



TOWN OF WEST BOYLSTON ZONING BOARD OF APPEALS

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MEETING MINUTES

January 27, 2014

Chairman: John Benson

Members Present: Jon Meindersma (Vice-Chair), Francis Cahill (Clerk), Kristina Pedone and Charles Witkus

Others Present: David Femia (Associate Member), Aaron Goodale, III (Associate Member), Paul Hennessey (Associate Member), and Secretary Toby Goldstein

Members Absent: None.

The meeting was called to order at 7:20 p.m. by Mr. Benson. Mr. Benson read to all attending the names of the board members that were present.

Mr. Benson next proceeded to read from the agenda that the first order of business at the meeting was a Public Hearing, Petition for Special Permit by Kathleen Piscione, 22 Lost Oak Road.

Public Hearing, Kathleen Piscione, Petitioner, for Special Permit, 22 Lost Oak Road:

(Attorney George Kiritsy and Kathleen Piscione represented). Mr. Benson verified with Mr. Kiritsy that the following correspondence was forwarded to him: opinion from the Planning Board, packet from Attorney Todd Brodeur, packet from Attys. Fletcher/Tilton (Mr. Kiritsy did not see this before, therefore he was allowed time to read it), and letter from Eliot Freeman (he also did not see this before, and was given time to read it). (All correspondence is on file). Mr. Benson then read aloud the petitioner's purpose for her petition. Mr. Kiritsy also verified that the board had a memorandum submitted by him, and Mr. Benson replied that they did have it (also on file). The only other document received by the board was a set of full-scale plans of the site (also on file).

Mr. Kiritsy then came forward to explain why Ms. Piscione is requesting a Special Permit. According to the petition, the petitioner is requesting a reduction in frontage to 111.4 ft, with minimum frontage allowed by zoning bylaws being 120 ft. Ms. Piscione is proposing to

subdivide her land such that part of it would become a separate lot upon which she intends to build a single-family house. Mr. Kiritsy opined that nothing would change. There would not be a change in the driveway. The new lot, which would be 2 lots away from the closest neighbors, the Apelians, would be 100% compliant regarding sufficient frontage and area. There would be no modification of the lot. However, the remaining part of the lot would have frontage of 111.4 feet at the narrowest point. Mr. Kiritsy opined that the zoning bylaws recognize a reduction in frontage by a Special Permit, if the frontage is not reduced to less than 100 ft. and there is adequate access for traffic and utilities. He stated that they are not trying to claim hardship as a reason to seek the Special Permit. Mr. Kiritsy opined that the use will be the same, and not a detriment to the neighborhood.

Mr. Kiritsy then referred to what he opined was written authorization for Ms. Piscione to reconfigure her lots, provided it does not cause the property to exceed the original total of 13 lots. (This authorization is attached to the aforementioned memorandum). The original developer, Eliot Freeman, drafted restrictions to what could be done to the property but, according to this document, released the restrictions with that stipulation regarding the total number of lots. Mr. Kiritsy added that this release was recorded at the Registry of Deeds. He opined that the petitioner is not seeking to expand the use of the property, and that there would be no change in access to the property. He then referred to a prior denial of a Special Permit to Ms. Piscione back in 2010, and opined that this prior denial should not affect the issuance of this permit.

Mr. Benson suggested the general idea that the other homeowners may have had certain expectations, and even if there are not legal considerations, the board needs to consider if the request would be consistent with the character of the neighborhood. Mr. Kiritsy replied that the original design contained 13 lots, reconfigured to 12. One lot was divided between the Pisciones and Apelians. Regarding expectations, the restrictions on the development of the property expressly provided for release of the restrictions. If the developer decides to release the restrictions, he has a right to do so. Mr. Kiritsy opined that the declarant, Mr. Freeman, did release it to Ms. Piscione as a bargained exchange, and that this change now would restore the number of lots that Ms. Piscione originally bargained for.

Mrs. Pedone asked if the buyers were aware of this before purchasing their property. Mr. Kiritsy replied that he believed prior to the Apelians, but at least prior to the Pisciones, it was in place. He opined that, when the restrictions were released, Ms. Piscione was authorized to reconfigure the property from time to time as she saw fit.

Mr. Meindersma then asked how many lots Ms. Piscione bought. Mr. Kiritsy replied that she purchased greater than 2 lots; Ms. Piscione added that she bought a horseshoe-shaped lot, which was 1 lot and half of another, and that there were originally greater than 13 lots. Mr.

