

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
FEBRUARY 19, 2014**

**Members Present:** Clayton M. Harrison, Chairman  
Christopher Graham, Vice Chairman  
Gerald Coutinho  
Gary Simmons  
Larry Kidney  
Donna Lambert  
Heather Salva, Clerk  
**Also present:** Ralph Souza, Building Inspector  
Attorney Ilana Quirk, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance.

**Robert & Lisa Grillo - RE: Applicant is seeking an Administrative Appeal of the Zoning Enforcement Officers' determination that Lots 1, 2 and 4 on ANR Plan does not meet frontage requirements. The property is located at 388-F Old Bedford Road and known on Assessor's Map 2, Lot 31.**

**\*\*Christopher Graham and Donna Lambert recused themselves from the Board for this petition.**

**Hearing petition:** Harrison, Coutinho, Salva, Simmons, Kidney  
**Present:** Robert Grillo, applicant  
**Abutters present:** Quentin Lord, 313 Davis Road  
Eugene Roy, 388-G Old Bedford Road

The public hearing was opened at 7:00 P.M. with Chairman Harrison reading aloud the Public Hearing Notice. Chairman Harrison explained the procedure for the hearing; first, the applicant would present their petition and then input would be taken from the abutters. Anyone wishing to speak must identify themselves by name and address.

Mr. Coutinho noted for the record, that Mr. Grillo had called him and spoke with him regarding a matter of procedure for tonight's hearing and in no manner did they speak of anything that would have an influence on his decision regarding this petition.

Mr. Grillo stated he put in a request to the Building Inspector regarding his property because before purchasing the property, he wanted to know the process; the Building Inspector wanted to review his request before rendering an answer. Mr. Grillo stated his questions were specific to buildable lots because he felt that the lots had enough size and frontage. There were issues such as the laneway cutting through all of the lots and on one plan there is an easement (which he does not want to discuss tonight); the Planning Board has approved an ANR Plan. Mr. Grillo stated his question is the procedure to contest. I have 20 days to appeal to the courts; so if we look at the bylaw definition of a street or way, why does the ZBA have to review what the Planning Board has already done. The Planning Board has made their determination. The Franco case was by default, so that does not help me. Mr. Grillo stated he has a ton of information if the Board would like to review it. The fact, Mr. Grillo stated, is that the ZBA is making a decision based on the Planning Board decision.

Mr. Harrison read into the record, the letter rendered by the Building Inspector denying Mr. Grillo's request. Mr. Harrison then asked Attorney Quirk, what is the effect of the Planning Board's decision of

the ANR Plan. Attorney Quirk stated the Planning Board makes a decision on a subdivision control law regarding access; once a determination is made, it has no effect on the ZBA. The Building Inspector makes the determination on frontage, separate from the Planning Board's determination on the ANR Plan. One determination the ZBA must make is if the Building Inspector made the right determination on the frontage. Attorney Quirk stated that the Planning Board minutes on this matter would be very useful. There are some aspects such as, did the Building Inspector make the right call; is there frontage under the bylaw; and there is the zoning issue with a common driveway. Mr. Coutinho stated that in reading all the material, we are not here to question the Planning Board's ANR Plan, it was a vote taken; I believe the biggest question is the frontage being on a way; with all the court cases before, this roadway was determined to meet the definition of a road. Attorney Quirk stated if you want to look at the interpretations in the past, you must question is this an accepted way; the application is very thorough; the Board may want to investigate prior decisions and court decisions such as 1989-Lavoie.

