

Call to order 7:02 members present: Tom Mulligan, John Pingree, Leo Ryan, Tracy Hartford, Jay Ogden, Admin. Robyn Holt. Missing Dave Kapnis, Eric Burton

Business: Announcement of Patty Pitari retirement, and appointment of Robyn Holt as new ZBA Admin

Motion by J. Pingree for approval of November 1, 2022 minutes, second T.Hartford roll call vote all in favor

No additional correspondence or Zoom invoice

L.Ryan motion to continue business portion of meeting, T.Hartford second, roll call vote all in favor.

Open public hearing of Chute Rd, L.Ryan read legal ad. Applicant Godzilla LLC represented by John Colantoni with legal representation of Nancy McCann present, Owner St.Vasilios Greek Orthodox Church. Voting on applicant will be Tom Mulligan, Jon Pingree, Tracy Hartford, Leo Ryan and Jay Ogden. Hearing is for a use variance. T. Mulligan explained the prongs of a variance, all prongs must be met to grant the variance. Applicant is the prospective purchaser of the property and is the owner of the adjacent property. Per the Georgetown assessors the subject property is located in the RB zone, however on the Zoning Map it is located in the IB Zone. Chute Rd is not approved or developed. Attorney McCann gave history of the property, in respect to takings by the Commonwealth of Mass for Rt 95, it is a vacant property. Property is surrounded by Rt 95 and residential properties in both Georgetown and Newbury. The lot cannot be used without relief from the ZBA. It is proposed to have lot combined with abutting property, owned by the applicant, known as Parish Commons, Attny McCann present plan which was filed with the application. Discussion on history of zoning for subject lot, per assessors the subject lot has always been assessed as residential. Should a variance be granted applicant will be required to return to the Georgetown Planning Board to incorporate the lot into the OSRD special permit and an Approval Not Required plan. Applicant met with the Planning Board informally and was given positive feed back about the modification. Mr. Colantoni has not received any negative feed back from any abutters about the proposed use.

T.Mulligan asked if any members of the audience had questions, hearing none, opened up questioning to the ZBA members.

J.Ogden asked if Chute Rd was abandoned. Attny McCann has not found any documentation that it was abandoned.

J.Colantoni stated Chute Rd would never be developed.

J.Pingree asked why in 1994 it was not re-zoned, N.McCann believes it was not picked up, unintentionally

Manohs purchased land in Rt 95 was constructed in 1951 prior to Georgetown Zoning and created the subject lot, 1974 State took additional land and altered the lot.

T.Mulligan asked was any part of this lot originally part of the property now known as 66 Parish Rd

J.Colantoni did not believe it was, church obtained the property in 2016 and attended some of the meetings, however, he believes the developer did not want to add the property at the time

T.Mulligan believes that the property known as 66 Parish Rd was previously zoned industrial, the previous owner went before Town Meeting to have the property re-zoned because the property could not be sold as industrial.

J.Pingree asked if there was case law allowing for the size of the lot being used for a variance, N.McCann stated no, in this case she used the size and shape as a result of the taking.

J.Pingree – the shape of the lot looks rectangular, why is that a hardship.

N.McCann – the shape of the lot is less than what is required for the zoning district, Board members argue that is size not shape. J.Colantoni previous owners were not in control of what was taken, the taking created the shape

T.Mulligan – agrees, however a different legal remedy exists that they could go to Town Meeting for a re-zoning of the property, which would result in an undersized residential lot, but would have created an easier argument for the use.

T.Mulligan – who owns Chute Rd? J.Colantoni, believes the Town of Newbury. T.Mulligan believes the North Street side is private. T.Mulligan asked if J.Colantoni needs a driveway from Chute Rd, N.McCann stated the applicant would need frontage, T.Mulligan asked how would they get frontage off a private road.

N.McCann stated (per bylaw) that access on a private road has to be a way that provides adequate access. This does not have that, so there would need to be some type of development of Chute Rd in accordance with the sub-division regulations.

If allowed frontage would then be off the new development.

