
Members Present:

Doreen Prouty – Chair
Vincenzo Ronghi - Alternate
Aldo Mancini - Alternate

Members Absent:

Richard Maggi – Vice Chair
Gary Geiger – Clerk

Also Present:

Hope Goff

Via Zoom

Chairperson Prouty opened the meeting at 6:30 PM. She explained the Town of Agawam virtual public meeting protocol during the Covid-19 State of Emergency.

1. PUBLIC HEARING – Variance – Andrew Felix – 0 Prospect Street – Case# 1998.
Members sitting on this case: Doreen Prouty, Chairperson, Aldo Mancini, acting Vice-Chairman and Vinny Ronghi, acting Clerk.

Chairperson Prouty opened this hearing by introducing the sitting members and explaining the procedure to be followed. She went on to say that at the last hearing the Board heard from Attorney Liquori who is representing Mr. Felix and also from the public. At which time the Public Hearing was continued to allow for more research to be done on the case.

Mr. Andrew Felix, along with his Attorney Gary Liquori, were present via Zoom. Att. Liquori explained that at the last public hearing, the opposition was concerned with the size of the house to be constructed on this property. He said that Mr. Felix is willing to amend the plan for a smaller size house, similar to the existing houses in the neighborhood. He went on to say that this lot has been a grandfathered building lot going back to 1945. He said it has always been a separate and distinct deed so under the MGL 40A, Section 6, the requirements of a separate lot protection have been met. He went on to say that this lot has been assessed as a building lot since 2007. He said the deeds exist separate and distinct from any neighboring properties. He stated that there would be no substantial detriment to the public good. He added that the zoning for the town should be consistent and this property has the same lot size as neighboring properties. The owner of the lot has been paying taxes on a building lot for a significant period of time. Attorney Liquori said that as the requirements for a Variance are met he asks that a Variance be granted.

Chairperson Prouty called on the Board members for comments. Member Mancini noted that on the Town's tax bill the property is assessed as a building lot, type 130, land which is developable. Member Ronghi acknowledged a petition of opposition that was submitted to the

Board. He believes that it should be verified by the Town Clerk's office to become an official petition. He said he looked at the Assessor's card for the property and he concurs with Member Mancini that the lot is deemed as a developable building lot. He went on to say that concerning grandfathering, when the lot was split the owners followed the zoning rules at that time. Chairperson Prouty said she will mention the petition but not read it into the record. She will ask Attorney Buoniconti, City Solicitor, how the petition should be handled. Attorney Liquori stated that this should be a grandfathered lot under MGL Chapter 40A, Section 6 as it has been a building lot for many years. He then asked for the Variance to be granted.

Chairperson Prouty read into the record an email from Gary Buynicki received on January 25, 2021 voicing concerns over a potential increase in street traffic. Next was a letter from Marcia Scherpa, 24 Tower Terrace, dated February 3, 2021 expressing concern for Dan Jury, owner of the lot, adding that he is a very good neighbor. A letter was received on February 4, 2021 from Lawrence Scherpa, 24 Tower Terrace. Chairperson Prouty condensed the 6 page letter saying that it talks about rules and regulations of the ZBA. The letter also talks about lot size, conditions for approval of a Variance such as hardship to the applicant which he feels does not apply as the petitioner does not own the property. He asked if granting a Variance would be in the public good. He feels that the applicant has not satisfied the conditions of a Variance.

Chairperson Prouty then opened the hearing for comments from the public at which time she asked for new comments only. Robert DeFilipi, 24 Prospect St., said that corrections need to be made on comments made tonight. Attorney Liquori had said that the properties on the left side of the street average 10,000 sf. He feels this is not correct. He also said that 8 of 24 people who signed the position he submitted spoke at the last meeting, not half as was mentioned. He said that concerning the assessed value and amount of taxes paid, he feels the owner should receive an abatement. He asked where the hardship is for the applicant. He also said that he feels Mr. Scherpa's letter should be read in full. Chairperson Prouty said that she accepted that. Mr. DiFilipi pointed out that variances are granted sparingly by law. He feels that the neighbors who are in unanimous agreement against the granting of a Variance should not be disregarded. He went on to say that Attorney Liquori's offer of a smaller house is not acceptable.

Chairperson Prouty read all the names on the petition submitted by Mr. DiFilipi into the record because it has been submitted to the Board. The names on the petition are: Robert & Janice DeFilipi, Steve & Linda Bonasoni, Marcia and Larry Scherpa, Eric Norris, Katherine Norris, David & Karen Sterling, David Popp, Gary & Sharon Buynicki, Susan Bongiovani, Edmund & Vivian Govoni, Fred & Ashley Slattery, Peter & Abby Clark, W. Letellier, James & Susan Hawke and Gloria Mitchell. She will check with the City Solicitor to see if the petition needs to be verified by the Town Clerk's office.

