

**HOLYOKE BOARD OF APPEALS (BOA) PUBLIC HEARING MINUTES
THURSDAY, NOVEMBER 18, 2021 at 5:00 P.M.
DAVID URBANSKI – 53 ROLAND STEET (#968)
via Zoom.com; ID: 844 9455 4147; Call In *67 646 558 8656**

Board of Appeals

Josh Knox Chairman
Mary Louise Monahan... Member
Morriss Partee..... Associate Member

Staff

Jeffrey Burkott Principal Planner
Jack Carolan Planner II
Sharon Konstantinidis Head Administrative Clerk

Others Present: Michael Bissonnette (Assistant City Solicitor); David Urbanski (Petitioner); Attorney Jack Ferriter; Peggy McBrite (Ferriter & Ferriter)

CALL TO ORDER

At 5:05 p.m. *Josh Knox* called for a motion to open the Public Hearing for Petition #968 noting that the Hearing was being recorded and that the members seated were at the designation of the Chair (Part 1, Title 7, Chapter 40A, Sect 12). A motion was made by *Mary Monahan* and seconded by *Morriss Partee*. The motion carried 3-0.

Josh Knox stated that following the October 28th hearing, he reached out to the Building Commissioner, Damian Cote, to inquire as to whether the applicant "could build a 1,600 sq ft house on the property" as indicated by Attorney Ferriter. A letter dated November 10th was submitted by Mr. Cote which clarified that "...a second primary structure cannot be permitted as of right per the zoning. The size of the structure is not a factor since only one primary structure is allowed".

Josh Knox asked for clarification with regards to the three lots (lots 23, 24, 25) as listed on the application (two adjoining lots were combined to create two lots where the deed references three lots). Attorney Ferriter stated for the purpose of the variance, conceded that the parcel exists as one lot and waive the argument that the parcel has "grandfathering" status. He explained that the application should have read "three lots were combined to form one lot".

Josh Knox, with regards to the submitted plan, stated that the submitted plan does not show where the lot line between lots 23 and 24 is in relationship to the house. He was able to draw the lot line with the information provided and asked Attorney Ferriter if he concurred with the placement of the line. Attorney Ferriter replied that he concurred with everything the Building Commissioner has conveyed. He added that to be a buildable lot, he would need to receive 2 out of 3 favorable votes.

Josh Knox, with regards to the November 10th email, asked if Civil Engineer Timothy F Keane had the Sanitary Engineer credentials as outlined in the Zoning Ordinance, Section 8.2.3 to provide documentation to the Planning Board regarding WRPOD boundary disputes. *Attorney Ferriter* replied that Mr. Keane has 25 years of experience with Fuss & O'Neil and is familiar with the Barnes Aquifer; his opinion that there will be no impact to the Barnes Aquifer can be relied upon. *Josh Knox* added that he was aware that Mr. Keane was not listed with the State as having those credentials. Attorney Ferriter responded that Mr. Keane would not jeopardize his engineering license if he was not qualified to determine that a single-family home would have no impact in the WRPOD, Mary Louise Monahan concurred that Mr. Keane was an excellent engineer although his License does not have that specific certification.

Josh Knox, with regards to soil, shape, topography, stated that the CPTC created a document (2007) to assist BOA's with the review process. He read that "a lot lacking sufficient area does not justify the granting of a variance under this required finding". Further down the document it noted that "Massachusetts courts have repeatedly rejected the lack of sufficient area as grounds for the granting of a variance. *Josh Knox* read a 1989 appeals example from Mitchell v Board of Appeals of Revere where the court wrote "...the hardship arises solely from the fact that the lot is too small to qualify as a buildable lot under the zoning ordinance or to achieve exemption under the grandfather clauses applicable to lots created before zoning. In these circumstances they give the Board of Appeals no authority to grant a variance". *Attorney Ferriter* responded that he was not aware of the 14-year-old manual or 1989 case but called attention to the application that reads soil, shape, OR topography, not all three. The fact that the statute is silent on size means it was just not mentioned. He added that he realizes that the decision will not be unanimous but hopes two members feel differently.