No correspondence has been received from the planning Board, however after a straw pole there was interest in it

J.Ogden – regarding shape, lot is approximately 160' deep from Chute Rd to the rear lot line. Industrial zone requires a 50' front line set back, zoning requires the rear and side yard setbacks increase to 100' when abutting a residential zone, so when rezoned the property at 66 Parish Rd to residential the imposed a 100' setback the front yard setback almost reaches the rear yard set back leaving them an 8' sliver to put an industrial use on. J.Pingree, if they had 80,000 sq ft, the original property was only 1.3 acres, how would the calculations work then? J.Pingree believes the best way for this to work would be to go to Town Meeting and have the property re-zoned.

J.Ogden the property owners obligation is to make sure property is being assessed correctly. The assessors obligation is to make sure the property is listed correctly. The Church is not paying taxes on the property.

N.McCann – this would be another benefit to the Town, allowing this would provide a taxable parcel. The church is not exempt from zoning, unless they wanted to put a church on the property.

J.Colantoni – asked, a side from the regulations, is the Board in agreement that the property should be used as a residential parcel.

T.Mulligan – yes, however, the Board needs to follow the law and all three prongs need to be hit in a use variance since 1975, is almost impossible to get, unless there is a problem with the soil, shape or topography.

J.Colantoni – questioned why the two takings did not dictate the shape, that the owner had no say in.

T.Mulligan – is not making that determination, J.Ogden brought up a good example that the town by granting the IB (industrial B zone) to RB (residential B) unintentionally placed another hardship on the property based on the Town's bylaws, because of the setback requirement, did the Town make the property uneconomical.

J.Colantoni – it may have never been done, but the Board has the right to do it

J.Pingree – why not go to the May Town Meeting for re-zoning, and if it was granted and construction began could a neighbor appeal.

N.McCann – no construction can begin within the 20 day appeal period, after 20 days no appeal can be heard. And they will need to go to the Planning Board.

J.Colantoni believes going through the Zoning Board is the quickest way.

J.Pingree believes if granted and appealed the decision is indefensible. And it would set a precedence for use variances, and the decision would have to defend it in the written decision from the Board

J.Ogden – is there any case law that supports any protections due to a taking

N.McCann – it becomes a legal non conforming due to the taking

J.Pingree – the taking did not make it non conforming, N.McCann agreed

J.Ogden – in 1951 they created a protected lot that was available to be used as a one and two family home, in 1974 that protected lot was destroyed by the taking of the second parcel.

T.Mulligan – would add that by changing the zoning on the abutting lots the town created the buffer zone of 100’.

J.Pingree – the Town agreed to zone the parcel IB, the owner at the time could have fought that re-zoning. Residents wanted that zoning because economically it would have been beneficial. However, would be interested to see case law that eminent domain taking is causing hardship.

N.McCann – there is case law that if an eminent domain taking creates a non conforming status of the lot. If this was non-conforming before and then the taking makes it worse, it makes it more non-conforming. She is not aware of case law regarding takings and re-zoning around the property.

T.Mulligan – does the original taking pre-date zoning. J.Ogden 1951 was the original taking, 1954 was adapted zoning.

J.Ogden – met G. Mahos and spoke to the Building Inspector at the time and Mr. Mahos was surprised that the lot was industrial, but he wanted to sell it as a house lot. And the building inspector advised him to hire an attorney to try to remedy the zoning.

N.McCann – regarding going to Town Meeting, it is a 2/3 vote and timely. After Town Meeting the Attorney General has to approve which is a 5-6 month process right now. The lot is not an irregular shape and an unusual shape, impacted by takings and zoning changes and that is unique. Newbury’s zoning is also residential (residential agricultural).

T.Mulligan – did the Towns regulations make this lot un-buildable.

N.McCann – use variances are difficult but the board has the ability to find the hardship given all the variables surrounding the situation, it is so unique. All three prongs have to be met, but all three are as important, her client has excellent basis on the others, board member agreed.

N.McCann not only is it beneficial to the neighborhood but the Town as well in relationship to the Affordable Housing Trust. Approval would bring the property into the existing OSRD, which will trigger the Affordable Housing Trust benefiting by way of a donation. A single family lot would not benefit this

This lot would be combined with the OSRD lot. This house would have it’s own septic system and will be covered in the condominium documents

T.Hartford does believe it is a unique shape

L.Ryan – agrees about the shape, but is not sure it is proven

J.Ogden – is not sure a use variance is the best way to make it usable, but with the Zoning as the Town has created, it could be up to the Zoning Board to fix

J.Pingree – what shape would not be unique. T.Mulligan porkchop T.Hartford is it outlined as to what shape means

N.McCann believes the case to be made is the lot does not need to be an irregular shape, the shape that resulted from the taking has rendered this lot not buildable

J.Pingree – what shape would not have rendered this problem.

