

Ashfield Zoning Board of Appeals

Meeting Minutes

Thursday, July 23, 2013

Town Hall, Ashfield

7:00 pm

MINUTES

Case #: **2013-1 (CONTINUED)**

John A. LaBelle, 40 Stroheker Road, Ashfield, MA 01330

Application for Variance or Special Permit to obtain a building permit for 7.83-acre property with 150' frontage on Buckland Road, Ashfield, Assessors Map 4.1, lot 13 (Book 5265, Page 287).

Present: Stuart Harris, Chair; Mollie Babize; Kit Nylen; (Anne Yuryan, associate but recused)
John LaBelle, Appellant

Meeting began at 7:10

Continuation of **case 2013-1**:

Minutes of 7/2/13 amended to state that the hearing was closed. Kit Nylen moved to accept amended minutes; Stuart Harris seconded; approved unanimously.

Deliberation on the case opened at 7:15 pm. Meeting of 7/11/13 was not posted; therefore the discussion held then was read into the record at this meeting. The issue to be resolved is whether the joint ownership of two adjacent lots – Map 4.1, lots 13 and 14 – by John and Beverly LaBelle prior to February 13, 2007 means that John LaBelle's property (lot 13) cannot be considered a building lot for zoning purposes under the Merger Theory. Members of the Zoning Board decided to do further research and obtain legal interpretation of this theory.

Mollie Babize reported on a conversation with Elaine Wijnja, Principal Land Use Planner with the MA Department of Housing and Community Development, who suggests because the two lots were in joint ownership at the time when Ashfield's Zoning Bylaw was changed to require 200' frontage, these lots (both now with less than the required frontage) would be considered merged in terms of zoning, regardless of how the town maps or taxes them. At that point, they must be considered one lot for zoning purposes. Ms. Wijnja forwarded a November 30, 2009 paper by Donald J. Schmidt explaining this point of the law.

Stuart Harris handed out a chronology of "Deed Conveyances Related to Map 4-1, Lot 13" that outlines the sequence of ownership of lots originally held by Armond and Janice LaBelle. *(to be attached as part of the minutes)*

He presented this chronology to Town Counsel to obtain her opinion. In 1973, the lots were separated; parcel 2 (lot 14) was conveyed to John and Bev LaBelle, while the other two lots remained in the ownership of Armond and Janice LaBelle. The Zoning Bylaw was changed in 1974. Parcel 3 (lot 13) came to John and Bev LaBelle in 1982.

Although the lots may be considered one lot for zoning purposes, Town Counsel suggested an argument can be made to grant a variance for lot 13, allowing the owner to obtain a building permit. The Zoning Board agreed that the reduced frontage is related to the shape of the lot, and stated that the lot size is substantially larger than other lots in the area, and given its size building on it won't increase the perception of density. The spacing between building sites will be consistent with the neighborhood. The use is consistent within the district. Therefore, relief can be granted without substantial detriment to the public good.

Stuart Harris moved to grant a variance for a building permit on Map 4-1, Lot 13, based on prior discussion with Town Counsel. Mollie Babize seconded, contingent upon getting specific case law reference from the Town Counsel. The vote was unanimous.

Mollie Babize moved to attach a condition to the variance, stating the proposed building envelope meet setback requirements from wetland boundaries as identified by the Conservation Commission, as well as zoning setbacks from lot lines. Stuart Harris seconded, and the vote was unanimous.

Deliberation on Case 2013-1 was closed at 8:14 pm.

8:14 closing deliberation on 2013-1.

Amendment to minutes of 7/16/13: **Case 2013-2**

Stuart noted a number of small wording changes to the minutes of 7/16/13. Mollie will resubmit amended minutes to the Board for approval at the next meeting.

Next meeting: scheduled for Thursday, August 1st, 2013, 7:00 pm.

Agenda will include review of the decisions on cases 2013-1 and 2013-2; approval of amended minutes for 7/16/13, and minutes of 7/23/13.

Case 2013-3 will be scheduled once the abutters list is received from the Assessors clerk.

The meeting was adjourned at 8:55 pm.

Respectfully submitted by Mollie Babize