

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
APRIL 16, 2014**

Members Present: Clayton M. Harrison, Chairman
Christopher Graham, Vice Chairman
Gerald Coutinho
Donna Lambert
Gary Simmons
Larry Kidney
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.

Continued Hearing for 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
Attorney John Coughlin, representing Mr. Grillo
Mark Boucher, Boucher & Heroux Civil Engineers/Land Surveyors

Abutters present: Quentin Lord, 313 Davis Road

The continued 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.

Attorney Coughlin stated he submitted a packet last week for the Board's review and gave a summary of what the packet contained. Attorney Coughlin stated there were two issues: whether the lots had frontage on Driftway (aka Cahoon's Lane and Proprietor's Way) and whether this way meets the definition of a street. My client's property is on the west side of Driftway in the area of Lots 24 & 25. Attorney Coughlin stated the Planning Board made a finding that the way was in existence before the bylaw and that the way was sufficient; also, a former Town Counsel opined the same and there was a court case (Franco decision-east side of the way) which ruled in favor of the Franco's. My client's position is that they want to be treated in the same manner as the Franco's.

Mr. Coutinho stated the biggest question is, did Mr. Grillo's lot have frontage due to a strip of land between his property and the way. According to the neighbors, the straight away was created in recent years. Mr. Coutinho asked for clarification of the physical way that was traveled all those years, was it a straight pass. Attorney Coughlin stated yes, we are prior to 1957, the way was in existence and it was a travel-able way. My client's deed states the property goes to the edge of the way. Attorney Coughlin stated that Superior Court said the way (Old Bedford Road) goes up to Lot 38 and that the way was adequate; everyone uses the way to go back and forth.

Mark Boucher stated his company did a Form A back in July. For clarification, there is a new plan with the additional information. There is no changes in regards to lot lines, etc. it merely gives information as to whether the lot touches. Mr. Boucher stated he could not speak to the Franco case but he maintains that the way is private; as for ancient way plans, they do not have any deeded definition. There is no layout by the Town. The plan prepared by his company gives additional deed references dating back to the 1860's. Both old and new plans show a portion of the way touching and then it meanders. This is no different from subdivision plans today. The deeds consistently call for a western line along the way. Mr. Boucher stated he questioned the plan that was done for the Franco's. Attorney Coughlin stated the Franco's deed dated back to the 1920's and it says the lot abuts. Attorney Quirk questioned Exhibit E – whether all four lots in question touch the way; now, Exhibit E indicates as on the ANR Plan, they abut in some way. Mr. Boucher stated the gravel portion does not touch the side line of Cahoon's Lane. Mr. Boucher stated that if there is no definition in the deed, my plan would reflect that the lot lines touch the gravel; again, the traveled way meanders in width. We survey where monuments are; Franco did not have monuments to go back to but Mr. Grillo's deed did. The confusion is the gravel does not touch the lot line. Attorney Coughlin noted Plan 113 – 105, this is the plan for property north of Mr. Grillo's property; it did not even show a layout of a laneway but building permits were given to the lots; all of the plans are consistent with the 1908 deeds.

Attorney Quirk stated in summary: An appeal raises three issues. Two issues are does the frontage touch and is it frontage. The ANR endorsement is not evidence that constitutes frontage; the definition of a way and any other way that is public. The Franco case had a number of issues but it is not a binding determination on this Board. Attorney Quirk referred to Chapter 41, 81-L (public ways) (subdivision control) – A. public way B. way is less than 40 ft. C. way is not endorsed and D. 1957, the Planning Board approved. Now, the third issue is a determination as to whether the lots are buildable and if there is a common driveway, there is no special permit. We have a non-conforming situation. Does Mr. Grillo propose to move the common driveway? Attorney Coughlin stated the way provides access to a back non-buildable lot with no deeded easement; we don't believe there is a common driveway. In referring to the Judge's decision on this, my client should be treated the same way. My client's driveway goes out to Cahoon's Lane.

Mr. Coutinho asked how the existing house got a building permit without frontage. Mr. Grillo stated the house was built in 1972. Mr. Coutinho stated there is a lot of confusing issues with this area. Attorney Coughlin stated the court case should have settled this area up to Lot 38. To the north and east of my client, there have been building permits given.