Kiritsy clarified that the others were on another street, and not subject to the restrictions. Mr. Meindersma then asked which lots Ms. Piscione bought, and Mr. Kiritsy showed them to the board on the site map, lots 4R and 5R. They were later reconfigured to 4R, 5R and 7R, with 6 being gone. This application restores 6.

Diran Apelian then clarified, that lot 6 was divided into 3 parts, with Mr. Apelian buying 2/3 of it, and Ms. Piscione buying the rest. Mr. Witkus asked about the corner of the lot, and Mr. Apelian replied that Ms. Piscione wanted to buy it from him but he did not sell it.

Mr. Benson then asked, when Mrs. Piscione owned both lots, how many houses were there, and Mr. Kiritsy replied that there were 2 lots in her original land grant. Mr. Meindersma asked from whom they were purchased, and Ms. Piscione replied that they were purchased from Eliot Freeman. Mr. Benson noted that Ms. Piscione would know that, if she subdivided it, it would be non-compliant with the bylaws. Mr. Kiritsy agreed.

Joseph Evangelista, who attended the meeting, spoke, and he said that Ms. Piscione reconfigured the lot because she couldn't originally have the 120' frontage required. Mr. Kiritsy added that there would be no access change to the property, and no change for abutters, if the frontage is reduced.

Mr. Benson then noted that the release was granted in 2004, but the deed was issued in 1997. Ms. Piscione then referred to the O'Brien house, stating that she and her husband purchased the lot and built on it. Mr. Kiritsy added that she bought 5R in 1997, 4R in 2003, and Eliot Freeman gave her the release in May 2004. Mr. Cahill asked when she bought lot 6, and she replied that she bought half of lot 6. Mr. Kiritsy clarified that 6 was part of 5R, and that Mr. Freeman divided it and sold part to the Apelians and part to the Pisciones.

Mr. Femia then asked if the Special Permit is granted, how many buildable lots will there be, and Mr. Kiritsy replied that there would be 13. He said that, regarding the release of the restrictions, Ms. Piscione could reconfigure and subdivide her property at her discretion. Mr. Femia then added, according to an affidavit dated 12/2010 signed by Mr. Freeman (on file), Mr. Freeman stated that it was never his intent to allow Ms. Piscione to produce more buildable lots. Mr. Kiritsy replied that Mr. Freeman signed the release of restrictions in 2004, stating that Ms. Piscione could reconfigure and subdivide lots 4R and 5R however she sees fit, except that she cannot exceed the total of 13 buildable lots. Referring to a letter from Mr. Apelian (on file), Mr. Apelian stated that Ms. Piscione agreed that it would not be her intent to do that. Ms. Piscione replied that she never agreed upon that with Mr. Apelian, therefore he was not telling the truth.

Mr. Kiritsy opined that the focus of the zoning bylaws is access to the property, and that nothing would change relative to access if the permit is granted.

Ms. Piscione recalled that the house built in the back of the property was built in 2004 or 2005, so that Mr. Benson surmised that the back house was built after the release from restrictions was issued; Ms. Piscione had reconfigured the lot and built a house on it.

Mr. Kiritsy replied that the bylaws provide for relief, and contemplate a reduction of up to 20 feet. Mr. Meindersma responded that Ms. Piscione is asking for another buildable lot, and that, looking through the declaration of restrictions, in section 2A, the declarant (Mr. Freeman) has the right to release any provisions in that section, but section 2T, which states that no lots will be further subdivided, had no such provision for release. Mr. Kiritsy responded that Mr. Freeman released Mrs. Piscione. Mr. Meindersma responded that the nature and character of the neighborhood is the issue for the board.

Mr. Benson then opined that Ms. Piscione is seeking to subdivide, knowing that there would be only one conforming lot. Mr. Kiritsy replied that the petitioner is not suggesting hardship, but knows that she can seek a special permit to remedy the situations. Mr. Benson responded that the Town does have zoning bylaws and opined that it cannot simply grant special permits whenever requested.

Next, Mr. Femia asked Mr. Kiritsy what the difference is between this request and the request in 2004. Mr. Kiritsy replied that the request for relief is not significant, but statute allows for re-application after 2 years. Mr. Benson added that the board is not bound by the prior decision.

