lot of money to improve the value of my home.. JD asked the applicant to draw in the septic and leeching field. The Wilcox Cemetery is behind me. It is zoned Suburban. The setbacks are 20-rear /15-side. PF asked for 5 and 5 from side. Maybe too close to the pool. PF tried different variations. PG with the current shed, even though it's falling down, 4.5 from side and 10 from back. There is room in the back but not on side. The shed was existing. BS stated the shed was there, near a cemetery....we do have a strict standard. JK asked TA what size of a shed that you don't need a permit; TA stated approx. 200 square feet. You still need meet the setbacks just don't need a permit. PF stated it is on a plywood floor. It will be a 12 x 16 shed. AP asked if he would you consider putting at the other end of the lot. PF said it would still be in middle of lot. AP asked if over in the corner, even with the 15' and 20' why won't it work. PF stated if he can't use the 15 or 20 feet what good would it is. JD stated he could rotate it. JK stated if he wanted to see if permits were pulled and go that route with the Building Commissioner he could. We could find documentation when the house was built and what bylaw was in effect at that time to see if it was pre-existing non-conforming at that time, then 4.5 feet from that side. He could continue to allow time to research if the house was built after the zoning bylaws were put in place. PF asked if he decided to put a shed there, what size would it have to be. AP stated within the boundaries he could put up to 200 square feet. PF asked if 8x10, only has to be 4 feet and if he put 2-8x10's be okay. BS stated he would have to go to TA of the Building Department. Marcia Crooks, Cemetery Commission stated they were in the process of trying to grade that land. She didn't feel he should be given any setback that isn't required. The cemetery is full. Last year they had to cut brush. Their concerns are no one would buy a gravesite 4 feet from a shed. BS stated the Board will take that into consideration. Cecile Mowry, 33 Lake Street stated she is the only property that abuts Wilcox Cemetery and she would like to know if it will affect her. The applicant asked for a continuation to do some further research and discuss with TA in the meantime.

BS motion to allow to continue to August 3, 2107.

AP second.

All in favor to continue.

New - 64 Mellen Street – Andrew and Deborah Swift

Variance for lot area to subdivide

Sitting In: BS, AP, JD, PG and JJ

JK read the Public Hearing notice.

AP motion to open the hearing.

BS second.

All in favor to open.

The applicants, Andy and Deborah Swift were in attendance. Attorney Steve stated they are in an Agriculture district and would like to divide into 2 lots. They need to build a new home. They need 2-40,000 square foot lots. They decided to try and make the first floor livable for Andy with his medical conditions. The house was built on steep grade. They need to go upstairs to get to any area. The thresholds are an issue; one entrance to house is a safety issue. It is physically challenging for him now. He is having more trouble navigating around his own home. They would like to move onto the Milford lot and build a home there. One reason is financial hardship and also important, a personal hardship. They don't want to be forced to leave, it's a ranch, no thresholds for his wheelchair, reading from bylaw "can be granted, no impact at all" 45,000 foot lots, and they would blend in perfectly. No one is impacted negatively. The home in Bellingham will continue to comply with frontage but less square footage making it non-conforming. The Milford lot would comply with all zoning. If you look at the general

neighborhood, (showing on assessor's map) to the west no one is there, the other lots on east are 30-38,000 square feet, about 6 lots and not much of an impact. It can be granted without derogating from the intent of the bylaw. We have the land in front with a steep grade which will never be used for farm like with animals. It is really just a part of the new subdivision. There is no detriment. JK explained the Milford lot conforms and Bellingham does not. Originally that lot in Milford was added in to make this lot conforming. We would have to take into account crossing town line, and would have to get the owner of the new road. The board asked if that would suffice. JK stated we would most likely seek an easement or something similar. Attorney Steve agreed. BS asked what time table for completion is. Attorney stated the road is in. BS stated they are saying the hardship is the grade, the steep incline? Attorney Steve said yes it is the topography. BS asked what the grade of Mellen Street is. Applicants stated it is uphill. BS asked if they were to sell the property as a whole wouldn't that be better? Attorney Steve stated that no because a part of it is that they need the money to build the second home. The applicants stated they don't want to leave the neighborhood.

