

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
JULY 24, 2014**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Todd Crowley, Vice Chair; Carol Amick, Clerk; Michelle Puntillo; Arthur Smith

ABSENT: Jeffrey Dearing; Kay Hamilton

Mr. Colasante introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members introduced themselves.

PRESENTATION: Ms. Amick read the notice of the meeting.

PETITION #001-15 – Michael Johnson, for 5 Alaska Avenue, seeks to overturn the Building Inspector's decision that the lot is unbuildable per Table II: Dimensional Regulations of the Zoning Bylaw.

Mr. Johnson introduced himself and his attorney, Brian DeVellis. Mr. Johnson said that his father passed away in March and had left the property at 7 Alaska Avenue to him and his brother. He said that his father had always been under the impression that the lot was buildable, and left it to his children with the understanding that they would be able to build on it in the future. He stated that, when he talked to the Code Enforcement Director, he discovered that the lot was, in fact, no longer considered buildable.

Mr. Johnson commented that Mr. Laskey was very helpful in explaining why the lot was not buildable, and the reason stemmed from Section 6 of Chapter 40A of the Massachusetts General Bylaws, which stated that there was a five-year "grace period" from the date of January 1, 1976 to construct a dwelling on the lot under the older provisions provided that, at the time of the lot's creation and recording in 1949, it complied with the previous Zoning requirements – which it did. He said that, after that time, the lot would be required to comply with the newer, more restrictive provisions under the Zoning Bylaw. Mr. Laskey explained to him that, given that 7 Alaska Avenue had already been built upon, case law would suggest that 5 Alaska Avenue was no longer considered buildable and should be combined with 7 Alaska Avenue to create a lot that conformed to Bedford's current Zoning requirements. Mr. Johnson said that Mr. Laskey also referenced Section 6.4 of the Bedford Zoning Bylaw, which stated, "*No building, structure or part thereof shall be constructed, altered, moved, added to or reconstructed, for use carried on, except in accordance with the requirements of this Zoning Bylaw of the Town of Bedford, or as exempted here from by this Bylaw or the General Laws of Massachusetts.*"

The Board talked about the wording of the Zoning Bylaw and the Massachusetts General Bylaw. Mr. Colasante said the laws here were fairly clear, and noted that the Board always had to find a justification within the Zoning Bylaw to grant an appeal; he asked whether the applicant could give a basis for the appeal to help the Board find a clear reason to grant it. Mr. DeVellis said that the applicant was not asking for anything that Zoning did not anticipate; allowing a home to be built on this lot was expected at the time the neighborhood was built and when the Zoning Bylaw was created.

There was discussion about the best way to rule on this application, and whether a Variance might be a better avenue for the applicant to pursue.

Mr. Smith said that he felt that there were certain instances, such as this one, where the Bylaw encouraged Board members to think and understand its intent rather than simply reading the black and white law. He said this subdivision was filled with similarly sized lots, and when Bedford was zoned, it intended this 20,000 square foot lot to be built upon.

Ms. Puntillo asked whether the applicant currently had any intention of building on the lot. Mr. Johnson said he did not at this time, but his brother has stated that he would like to build on it in the future; he noted that this process was, therefore, simply to determine whether the lot was buildable.

Mr. Crowley asked whether the lots at 5 and 7 Alaska Avenue were originally one lot that were then subdivided. Mr. Johnson replied that they were not; they were always independent lots.

Mr. Colasante opened the hearing to the public.

Chris Gittens, of 8 Brooksbie, asked what kind of precedent would be set if the Board did overturn the Building Inspector's decision. Mr. Colasante said that would have to be discussed during deliberations, but he didn't necessarily feel that this would set any precedents because the lots were created before Zoning.

Les Stucka, of 6 Richard Road, said that, in his opinion, this subdivision was created long before the Zoning Bylaw became more prohibitive and therefore the lot should be considered buildable.

Mr. Johnson stated that he also had four letters of support from surrounding neighbors. Mr. Colasante read aloud the four letters of support from Harvey Malchow, of 9 Alaska Avenue; Edna Mercurio, of 3 Alaska Avenue; Christine Dudley-Marling, of 3 Oregon Avenue; and Suzanne Stuzynski, 4 Franklin Road.

With no further comments or questions from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Colasante reiterated that the Bylaw was quite clear in this instance, and it seemed to him that the Bylaw did not consider this lot buildable. Ms. Amick agreed, noting that she did not believe the Board had the legal authority to overturn the Building Inspector's decision, regardless of whether the members felt it was right or wrong.

Mr. Smith said he felt that overturning the Building Inspector's decision was the right thing to do in this case, because the Zoning Bylaw clearly intended a house to be built on this lot.

Ms. Amick asked whether the applicant had any other actions to take besides seeking relief from this Board. Mr. Colasante said he could also seek relief from Land Court. There was more conversation about the relief the applicant could seek. Mr. Colasante said that, in theory, he had no problem with the notion of allowing a house to be built on this lot, but he felt that the Board's hands were tied.

Mr. DeVellis asked whether the Board would consider continuing this hearing, to allow him to research the property more and perhaps find a stronger basis for an appeal. Mr. Colasante said he had no problem allowing a continuation, and the other members agreed. After choosing a date certain of August 28, Mr. Colasante called for a motion to continue the application.

MOTION:

Mr. Smith moved to continue Michael Johnson, for 5 Alaska Avenue, seeking to overturn the Building Inspector's decision that the lot is unbuildable per Table II: Dimensional Regulations of the Zoning Bylaw to August 28, 2014 at 7:30 PM.

Mr. Crowley seconded the motion.

Voting in favor: Colasante, Crowley, Amick, Puntillo, and Smith
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

BUSINESS MEETING:

Meeting Minutes

With no comments regarding the June 26 meeting minutes, Mr. Colasante called for a motion to approve them.

MOTION:

Mr. Smith moved to approve the minutes of the June 26, 2014 meeting.