Attorney Ferriter stated that he appreciated the Board's open mindedness and input to try to reach a favorable outcome. Mr. Urbanski spent thousands of dollars to obtain the documentation and surveyed plans that was requested, realizing that the Board would not request such an investment with an anticipated denial or closed mind. He added that the City has the

highest taxes in Massachusetts and needs to add to the tax base. The development of a low-impact single-family residence will do that, through water and sewer revenue, following obtaining a variance to create a buildable lot; a win/win for the neighbors and City. Josh Knox concurred he has had an open mind.

Josh Knox noted that the Water Department letter dated October 29th indicated that the site can be serviced by potable water but had not jurisdiction or authority to provide an exemption within the WRPOD.

Josh Knox, with regards to topography, noted that additionally in the Mitchell v Board of Appeals of Revere the Appeals Court held similarly "The hardship in this case is not owing to the topography of the land. The slope does not prevent the erection of a house. Rather the hardship arises solely from the fact that the lot is too small to qualify as a buildable lot under the zoning ordinance to achieve exemption under the grandfather clauses applicable to the lots created before zoning". Mr. Knox added, with respect to hardship, that the 1993 Supreme Judicial Court wrote "Unless circumstances relating to the soil conditions of the land, the shape of the land, or topography of the land caused the hardship, no variance may be granted lawfully".

Attorney Ferriter stated that reasonable minds can disagree, but he feels that there is justification to grant the variance, even if by a 2 to 3 vote, and a denial of that request would be upheld in court. He added that a 1,600 sq. ft. garage could be built and have zero impact on the neighborhood or Barnes Aquifer.

Mary Louise Monahan asked for confirmation that a majority vote was required as it was her understanding that a unanimous vote would be required for a three-member Board. Jeffrey Burkott read that law that noted that a unanimous vote was required. Attorney Bissonette concurred.

Morriss Partee asked for a recap of the process taking into account the parcel in question is one lot. Attorney Ferriter explained that the variance was required prior to subdividing the parcel to create a legal lot, record the plan, and then obtain a building permit.

Morriss Partee questioned if it was within the Board's purview to grant a variance on a future created legal lot. Attorney Bissonette replied yes noting that the combined three lots are what entails the property deed description in the original deed to the senior Urbanski's. The division of 28, 800 sq. ft. would be split in two, creating two 14,400 non-conforming parcels.

Morriss Partee asked if the variance were granted, what was the likelihood that other residents with similar situations would be forthcoming. Attorney Bissonette replied that not all parcels/neighborhoods were created equal. There may be situations where a variance can be granted. Jeffrey Burkott added that this variance would be setting a precedent.

Jeffrey Burkott clarified that the plan as provided displays the parcel division as one 10,000 +/- sq ft lot and the existing remaining home on an +/-18,000 sq. ft. parcel. Attorney Ferriter replied yes noting that the location of the division was suggested by the surveyor to avoid two non-conforming lots.

Attorney Ferriter, in reference to the variance setting a precedent statement, stated that not only is every neighborhood different but every lot is different.

Josh Knox clarified that the plan as provided shows the parcel at 18,900 sq. ft. which is still a non-conforming lot. Attorney Ferriter stated that if the variance were granted, the Applicant was amenable to creating one 20,000 sq. ft. conforming lot and the non-conforming parcel would be +/- 8,800 sq. ft.

Morriss Partee asked for 3 sentences as to the situation and why a variance should be granted. Attorney Ferriter replied #1. all the boxes were checked from what the statute requires for a variance; #2 all the neighbors were in favor of the variance; and #3 engaged an engineer to provide an opinion regarding the Barnes Aquifer.

PUBLIC COMMENTS

Josh Knox asked for those that wish to speak in favor or against, or to ask questions, to come forward. No one was forthcoming.

Adjournment

At 5:55 p.m., there being no further information to be presented, a motion was made by Mary Monahan and seconded by Morriss Partee to close the Public Hearing. The motion carried 3-0.

Respectfully submitted,

Josh Knox, Chair

Date signed:  

12/2/2021