Mr. Coutinho stated that on March 25, 1992, the ZBA acted on this same property; I have the Planning Board's minutes from July 30, 2013 and there was a motion to endorse the ANR Plan because it complies with the MGL's. Attorney Quirk stated the Planning Board made a determination under the Subdivision Control Law, not under Zoning and that has no determination under Zoning. Mr. Coutinho stated the Planning Board determined the lots had enough frontage, just not on a street according to the Building Inspector. Attorney Quirk stated the Planning Board made a determination on access; but it was not a binding determination for zoning. Mr. Coutinho stated he has not heard anything about the deed stating the boundary abutting the laneway. Attorney Quirk stated the surveyor needs to do a stamped revised plan showing the lots abutting the way. Mr. Harrison stated that a plan has been submitted and an approved ANR Plan: 7/16/13 – Mark Boucher and 7/30/13 – approved by Town Planner. Mr. Coutinho stated again, he did not see anything that shows a layout of the laneway; there is a strip of land between the street and his property; the question is who owns the strip. Attorney Quirk stated the Board can't make that determination on the strip; the Building Inspector made the determination that the property did not abut the lane. Mr. Grillo stated that the Board should look at the Planning Board minutes; the Planning Board can't give me the ANR Plan if I did not abut the laneway; the deed shows the easterly property line touching the Drift Way, my deed does not say Old Bedford Road. To clarify, the engineer put only the travel way portion for Planning Board purposes; there is grading along side, a swale and a catch basin. These are all things that were part of the Planning Board's approval; the ZBA needs to determine if my property is buildable and the Planning Board made the determination that my property abuts.

Mr. Simmons questioned the travel way through the properties. Mr. Grillo stated he spoke to the engineer a number of times and he does not know why this is an issue due to the deed. Attorney Quirk stated a revised plan would show the right of way; again, the Planning Board made a determination under the Subdivision Control Law but it is not binding to the ZBA and the Building Inspector's decision. Mr. Grillo then read from his deed; the deed has the same wording except the name "Old Bedford Road" and there are claims in the deed of it being a two-rod way. Attorney Quirk suggested that if the applicant is willing to have a revised surveyor's plan done, stamped and showing all of the area it would clarify a lot. Mr. Grillo stated his deeds says it very clearly and he does not see the need for a new plan, but he is willing to get one done. Mr. Coutinho stated the concern of the Board is that a number of houses along this way have been built; there have been a number of approvals and a number of denials; the house presently, was built in 1972 but there have been many houses built since then. Mr. Grillo stated there have been five houses and two ANR Plans have been built on. Mr. Coutinho stated we need to deal with the why and why not on this laneway. Mr. Grillo stated the Land Trust has bought the Nesby Property and presented an approved engineered plan; it shows a two-rod way (9-30-13 – Engineer Daniel Tiven). Mr. Grillo said his question is, if the Planning Board determined my frontage did not touch, they would not have approved my ANR Plan. If you looked at the bylaw definition, the Planning Board made a determination on the frontage (41.81.L). The Planning Board has already determined the adequacy of the lane. I asked the Building Inspector if on every other ANR Plan on an ancient way, do you look at what the Planning Board has determined; he said he looks at frontage. I asked the Building Dept. Clerk

that when an ANR Plan comes in on an ancient way, is a building permit issued and she responded yes. Mr. Grillo stated he was using the wrong term, ancient way, but he was using it to describe a way existing before the Subdivision Control Law; this has been treated completely different than all other ways. Mr. Harrison noted that there is a lot of information dealing with this area.

Eugene Roy stated he has lived in his home for 32 years. Drift Way is not an ancient way, it is only a path to put electrical poles. The access Mr. Grillo is trying to shut down is the ancient way known as Cahoon's Lane. We were all told our properties touch the laneway by Attorney Lees. The Franco's spent a lot of money and raised the bar. Mr. Roy stated he was totally against the laneway being shut down.

Mr. Coutinho asked for a clarification from Mr. Roy; the way we are talking about is the part that goes through the property? Mr. Roy stated that is the ancient way; the little spot on the map is Franco's property; just look at some of the deeds; I own to the opposite side and that is not an opinion, it is on the deed.

Quentin Lord presented an old map to the Board and an Assessor's Map dated October 1939, which contained updates. He also presented a document showing a deed from May 7, 1919 of an abutting property.

Mr. Graham questioned the ancient way and the travel way. Attorney Quirk stated the 2013 ANR Plan shows it and it is stamped by the surveyor, but the plan does not show the lots touching the way and normally it would, it is stated the right of way on Cahoon's Way for lots 2, 3 and 4; right now, it shows 150 ft. frontage for lot 1 but there is a question of frontage for four houses.

Mr. Coutinho asked Attorney Quirk, does the Board weigh in the fact that the Franco case sided with the applicant for a subdivision? Attorney Quirk stated it does not bind this Board; this is a different area; there are issues in the decision but the Town chose not to pursue; now, the ZBA must look at all parts of the bylaw, the definition and the issue of the common driveway (whether it is an old way).

