



OFFICE OF THE ZONING
BOARD OF APPEALS

Town of Dartmouth

400 Slocum Road - Room 317
Dartmouth, Massachusetts 02747

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MINUTES – February 26, 2013 Case #2013-04

Jose & Donna Larginha
81 Millers Drive, Dartmouth, MA
MAP: 70 LOT: 13-25

PRESENT

The Board: Chairman Michael Travers, Jacqueline Figueiredo, and John George, Jr.

Absent

Alternate Board Members Halim Choubah and Jay Peabody

Also Present

Peter Smola
Jose & Donna Larginha
Steve Gioisa, P.E., SITEC, Inc.

7:30 P.M. Chairman Travers opened the hearing

LEGAL AD

Notice is hereby given of a public hearing to be held on Tuesday, February 26, 2013 at 7:00 P.M. in Meeting Room #304, Town Office Building, 400 Slocum Road, Dartmouth, MA on the petition of Jose & Donna Larginha who are seeking a Variance to allow the construction of a single family home with attached garage on a lot with 41,325 square feet of area, where 80,000 square feet is required by zoning. The subject property is located at 81 Millers Drive in the Single Residence B District and identified on Assessor's Map 70 as Lot 13-25. Information is on file in the office of the Zoning Board of Appeals and may be seen upon request during regular business hours.
(By-Law Section 36 – Board of Appeals; Section 4B.401 – Lot Area)

ADVERTISED

This hearing was advertised in the Chronicle on February 6, 2013 and February 13, 2013.

ABUTTER'S LIST

A certified abutter's list is available for review.

John George, Jr. motioned to waive reading the list into the record, which was seconded by Jacqueline Figueiredo, and mad unanimous by Chairman Travers.

Unanimous vote. Motion passed.

RECEIVED
2013 MAR 18 AM 10:40
DARTMOUTH TOWN CLERK

CORRESPONDENCE RECEIVED

- Application time-stamped with the Town Clerk on January 3, 2013 with attached brief from SITEC, Inc.
- Site Plan dated December 12, 2012 by SITEC, Inc.
- Letter from Donald Perry, Planning Director, dated February 12, 2013

From the Building Department Files:

- Letter from Long Built Homes to Paul Murphy dated November 2, 2012
- Letter from Long Built Homes to Paul Murphy dated November 12, 2012
- Letter from Paul Murphy to Lee Castignetti, Jr., In-House Counsel for Long Built Homes dated November 14, 2012 stating his position that this lot is unbuildable

Chairman Travers read into the record:

- Letter from Donald Perry, Planning Director, dated February 12, 2013

Chairman Travers invited the Petitioner or representative to present the case.

Steve Gioiosa, P.E., SITEC, Inc. (Representing Petitioners)

Reviewed the lot history:

- Definitive subdivision create in 1992 (Miller's Farm Subdivision)
 - Zoned Single Residence A
 - One acre lots
- Lot purchased in 1998
 - Purchased as buildable lot
 - Pays taxes
 - Pays Homeowner's Association fees
- Z.E.O. determined Zoning Protection expired in 2000
 - Grandfathered rights as one acre lot lost
 - Zoning changed to Single Residence B (two acre lots)
 - Determined lot unbuildable
- Surrounding lots sold between March 1998 and March 2000
- All abutting lots have been developed as single family residential
 - Previous Z.E.O. issued permits after 2000
 - Different interpretation for Zoning Protection expiration
- Seeking to construct moderate sized home
- One acre lot consistent with intent of the by-law
- Proposed construction will meet all current zoning standards for Single Residence B except for lot area
- Lot has over 200' frontage (current standard)
 - Won't appear to increase density
 - From the street it will look like a Single Residence B house lot
 - Not creating additional curb cuts

A lengthy discussion ensued in terms of zoning changes in Town. The Board agreed that residents are often unaware of zoning changes believing the Town doesn't notify zoning changes clearly, and felt that residents have difficulty understanding the potential impacts on their property. The Board discussed the different interpretations of the Zoning Enforcement Officers.

Steve Gioisa

Submitted an aerial view of the Miller's Farm Subdivision, with the subject lot outlined. Discussed the unique shape of the lot, noting the lot area is in keeping with the neighborhood.

Chairman Travers invited public comment.

Kenneth Ferreira, P.E. (Original Engineer for Miller's Farm Development)

Supported the variance request. Stated that even if a resident was notified of the zoning change, their attorney may have advised that the lot was buildable. Reviewed MGL 40A, Section 6 noting the original interpretation would have protected lot owners as the zoning freeze went with the buyer of the property. In this case, the Zoning Enforcement Officer determined that the lot is no longer grandfathered because the zoning freeze expired, basing the expiration on the original subdivision date rather than when lots were sold. Stated that the Zoning Enforcement Officer's interpretation is correct, but this subject has confused even very prominent attorneys.

Reviewed the subdivision design of 47 lots, noting that many more lots would have been created at the time, but the land didn't perk well. Explained that as a result, the subdivision is less dense and consists of extra open space. Stated that the subject lot is the last lot in a full development of one acre lots, and without the variance would be useless.

Chairman Travers thanked Mr. Ferreira, and asked if anyone else wished to comment.

Richard Pacheco – 57 Edmund Street

Supported the Variance request.

No more public comment was received.

Jacqueline Figueiredo motioned to close the public portion of the hearing, which was seconded by John George, Jr., and made unanimous by Chairman Travers. Unanimous vote. Motion passed.

The Board discussed findings:

- As outlined in application/brief
- Unique lot
 - Shape
 - Frontage complies with current zoning

- Size
 - no option to increase parcel size
 - Abutting parcels developed
- Financial burden
 - Purchase based on buildable lot value
 - Paid 14 years of association fees and real estate taxes based on buildable lot
- Not detrimental to the public good
 - Lot designed and approved for residential use
 - Similar in size to other lots in the development
 - Over 200 feet frontage, which meets current Residence "B" requirement
 - Proposed construction of a single family dwelling will meet the Residence "B" setback requirements
 - In scale compatible with neighborhood
- Will not derogate from intent of the bylaw
 - Intended to promote residential development
 - No additional lots being proposed by this Petitioner
- Cannot conform with zoning due to existing development
- Large subdivision
 - Subject property 1 of 2 lots left to be developed
 - Adequate open space
- Unbuildable as a result of zoning change
- Unusable and financial burden without variance

Conditions:

- Must meet Town Standards
- Must meet all zoning requirements for Single Residence B District, except area
- Location of single family home pursuant to site plan

John George, Jr. motioned to approve the Variance with conditions, which was seconded by Jacqueline Figueiredo, and made unanimous by Chairman Travers. Unanimous vote. Motion passed.

8:15 P.M. Hearing adjourned.

Respectfully submitted,

Jane Kirby

Jane Kirby, Principal Clerk
For the Zoning Board of Appeals

APPROVED

3-12-13