JJ stated his concern is the other people as he felt it would affect the other properties. Attorney Steve stated this fits the guidelines. If you look at the neighborhood this looks like it was designed to go there. BS stated he struggles with hardship. I understand the hardship but don't get how it goes with the land. Attorney Steve stated it directly related to the land, on a grade and this is one entrance. TA stated to look at the topography, narrow road, cannot be widened, up and down in all different areas. They used the topography to build it up, only one egress to get out of the home. The other exits are elevated. It makes sense as he is trapped. It is a big factor. That is the topography. It is due to the land. JD stated the lot is buildable, and the lot was built upon, so there was no hardship to build. Now there is a claim to hardship because the house does not fit their current needs. That is not a "hardship" by definition of hardship, that is a reason to move to a more suitable home. TA stated his hardship is his condition he can't use due to the topography. They want to create a one level home. It plays a big part in his condition now. Mr. Swift stated he cannot get around on his own. It would make him more independent. BS stated if its TA's professional opinion that it works here then I agree. It is unlike the other cases. It is unique. BS stated what if we decide to subdivide and you decide to live in the house and sell the other lot then we are stuck. The applicants stated they wouldn't mislead and this is their intention. It would make a difference for their life. Attorney Steve stated he wouldn't misrepresent and that is the plan. They must leave their home. JJ stated he felt they are setting precedence. AP stated they must take each case on their own merits. No audience comments or questions.

AP motion to close the hearing.

PG second.

All in favor to close the hearing.

AP move to grant the variance as requested with a condition of an easement for access to pass and re-pass on Gordon Drive.

BS second.

Discussion:

AP feels should grant as they met the criteria. JD stated it is a challenging predicament. He sometimes feels people sometimes need to move as their situations change, and that is not meeting the criteria for "hardship" there are other homes in area. No neighbors are here though.

I would not appreciate if I bought into a 2- acre zoned area, and then later a close by lot got changed into 2 one acre house lots. It is a challenge tonight. PG felt the applicant was in a difficult situation but would

hope they would not just end up selling the 2nd lot off.

Vote:

In Favor: BS, AP, JD and PG

Opposed – JJ

The variance is granted.

JK will draft up the decision and there is a 20-day appeal period.

New - 35 R. Belanger Drive – Peter Starrett

Variance for setback for attached garage

Sitting In: BS, AP, JD, PG and JF

JK read Public Hearing notice.

BS motion to open the hearing.

AP second.

All in favor to open the hearing.

The applicant, Mr. Starrett was in attendance. Attorney John Powers will be representing the applicant. He stated this is an issue of shape not topography or soil. What happened since purchasing this house is that now the town interprets he is on 2 streets so he has to have 2 front yards. When he bought the house in 1985 wasn't a problem. He wants to add an additional garage to put all cars in there is no rear yard setback; there are 2 fronts and 2 sides. Attorney explaining photos. It is a small back yard. They want a one car garage, 2 stories, storage for work truck go in use existing driveway. There are 7 people in home and they really need this. TA has been there. He stated it is flat topography, corner lot and the zoning changed. There are several letters in the packages from the neighbors that they are in favor and no issues. JK read a corner lot definition" 2 side yards and no rear yard". JK stated 2 fronts and 2 sides. The front requirement is 30. TA stated it was intended to front Belanger. It was originally a cluster zone. It might be something to look into. JD stated it might be good to know what those setbacks were. A suburban zone may not have existed when it was built. TA stated it appears that it was intended to be a cluster. BS stated it may be a good idea to look in to the Cluster Development. The applicant asked for a continuance to allow further research.

AP motion to allow to continue to August.

BS second.

All in favor to continue to August 3, 2017.

Minutes – June 1, 2017

AP motion to accept the minutes as presented.

BS second.

All in favor to accept the minutes.

Meeting adjourned 10:45 PM

Approved 8/3/2017