



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

**Foxborough Zoning Board of Appeals Minutes
January 15, 2015**

Members present: Chairman Neil Forster, Vice Chairman Barney Ovrut, Member Kim Mellen, Alternate Kris Behn, Town Planner Sharon Wason and Building Commissioner Bill Casbarra

Chairman Forster opened the meeting at 7:00 p.m. in the Media Center of the Foxboro High School, 120 South Street.

7:00 p.m. Briarwood Construction Corporation requests a Variance from Section 4.0 - Dimensional Requirements - 4.1.1 Table of Dimensional Requirements of the Code of the Town of Foxborough Chapter 275 - Zoning Bylaws to allow two (2) buildable lots with lot frontage of approximately 71 feet where 200 feet is required and minimum lot width of approximately 74 feet where 134 feet is required at 27 Lakeview Road. The property is located in the R40 Residential Zoning District and a Zone II Water Resource Protection District. Atty. Frank Spillane represented the applicant, Mike Ferrone, who was also present. Members of the Sydney Loder Family Trust were also present; they are the sellers of the parcel. Atty. Spillane explained that they would like a variance for two building lots at 27 Lakeview Road. The current lot is approximately 6.45 acres, old records showed 7 acres; they are having the land surveyed to determine the final acreage. They have 142 feet of frontage where 200 feet is required in the R40 zone. The land is also located in the Water Resource Protection District. Currently a single-family home from the 1800's is on the land. They are proposing to subdivide the land into four lots which includes a small strip of land of 12 feet to one of the abutters as a buffer strip. The remaining land is proposed to be split into two buildable lots and one non-buildable lot containing the wetlands to the rear. The two buildable lots would be 71 feet and 74 feet wide, the rear parcel would be given to the Conservation Commission. Atty. Spillane has met with the Conservation Commission and they would be willing to take the land in the rear. Mr. Kissinger who is a direct abutter would grant an easement for town access.

Atty. Spillane noted that there are other lots near this one that have less than the required amount of frontage than what is required. He also stated that if a Variance is not granted they will be going to the Planning Board for a subdivision of a least two lots.

Ms. Wason noted that the Planning Board would require a 50 foot right of way and 40,000 sq. ft. lots with 200 feet of frontage on a subdivision road that is built to a level of acceptance. It could be built as a private road or the construction of the road could be waived with the use of a common driveway.

Atty. Spillane reviewed the criteria for a Variance are problems with the soils, the shape of the lot or the topography of the land. This lot is an odd shaped lot, this lot as well as others in the area is pre-existing, non-conforming lots that pre-date zoning; approximately 3 acres of the property are wetlands which speak to problems with the soils and the land slopes down which is a problem with topography. The hardship is that a subdivision would impact the land and the neighborhood as the neighbors would prefer just two lots over a subdivision.

Abutter Phil Kissinger of 25 Lakeview Road would prefer the two houses to keep the neighborhood the same and not disturb the land in the rear. His wife Patricia agrees with him.

Richard Berger of 33 Lakeview Road would have no problem with the driveway and would prefer that over a subdivision road.

Ms. Wason noted that the Planning Board is working on changes to the Open Space bylaw which will remove the requirement for a minimum lot size and would allow them to use the existing road frontage; this could be a third alternative.

A motion to close the Public Hearing was made by Ms. Mellen and seconded by Mr. Ovrut. The motion carried 3-0-0.

Mr. Ovrut noted that this application will double the non-conformity in regards to the frontage as it will create two non-conforming lots with significantly less frontage than what is already there. There is an existing house on the land that could be torn down and replace or rehabbed. He does not see a hardship besides the costs to the owners. There was a similar proposal a few years ago, but one of the lots met the frontage requirements. He is not satisfied that the criteria for a Variance have been met.

Ms. Mellen agrees with Mr. Ovrut, she does not want to see the non-conformity intensified. She feels that the conditions of the soils and the topography do not justify increasing the non-conformity. The lot is buildable as is.

Mr. Forster asked if a condition could be to go before the Planning Board to see if they could get subdivision approval then this request could be withdrawn.

Mr. Ovrut stated that he would prefer two driveways over a subdivision but doesn't feel the criteria were met.