Discussion with J.Colantoni that it is not up to him to give an example of what shape lot would work, the Boards job is to determine that what has happened with the land. J.Pingree it is up to Mr. Colantoni to prove to the Board they need to grant a variance with certain criteria

N.McCann provided a scenario of turning the lot, so a variance would not be necessary

J.Pingree believes it is a bad excuse for a use variance, there should be another standard

N.McCann believes the Board is protecting the Town to keep an industrial use. J.Pingree believes there will never be an industrial use on the property

J.Ogden – if the applicant buys the property under the current ownership as 66 Parish would the lot be absorbed into the current lot and become an RB zone

N.McCann is not sure that would work, the Planning Dept asked the same question

T.Mulligan – did the Town create the hardship, J.Pingree can the applicant provide the Board with case law. And the impact to Newbury, if applicable

No additional questions from the audience or zoom

N.McCann requested a continuance, and maintains that the taking has a shape issue for this lot and has created a unique situation that is not a situation that other lots in this zoning district or in this neighborhood are impacted.

Discussion of date of continuance, J.Pingree motion to continue to January 18, 2023, L.Ryan second all in favor by roll call vote.

203 North Street Accessory Apartment

J.Ogden read the legal notice

T.Mulligan disclosed 2 items, his sister is an abutter to the property living in Parker River Landing, she has no financial interest in the proposed project and Mr. Mulligan feels he can be impartial, Mr. Mulligan also has a mutual relation, Mr. Mulligan's niece is married to Steven Tudel, who is the applicants nephew, applicant has no problem with the relationship and the Board does not have an issue with it.

This filing is a Special Permit, Mr. Mulligan read the 4 prongs needed. J.Pingree explained the definitions, no correspondence through the office

J.Colantoni representing Kate Amiro & Travis Davies owner of the property, presented the Board with letters from abutters in favor of the proposed project, a three car garage with an apartment above. Septic system is currently in the process for design, perc and soil testing have been completed

J.Pingree asked if the area is large enough, why is it not bigger. J.Pingree read the bylaw and believes they have the opportunity for a bigger area, 700 sq ft

T.Mulligan read the letters from the abutters

Mr.Richard Moylin 1 Blarney Ct, supports the proposed project, wants to make sure that the apartment will not turn into a rental apartment, assured that would not happen

J.Pingree provided information regarding who is allowed to live in both the house and apartment.

J.Colantoni would like to revise the plan and come back to the Board with the new floor plans, T.Mulligan, there would not need to be a new filing if the foot print does not change.

Board agreed that overall the plans looked good.

T.Mulligan made sure the applicants understood that the Special permit ends with the current owner should they sell the property

T.Hartford, J.Ogden, L.Ryan J.Pingree and T.Mulligan continued with the Special Permit conditions

J.Ogden asked about livable floor area, which appears to not be in the bylaws

J.Pingree motion to continue hearing to January 18, 2023 first on the agenda, L.Ryan second all in favor in a roll call vote

J.Ogden to write the decision T.Mulligan provided example

Continuation of Business meeting. J.Pingree discussion on procedures of the Board, and suggested that Board members review

T.Mulligan provided the members with a signature page from the Town of Boxford, as an option for the Board to use in the future, and also docu sign is an option. Decisions would be sent out for review via email, with no discussion by email to other members, changes would be made through the Administrative Assistant

Per Kopleman & Paige, remote meetings can be stopped, but can be used in the future.

Updates on the Diedrick case, per Kopleman & Paige that is the only opinion available

Regarding procedures, can the applicant be required to provide the mailings for abutter notification, they can but it will need to be in the Rules and Procedures and voted on, and K&P suggested reviewing fees

T.Mulligan should be made aware of any potential conflicts. Also suggested that members visit sites. Discussion regarding hearing and motion procedures, also new State legislation

Question about legal ads in newspapers, does not need to be weekly paper, but needs to be general circulation

J.Pingree motion to close business meeting, T.Hartford second all in favor. J.Pingree motion to adjourn, L.Ryan second all in favor

Respectfully Submitted, Robyn Holt, Administrative Assistant Zoning Board of Appeals