

Freetown Zoning Board of Appeals

Wednesday, January 11, 2017
Town Hall – Assonet, Mass.

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Present: James Frates, Bradford Paiva, and Nicolas Velozo.

Absent: Christopher Chapin (associate) and James Sarcia (associate).

Call to order: James Frates called the meeting to order at 6:30 p.m.

Case #567 – Aspen Properties Investments, LLC – 64 Howland Road, Assonet

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to open the public hearing. The motion carried unanimously. A motion was made by Mr. Velozo, seconded by Mr. Paiva, to waive the reading of the public hearing notice. The motion carried unanimously.

Atty. David Assad introduced himself as representing the applicant, Aspen Properties Investments, LLC. Mr. Frates announced that new associate member Chris Chapin is somehow involved with this project, but was not present and not participating in the presentation. A point of confusion was clarified where it had been believed that Mr. Chapin was involved with Aspen Properties: Chris Chapin has business dealings with Aspen Properties but is not affiliated with them; Chris Coute is the person involved with Aspen Properties.

Atty. Assad introduced the proposal, explaining that the property could be divided into two buildable lots (one containing the present single-family dwelling and the other available for new construction) as it meets all requirements of the protective by-laws except for 3.02 feet of frontage. The petitioner is seeking a waiver of the missing 3.02 feet, allowing for the lot with the existing home to have 175.00 feet of frontage and the second lot to have 171.98 feet of frontage. Atty. Assad also clarified that the proposed so-called "Parcel A" at the rear of the property, containing the hill and steep slope down to the swamp, would either be combined with Chris Chapin's property or conveyed to the state as it abuts the Freetown State Forest.

Mr. Paiva noted that Parcel A has no frontage. Atty. Assad stated that it was designated non-buildable, and did not require frontage. Mr. Velozo, as a Planning Board member, verified that a so-called "parcel" does not require frontage.

Mr. Frates asked what the hardship is, since this is a variance request. Atty. Assad responded that the hardship is the unique shape of the lot. The lot is unusually large for its neighborhood, and has substantial width, both features lending themselves to division and development but for the shortage of frontage. Atty. Assad also provided a petition, signed by a number of neighboring property owners, supporting the variance request.

Mr. Velozo asked when the former property owner, Timm Hadley, had filed his Form A with the Planning Board to create the premises now known as 64, 66, and 68 Howland Road. Atty. Assad provided a copy of the Form A plan, and it was noted that the lot under consideration was created in its current form in 2013.

Mr. Velozo asked if proposed Lot 2, the lot with insufficient frontage, contained any wetlands. Atty. Assad responded that it did not have any wetlands.

Mr. Velozo asked when Aspen Properties purchased the property from Sheri Hadley. Atty. Assad responded the sale was in August of 2016.

Mr. Velozo asked if Aspen Properties was aware at the time of purchase that the property had been divided in 2013. Chris Coute, on behalf of Aspen Properties, stated that they had not looked into that at the time as

they did not originally intend to divide the property. Mr. Velozo felt that as a recent purchase, the frontage issue should have been noticed sooner.

Atty. Assad stated that the Hadleys could have followed the same process, applying for a variance, and created an additional lot at the time they divided the property in 2013, but that they chose not to. He reiterated that the property is large and oddly-shaped, and that in all other respects aside from frontage it qualifies to be divided.

Mr. Frates asked if the second house was for spec. Mr. Coute responded that it was intended to be sold. Mr. Frates felt that was understandable given the size of the property.

A resident identifying himself only as residing at 69 Howland Road asked if the property in question was the vacant lot at 66 Howland Road (owned by the estate of Timm Hadley). Mr. Coute responded that the petition did not involve that lot, only the larger property at 64 Howland Road.

Mr. Frates stated that three feet is not a lot, but that he was concerned about "where [it would] stop" in the future – does the next person ask for five feet and say "It's only five feet", etc.

Mr. Paiva asked if Mr. Coute intended to occupy either the existing house at 64 Howland Road or the proposed house on the proposed lot between 62 and 64. Mr. Coute indicated he did not intend to occupy either house.

Mr. Coute stated that the proposal appeared to be the best use of the property, given the ledge and steeply-sloping topography. Atty. Assad added that the intent was to limit development by proposing only one additional house and conveying the remaining land either to Chris Chapin or to the state.

Mr. Paiva expressed difficulty seeing the hardship, and also that he would have wanted to see a family staying together in neighboring houses given some consideration if that had been the case here.

Atty. Assad stated that under G.L. Chapter 40A, Section 6, the shape of the lot is a factor that can be considered as part of a variance request.

