

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
MAY 13, 2014**

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

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 of Robert and 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

Chairman Harrison asked the applicant if there was any new information to add to this hearing. Attorney Coughlin stated his client has submitted the letter of certification and he has reviewed the ZBA Appeals Decision. Attorney Quirk stated the deadline to close this matter is tonight and must be filed with the Town Clerk by May 20th. This hearing was held open for a letter of certification and review of the draft decision and for possible further opinion from the applicant or abutters.

Mr. Coutinho stated there was some discussion of a number of building permits being issued, is there a list available. Mr. Grillo stated in the original application packet under pages 21-25 and issued on less than 40 ft. wide roads and on private ways.

Mr. Graham, 119 Davis Road, asked if the Board considers setbacks and like conditions. Mr. Harrison stated that generally we look at setbacks in the area. Attorney Quirk noted that this is not a variance. Mr. Grillo stated the lot was approved as a buildable lot after subdivision control; not public ways, they fall under a 3rd category in the bylaw. Attorney Coughlin stated that not all private ways are 40 ft. wide. Attorney Coughlin stated that his clients' deed clearly says frontage on the way. Mr. Grillo stated the way varies in width; one confusing thing is the Driftway laid out in 1787 but not recorded, although it is stated in my deed. Mr. Coutinho stated of importance is the 1908 dated Freeman's & Pocasset Purchase.

At this time, the Board reviewed the decision prepared by Counsel.

The December 23, 2013 Administrative Appeal

On December 19, 2013, the Building Inspector issued a determination that 388F Old Bedford Road (Map 2, Lot 31)(the "Property") does not have legal frontage for four building lots. A copy of the December 18, 2013 determination is attached hereto as Exhibit A.

On December 23, 2013, Mr. Robert and Ms. Grillo (the "Grillos") appealed the Building Inspector's December 19, 2013 Zoning Determination to the Board (the "Appeal").

On February 19, 2014, the public hearing on the Appeal opened and then continued on April 16, 2014 and May 13, 2014 and was closed on May 13, 2014. Board Members Coutinho, Harrison, Kidney, Salva and Simmons sat on the appeal and deliberated on the instant decision. All Members took a view of the Property and were familiar with it.

Findings of Fact:

The Board, after the close of the public hearing, reviewed all of the evidence and testimony and documents and other evidence presented and, based upon that review and their familiarity with local conditions, the Board voted and made the following findings of fact.

1. On December 19, 2013, the Building Inspector issued a written determination that the Property lacks sufficient frontage for four building lots.
2. On December 23, 2013, the Grillos filed the instant administrative appeal (the "Appeal").
3. The Board has jurisdiction to hear a timely administrative appeal under Westport Zoning By-law ("ZBL") §2.4.2.0 and G.L. c.40A, §§8 and 14.
4. The December 23, 2013 Appeal was timely filed with the Town Clerk and the Board within 30 days of the Building Inspector's December 19, 2013 Zoning Determination regarding the Property.
5. Under G.L. c.40A, §14, the Board may make orders or decision, reverse or affirm in whole or in part, or modify any order or decision and 'shall have all of the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.
6. Under G.L. c.40A, §15, the concurring vote of four members the Board shall be necessary to reverse any order or decision of any administrative official.
7. The Property is located in a Residence/Agriculture District.
8. The Residence/Agriculture District requires that a building lot shall have a minimum area of 60,000 s.f. and 150 feet of frontage. ZBL §7.0.
9. The relevant terms are defined under ZBL §1.1 as follows:

Lot: An area of land in one ownership with definite boundaries, used, or available for use, as the site of one or more buildings.

Frontage: That portion of a lot fronting upon a street or way, said frontage to be measured continuously along one street line between its side lot lines and their intersection with the street line.

Roadway or Street: That portion of any way, right-of-way or street layout, which has been designed and constructed to serve vehicular traffic for more than one lot. This term shall not include a driveway or common driveway or any other way that is not a public way or a way has not been approved under the Subdivision Control Law.

Street: Any duly accepted way, any way not less than 40 feet wide shown on plan duly recorded after April 10, 1920, or any other way equivalent to a public way for the purposes of subdivision control as specified in General Laws, Chapter 41, Section 81L.

Way: Same as Street.

10. The Property is shown on a July 16, 2013 Approval Not Required Plan, as prepared by Boucher & Heures, Inc. and stamped by Mark A. Boucher, PLS (the "2013 ANR Plan").
11. The 2013 ANR Plan indicates the Property has a total of 290,589 s.f. of area and depicts four proposed lots, each with more than 60,000 s.f. of area.
12. The 2013 ANR Plan depicts access for the Property from the paved portion of Old Bedford Road that leads to a graveled road of variable width that is sometimes referred to as "Driftway" or "Cahoon Lane" or "Proprietor's Way."
13. The 2013 ANR Plan depicts a proposed Lot 1 that abuts the graveled way that leads from the paved portion of Old Bedford Road.
14. The 2013 ANR Plan depicts an "existing gravel drive" that travels from the graveled way onto Lot 1 and then across Lots 2, 3 and 4 and then onto adjacent land.

