



TOWN OF NORTHBRIDGE

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ZONING BOARD OF APPEALS

Aldrich School Town Hall Annex

14 Hill Street

Whitinsville, MA 01588

(508) 234-0819

Fax# (508) 234-0821

**NORTHBRIDGE TOWN CLERK
DOREEN A. CEDRONE**

Approved on May 8, 2014

ZONING BOARD OF APPEALS

MINUTES OF MEETING

APRIL 10, 2014

This meeting was called to order at 7:00 P.M. by Thomas Hansson, Chairman. Other members present were:

William Corkum

Diane Woupio

Brett Simas

Randy Kibbe

Also present was Brenda Ouillette, Administrative Assistant.

Absent from this meeting were Carol Snow & Sharron Ampagoomian.

A motion was made by William Corkum to approve of the minutes of March 13, 2014. The motion was seconded by Thomas Hansson and the vote was 3-0 in favor. Diane Woupio and Brett Simas abstained from the vote as they were not present at the March 13th meeting.

PUBLIC HEARING: (3-V-14) JOHN BERKOWICZ, APPLICANT

This hearing was held to consider the petition of John Berkowicz, 7 Walker St., Whitinsville, MA requesting a Variance to allow a reduction in lot size of an existing non-conforming house lot from 14,600 sq. ft. to 9,221 sq. ft. The property is located at 55 Edgemere Ave., Whitinsville, MA, shown on Assessor's map 23A as parcel 144 consisting of 14,600 sq. ft. The property is located in a Residential-3 zoning district.

Diane Woupio read the public hearing notice. Assigned to this hearing were Thomas Hansson, William Corkum, Randy Kibbe, Diane Woupio, and Brett Simas.

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Cheryl Peterson from Heritage Design Group was present as well as the owner of the property, John Berkowicz. Ms. Peterson stated that it has been the opinion of Heritage Design Group that the remaining portion of Piedmont Street is a private way that was not accepted by the Town and therefore owned by John Berkowicz on both sides. That was the premise that they used when they submitted the prior petitions. However, James Sheehan, Building Inspector and Zoning Official, has expressed and maintained his opinion that it is a public way accepted by the Town. Heritage Design has done additional research and it is now their opinion that it is a public way requiring town meeting vote to abandon that portion of the road. She requested that the Board allow the applicant to withdraw the petition without prejudice.

Mr. Hansson asked Ms. Peterson the reason for the withdrawal. She replied that at this time there is no purpose to move forward without having that portion of Piedmont St. abandoned by the Town. She stated that without the Variance for the two lots, it serves no purpose to reduce the area of the one lot for which this petition applies.

Mr. Hansson replied that even if the Town abandons that portion of Piedmont St. the applicant would have to file a new petition and it would still be considered a repetitive petition. He explained to her that the Board could vote tonight to deny the withdrawal and proceed with voting on the petition. If the Board denies the petition the applicant could re-file it as a repetitive petition within two years if there is a significant change and the Planning Board agrees that there is enough of a change to warrant it going back to the Zoning Board of Appeals. Or the applicant can wait two years before filing the petition again without going through the repetitive petition process.

Ms. Woupio stated that she would like to deny the withdrawal and move forward with the petition as this has been going on for some time, with several petitions being filed, continued, or withdrawn; it appears to her that nothing has significantly changed since the first petition was denied in November of 2012 and the status of the road is not going to make a difference to her.

Mr. Simas stated that even though there is a significant history with this petition he feels that they should be allowed to withdraw the petition in order to allow them more time to research their options. It would be a disservice not to allow them to withdraw. He added that as long as they keep paying the filing fees, they should be able to file as often as they like.

Mr. Hansson replied that the ultimate result is the same because either way they have to pay the fees again and in either case it will still have to go through the repetitive petition process if it's within the two year time frame.

Mr. Kibbe stated that regardless of the end result of the street, you can't take a legal, nonconforming lot and make it more non-conforming in order to create an additional non-conforming lot. There is no hardship.