Mr. Coute stated that the neighbors are pleased with the proposal for one house, but that if the petition fails a new plan could be developed that might involve an additional house or more. Mr. Frates asked how a second additional house could be added when there isn't enough frontage for one additional house, and Mr. Coute responded that the possibility existed to add an additional house if a small road was included in future plans. Atty. Assad clarified that the objective for now is one additional house, and not to go beyond that. The topography of the property, ledge, and other like factors lend themselves to one house more than multiple houses.

Mr. Velozo stated that he agreed three feet was minor, but that this did amount to the applicant creating his own hardship. Atty. Assad stated that each case should be considered on its own merits, and that a ZBA is not bound by precedent.

Mr. Frates reiterated that three feet was not a lot, but the concern is what will the next person think is not a lot. He then asked again what the hardship is, and Atty. Assad responded the lot is large for its neighborhood, oddly-shaped, and would conform to all requirements if not for the absence of three feet of frontage. Atty. Assad felt that Aspen Properties is being denied the reasonable use of its property by being held strictly to the requirement of 175 feet of frontage.

Gerry Lima, 116 Howland Road, spoke favorably about the proposal. He stated he has lived in town about three years, likes the area, and feels an additional house would not be a detriment to the neighborhood. He felt that one additional house was better than two or more additional houses.

Mr. Frates stated he did not feel the shape of the lot was a hardship. Atty. Assad argued that the lot was very large compared to the other lots in the area, and that the potential to develop that lot was being hindered by three feet of frontage when the lot otherwise would qualify to be divided. Atty. Assad stated the project could not move on to the Planning Board for a Form A submission without a variance. Mr. Velozo stated that the plan could be approved as a Form A provided "Lot 2" would be noted as a non-buildable lot without later receiving a variance. Atty. Assad and Mr. Velozo disagreed on the interpretation of what is permissible under a Form A submission.

Mr. Coute stated that this was the best plan for the neighborhood. Mr. Paiva stated that one lot was also better than multiple lots because it would save a developer from the costs of constructing a road. Mr. Coute stated that multiple lots would ultimately be more profitable, even with a road.

Mr. Frates stated that he was not comfortable with the idea of a variance being requested for a lot that does not yet exist. Atty. Assad stated the lot could not exist without first obtaining the variance.

Mr. Frates stated that attempting to divide the lot was what was creating the hardship, but that the hardship does not exist if the lot is left as-is. Mr. Velozo stated that the request is to create the lot, and that it was difficult to find a hardship in the shape of the lot.

Mr. Paiva stated he would defer to the experience of Messrs. Frates and Velozo.

Mr. Frates asked for a motion. Mr. Velozo stated he would not make a motion.

Mr. Coute asked if he should create the one compliant lot with the Planning Board and then return afterward, but Atty. Assad did not feel that the Planning Board would endorse the plan.

Mr. Coute stated that a lot of the land could not be developed because of the slope/topography, and that many towns' ZBAs would agree that that constituted a hardship.

Mr. Frates asked if not dividing the lot would be a financial hardship. Atty. Assad stated that finances were not relevant, but that the value of the property is diminished by not being able to divide it into developable land. Mr. Frates stated he was trying to determine if not developing the land could be viewed as a financial hardship, as he was trying to identify some hardship that he could make work for the proposal.

Mr. Velozo noted that the existing well and septic system were on the proposed Lot 2 while the existing house is on the proposed Lot 1. Mr. Coute stated the existing septic system would need to be replaced. Atty. Assad did not foresee any sharing of wells.

Mr. Coute reiterated that the neighbors support the petition. Mr. Velozo stated that neighbor support counts, but that the board is bound by the by-laws and the guidance and requirements of state law. He did not see a clear hardship or need for a variance.

Atty. Assad asked if the petition should be withdrawn. The board members were agreeable to the petition being withdrawn rather than denied.

DISPOSITION: A motion was made by Mr. Velozo, seconded by Mr. Paiva, to allow the petitioner to withdraw the application without prejudice. The motion carried unanimously.

Proposed Changes to Application Form

Members reviewed the proposed application again after having previously reviewed it in the late summer and early fall. A motion was made by Mr. Paiva, seconded by Mr. Velozo, to adopt the revised application form as previously received. The motion carried unanimously.

Other Business Properly Before the Board

No other business was raised.

Minutes of Previous Meeting

The minutes of October 4, 2016, were not available.

Meeting Adjourned

A motion was made by Mr. Paiva, seconded by Mr. Sarcia, to adjourn the meeting at 7:26 p.m. The motion carried unanimously.

This is a True Record by me.

Attest: _____
Michael T. McCue, Senior Clerk