



OFFICE OF THE
BOARD OF APPEALS
TOWN OF DUNSTABLE
TOWN HALL
511 MAIN STREET
DUNSTABLE, MA 01827-1313

Approved
July 10, 2008

Schembechler Hearing
May 29, 2008

Members Present: Wesley Goss, Chairperson
Alice Ekstrom, Member
Judith Thompson, Member
Leo Tometich, Member
Lisa O'Connell, Secretary, Associate Member

Members Absent: Joshua West, Clerk
Al Horton, Associate Member

Petitioners Present: Geoffrey Schembechler, 36 Parkhurst Lane, Dunstable
Brian Weilbrenner (Builder), 20 Massapoag Way, Dunstable

Others Present: John Martin, 14 Massapoag Way, Dunstable

This meeting's intent is to file a formal decision with the Town Clerk regarding the application of Brian Weilbrenner for Geoffrey Schembechler for the property located at 12 Massapoag Way, Dunstable, MA for a variance from the Dunstable Zoning By-laws, Sections 4.2 and 4.3 alteration, reconstruction, extension or structural change of a nonconforming structure or lot, and Sections 11.1 and 11.3 dimensional lot requirements.

Wes Goss called the meeting to order and reconvened the hearing at 7:30 p.m.

Wes Goss stated that he had been in contact with Town Counsel and asked if Dana Barnes had them apply for the variance.

Brian Weilbrenner said, no, that he applied for the variance.

Wes said that a variance is a hardship on the property.

Brian Weilbrenner asked what he should have applied for.

Wes replied that he should have applied for an administrative appeal to a decision of the building inspector. Wes went on to say that section 4.1 of the Zoning By-laws does not pertain to the application as it pertains to the use of the property and not the legality of the lot.

Brian Weilbrenner said that the property has been held in separate ownership since the lot was created.

Wes Goss said that the Board could treat it as a vacant lot and determine whether it can be considered grandfathered. He asked when the property was split and set off in separate ownership.

Brian Weilbrenner said in 1959.

Wes Goss said the Zoning By-Laws at the time had a camp lot district requiring properties to have 5,000 sq. ft. and 50 ft. of frontage. He said that whether it was on the pond or the street is not specified.

Brian Weilbrenner said that he could not find the information as well.

Wes Goss said that Town Counsel said that it was historically handled both ways, but legally the Board should interpret it to be on Massapoag Way.

Alice Ekstrom asked if it was a taxable lot.

Brian Weilbrenner said yes.

Lisa O'Connell said that according to Town Counsel, just because it is taxable, it doesn't mean that it is a buildable lot.

Lisa O'Connell explained the Town Counsel's opinion with reference to the State Law pertaining to non-conforming lots (Chapter 40A, section 6). The State Law pertains only to vacant land. If a lot was not vacant at one time, the law looks at the applicable rules when the lot was made vacant. It must have been in conformity with the Bylaw in force at that time, which is believed to be 1978. It did not conform at that time, as the minimum area was 2 acres and the frontage 200 feet. This legal interpretation involving cases of formerly non-vacant lots was created and mandated by the courts. However, the Dunstable Zoning By-Laws at Section 4.4 address the nonconforming lot issue in different terms. It appears to select the factors of conformity to Bylaws at the time of separation of ownership as means of defining the lots entitled to "grandfather" consideration, without regard to subsequent events resulting in vacancy. This section could be interpreted to mean that the Zoning By-Law in effect when the lots were created would make it a legal non-conforming lot, as the lot was formed in 1959; and that status would continue regardless of later development followed by vacancy (as long as ownership remained separate)."

Wes asked when the house was destroyed.

Brian Weilbrenner said that he was not sure. There were varying stories.

John Martin said that if the 1947 By-Laws recognized the street frontage, then Massapoag way was a public street.

Lisa O'Connell said, no. It was recognized as a buildable lot with street frontage in 1959 as a basis for a conforming lot and that it was not necessarily a public way. She suggested that the Board get more definitive wording on this as well as how the Board could recognize the petition as an administrative appeal without the applicant having to withdraw. It would be redundant to have them come back if they could just continue this hearing.

Wes said he would like to get a recommendation from Town Counsel as to how the Board should vote in this instance and also how the Board could look at section 4.4 as a basis to recognize the lot as a lawful non-conforming lot.

Brian Weilbrenner asked if he could have a copy of Town Counsel's opinion that the Board had referenced this evening.

Lisa O'Connell said she would check with Town Counsel.

Judy Thompson motioned to continue the hearing until Thursday, June 12, 2008 at 7:00 p.m. Leo Tometich seconded the motion and all were in favor.

The hearing will be continued to Thursday, June 12, 2008 at 7:00 p.m. at the Town Hall.