

Zoning Board of Appeals Minutes

September 21, 2021

**“HYBRID” MEETING HELD IN PERSON IN MEETING ROOM 3 A/B AND
VIRTUALLY USING GOTOWEBINAR PLATFORM**

Present: Elisabeth Garber-Miller, Chair; Darlene Pruitt, Clerk; Eric Correia, Philip Shannon, Matthew Cummings; Associate Members Ryan Maxwell and Matthew List

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1. Zoning Board of Appeals Meeting called to order at 7:30 p.m.

2. Variance Public Hearing – 0 Homefield Drive/Bird Road Rear – Lot Width – MacDonald

The Chair read the public hearing notice for the application of Dennis MacDonald for a Variance from Zoning By-Law Section 230-1.5, Definitions, Lot Width, for the creation of a lot with less than the required lot width at Rear Bird Road/0 Homefield Drive (Assessor’s Map 39, Parcels 24 & 386) in the Residential 1 (R1) zone.

Owner Dennis MacDonald attended by phone, and Craig Cygawnoski, RIM Engineering, were present.

Mr. Cygawnoski explained the lot was landlocked by the development of Elyse Road and Homefield Drive and said it has the minimum required lot area and access through Homefield Drive, but it lacks the required lot width. He said they are requesting relief for one single-family house lot on the large lot. Mr. Cygawnoski noted the majority of the property is Mr. MacDonald’s, but a small portion belongs to the Zola Family Trust.

Mr. Cygawnoski said the 16-foot driveway would come in off Homefield Drive and they are not planning to clear cut the property because they only want to build one single-family house there. He said he understands the neighbors are concerned about another house being built.

Mr. Cygawnoski said the Zola-owned land was left over when Homefield Drive was built. He said Mr. MacDonald’s property came off Bird Road but is divided by wetlands, and this parcel is what was left over. He said this parcel should have been combined with one of the subdivisions or a 50-foot right-of-way left for access to access this parcel, but that was not done.

Mr. Cygawnoski said the house would be built in the 200’x200’ square foot box shown on the plan.

Board Comment

Mr. Shannon said he understands the neighbors are concerned about the additional house; Mr. Cygawnoski said they would leave 40 feet natural wooded buffers between the properties.

Mr. Maxwell asked about a subdivision; Mr. Cygawnoski said that could be done through the Planning Board, but said his client does not want to do that for a single-family house lot.

Mr. List said the land should have been part of one of the Zola subdivisions and asked if a Form A could be done instead. Mr. Cygawnoski said it could be done, and because the lot has

sufficient area and frontage, the Planning Board would sign the plan. However, he said because the lot does not have the 200'x200' lot width, a building permit would be a problem.

Public Comment

September 17, 2021 letter from Thomas C. Houston, AICP, PE, President, Professional Services Corporation.

Mr. Houston explained he has been retained by the Kanes on Elyse Road and said the application includes procedural defects because it seeks relief for a lot that does not exist. He said the plan does not include the metes and bounds of the lot, seeks dimensional relief without showing the lot's dimensions and does not meet the conditions for the grant of a variance. He said Parcel 24 is undevelopable, with only 3.3 acres of land, and Parcel 386 is undevelopable backland, there is no hardship because the applicant cannot build on the land now, the applicant created the hardship from which he is requesting relief, the application does not document that relief can be granted without substantial detriment to the neighborhood, and the application does not document that desirable relief can be granted without nullifying or substantially derogating from the Zoning By-Law. He said the proposed Lot B is not in compliance with the requirements of the Zoning By-Law and asked the Board to consider the residents' concerns and deny the variance application.

Tim Kane, 92 Elyse Road, said they have lived there for 22 years. He said they are concerned about a driveway at the corner of Homefield Drive and Elyse Road, which is a four-way intersection with a bus stop. He said he is concerned about the loss of privacy because this lot surrounds his lot on two sides. He said the lot should have 200 feet of frontage and only has 102 feet.