There was a short pause in the meeting as Chairperson Prouty lost internet connection.

Chairperson Prouty asked Mr. Scherpa if he agreed with Mr. DeFilipi that his letter of February 4, 2021 should be read in its entirety. Mr. Scherpa agreed. Chairperson Prouty then read Mr. Scherpa's letter of February 4, 2021 into the record in its entirety.

David Sterling, 33 Prospect St., said that the size of the proposed house, the size of the lot, and the current tax bill are not relevant to their concern. He said that what is material is that when the town implemented the current zoning ordinances the town knew that some lots would no longer conform. 0 Prospect Street no longer conforms. He went on to say that the current Town zoning laws are what is relevant and this lot is not conforming to current zoning laws. Marcia Scherpa, 24 Tower Terrace, questioned grandfathering. Chairperson Prouty explained that both the Town and State Zoning laws are being considered. According to MGL Chapter 40A, Section 6 the lot doesn't meet today's standards but it did when it was created. Mr. Scherpa asked if grandfathering applies to every subsequent home. Chairperson Prouty said that if separate lot protection applies this will be protected in perpetuity. Jim Hawkes, 49 Prospect St., read his letter that he wrote as it was not received by the Board, in which he discussed the requirements for the granting of a Variance. He stated that in 2014 when Dan Jury purchased the lot it was unbuildable. He went on to say that the 2 lots owned by Mr. Jury, 0 Prospect St. and 18 Tower Terrace should be combined as one. He feels that the neighbors should be heard. Dave Sterling questioned the purpose of zoning laws and agreed that the people should be heard. Chairperson Prouty explained that the State and Town laws must be followed to grant a Variance. Dan Jury, 18 Tower Terrace, owner of 0 Prospect Street, said he understands the neighbors' opposition. He said the property was intended as a building lot and he has been paying taxes on the property as a building lot for many years. He wants his family not to have to deal with this again.

Chairperson Prouty addressed the Board members and asked if they were ready to close the Public Hearing. Member Mancini – yes, Member Ronghi – yes, Chairperson Prouty – yes.

The Public Hearing was closed at 7:53 and the Board went directly into a meeting. Chairperson Prouty explained that the Public meeting is for Board members only and is not open for public comment.

Chairperson Prouty said that in her opinion this lot does not enjoy separate lot protection and is not grandfathered because although the lot was legally created it does not fulfill the requirement under Chapter 40A, Section 6 to be granted single lot protection. This protection was lost when Mr. Jury purchased the property in question in 2014. The basic purpose of zoning laws is to foster the creation of conforming lots. The fact that this lot has always been taxed as a building lot is not relevant. Chairperson Prouty spoke with the Assessor who confirmed that the lot has always been taxed as a building lot as it was legally created as a building lot. The lot was able to be built upon until Mr. Jury bought the lot in 2014 and became owner of 0 Prospect and the abutting lot at 18 Tower Terrace. Member Ronghi stated that Chairperson Prouty should state that her statement was her opinion and her interpretation of the law. He spoke of case law decisions regarding pre-existing and expired variances. He believes that this lot does enjoy single lot protection. In response to the discussion of the case law decisions, Chairperson Prouty stated that the 2 lots in the case had separate ownership then were bought by the same people therefore nullifying the single lot protection clause because it now depends on the ownership and is owned by the same person. The 2 lots owned by Mr. Jury were deeded separately but are owned by the same person and must be merged to minimize the non-conformity. Member Mancini asked questions about 2 previous cases before the ZBA in which the Variance was granted. He stated that those 2 Variance Requests were granted and would like to know why this request for a

Variance is different. Chairperson Prouty could not recall the details of those previous cases and said she will need to review those cases in order to answer Member Mancini's questions. She suggested that the Public Meeting be continued to Monday February 22, 2021 at 6:30pm via Zoom in order to review past cases.

Motion was made by Member Ronghi and seconded by Member Mancini to continue the Public Meeting to Monday, February 22, 2021 at 6:30pm. Mancini- yes, Ronghi- yes and Prouty- yes.

2. APPROVAL OF MINUTES

Motion was made by Member Ronghi and seconded by Member Mancini to approve the minutes of January 25, 2021 as written.

Mancini – yes, Ronghi – yes, Prouty – yes.

3. Any other matter that may legally come before the Board—None

Chairperson Prouty called for a vote to adjourn.

Ronghi-yes, Mancini – yes, Prouty-yes.

Meeting Adjourned at 8:18 pm

Submitted by hpg

