



TOWN OF WILBRAHAM

Zoning Board of Appeals
240 Springfield Street
Wilbraham, Massachusetts 01095

MINUTES OF THE WILBRAHAM BOARD OF APPEALS MEETING THURSDAY, JANUARY 19, 2017

In Attendance: Edward Kivari Jr. – Chair, H. Clark Abbott, Charles Pelouze, Betsy Johnsen – Associate

Staff: Lance Trevallion, Zoning Enforcement Officer
John Pearsall, Planning Director
Heather Kmelius, Administrative Assistant

The meeting was called to order at 5:52 PM by Chairman Kivari.

1. **Approval of Minutes**

Chairman Kivari called for a motion to approve the minutes of December 6, 2016 and December 8, 2016 as submitted and the Board unanimously agreed.

2. **Public Hearing (Continuance)**

Appeal of Zoning Enforcement Determination

Leon Charkoudian, 19 Peak Road

(Digitally recorded)

Chairman Kivari opened the public hearing at 5:58 PM and reread the legal notice into record and stated that this hearing is a continuation from October 27, 2016. The Board, Town Counsel and other interested parties and their counsel conducted a fact finding site visit at 19 Peak Road on December 6, 2016 at 1:00 PM.

Mr. Charkoudian is appealing Zoning Enforcement Officer, Lance Trevallion's determination from May 2016 that 19 Peak Road is a "buildable lot" with the hope of preventing the planned sale of the property to Joe Pellegrino, resident of 81 Springfield Street, who made an offer on the property when it was featured on MLS contingent upon his ability to obtain a building permit for the property. Chairman Kivari referenced that the Board had reviewed three memorandums submitted by both opposing attorneys, as well as one from Town Counsel, Alan Marshall.

Attorney Richard Schafer, representing John Charkoudian, and Attorney Jesse Belcher-Timme, representing and appearing with Leon Charkoudian, were called to the Board table. Attorney Schafer reviewed the points outlined in the Supplemental Memorandum of John C. Charkoudian and Nahabed L. Charkoudian presented to the Board on January 18, 2017. He also presented a venn diagram showing the intersecting "gray area" features of Section 3.3.3 and 3.3.4 of the Town By-Law. He stated that Section 3.3.3 is a protection for single and two family homes on a non-conforming lot. He stated 3.3.4, a much more restrictive by-law, applies to all structures that are destroyed by natural disaster on non-conforming lots. He stated that it is illogical that a homeowner under 3.3.3 who voluntarily raises their home, has unlimited time to rebuild it where a homeowner whose home is destroyed by natural disaster is restricted in that he can only rebuild what came down within a one year time period.

Attorney Schafer pointed out that all parties were able to drive to and park their cars easily at 19 Peak Road for the site walk on December 6, 2016. He stated that no one has ever owned Peak Road, despite the fact that there are several plans on record for the homes constructed along Peak Road, including recorded ANR plans approved by the Planning Board. He stated that if the road is constructed as a street, the Town should treat it as a street. Attorney Schafer discussed the similarities of Peak Road with Lake Drive and Federal Lane.

Planning Director John Pearsall testified that he was involved in drafting the language revising and reorganizing section 3.3 that was adopted by Town Meeting in 2008. Mr. Pearsall stated that the intent of the new language in Section 3.3.3 was to liberalize the protections for single and two family residential structures in response to guidance provided by recent decisions of case law and to assist the Building Inspector due to the high number of non-conforming situations in town. Mr. Pearsall explained that the language in Section 3.3.4 was carried forward without revision from the existing Zoning By-Law and was intended to provide conditional special treatment for structures (both residential and nonresidential) damaged by natural causes and does not preclude property owners from taking advantage of the more liberal treatment of non-conforming single-family and two-family structures provided in section 3.3.3. Mr. Pearsall noted that Section 3.3.4 is rarely invoked and suggested that additional language might be considered in section 3.3.4 to expressly clarify the intended interpretation of the Zoning By-Law.

Attorney Belcher-Timme stated that Section 3.3.3 is a general provision applying to single and two family structures. He also stated that 3.3.4 does not have wording that exempts residential non-conforming structures and is therefore applicable in this matter, regardless of the intent of the By-Law's authors. Attorney Belcher-Timme stated that Section 3.3.5 is only applicable to uses not structures, making it also applicable in this matter as the structure at 19 Peak Road was a pre-existing non-conforming use due to the fact that the property lacked frontage. He stated there is a specific process to create a road in Massachusetts that involves a Town meeting vote. He stated that Peak Road was officially discontinued over one hundred years ago and if the Town wanted to make Peak Road a legal road, it could have done so. At this point in time it has not executed this process and therefore a "paper road" is not a legal road.

The Board, along with Town Counsel, reviewed supporting case law regarding the legal issues in this matter and discussed the issues thoroughly.

The Board closed the hearing at 7:45 PM. The Board will prepare a draft decision for review at its next meeting Thursday, February 16, 2017.

3. **Soja & Abbott, Attorney John Soja – 2022 Boston Road**
Administrative Review of Parking Lot Extension
Special Permit - September 22, 2005

Board member H. Clark Abbott recused himself on this matter because of potential conflict of interest concerns.

Attorney John Soja presented plans to expand the parking lot onto adjacent land he recently acquired with ten to twelve additional parking spots for his law office located at 2022 Boston Road. The plan is compliant with Town By-Laws. The Board reviewed the plans and did not have any issues. The Board agreed that it could approve the parking lot expansion administratively in accordance with the Special Permit issued in this matter on September 22, 2005.

MOTION (Kivari, Johnsen): To administratively approve the expansion of the parking lot in accordance with the Special Permit dated September 22, 2005 and in compliance with the Town By-Laws. (3-0, with Ms. Johnsen serving as the Alternate Voting Member).

4. **Approval of Variance Decision – Addition to Frisk Residence, 1329 Tinkham Road**

The Board reviewed the final draft of the decision in this matter without any issues or changes. The builder, Rick McCullough of McCullough Builders, was present at the meeting. The Board advised Mr. McCullough that the existing shed that straddles the property line of this parcel needs to be removed or moved on the property to be in compliance with this Special Permit.

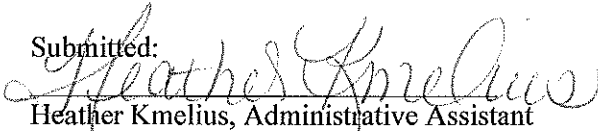
The Board unanimously approved the draft decision.

5. **Draft 2016 Annual Town Report**

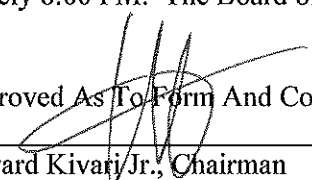
The Board did not have any issues with the draft of the 2016 annual report.

Having no further business, the meeting was adjourned at approximately 8:00 PM. The Board of Appeals will reconvene on February 16, 2017 at 5:15 PM.

Submitted:


Heather Kmelius, Administrative Assistant

Approved As To Form And Content:


Edward Kivari Jr., Chairman

Date: 2.16.17