TOWN OF DIGHTON

ZONING BOARD OF APPEALS
Meeting Minutes
July 15, 2015

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Call to Order:
Chairman Peter Caron called to order the regular meeting of the Zoning Board of Appeals at 7:35 PM

Roll Call:
The following persons are present: Peter Caron, Kenneth Pacheco, Robert Adams Sr. and Zachary Caron.

The following persons were absent: Greg Logan.

Chairman Peter Caron explained to the audience that Joseph Pacheco had retired and now there was an open seat on the Board and anyone interested in applying to become a member should apply with the Selectmen's Office.

New Business:
Case #12--15 Police Station 1458 Somerset Avenue

Chairman Peter Caron explained there was a request from the Town of Dighton to waive the application fee for this variance. He explained that moving forward any waiver request must be heard at a meeting separate from the hearing.

Motion Peter Caron second Kenneth Pacheco to waive the application fee.

All in Favor Aye

Robert Adams Sr. recused himself stating that he was a direct abutter. He then picked three voting members, **Peter Caron, Kenneth Pacheco and Zachary Caron**. Kenneth Pacheco read the meeting notice
Posted in the **Taunton Daily Gazette on June 30th 2015 and July 7th 2015.**

Justin Mosca, a civil Engineer with vhb in Watertown, MA. presented the case. He explained that the property was located on Somerset Avenue and the parcel was about 1 ½ acres and they were building a 6300 sq. ft. building with access off Somerset Avenue as well as through Dighton Power. Two parking lots would be associated with the site. The first would be a public lot off the main entrance through Dighton Power and authorized vehicles only past that part as well as authorized vehicles only from Somerset Avenue. He stated that where the building is proposed there would be an encroachment into the 75' building setback from the centerline of the road. The relief requested would be 46' from the

centerline. Dighton Power had given them an easement to have the public entrance through Dighton Power.
Chairman Caron explained they didn't need to discuss the building. What is before the Board tonight is relief from the 29' setback. He also stated that the current police station is about 10' off the road and 29' would be an improvement.
Robert Adams Sr., asked his questions as an abutter. Was this plan originally accepted by the Planning Board?
Justin Mosca: Explained that on August 5th the Planning Board will hear this Site Plan Review.
Robert Adams Sr.: You are asking for a 29' setback. If this was for a residential property the setback would have only been 55' from the center of the road. Then he inquired about the right of way and if it was a 40' right of way that goes down through that property or is it an easement?
Justin Mosca: It is an easement.
Robert Adams Sr.: Why? You said that there is going to be an access road through there.
Justin Mosca: Yes this is a 24' driveway.
Peter Caron: How far down before the entrance do you need the easement for?
Justin Mosca: About 60' in perpetuity.
Peter Caron: that will be the public entrance and the other entrance on rt. 138 is just an exit or just for Police vehicles only.
Justin Mosca: Police vehicles only. The police employee part will also be this side of the building. The only public entrance is through Dighton Power.
Robert Adams Sr.: There is no other public entrance.
Justin Mosca: No.
Zachary Caron inquired as to why there is no public entrance on Somerset Avenue?
Justin Mosca: Stated that the parking entrance through Dighton Power is due to the entrance off Somerset Avenue already being there and to the traffic circulation around the building. He explained the traffic engineer didn't want 3 access points located that close to each other on Somerset Avenue. There will be an entrance on Somerset Avenue but the public will enter through Dighton Power. That public parking and public access will be easier and safer through that entrance.
Robert Adams: You stated that someone else is going to hear this plan?
Justin Mosca: The Planning Board will hear it on august 5th and conservation will hear it as well.
Robert Adams: Have you talked to the Planning Board at all about this easement? It is private property. Entering public property through a private entity.
Justin Mosca: The Planning Board is aware of the easement. It has been ironed out and is recorded.
Robert Adams Sr.: This is not right. Public Access through Private Property.
Chairman Peter Caron explained that the easement is not a zoning issue. The Planning Board which we have a lot of faith in will decide about the entrance location not the ZBA.
Justin Mosca: Dighton Power's access will remain and you will have two driveways right next to each other. Other entrance locations were looked into and this was the safest.
Jeff McElravy: We originally looked into public access through the staff entry but there is more topography there, there is a hill so line of vision also becomes an issue. Access through Dighton Power is the safest public access.
Kenneth Pacheco: Does the Building have to be placed there? You don't have enough land to push the building back?
Justin Mosca: Yes, due to the topography and shape of the lot a retaining wall needs to be built along the backside of the building to be able to get down to the existing grade and to be able to put in the driveway around the building for fire access and police vehicle access we needed to put the building where it is here which is what is pushing it closer to the street. It is a topography and shape issue as well.

