



Town of Sudbury

Zoning Board of Appeals

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MINUTES

JUNE 21, 2019 AT 8:00 AM

LOWER TOWN HALL, 322 CONCORD ROAD, SUDBURY, MA

Members Present: John Riordan, Chair; William Ray, Clerk; Jonathan Gossels; Frank Riepe; and Benjamin Stevenson

Members Absent: Nancy Rubenstein

Others Present: Adam Duchesneau, Director of Planning and Community Development, and Lillian Vert, Planning and Zoning Coordinator

Mr. Riordan opened the public meeting and the deliberations by noting the presence of a quorum at 8:00 AM. Mr. Riordan then asked Mr. Ray to read the legal notice as published in the newspaper into the record, which noted the below Zoning Board of Appeals applications. Mr. Riordan noted the requirements for decisions which are issued by the Zoning Board of Appeals under Massachusetts General Laws, Chapter 40A. He also noted each of the findings under Massachusetts General Laws, Chapter 40A, Section 10, all of which need to be made, in order for the Board to issue approval of a Variance. Further, Mr. Riordan called out the specific requirements in Section 6140 of the Town of Sudbury Zoning Bylaw which also need to be made by the Board in order to issue a Variance.

Deliberation - Case 19-3 – Anne Stone, applicant and owner, to request a Use Variance under the provisions of Section 2230 of the Zoning Bylaw, to allow for the construction of a self-storage facility in a Residential A-1 District. Property shown on Town Assessor Map K06-0602 at 554 Boston Post Road, Residential A-1

and

Deliberation - Case 19-4 – Anne Stone, applicant and owner, to request a Variance under the provisions of Section 2210 of the Zoning Bylaw, to allow for more than one principal structure. Property shown on Town Assessor Map K06-0602 at 554 Boston Post Road, Residential A-1

Attorney Jerry Effren and Quentin Nowland of Lynch Landscape & Tree Service, Inc., were present to hear deliberations.

Mr. Gossels asked what the right vote would be from the Zoning Board of Appeals in light of the Board of Selectmen now appealing the Constructive Approval decision, in order to support these actions and the Town's best options going forward.

Mr. Stevenson replied that in his opinion the Zoning Board of Appeals should vote as if the Constructive Approval and the appeal by the Board of Selectmen have not taken place. He felt the Zoning Board of Appeals should simply vote based on the merits of the applications.

Mr. Riordan noted the Zoning Board of Appeals was not acting against the Board of Selectmen as the Board of Selectmen know the Zoning Board of Appeals was inclined to continue working on the applications to reach a thoughtful decision on the matter.

Mr. Stevenson asked the Zoning Board of Appeals to continue discussion on deliberations.

Mr. Gossels commented his only concern from the beginning was the massing of the building and the destruction of the barn.

Mr. Riepe stated he did not feel the applications satisfied Section 6131 of the Zoning Bylaw at all, as there was nothing unusual regarding this piece of land in any way. Under Section 6132, he felt the Applicant had not demonstrated a hardship as the property was never put out on the market for residential uses and he did not believe this process took place. Under Section 6133 of the Zoning Bylaw, which speaks to the possible detriment to the public good, Mr. Riepe noted there were large objections from the public, but he was not sure if this would constitute a substantial detriment. Lastly, under Section 6134, which has a finding of not derogating from the intent of the bylaw, Mr. Riepe noted the proposed use of a self-storage facility was already allowed in the industrial, limited industrial, and industrial park zoning districts, and he felt it was a fantastic stretch to assert the use did not derogate from the intent of the Zoning Bylaw. Mr. Riepe stated he believed the applications failed three out of the four findings for Variances. He again noted Town Meeting was the legislation body of the town and this would be the appropriate body to decide if such a use were appropriate in this location.

Mr. Riordan noted once a decision on the matter was filed by the Zoning Board of Appeals with the Town Clerk that decision could be appealed by any party.