15. The 2013 ANR Plan depicts the "existing gravel drive" as providing vehicular access to an existing dwelling, which is shown on the 2013 ANR Plan as proposed Lot 3, and that the existing dwelling has a street address of 388F Old Bedford Road.
16. The 2013 ANR Plan depicts proposed Lots 2-4 as not abutting the traveled portion of the graveled road that leads from the paved portion of Old Bedford Road (i.e., "Driftway" or "Cahoon Lane" or "Proprietor's Way").
17. On July 30, 2013, the Planning Board voted 4-1 to endorse the 2013 ANR Plan as "Approval Under Subdivision Control Law Not Required."
18. During the public hearing, testimony and evidence was received by the Board regarding the status and use of the "existing gravel drive" shown on the 2013 ANR Plan that travels over Lots 1 -4 and then to three parcels of land beyond.
19. One or more members of the public asserted that the "existing gravel drive" is a way that pre-dates the Subdivision Control Law and is the original "Cahoon Lane."
20. One or more members of the public asserted that the "existing gravel drive" is a nonconforming common driveway that provides access to the dwelling at 388F Old Bedford Road and to the Lewis Dwelling (388A Old Bedford Road) and to a landlocked farm, both of which are located to the north of the Property. It was asserted that a second dwelling, the Cahoon Dwelling, has a driveway that runs directly to the traveled portion of the way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way." It was asserted that the Lewis Dwelling (388A Old Bedford Road) parcel has land that physically abuts the "Driftway" or "Cahoon Lane" or "Proprietor's Way," but it does not have direct physical access from the parcel to that access way.
21. The Grillos asserted that the "existing gravel drive" shown on the 2013 ANR Plan has no legal status except as an undefined easement and that the Grillos can either negotiate or legally compel a relocation of the existing gravel drive, so that it does not interfere with the four proposed lots shown on the 2013 ANR Plan.
22. During the public hearing, testimony and evidence was received by the Board regarding the status and use of the access way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way."
23. The Grillos asserted that the way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way" is lawful frontage and that the Property is bounded by the edge of this way, although Lots 2, 3 and 4, as shown on the 2013 ANR Plan, do not abut the traveled way for the access way.
24. The Grillos presented evidence that the way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way" has been relied upon as frontage in the past.
25. The way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way" is presently used as access for ten or more dwellings and the Grillos proposed to add three new dwellings.
26. On April 11, 2014, the Grillos' counsel provided the Board with a package of information regarding the ownership of the Property and the history of the "Driftway" or "Cahoon Lane" or "Proprietor's Way."
27. On April 16, 2014, the Grillos presented the Board with a revised plan, dated April 3, 2014, prepared by Boucher & Heures and stamped and sealed by Mark A. Boucher, which moved the label for the way, to clarify that Lots 1-4 on the 2013 ANR Plan all abut the "Driftway" or "Cahoon Lane" or "Proprietor's Way".
28. On April 16, 2014, the Grillos' counsel indicated that he would provide a certificate that the title for the Property has been researched and that the title search revealed that the Property is bounded by the access way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way."

29. On May 13, 2014, the Grillos' counsel provided the certificate of title that the Property is bounded by the access way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way."
30. The "Driftway" or "Cahoon Lane" or "Proprietor's Way" is shown on a 1908 Plan entitled "Freeman's and Pocasset Purchases".
31. There have been conflicting decisions in the past on whether or not to allow the "Driftway" or "Cahoon Lane" or "Proprietor's Way" to be used as frontage, including a recent Bristol Superior Court decision, known as Franco, et al. v. Harrison, et al., Bristol Superior Court, C.A. No. 2002-01186, which the Town did not appeal and it not binding precedent in this matter.