Mr. Coutinho stated the 1939 map has been revised and updated a number of times and there is the Planning Board decision. Attorney Quirk stated one way would be for all owners to come together to the Planning Board and have it determined a laneway abutting. A plan should be put together by a registered land surveyor showing all land abutting. The prudent course is to wait until a building permit application is applied for but there is one issue: common driveway – with no relief. Lot 1: 150 ft. seems to touch the travel way and don't have the common driveway on it. Lot 2: Does not touch but the common driveway goes across it; to address the other lots, you would have an issue with the common driveway.

Mr. Grillo stated his reason to apply is to avoid what happened to the Franco's. I wanted a determination as to whether the buildable lot had frontage and area; the Building Inspector denied, so I am here before the ZBA. The gravel drive is about 30 ft. from my back door; my intent is to move that and if it is shut down, they still have access. These are the issues that need to be resolved.

Mr. Harrison stated when the Planning Board ruled on this exact property, it is the exact opposite of what the Planning Board did present. There is enough information that needs to be gathered in order to move this along.

Mr. Grillo asked if he could get a legal opinion from Town Counsel of his lot. Attorney Quirk stated previously the ANR Plan (Cahoon's Way a/k/a Proprietor's Lane) and the travel way are not the same; you need a plan based upon the deeds. Mr. Coutinho noted that the other deeds show they own all the way up to Mr. Grillo's property. Mr. Grillo stated there are a lot of gray areas; a lot of legal issues. Mr.

Coutinho stated that maybe there is no easement at all, maybe someone decided one day to use a bulldozer to straighten out the road.

Mr. Graham noted to the Board that on page 15 of the Franco Decision, a map dated 1908 is referenced. He believed it was the Freeman's & Pocasset Purchases.

Attorney Quirk stated an option would be for the abutters to relinquish the use of the driveway. Discussion ensued regarding a special permit for a common driveway. Materials needed for the next meeting would be the map in the Franco Case (page 15/16), a revised survey plan showing the common driveway with dimensions and deeds for reference, copies of deeds to back up a common driveway (showing where it is and who it served). Attorney Quirk stated that option 2 would be to deal with a common driveway in which the applicant has to make a decision to extinguish it or seek a special permit.

Mr. Coutinho asked Attorney Quirk, if the bylaw is changed at Town Meeting, what is the impact? Attorney Quirk stated the applicant would have to have a building permit in hand before Town Meeting in order to have no effect.

**Motion** made by Mr. Coutinho to continue this hearing to Wednesday, April 16, 2014 at 7:00 PM. Second by Mr. Simmons. The Board voted unanimously in favor.

**Motion** made by Mr. Coutinho to accept the extension request from Mr. Grillo in regards to the time frame for filing a decision with the Town Clerk through and including May 7, 2014. Second by Mr. Simmons. The Board voted unanimously in favor.

**Motion** made by Mr. Coutinho to close the hearing at 9:30 PM and to continue on April 16, 2014. Second by Mr. Simmons. The Board voted unanimously in favor.

#### Minutes

**Motion** made by Mr. Simmons to approve the Regular Meeting Minutes of January 29, 2014 with amendment. Second by Mr. Kidney. The Board voted 6 in favor, 1-abstention (Graham). \*Amendment: Page 2 – change 1994 to 1974 and render to surrender.

**Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of December 18, 2013. Second by Mr. Graham. The Board voted 6 in favor, 1-abstention (Lambert).

#### Other Business

1. Mr. Coutinho questioned Attorney Quirk whether the Board could legally put conditions on a variance. Attorney Quirk stated yes; on time and use. There can be an expiration date on a special permit but she has never seen an expiration date on a variance. If an appeal is filed, you would need one of the conditions in addition to the financial.

Correspondence – None.

**Motion** made by Mr. Coutinho to adjourn the meeting at 9:45 PM. Second by Ms. Salva. The Board voted unanimously in favor.

#### Adjournment.

Respectfully submitted, Diane Pelland  
Diane Pelland, Principle Clerk to the Zoning Board of Appeals

**APPROVED:** Heather Salva  
Heather Salva, Clerk of the Board