
Members Present:

Doreen Prouty – Chair
Richard Maggi – Vice Chair
Vincenzo Ronghi - Alternate
Aldo Mancini - Alternate

Members Absent:

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 re-opened the Public Meeting by introducing the sitting members and explaining the procedure to be followed. She went on to say that at the last meeting the Board had questions on past cases that had come before the board. At which time the Public Meeting was continued to allow for more research to be done on these cases. In her research Chairperson Prouty found that the 3 cases mentioned at the last meeting were similar to the present case but not the same which is why each case is decided upon individually. The interpretation of common ownership was discussed. Member Maggi spoke saying that the Board cannot go against state law. He feels that separate ownership no longer exists in this case. Once the lot came into common ownership the lots merged and the right to build on the lot is lost.

Mr. Andrew Felix, along with his Attorney Gary Liquori, were present via Zoom. Att. Liquori said that there were 2 separate and distinct deeds going back to 1970. He said he has presented the history of deeds back to the 1930's. Member Maggi said that the lot must meet the zoning requirements that were in effect as of January 1, 1976 and this lot does not. He also said that the lot must be in common ownership with adjoining land at the time of the increased zoning requirements. This lot was not. He believes that this lot fails to meet the requirements. Member Ronghi read from a November 11, 2009 publication from DHCD concerning grandfathered lots and plan protection. Chairperson Prouty stated that under common lot protection a non-conforming separate lot is protected for 5 years from the date it became non-conforming from local town zoning or 5 years from the date of Chapter 40A which is January 1, 1976. Chairperson Prouty said that the minutes will reflect that the Board disagrees about separate lot protection but the decision must meet the requirements of a Variance. Member Ronghi asked that

if there were 2 owners would there be no issue with the lot being built upon. Member Maggi said no because it was in common ownership and not built upon within 5 years. Chairperson Prouty commented that the Board is disagreeing on the interpretation of Chapter 40A, Section 6 and this will be reflected in the minutes and in the decision. Member Mancini said that the town identifies it as a separate lot. Member Maggi stated that the question of a Variance hinges on 3 questions. The Board should address the 3 aspects that must be met to grant a Variance. Chairperson Prouty asked the Board to continue to discuss whether the lot meets the requirements of a Variance. She added that the Board will agree to disagree about the separate lot protection. A Variance requires 3 separate determinations.

The first is owing to circumstances relating to soil condition, shape or topography of such land. Member Mancini said that this is a separate lot and has a separate deed going back to 1945. Chairperson Prouty said the Board must make a decision based on the requirements of a Variance. Member Ronghi feels that the lot does meet the requirement because of the shape which he feels includes the size of the lot. Chairperson Prouty said that there are other lots of the same size in the neighborhood, this lot is not unique.

The second requirement is substantial hardship, financial or otherwise to the petitioner or appellant. Member Mancini believes there is a hardship to Dan Jury who owns the property since he is having to pay higher taxes on the property. Member Ronghi agrees and added that this lot has been taxed as a buildable lot by the town. Chairperson Prouty referred to a booklet from the Mass Federation of Planning and Appeals Court which says no one is entitled to a Variance. Although each case should be analyzed on its own merits the courts rarely uphold the grant of a Variance. Member Prouty stated that financial hardship to the owner (who is not the petitioner) due to (A) the Town's classification as a buildable lot, thus increasing the amount of taxation and (B) realizing less financial benefit if not allowed to sell as a buildable lot, are not sufficient reasons to satisfy the substantial hardship requirement. The owner will still have the use of this lot. Member Ronghi said that if Mr. Jury were able to sell the lot it would help to remedy the tax burden bestowed upon Mr. Jury. He believes that this substantiates financial hardship. Chairperson Prouty said the taxability by the town has no bearing on this case or the granting of a Variance.

The desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Member Ronghi noted that there are similar lots of like size in the neighborhood so granting the Variance would not be a detriment. Member Mancini agrees and feels the criteria is met. Chairperson Prouty also agrees. All 3 members were in agreement that to allow a single family dwelling to be built in a neighborhood which mostly consists of single family homes is consistent of the third Variance requirement.

Chairperson Prouty stated that the Board will vote on each condition separately as to whether it meets the criteria.

Condition #1 – Owing to circumstances relating to the soil conditions, shape or topography of such land. Mancini - yes, Ronghi – yes, Prouty – no

Condition# 2 – A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant. Mancini – yes, Ronghi – yes, Prouty – no

Condition# 3 – The desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Mancini – yes, Ronghi – yes, Prouty – yes.

Chairperson Prouty said that when a ZBA consists of only 3 members the decision must be unanimous to approve a petition.

Chairperson Prouty explained the 20 day appeals process.

The Public Meeting was closed at 7:30pm.

2. APPROVAL OF MINUTES

Motion was made by Member Ronghi and seconded by Member Mancini to approve the minutes of February 8, 2021 as written.

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

3. Any other matter that may legally come before the Board –

Chairperson Prouty mentioned to the members of the Board that the Massachusetts Citizen Planner Training Collaborative contains a lot of great information that the Board could read.

She also said that regarding members not being able to get on the Zoom meeting last time, Marc Strange sets up the meetings and sends invitations then Ms. Goff emails the Zoom information to the Board. The information is also on Boardpaq.

Next Member Ronghi asked if Chairperson Prouty and Member Mancini had been approved for re-appointment by the City Council. The answer was yes.

There was a general discussion among the Board regarding the members attending workshops, common lot protection and interpretations of the law.

Motion was made by Member Ronghi and seconded by Member Mancini to adjourn the meeting. Ronghi-yes, Mancini – yes, Prouty-yes.

Meeting Adjourned at 8:00 pm

Submitted by hpg