Mr. Grillo stated he can see the confusion; the reality is that Judge's Lane and Sylvia's Lane, etc. are not 40 ft. wide and they are not public ways but the Town has treated the lots as buildable. Mr. Coutinho questioned a common driveway; due to the bylaw, are they still in existence and legal. Mr. Boucher stated that on a lot of farms in Town there are these lanes, are all these lanes now considered common driveways. Mr. Coutinho stated that a common driveway bylaw was created to use less asphalt but it was not intended to be directed to all laneways. Mr. Grillo stated he spoke with Jim Hartnett, Town Planner and he looked at the bylaw, he looked at the use and did not know how they would give a special permit for a common driveway because a common driveway needs to run over a property to serve two other lots that abut. Attorney Coughlin stated in his opinion, this is not a common driveway.

Chairman Harrison noted that Quentin Lord submitted additional information material from the last meeting; a 1942 / 1951 Historical maps.

Mr. Boucher stated that as part of the submittal to the Planning Board, we have to submit USGS quad graphic survey maps with additional information to show existence. In addition, we had deeds and there is nothing in the deeds or prior surveys that show gravel. Chairman Harrison stated that the driveway in

question, according to what the abutters say, was the original Cahoon's Lane. Attorney Coughlin again referred to the Franco case, which says that from Old Bedford Road to Lot 38, is Cahoon's Lane; and he, himself, has looked at the same plan from 1908. Attorney Quirk stated the Judge in that case approved under the ANR Plan but in court there was no evidence that supported Cahoon's Lane. Mr. Boucher stated that no ownership of the lane was shown; he has determined it independently; on a private way, frontage is owned by someone. Mr. Graham questioned the definition of a street. Mr. Boucher stated that the Grillo property abuts, if not, then you are ignoring 150 years of deeds which call for the way as the boundary. Mr. Coutinho asked Mr. Boucher, does the Grill property touch the gravel way and what is the widest width from the gravel way. Mr. Boucher stated about 13 ft. or less. Attorney Quirk asked if the applicant was willing to put more gravel so the lane touches the lot. Mr. Grillo stated that if you look right now, there is a culvert which is not reflected and a swale not shown and a catch basin. All this area would have to be redone; there is also a utility pole. There are two deeds showing the way at 32 ft. wide and the Planning Board made their determination based on a 33 ft. right-of-way and the ZBA has also made a determination. At the Planning Board meeting in 1985, Eugene Roy stated that he stayed within the 33ft. right-of-way when making improvements. In 1787, the property across the street was subdivided and no lots went across the laneway; the only deed on Old Bedford Road says to Lot 38; other deeds vary. Discussion continued as to the public way and who makes the determination.

Mr. Graham asked if this was a public or private way. Attorney Quirk stated there is an argument to the use over time; but there is no question of it being a private way.

Quentin Lord stated the trench is to handle water; there is no gravel underneath it; the road was pitched to divert the water. Eugene Roy put that trench in to handle the rain water; it was done probably 20 years ago. As for surveys, it shows that the lane goes out to Indian Town Road on the Fall River side.

Mr. Simmons asked that if the Grillo property borders a culvert; is the culvert on his property. Does Mr. Grillo's property not touch the travel way because of the drainage ditch but with 13ft. of wandering, could it be abutting. Mr. Boucher stated that it is possible it touches, yes. Mr. Boucher stated on one of the more recent plans, none of the property line and frontages were changed from the signed ANR Plan so what he did, was input historical notes; the Grillo property does touch gravel way; this had to be proven to the Planning Board that it existed in 1957. We have deeds back 150 years. Mr. Simmons stated that whoever put the culvert in had to get permission to do so. Mr. Lord stated no permission was given, Mr. Roy did the work himself.

At this time, Mr. Harrison reviewed the Building Inspector's denial letter. It states not abutting, a gravel way, an easement and the width of the lane. The Board needs to work with the information that has been provided. Mr. Coutinho asked for a clarification; the Grillo deed references that his property is to the way? Mr. Boucher stated the deeds refers to Old Bedford but his actual deed says yes. Attorney Coughlin referred to Exhibit D. Mr. Coutinho stated that based on the deed, there is no question that the property refers to the abutting way.