Joey Tyron, 6 Homefield Drive, said she has lived there since 2009 and it would be a huge loss of privacy and a driveway at that location would be a safety concern.

Mr. Shannon said he would like to see the dimensions on the proposed driveway, where the house is going, the distance from the neighboring houses and where the boundaries are. He said he doesn't think a driveway will impact anyone's privacy because everyone has a driveway, but said more information on the plan may make the neighbors more comfortable.

Jen Kane, 92 Elyse Road, said this is a case of someone purchasing land and proposing to build with a variance, and is being proposed on land that isn't his. She said the land was left over from the development and was recently sold by owners on Bird Road. She said this lot touches a lot of abutting landowners.

Ms. Garber-Miller said the applicant has another procedural method by which to build the house, which would be to permit a subdivision and roadway through the Planning Board.

Mr. Cygawnoski said the unique thing here is that the land is landlocked, which should not have been done, and said they could go to court because of that issue.

Jeff Wagner, 2 Jean Road, suggested the applicant submit an explanation of the hardship, some photographs and additional details.

Mr. Houston said while it is theoretically possible a subdivision road could be built, that is not what is before this Board and said the variance before the board cannot be granted by law. He said Mr. Cygawnoski said the court could mandate access, which he said he disagrees with. He said there is undevelopable backland throughout the Commonwealth and the town, and there is no process by which the courts would open that up.

Lori Cremen, 25 Donald Allen Drive, asked what would happen if the variance is approved and the owner decides not to build just one house, but a subdivision. Ms. Garber-Miller said the property could not be a subdivision. Mr. Shannon said this proposal is not for a road, but for a driveway to one lot. He said if they go to the Planning Board for a subdivision and build the road, he thinks there could potentially be two lots.

Mr. Cummings asked what the plan is for the rest of the land, behind Lot B. Mr. Cygawnoski said Mr. MacDonald owns the wetland area, but could not get more than one lot. Ms. Garber-Miller asked if the remaining property would be vacant; Mr. Cygawnoski said it would be.

Mr. List said the two properties are not combined at the moment and asked which one the variance is for. He asked if a lot width variance would be required if the two properties were combined. Mr. Cygawnoski said there would still be a problem when they applied for a building permit. Ms. Garber-Miller said if they do that and come back with an updated plan showing what Mr. Shannon requested, that would make it clearer. Mr. Cygawnoski said they could do that. Mr. Maxwell asked for a "proof plan" for a subdivision.

Mr. List said he is concerned there have been some challenges to ZBA decisions based on lot shape. Ms. Garber-Miller said if the properties were combined, the frontage would be much greater.

Mr. List said he is concerned there have been successful challenges to dimensional variances in other municipalities where Courts have ruled that self-created dimensional hardship stemming from owners' previous actions to subdivide lots does not justify relief. Ms. Garber-Miller said if the properties were combined, the frontage would be much greater.

Dwayne Bryant, 81 Elyse Road, said there is a school bus stop at that intersection. He said he purchased his house because of the protections provided by the by-law, and asked if there have been variances granted on similar plans. Ms. Garber-Miller said the Board has discussed making sure the property is in one ownership. Mr. Bryant said there is no hardship to this lot, and there would be a hardship caused to the residents.

Lily Foley, 64 Elyse Road, said Mr. Zola owns another property next to this one and asked what would prevent him from developing that land as well. Ms. Garber-Miller said Mr. Zola does not own Lot B; Ms. Foley said the lots could be combined and developed. Mr. Cygawnoski said if they could have done that, they would have and said the two parcels are separated by a large wetland.

Ms. Garber-Miller asked if Mr. MacDonald is seeking to sell his property to Zola or the other way around; Mr. Cygawnoski said Mr. MacDonald had a deal with Zola Realty Trust to purchase the land before Homefield Drive was developed. He said there is a large wetland system between this parcel and Bird Road, and the cost of putting a road through that would outweigh the value of getting one or two lots.

Matt Shurtleff, 12 Homefield Drive, echoed the other neighbors' concerns about buying their house because of the privacy and said he is concerned about this lot being next to existing homes. He said the people who live there do not view this favorably.