Mr. Stevenson stated the Zoning Board of Appeals had heard comments in support and opposition of the project, and while he felt sympathetic to the Applicant, the Board was being asked to grant two Variances and Variances do not come easily. Regarding Section 6131 of the Zoning Bylaw, Mr. Stevenson stated he had a hard time finding something unusual about the property. Under Section 6132, Mr. Stevenson felt he did not hear any evidence about other uses available. Under Section 6134, he thought it was hard to state this use did not derogate from the Zoning Bylaw. He noted the intent of the bylaw was to establish these zoning districts for at least 50 years and all evidence he could see showed it has always been the intent of the bylaw to preserve this agricultural use. In Mr. Stevenson's opinion, this was not a good project to put on an agricultural parcel.

Mr. Ray stated he could always see both sides to an issue. He appreciated all the work and effort the Applicant had put in, and their willingness incorporate comments, but Variances were not entitled and were not easy to get. Mr. Ray stated he was struggling with the hardship finding because the Zoning Board of Appeals had asked the Applicant this question and that information was not presented. He did not feel the hardship was fully presented and felt the Applicant had failed to meet the findings of Section 6132.

Mr. Gossels stated he did not have anything to add.

Mr. Riordan stated a hardship finding could be for something other than financial and noted the case law of Cavanaugh versus DiFlumera (9 Mass. App. Ct. 396).

Mr. Stevenson asked what evidence had the Zoning Board of Appeals heard about marketing or putting the property on the market.

Mr. Gossels noted if the Zoning Board of Appeals voted to grant the Variances, the Applicant would move forward with the project as proposed in the application before the Board. If the Zoning Board of Appeals voted to deny the Variances, the Applicant would move forward with project as originally proposed under the Constructive Approval decision. As such, Mr. Gossels stated he did not see the reason of voting now when the Applicant could build a project regardless of how the Zoning Board of Appeals voted on the applications.

Mr. Stevenson stated he would not be forced to review these applications with a gun to his head and felt the Applicant was not duty bound to file the Constructive Approval. He noted he felt sympathetic to the Applicant and Owner, Anne Stone.

Mr. Gossels stated the Applicant had worked with the Zoning Board of Appeals and had advanced the proposed project in many ways. He felt the Applicant would not go back to build a project under the original application filing with the Zoning Board of Appeals.

Mr. Riordan asked the Zoning Board of Appeals to take a vote on the applications under the requirements of Section 6130 of the Zoning Bylaw for Variances, beginning with Section 6131.

Section 6131 indicates there must be special conditions relating to the soil conditions, shape, or topography of the land or structures thereon, and especially affecting the land or structures, but not affecting generally the zoning district in which the land is located. A roll call vote on this finding was taken as follows:

Mr. Riepe – No, Mr. Stevenson – No, Mr. Ray – No, Mr. Gossels – No, and Mr. Riordan – Abstain.

Mr. Riordan then noted because the applications failed to meet the findings of Section 6131, there was no need to have the Zoning Board of Appeals vote on the other findings for Variances because the applications were already both denied by the outcome of this vote. At this point, how the members would vote on the other findings for Variances would be irrelevant.

Mr. Stevenson stated because of the posture of this case and for the record, he felt it was important for the members of the Zoning Board of Appeals to vote on the other findings for Variances for the applications. Mr. Riepe agreed. Mr. Stevenson asked to make the record as full and complete as possible.

Mr. Riordan indicated he felt this was not necessary as it would not change the outcome of the proceedings in any way and he did not feel it was the proper action for the Zoning Board of Appeals to undertake. He stated it made no difference on what the record was of the other elements if one of them had already failed as the prerequisites of MGL Chapter 40A, Section 10, are conjunctive, and failure to establish any *one* of them was fatal to the granting of a Variance.

Mr. Ray made a motion to adjourn the meeting. Mr. Gossels seconded the motion. The vote was unanimous, 5-0. The meeting was adjourned at 9:05 AM.