A motion to deny the request for a Variance from Section 4.0 - Dimensional Requirements - 4.1.1 Table of Dimensional Requirements of the Code of the Town of Foxborough Chapter 275 - Zoning Bylaws to allow two (2) buildable lots with lot frontage of approximately 71 feet where 200 feet is required and minimum lot width of approximately 74 feet where 134 feet is required at 27 Lakeview Road was made by Mr. Ovrut and seconded by Mr. Mellen. The motion carried 3-0-0.

7:10 p.m. James and Pamela Gibson request a Special Permit and if necessary, a Variance to extend an existing non-conforming parking area as an accessory use pursuant to Foxborough Zoning By-Laws, Section 5.2 and Section 9.7.8 which prohibits parking within the front yard setback. The property, located at 14 Mechanic Street is an R-15 Residential Zoning District and Foxborough Center Overlay District. A letter has been submitted by the applicant requesting a withdrawal without prejudice. Mr. Ovrut and Ms. Mellen did walk the nearby site which would have allowed for plenty of parking but the Building Commissioner has determined that the additional apartments are not allowed in the district as the underlying zoning conditions still need to be met.

A motion to accept the applicant's request to withdraw the application requesting a Special Permit and if necessary, a Variance to extend an existing non-conforming parking area as an accessory use pursuant to Foxborough Zoning By-Laws, Section 5.2 and Section 9.7.8 which prohibits parking within the front yard setback. The property, located at 14 Mechanic Street is an R-15 Residential Zoning District and Foxborough Center Overlay District without prejudice was made by Mr. Ovrut and seconded by Ms. Mellen. The motion carried 3-0-0.

7:20 p.m. Continued Public Hearing - Fox Comm Way, LLC. requesting a Comprehensive Permit pursuant to Chapter 40B of the Massachusetts General Laws to approve 20 detached single family homes, 25% of which will be affordable to household earning no more than 80% of the area median income. The property, known on Assessors Map 084 as Parcel 2060 is

located at 8 Community Way. Correspondence received from abutter Angelina Bisanti was read into the record by Ms. Mellen. Mr. Forster noted that the requested waivers need to be reviewed. It was also noted that the extension to file a decision expires on January 23rd and also that once the public hearing is closed the Board has forty days to file a decision.

Atty. Lovely and Ms. Wason have both prepared a draft decision and an updated list of waivers. The Board reviewed the waivers submitted. In regards to density, Mr. Forster proposes approving 16 units. Atty. Lovely noted that this would affect the economic feasibility of the site due to the high development costs given the road shape and topography.

Other members of the Board were asked for a number to approve, Mr. Ovrut stated 19 as he does not like the one proposed nearest to the railway line and Ms. Mellen feels that the fire departments requested changes to the radius of the cul-de-sac could affect how many units ultimately will fit.

Mr. Marchant noted that the Board needs to look at the public safety, health and design aspects as to what is appropriate in this relatively small development.

Mr. Buckley noted that the homes that appear across from each other on the plans are actually at different elevations so they will not be directly across from each other.

Robert Ritcey of 3 Pratt Street remembers that there were 40 foot buffer requirements to the rail line in the past; his home is 40 feet from the rail line and they are affected by the noise from the commuter rail and the speed of the Amtrak train.

Atty. Lovely stated that they could rework the size of the cul-de-sac, but they cannot reduce the number of units as the fixed costs will remain the same.

Final site plans can be a requirement as a condition.

Ms. Wason stated that Mr. Lynch came to the Planning Board and this development was a result of that meeting, a neighborhood as opposed to a development.

Linda Derba of 2 Brandon Lane stated that some of the proposed homes are also too close to her property line.

Atty. Lovely stated that any reduction in the number of units will be appealed; they will try to move the units around without reducing the density. The applicant is also willing to grant an extension to next month to work on new plans.

It was suggested that there be a working session before next month so the engineers can review the plans.

A motion to continue the hearing for Fox Comm Way to February 19, 2014 was made by Mr. Ovrut and seconded by Ms. Mellen. The motion carried 3-0-0.

GENERAL BUSINESS

The minutes of December 18, 2014 were reviewed.

A motion to approve the minutes of December 18, 2014 was made by Ms. Mellen and seconded by Mr. Ovrut. The motion carried 3-0-0.

The meeting was adjourned at 9:30 p.m.

Respectfully Submitted,

Diana Gray

Signed on behalf of the Board

Kim Mellen, Clerk