Patrick Campbell, 29 Donald Allen drive, asked about the size of the house. Mr. Shannon said that is one of the things the Board would like added to the plan. Mr. Campbell asked what is to stop them from developing the rest of the land. Ms. Garber-Miller said the lot is over eight acres, the building envelope shown on the plan is 200'x200', and the remainder of the land is to remain undeveloped. Mr. Campbell asked what is to stop them from changing that plan after this is approved. Mr. Shannon said if the variance is approved, the board's decision can specify it is for one lot. Mr. Campbell said the neighbors do not believe it should be built, but said if it granted, there should be language that limits it to one lot.

Mr. Shannon said a landowner has the right to build on his parcel, but said the Board hears the neighbors' concerns, which is why the members have suggested continuing the public hearing to get more information.

Mr. Campbell asked about the placement of the septic system; Mr. Shannon said the septic system would have to meet the requirements of the Board of Health.

Malathy Krishnamurthy, 68 Elyse Road, said she is concerned about potential environmental damage done by this development; she there is a large wetland area on this property and a vernal pool across the street. She said she is concerned about further development of the land.

Julie Flynn, 62 Elyse Road, echoed the neighbors' concerns and added there is a drainage easement behind the lots from 58 Elyse road to Donald Allen Drive, and that land is very wet. She said Elyse Road has had flooding basements, which will get worse with additional construction. She asked if a driveway is put in, would it be impossible to put in a road.

Mr. Kane said the lot was split from Bird Road over the last few months, which provided more land behind the houses, and said it doesn't seem right to approve a variance without a hardship. Mr. Shannon said that is why the Board has discussed a continuance to get additional information; he said the rest of the land is landlocked and could not be developed. He said landowners are entitled to build on their land and suggested waiting for the revised plan. Mr. Kane said more information will be helpful, but said the Board will have to vote on whether to grant a variance on a nonconforming lot that he created.

Ms. Kane asked for an environmental study of the area; Ms. Garber-Miller said that is not in the Board's control. Mr. List said the Building Department would send any building permit application to the Conservation Commission.

Motion: To continue the public hearing to October 19, 2021
(Shannon-Cummings) All in favor. PASSES

3. Finding Public Hearing – 10 Plowshare Court - Deck Addition – Hill

The Chair read the public hearing notice for the application of on the application of David and Jennifer Hill for a Finding from Zoning By-Law Section 230-4.2.A, Front Yard Setback, for the construction of a deck resulting in a 33-foot front yard setback where 40 feet is required at 10 Plowshare Court (Assessor’s Map 37 Parcel 172) in the Residential 2 (R2) zone.

Homeowner David Hill was present and explained the property is a pre-existing, non-conforming corner lot with a 29.4-foot front yard setback from Millfarm Drive. The proposed new deck would have a 33-foot setback from Millfarm Drive.

Board Comment

Mr. Shannon said a corner lot requires front-yard setbacks on both streets, which is 40 feet in the Residential 1 zone, but he noted this house is pre-existing, non-conforming.

Public Comment

There was no public comment.

Ms. Garber-Miller closed the public hearing.

Motion: That the request for a Finding at 10 Plowshare Court is an increase in the pre-existing, non-conforming condition. (Cummings-Shannon) All in favor. PASSES

Motion: That the increase in the pre-existing, non-conforming condition, in accordance with the “Zoning Plan 10 Plowshare Court” dated July 19, 2021, prepared by Hutchins-Trowbridge Associates, Inc. is no more detrimental to the neighborhood than the current condition.

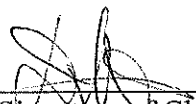
(Cummings-Shannon) All in favor. PASSES

4. Correspondence and Minutes

5. Adjournment

Motion: To adjourn at 8:45 p.m. (Cummings-Shannon) All in favor. PASSES

Next Zoning Board of Appeals Meetings: October 19, 2021 at 7:30 p.m.



Signature of Clerk

10/19/21

Date of Approval