Determinations:

On May 13, 2014, the Board voted to close the public hearing and, following the close of the public hearing, the Board reviewed all of the evidence and deliberated and voted the following determinations:

1. The access way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way" is not a duly accepted public way in the Town within the meaning of the definition of Frontage set forth under ZBL §1.1.
2. The access way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way" is not a way that is "not less than 40 feet wide [and is] shown on plan duly recorded after April 10, 1920" within the meaning of the definition of Frontage set forth under ZBL §1.1.
3. The access way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way" is as shown on the 1908 Freeman's and Pocasset Purchases Plan and constitutes a way that falls within the language of "any other way equivalent to a public way for the purposes of subdivision control as specified in General Laws, Chapter 41, Section 81L" within the meaning of the definition of Frontage set forth under ZBL §1.1.
4. The four lots shown on the 2013 ANR Plan, based upon the title information and certificate provided to the Board, are bounded to the east by the way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way".
5. Lot 1 physically abuts the traveled portion of the way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way".
6. Lots 2-4 physically abut the traveled portion of the way shown on the 2013 ANR Plan as "Driftway" or "Cahoon Lane" or "Proprietor's Way".
7. Lot 1 as shown on the 2013 ANR Plan intersects continuously with the street line for the way shown on the 2013 ANR Plan as the "Driftway" or "Cahoon Lane" or "Proprietor's Way" within the meaning of the definition of Frontage set forth under ZBL §1.1.
8. Lots 2-4 as shown on the 2013 ANR Plan intersect continuously with the street line for the way shown on the 2013 ANR Plan as the "Driftway" or "Cahoon Lane" or "Proprietor's Way" within the meaning of the definition of Frontage set forth under ZBL §1.1.
9. Lot 1 as shown on the 2013 ANR Plan has legal frontage on the access way shown on the 2013 ANR Plan as the "Driftway" or "Cahoon Lane" or "Proprietor's Way" within the meaning of the definition of Frontage set forth under ZBL §1.1.
10. Lots 2-4 as shown on the 2013 ANR Plan have legal frontage on the access way shown on the 2013 ANR Plan as the "Driftway" or "Cahoon Lane" or "Proprietor's Way" within the meaning of the definition of Frontage set forth under ZBL §1.1.
11. Based upon the above findings and determinations, the Board voted 5 to 0 to **reverse** the Building Inspector's determination that Lot 1 does not have frontage on the access way shown on the 2013 ANR Plan as the "Driftway" or "Cahoon Lane" or "Proprietor's Way" within the meaning of the definition of Frontage under ZBL §1.1.
12. Based upon the above findings and determinations, the Board voted 4 to 1 to **reverse** the Building Inspector's determination that Lots 2 through 4 do not have frontage on the access way shown on the 2013 ANR Plan as the "Driftway" or "Cahoon Lane" or "Proprietor's Way" within the meaning of the definition of Frontage under ZBL §1.1.

13. The Grillos asserted and the Board determined that the status of the "existing gravel drive" as shown on the 2013 ANR Plan, which provides physical access to the dwelling shown as Lot 3 on the 2013 ANR Plan and to other land, and whether further zoning relief would be required regarding this drive before building permits for the Property may issue, was not properly before the Board as part of the instant appeal; and, therefore, that issue is reserved for a future determination by the Building Inspector/Zoning Enforcement Officer at an appropriate future point.

Mr. Grillo stated it was never his intention to shut off the access; he will provide an easement to the abutters.

Following the review of the decision there was a lengthy discussion regarding #3 and #17.

Motion made by Ms. Salva to close the hearing at 9:30 PM. Second by Mr. Kidney. The Board voted unanimously in favor.

Discussion:

Ms. Salva stated all four lots have frontage on the laneway.

Motion made by Mr. Coutinho to confirm the previous votes in the Findings & Determinations of Facts as amended. Second by Mr. Simmons. The Board voted unanimously in favor.

Under #11: **Motion** made by Mr. Simmons to reverse the Building Inspector's determination on Lot #1 only. Second by Mr. Coutinho. The Board voted unanimously in favor.

Under #12: **Motion** made by Mr. Coutinho to reverse the Building Inspector's determination on Lot #'s 2 through 4. Second by Ms. Salva. The Board voted 4 in favor, 1-opposed (Simmons).

Motion made by Mr. Coutinho to allow the Chairman to sign the final decision as amended. Second by Mr. Simmons. The Board voted unanimously in favor.

The Grillo matter is closed and will be filed with the Town Clerk's Office.

Minutes

Motion made by Mr. Simmons to approve the Regular Meeting Minutes of April 30, 2014. Second by Mr. Coutinho. The Board voted 4 in favor, 1-absent (Harrison, Lambert, Salva).

Decisions

Motion made by Mr. Simmons to approve of the Decision for William Carpenter. Second by Mr. Coutinho. The Board voted 4 in favor, 1-absent (Harrison, Lambert, Salva).

Correspondence

No actions/votes taken.

Other Business

1. Post the next ZBA Meeting for Monday, May 19, 2014 at 7:00 PM, in case a meeting is needed.

Executive Session was passed over. No actions/votes were taken.

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

Adjournment.

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

APPROVED: Heather B. Salva
Heather Salva, Clerk of the Board