Public Input:
Joseph Pacheco asked the Board to consider making a decision tonight and not take the case under advisement. The committee needs to go to the Planning Board on the 5th of August and we need the decision.

Peter Caron explained that he was going to make that recommendation to the Board himself.

Motion Zachary Caron second Kenneth Pacheco to approve.

All in Favor Aye

Case# 09-15 883 Main Street

Chairman Caron explained that he had a concern that a voting member for this case was absent tonight.

Motion Peter Caron to replace voting member Greg Logan with Robert Adams Sr. Bob Adams Sr. was here that evening and he heard the case, second Kenneth Pacheco.

All in Favor Aye

Chairman Caron asked the Board if anyone would like to add anything to case #09-15.

Kenneth Pacheco: Would like to add a condition that only a single family home be allowed if approved?

Peter Caron explained that in his opinion;
DENYING A VARIANCE IS NOT A DECISION I TAKE LIGHTLY. OFTEN GOING ABOVE AND BEYOND TO FIND A WAY TO ACCOMMODATE OUR CITIZENS REQUEST.

HOWEVER, IT IS THE APPLICANT'S RESPONSIBILTY TO BE PREPARED WHEN PRESENTING THEIR CASE TO THE BOARD.

SEEKING A VARIANCE REQUIRES THE APPLICANT TO PROVE VARIOUS FORMS OF HARDSHIP ON THE PROPERTY GIVING THE BOARD VALID REASONS TO GRANT THE REQUEST.

THE APPLICANT GAVE NO VALID REASONS TO GRANT THE REQUEST OTHER THAN DESIRE TO SUBDIVIDE THEIR PROPERTY.

EXCESS AREA SIZE IS NOT A VALID REASON FOR GRANTING A REQUEST.

NOR IS THE REASON THAT A CONDITION MAY BE ATTACHED RESTRICTING ANY FUTURE DEVELOPMENT ON THE PROPERTY THEREFORE LIMITING ADDITIONAL HOUSING IN THE FUTURE.

THIS HAS BEEN A REASON USED A FEW TIMES IN THE PAST BUT YET TO BE CHALLENGED.

AFTER SEAKING WITH THE ZBA'S LEGAL COUNSEL IT IS NOT A REASON THE BOARD SHOULD CONTINUE TO USE OR RELY ON FOR JUSTIFICATION IN APPROVING A VARIANCE.

THE PROPERTY OWNER IS NOT AGGRIEVED IN ANY WAY AS THEY DO HAVE A CURRENT DWELLING ON THE LOT AND ARE ABLE TO USE THE PROPERTY WITHOUT GRANTING A VARIANCE.

OTHER THAN BEING A LARGE LOT IN SIZE THERE IS NOTHING UNIQUE ABOUT THIS PROPERTY.

EXCESS AREA SIZE ALONE IS AGAIN NOT A VALID REASON FOR GRANTING APPROVAL.

I APPPRECIATE THE APPLICANT'S INVITION TO WALK HIS PROPERTY BUT DRIVING THE AREA WAS ENOUGH TO GET THE INFORMATION I NEEDED TO MAKE MY DECISION.

THE APPLICANTS REPRESENTATIVE STATED THERE ARE OTHER LOTS IN THE AREA WITH MUCH LESS SQUARE FOOTAGE
IN SIZE.

RESEARCHING CURRENT PROPERTY MAPS IN THE TAX ASSESSORS OFFICE SHOW OTHER LOTS ADJACENT TO THIS PROPERTY WITH MUCH SQUARE FOOTAGE THAN THIS SUBDIVISION REQUEST BUT NONE OF THOSE LOTS LACK THE REQUIRED FRONTAGE NEEDED AT THE TIME THOSE HOUSES WERE BUILT.

