

Town of Westwood
Zoning Board of Appeals
Selectmen's Meeting Room
580 High Street
Meeting Minutes
August 10, 2015

Members Present: David W. Krumsiek - Chairman, John F. Lally, Douglas C. Stebbins

Staff Member Present: Thomas McCusker – Town Counsel, Louise C. Rossi – Administrator

Mr. Krumsiek gave a brief description of the proceedings and all were sworn in who anticipated giving testimony.

Application:

Mill Street, Map 19, Lot 23

Applicant: Luke H. Legere, Esq. on behalf of Lindsey Mahoney, Dr. Fernando Almenas, Jane P. Gallagher, William F. Abel, Kathy Marie Toffoloni and Michael K. Brannelly

Appeal under Section 10.1.7.1

Mr. Krumsiek read the legal notice pertaining to this application.

Mr. Legere of McGregor & Legere spoke on behalf of the six Petitioners and gave some facts of the issue. He said that in 1957 the property was a recorded lot. Subsequently, Town Meeting changed the zoning from Residential D district to Residential C district. In 1978, the Town changed their grandfathering provisions by rewriting them to coincide with the State grandfathering provisions. Mr. Legere addressed the potential for this lot to qualify as a small lot exemption and stated that it does not. He does not believe that it meets the criteria for this exemption. He also opined that the window of time through which this lot could be grandfathered had closed.

Mr. Khoury of Madoff and Khoury spoke on behalf of Philip Eramo, the current owner of the land. He indicated that it was not a small lot exemption which they were seeking. He stated that in consideration of Article 66, passed at Town Meeting in 1957, this is not a Residential C lot, but maintains its status as a Residence D lot since it was excepted from the property changed from Residential D to Residential C.

Mr. Krumsiek opined that he believes this lot to have been carved out of the zoning change in accordance with the language of Article 66.

Mr. Legere disagreed and stated that the Town zoning map shows it to be in Residential Zone C.

Mr. McCusker informed the Board that discussion had been had on a small lot exception however, the issue really is the 1957 change; consequently, the lot was never rezoned and cannot be grandfathered because it was never out of conformance. He also opined that Zoning Maps have errors and that is why occasionally they are changed and updated at Town Meeting. He mentioned that nothing supersedes the 1957 vote, all the other lots in the parcel were sold and that sewers went in in 1992 making the lot available for building since passing a percolation test was no longer necessary. This is the reason the lot did not sell in the intervening years.

Mr. Legere maintained that it was a grandfathered lot which doesn't exist in zoning anymore.

Philip Eramo – new owner of the lot- said he tried to buy the lot eight years ago from the owners who live in California. Mr. Eramo was subsequently approached by the family and after researching the property, he bought it after the Town said it was a buildable lot.

Lindsey Mahoney – 198 Mill Street - stated that she bought her property one year ago and was told the lot was not buildable. Her house was originally built on ledge in the early 1930's. She opined that the assessors did not do their job.

Mr. Krumsiek repeated that all were on board that this does not meet the small lot exception.

Sam Perry of Hartford Street mentioned that he believed he ran into a similar land problem in 2004.

Michael Brannelly – 179 Mill Street – is looking for a clear article statement in the Bylaw.

Mr. Krumsiek proceeded to read from Article 66 from the 1957 Town Meeting and opined that Lot 1 was never converted.

Mr. Legere attempted to make the case that the Zoning Map prevails and Mr. Krumsiek requested some case law which would show the map supersedes Article 66.

On a motion by Mr. Lally which was seconded by Mr. Stebbins, it was voted unanimously to continue the hearing to September 9, 2015 at 7:00PM in the Westwood Library in order to give opposing counsels the opportunity to further research zoning maps and their ability to supersede the Bylaw.

The hearing adjourned at 8:30 PM.

ZONING BOARD of APPEALS
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List of Documents:

Mill Street – Parcel 19-023

- Notice of Appeal and supporting documents filed by Luke H. Legere, Esq. with the Town Clerk's Office on June 26, 2015 on behalf of eight Mill Street residents
- Memorandum from the Conservation Commission dated July 10, 2015 that the Mill Street property owner must file for review with the Conservation Commission
- Letter from Luke H. Legere, Esq. dated July 22, 2015 that he no longer represents the Ponte Family regarding the Mill Street lot.
- Response dated July 31, 2015 from Madoff & Khoury, LLP representing Philip Eramo on the appeal filed by Mr. Legere on the property
- Response from Mr. Legere dated August 5, 2015 to the Madoff & Khoury letter dated July 31, 2015
- Memorandum from the Planning Board dated August 7, 2015 advising that Mill Street is a designated Scenic Road pursuant to M.G.L. c. 40, § 15C
- Photographs taken by staff of the Mill Street property
- Photographs submitted by Lindsey Mahoney of her property at 198 Mill Street