Ms. Lambert stated the piece that cuts through Mr. Grillo's property was the original Cahoon's Lane; in 1950, the new laneway was put in. Mr. Coutinho stated that in 1980, it does not show a curved area, it shows a straight laneway. The only property that is landlocked is the Lord's 14.5 acres. Ms. Lambert asked about access for 388-A. Mr. Grillo stated they go behind my house. Mr. Coutinho stated they may be able to use frontage on the laneway. Mr. Souza stated he inspected about six months ago and he recalls two houses back there. Mr. Boucher stated the only deeded easement is for Mr. Lord's from the Driftway across Cahoon's property. In 1919, Pickard owned the property and it appears that it has been historically used for access; on the side of Lot 4 there is an access to his property, it is just relocated. Mr. Coutinho asked if this was now a common driveway. Mr. Boucher stated no because Mr. Lord does not have frontage; by law, there is the right to relocate the access. Mr. Grillo stated he would not stop the

access, but he will move, not extinguish it. Attorney Quirk stated that Mr. Grillo can move the access but there has to be an agreement with all parties and he must bear the cost. Attorney Coughlin stated this is going beyond the scope, the Town is not going to get involved with all the private easements. Mr. Coutinho stated a common driveway serves property with frontage; Mr. Lord does not have frontage but Mr. Lord has to use it and others to have access. Attorney Quirk stated if it is changed to a common driveway, the Board would have to make that determination; Section 6 would be a determination of finding; either the applicant can extinguish or seek relief. Discussion again continued over the easement to be extinguished or continued. Mr. Grillo stated he did not plan to use the easement for access; he was willing to make access along his property line up to a point for Mr. Lord.

At this time, Mr. Harrison asked if the Board felt they had enough information to make a determination using the information obtained from the applicant, his counsel, Town Counsel and the abutters.

Mr. Graham asked about the name changes of the way over time. Attorney Quirk asked Attorney Coughlin for a Certificate of Title for Lots 2, 3, 4 and to have him certify that they are all the same way. Attorney Coughlin stated he had given that to the Board along with all the other information. Attorney Quirk again asked if he was willing to give a certification to the reading of all the deeds that all refer to the same way. Mr. Graham stated that in Attorney Perry's letter (Driftway) is referenced but a driftway is for driving cattle and a proprietors way is for travel. Attorney Quirk stated that when looking at this, it has to be looked at for the statutory time; there is no significance to the name. Attorney Coughlin stated it all refers to the same way.

Motion made by Ms. Salva to close the hearing and to discuss the Building Inspector's letter. Mr. Coutinho stated he would like to continue the hearing because there may be some more information available and we just don't have it yet. Motion is withdrawn.

Attorney Quirk stated that in the past, the Board has asked me to prepare a list of questions; would the Board wish me to do so again. Mr. Harrison stated yes; this area has caused problems for the Zoning Board of Appeals, the Planning Board and Building Department in the past, so he would suggest input from Town Counsel in order to clarify issues.

Motion made by Mr. Coutinho to continue this hearing to Tuesday, May 13, 2014 at 7:00 PM in the Town Hall with a decision being filed with the Town Clerk by May 20, 2014. Second by Mr. Kidney. The Board voted unanimously in favor.

Both parties agreed to the continued date. Time is 9:05 PM.

Minutes

1. **Motion** made by Mr. Coutinho to approve the Regular Meeting Minutes of 02/12/14. Second by Mr. Simmons. The Board voted unanimously in favor.
2. **Motion** made by Mr. Graham to approve the Regular Meeting Minutes of 02/19/14 with amendments. Second by Ms. Lambert. The Board voted unanimously in favor.

Other Business

None.

Correspondence

1. No action was required regarding the Subsidized Housing Inventory Biennial Update from the DHCD.

Executive Session – 9:40 PM

Chairman's Declaration:

Chairman Harrison declared under MGL c.30A, §21 (b), that the Executive Session will be to discuss litigation strategy regarding Lortie v. Harrison (ZBA) and Underwood Farms, et al. Bristol Superior Court CA No. 2009-01499, regarding the Zoning Board of Appeals' October 14, 2008 decision to grant amendments to modify two conditions in an April 4, 2007 variance for property at 1344 Main Road regarding condition 3 (basements) and condition 15 (property lines); and a discussion of the foregoing in Open Session could compromise the purpose for the Executive Session; and the Board will return to Open Session at the conclusion of the Executive Session.

Motion made by Ms. Lambert to enter into Executive Session under MGL c. 30A, §21(a)(3), regarding litigation known as Lortie v. Harrison (ZBA) and Underwood Farms, et al, Bristol Superior Court CA No. 2009-01499, for the purposes and reasons declared by the Board's Chairman, with the Board returning to Open Session at the conclusion of the Executive Session. Second by Mr. Simmons. The Board voted unanimously in favor.

Roll Call Vote: Ms. Lambert-aye. Mr. Simmons-aye. Mr. Harrison-aye. Mr. Coutinho-aye. Mr. Graham-aye. Mr. Kidney-aye. Ms. Salva-aye.

Open Session – 9:50 PM.

Motion made by Mr. Coutinho to adjourn the meeting. 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 L Salva
Heather Salva, Clerk of the Board