TODAY'S BYLAW REQUIRES 175' FRONTAGE AND APPROVING A HOUSE LOT IN THAT AREA WITH WELL OVER 100' LESS THAN THE REQUIRED FRONTAGE IS A DETRIMENT TO THE NEIGHBORHOOD.

GRANTING THIS REQUEST WILL ALSO CREATE A "PORK CHOP" SHAPE LOT PLACING ONE HOUSE BEHIND ANOTHER, A LOOK THE INTENDED BYLAWS WERE CREATED TO ELINIMATE.

Peter Caron then asked if there was a motion to grant this relief.

The abutters requested to speak.
Chairman Caron stated that the hearing was closed.

Kenneth Pacheco motion to approve with a special condition that only one residential home may be built and incorporate the condition into the deed second Robert Adams Sr.

All in favor	Kenneth Pacheco	Aye
	Robert Adams Sr.	Aye
	Peter Caron	Opposed

Variance is denied. Gentlemen there is a 20 day appeal period and you can appeal through Superior Court. The appeal period will begin after the decision has been drafted, signed by the Board and recorded with the Town Clerk.

There was a discussion about the choice to withdraw this petition without prejudice.

Attorney Nicholas Scola representing the applicant asked the Board about the last meeting and he thought the case was taking the case under advisement not closed? Chairman Caron explained that when a case is taken under advisement it technically closes the case with no more public input but if the Board chose to they could reopen the case.

Kenneth Pacheco: Stated that he thought that there would be discussion about the possibility of moving the lot lines and make the frontage larger. There was a discussion about moving the lot lines and the Board explained that there would still be a significant shortage in frontage.

Atty. Scala: explained that there were abutters present in support of the variance at the last hearing and no abutters were against it.

Abutter Kenneth Rodriguez, 867 Main Street asked to be heard: Peter Caron:

Asked the Board if they would like to reopen the case for more input?
Motion Peter Caron second Kenneth Pacheco to reopen case #09-15.

All in Favor **Aye**

Atty Scala: The Board asked us to redesign the lot to have more frontage and also give the Board a chance to go see that there was a significant distance between the house on the street and where the proposed house would be built. Has the Board had a chance to do that?

Chairman Caron explained that he had driven by the area and his concern is not the lot size it is the frontage. In that neighborhood all the houses have in access of 175' frontage. Your lot is 55' or maybe even 75' is still significantly under the frontage required. Again a hardship needs to be proven for relief to be granted.

Attorney Nicholas Scola The size and shape of this lot was approved before as a hardship. There was no change in the size shape or topography of this lot since it was previously approved.

There was a discussion regarding proving hardship and the applicant mentioned that there were abutters here this evening and that they would like to give their opinion.

Kenneth Rodriguez: 867 Main Street: He asked about the cemetery that is in front of the property and if that was blocking his frontage? Please consider that the cemetery might be a hardship for his frontage problem. He also stated that the applicant has also increased the property values for the neighborhood. In Favor.

Eileen Swauger: 890 Main Street: The applicant has improved the neighborhood. She stated that she thought that it was difficult to drive by and see where the proposed house will be built. It will be set back in a clearing and will not be desecrating any forest. Please let him keep it as a compound. He wants to keep his family near him. In Favor

Joanne Riley: **1280 Pine Street:** In Favor! The Board denied me two years ago. My house would have not even been seen.
Donna Morse: **1280 Pine Street**: In Favor! This Board has granted many variances with even less frontage.

Atty. Scala: Requested that Chairman Caron recuse himself. Thinking that Peter had prejudged this matter.

Peter Caron: I will not recuse myself. I handle each case individually. No one has ever been discriminated against. If you were to go back through the minutes of past cases you will see the Board always asks the applicant to give us a reason to grant the requested relief and if the applicant has a done that the request was granted. He explained that he had spoken with legal counsel about if it would be in the best interest of the applicant to withdraw without prejudice. Legal counsel said the burden of proof is the applicant's responsibility.

Mr. Frangakis: This was approved before. You want to use tax payer's money to take this to court to fight one house lot. This was approved before. You are discriminating against it.

Peter Caron Motion to approve

Kenneth Pacheco: I want to discuss this. You made a comment that there are no other lots in the area with insufficient frontage required. We have just approved another variance like this a couple of lots down the street. I did drive by I live in that area and it is my understanding that the proposed house will be beyond the tree line and will probably not be seen from the road.