Mr. Corkum asked if anything had changed since the last petition which was withdrawn with the Board's approval last month. Ms. Peterson replied that as far as land area and hardships, there is

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no change since the last petition. The last petition was for two variances to reduce the size of the two abutting lots to create a third lot, incorporating that portion of Piedmont St. in question. This petition pertains to only reducing the size of Parcel 144 which is 55 Edgemere Ave.

Ms. Peterson argued that no harm is being done in filing the petitions. Mr. Kibbe disagreed because the abutters are being forced to attend these hearings only to find out that they are being continued or withdrawn. Ms. Woupio agreed.

Several abutters were present and Mr. Hansson asked if there were any comments from the audience. Mr. Robert Deluca, 61 Edgemere Ave. asked Ms. Peterson if they are still planning on trying to obtain the variance on the Edgemere St. parcel even if the Piedmont St. issue is resolved in Mr. Berkowicz's favor. Her response was yes. Mr. Deluca responded by stating that Mr. Berkowicz built a house on that lot several years ago because it was considered a legal, pre-existing, non-conforming lot. Now they want to take square footage from that lot making it smaller and more non-conforming. He stated that it would open a can of worms because there are a lot of lots in that area that meet the same criteria.

Mr. Hansson agreed that you can't take a non-conforming lot and make it more non-conforming to create a third non-conforming lot without a legitimate hardship. Regardless of how many petitions are filed, that fact remains and the ultimate result may be the same. Mr. Simas also agreed and stated that the By-law is very clear on that issue.

Mr. Hansson asked if there were any other comments and Mr. Deluca responded by asking if a hardship was demonstrated to the Planning Board when they went before them for the repetitive petition. Mr. Simas, Planning Board member, replied that they did not base their decision on whether or not there was a hardship, but based it on whether or not there was a significant change to allow it to go back to the Zoning Board. He asked Mr. Simas if he recalled what the change was and how the vote went and Mr. Simas replied that he did not.

There were no other comments.

A motion was made by Mr. Corkum to close the public hearing and take the matter under advisement. The motion was seconded by Ms. Woupio and the vote was 5-0 in favor.

During the discussion, Mr. Corkum stated that regardless of which way the vote goes, nothing stops the applicant from coming back with a repetitive petition within the two year time frame if there are significant and material changes. If the Board allows the withdrawal, the applicant is going to keep filing repetitive petitions with no significant change. Regardless, any new filings will be considered repetitive and the Planning Board will have to consent to it before it can go back before the ZBA. Any new repetitive petition would have to go back to the Planning Board through a public hearing process prior to the Board voting on it favorably.

A motion was made by Mr. Simas to allow the applicant to withdraw the petition without prejudice. The motion was seconded by Tom Hansson and the vote was 2 in favor 3 opposed.

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Diane Woupio, William Corkum and Randy Kibbe opposed. The motion did not carry. A motion was made by Diane Woupio to deny the withdrawal of the petition without prejudice, the motion was seconded by Randy Kibbe and the vote was 3 in favor, 2 opposed. Thomas Hansson and Brett Simas opposed. That motion did not carry.

Board members went into further discussion in order to resolve the issue. Ms. Woupio stated that it is her opinion that regardless of what happens with the road, the issue is still going to be the same. Mr. Kibbe agreed that the additional amount of land wouldn't make a difference to him. Mr. Corkum agreed that mathematically the issue won't change. By denying the withdrawal, it will force the applicant to come back with a significant change the next time.

Mr. Simas felt that the applicant should have the opportunity to present their argument and Ms. Woupio stated that they have had ample time. The applicant chose to withdraw the last petition without prejudice for more time to research options and then they immediately filed this one and are requesting once again to withdraw it for the same reasons.

A motion was made by Diane Woupio to deny the request for withdrawal without prejudice. The motion was seconded by Randy Kibbe and the vote was 4-1. Mr. Simas opposed.

A motion was made by Diane Woupio to deny the petition for a Variance, the motion was seconded by William Corkum, and the vote was 4-0 in favor. Mr. Simas abstained from voting.

There being no further business, the meeting was adjourned.

Attested by,



Brenda M. Ouillette
Administrative Assistant

THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE BOARD OF APPEALS (Minutes approved on May 8, 2014)