Mr. Meindersma then asked if the O'Brien lot has been reconfigured. Mr. Kiritsy replied that it was originally 5R, now is 5R1, indicating this on the map in the memorandum. After showing the board the original configuration of the lots, Ms. Pedone asked to see the present configuration. Mr. Kiritsy then continued, that lots 1 and 2 are now one lot. With further explanation, it was discussed that lot 6 was later divided between 4R, 5R and 7R. Ms. Piscione bought 5 and half of 6, explaining that Mr. Freeman would not sell lot 5 without part of 6. Ms. Piscione believed that Mr. Freeman attached more of lot 4 onto lot 6, with the intent that someone could build there; she added that wetlands are present on the back of her property, therefore she cannot build there. She replied to Mr. Benson that there is a curb cut there. Mr. Meindersma then asked, if the declarant retained the ability to release the restrictions, including that of further subdivision, could he not give the release to someone else? Mr. Kiritsy replied that he could. Mr. Kiritsy added that the Planning Board allowed the number of lots maximum on the street to increase to 13.

Next, Mrs. Pedone presented a copy of the ZBA meeting minutes from 11/18/2010 to the board to review. At this meeting, the special Permit application was withdrawn and mentioned in the minutes were statements by Mrs. Piscione regarding not intending to subdivide. Mr. Kiritsy responded that it is clear that she wants to do that now. Ms. Pedone then mentioned the fact

that, in 12/2010, the developer said that he was not going to give her permission to subdivide. Mr. Kiritsy responded that this is not consistent with his statement in 2004. Ms. Piscione opined that Mr. Apelian convinced Mr. Freeman to write that letter denying the subdivision. She continued that, with her husband deceased, she needed a smaller home and cannot maintain the large amount of property. Mr. Kiritsy continued that both lots would be compliant with bylaw, consistent with the release of 2004, with ZBA relief of less than 10 feet. Mr. Benson responded that, according to the opinion of the Planning Board (on file), the Planning Board mentioned the frontage issue of 117 feet, and Mr. Kiritsy agreed that 120 feet is in fact the minimum allowed frontage. But, if the applicant reduces the frontage to 111.4 feet by subdivision, they will meet the width requirements with the special permit. Mr. Femia referred to section 41E, which states that minimum lot width shall not be less than the minimum frontage. Mr. Benson replied that, if the board votes to reduce the frontage, they will also reduce the width requirement.

With no more comment from Mr. Kiritsy or the board, Mr. Benson opened the hearing to public comment. First to speak was Joseph Evangelista, a friend of Ms. Piscione, who proceeded to give the background of her original property and discussed her attempts to obtain a special permit to subdivide. He supported her efforts, and opined that the board should be pro-building.

Next to speak was Todd Brodeur of the law firm Fletcher/Tilton, who represented the Apelians in 2004 and 2010. He opined that it was always the developer's purpose in his declaration of restrictions that subdivisions would be into large lots, not small lots. In 2004, it was decided that reduced frontage would be detrimental to the neighborhood. He opined that, in the right situation, it would make sense, but that no one living in the neighborhood anticipated further subdivision of the parcels, and that this is not a reasonable expectation of potential buyers, either.

Next to speak was Betsy DeMallie, of 13 Lost Oak Road. She discussed her concerns regarding the character of the neighborhood and the setting of a precedent. She continued that she bought her house because of the large lot and privacy, and that the developer told her where her house could go. She opined that the new house that Ms. Piscione proposes would impact the privacy of the neighbors. She was also concerned that others will fit in more houses on other lots on the street.

John O'Brien of 18 Lost Oak Road spoke next. He explained that he bought his house with a certain expectation of privacy. He was concerned that a special permit for reduction of frontage would set a bad precedent, and opined that, according to the bylaw, that the special permit should be granted if it is not to the detriment of the neighborhood.

Mike Kopopoulos of 9 Lost Oak Road was the next to speak. He bought his home in 2006, and expressed concerns regarding house value and the appearance of the neighborhood. His wife, Julie, also expressed concerns with home resale value.

Next to speak was Thomas Cahn of 17 Lost Oak Road. He mentioned that, in the original agreement with the developer, large lots were promised; he is against the granting of the special permit.

Mrs. Pedone then asked Ms. Piscione, if the lot was subdivided and another house built, what would be the footage to Mr. O'Brien's house. Ms. Piscione replied that it would be pushed back. She opined that, according to where her builder would place it, there would be plenty of room. She opined that the septic system behind the O'Brien's would not affect the lot. Ms. Piscione continued that she always maintained her property, giving an example of the placement of pine trees for privacy. She added that, supposedly, Mr. Apelian had the opportunity to purchase lot 4, but had no interest in purchasing even half of it, and she claimed that he said that, if someone built a house on the lot, it would not bother him. Mr. Kiritsy added that Mr. O'Brien's property is only a one acre lot, and opined that it could have been 2 acres if he wanted.