Kenneth Pacheco: For the record I am in Favor

Robert Adams Sr. For the same reasons I am in favor too. I think it is in the best interest of the Town where this variance has previously been approved and they are willing to increase the frontage from what was already approved. There is another lot up the street with insufficient frontage and a cemetery is involved and a cemetery does create an illusionary frontage.

Peter Caron suggested that the applicant either grant an extension of time or withdraw without prejudice. You are forcing me with a timeline and I am not going to change my vote tonight. If we vote tonight I am going to deny it. If you would like myself and the building inspector will back out and walk your property. If you chose to withdraw you can reapply and the Board will waive the applicant fee or you can sign and extension of time document. I will reconsider. Regardless of what you see around town each case is individual. Each case is handled uniquely. I will take the extra step and look at this one more time. When you come before the Board you need to be prepared. I asked you many times to give us reasons to grant this relief, show us the hardship. We cannot grant variances because of a desire there needs to be legal reasons for it.

An extension was granted until October 7, 2015.

Robert Adams Sr.: Will anymore information be allowed? We have asked them so many times to show us a hardship, we are worn out. You feel the shape of the property is a hardship, Mr. Caron doesn't. Please bring us something, some case law that this is a hardship by the shape of the property. That is going to be allowed in September.

Atty Scala: It should be allowed in September. I believe that it the hearing wasn't closed last time.

Peter Caron: We have reopened the case.

Atty Scala: We would like the opportunity to look at everything and come up with what we have to do.

There was a discussion about other properties in the area with under sized lots and it was noted that they were allowed before zoning was allowed to have undersized lots.

Peter Caron: Please give your contact information to the secretary. I will go back out to your property with the building inspector. The other board members cannot go at the same time because it would be considered a meeting and we are not having a meeting.

Motion Kenneth Pacheco second, Robert Adams Sr. to continue the hearing until September 16, 2015 as long as an extension is signed.

All in Favor **Aye**

Case # 02-15 The Mylars for were signed for 1515 & 1517 Somerset Avenue

Kenneth Pacheco: Inquired about case # 08-15 Stoney Ridge Estates modification request scheduled for July 7th. I was here there was no one else here? We did have one person come in what happened.

Peter Caron: He explained that he had talked with the applicant the night after the meeting and after there discussion the applicant decided to withdraw the modification request and agreed to honor the 2 ½ baths. The letter to withdraw was submitted and is in the file so Marguerite said no meeting was necessary.

Peter Caron: Also wanted to discuss with the Board a change in procedures for submittal of zoning requests. We have to adopt that moving forward any request is a formal request. A hard copy must be submitted and stamped with the Town Hall before a case will be heard. We have had emails sent requesting zoning relief and have processed these that will no longer be allowed.

Motion Peter Caron second Kenneth Pacheco formal requests for zoning relief must be submitted in hard copy and stamped by the town Clerk. No electronic requests will be accepted.

All in Favor **Aye**

Peter Caron: Another topic that he wanted to discuss with the Board was the Zoning Fee Schedule. We have not increased the application fee for years. I would like to increase the fee to $350.00. The reason is I am not comfortable with requiring a denied petition to pay for the drafting the decision. Atty. Mitchell doesn't think that it is legal. There was a discussion about other towns in the area and what they charge. It was decided that the Board would consider what they thought about the fee schedule increase and discuss it at the next meeting in September.

Peter Caron: What does the Board think about starting the meetings at an earlier time? Let's consider starting earlier and discuss it in September.

Peter Caron: Those of us that are voting on a case are going to have to put their reasons in writing and given to the secretary to be forwarded to Marguerite. Starting in September please bring in supporting documentation for your vote.

Public Input

Mr. Lombardo 1820 Pine Hill Road: asked the Board for clarification of by laws. He is installing small scale ground mounted solar unit and he feels that the by law is unclear and would like the Board to make a ruling.

Peter Caron: The side yard setback distance needed is 15'. They discussed the process and the guidelines that need to be followed.

Adjournment:

Motion Kenneth Pacheco second Zachary Caron to adjourn the meeting at 9:45 PM.