Mr. Femia and Mr. Benson then discussed distance of the septic system from wetlands and whether or not the Conservation Commission would have to be involved, but decided it was not relevant without knowing the exact location of the proposed house.

Mr. Witkus and Mrs. Pedone then asked Ms. Piscione if she read the declaration of restrictions when she bought the house, and if she signed it. Mr. Kiritsy replied that she did not sign it, but it was recorded.

Next to speak was Diran Apelian, 26 Lost Oak Road. He showed the board a map of the neighborhood and gave a brief history of the development. He said that he moved to the neighborhood for privacy. He then mentioned the splitting of lot 6, with Mr. O'Brien obtaining the smallest lot. Then, he said that the Pisciones bought their lot, and built their home about 100 feet from the Apelian's window, and they set up pine trees for privacy. He opined that, if another home was built, it would change the whole visual context of the neighborhood.

Mr. Benson then asked Mr. Apelian about the distance of his house from the Piscione house, and he replied 100 feet (Mr. Kiritsy disagreed with this, stating that it is 109 feet to the property line). Mr. Benson asked if Mr. Apelian was concerned with privacy, and Mr. Apelian replied that John Piscione wanted to buy land from the Apelians; however, a friend suggested to Mr. Apelian that the Pisciones want to split the lot, and that he should not sell any land, opining that the Pisciones would build another house and it would ruin the neighborhood.

Mr. Witkus then asked how the 45 degree triangle of land (on map, on file) was created, and Mr. Apelian answered that lot 6 was split into 2 parts, with the Pisciones owning 65% of it, causing a wedge shape. (Ms. Piscione added that $\frac{3}{4}$ acre was taken out for the septic system). (Mr. Brodeur added that they had the opportunity to create straighter property lines, but did not). Mr. O'Brien then added that he did not sign the deed restrictions, but signed the deed. Mr. Kiritsy asked him if he accepted the deed subject to the restrictions, and Mr. O'Brien replied that, when he signed the deed, he knew the restrictions; he had notice of the restrictions.

With no further questions from the board or the public, Mr. Meindersma moved to close the hearing to public comment. Mrs. Pedone seconded. All in favor. Mr. Benson called a recess of the board for 10 minutes.

At 9:40 pm, Mr. Benson called the board back into session; all members were present. Mr. Meindersma moved to open deliberations of the board. Mrs. Pedone seconded. All in favor.

Mr. Benson discussed concerns with the character of the neighborhood, especially Mr. O'Brien's concerns; the restrictions on the deed are instructional of the neighbors' expectations. Enough people have expressed concerns suggesting that the change would not be consistent with the character of the neighborhood.

Mr. Meindersma agreed, saying that the supposed release, while the developer clarified it later, does not appear to give the developer the authority to release the restrictions. He questioned the weight that the release had, and the character of the neighborhood questions the assertion that the developer did in fact release the restrictions. He continued, that the deed restriction was recorded, and all buyers took notice of it; the public commented on their expectations, and division of the lot would be against their expectations.

Mr. Cahill agreed with Mr. Meindersma's opinions. Mr. Witkus next commented, that the buyers knew the restrictions on the deeds, but if they went to court, he asked if a judge would say that it was binding. Mr. Witkus opined that it was binding. Mr. Cahill continued, that when Mr. Freeman split the lot, he knew the frontage, and could have made it 120 ft. to conform with bylaw.

With no further discussion among the board members, Ms. Pedone moved for the board to vote. Mr. Meindersma seconded. All in favor. Mr. Benson explained that a "yea" vote grants the Special Permit, whereas a "nay" votes against it. The board voted as follows:

Ms. Pedone-nay

Mr. Cahill-nay

Mr. Benson-nay

Mr. Meindersma-nay

Mr. Witkus-nay

Mr. Benson announced that the Special Permit has been denied. (The Secretary will file the vote sheet with the Town Clerk).

Minutes of the 12/16/13 Meeting:

Mr. Benson and the board decided to continue the minutes to the February 24 meeting.

At 9:54 pm, Mr. Meindersma moved to adjourn the meeting. Ms. Pedone seconded. All in favor.

Respectfully submitted,

Toby S. Goldstein, Secretary

Date Accepted: _____ By: _____