

Town of Westwood
Zoning Board of Appeals
Professional Development Room
Westwood High School
220 Nahatan Street
Meeting Minutes
September 9, 2015

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

Staff Member Present: Louise C. Rossi – Administrator

Mr. Krumsiek gave a brief description of the proceedings and all were sworn in who anticipated giving testimony. The reading of the Public Notice of the hearing was waived and Mr. Krumsiek reiterated the reason for the hearing and facts to date.

Continuance:

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. Luke Legere of McGregor & Legere spoke on behalf of the six Petitioners and indicated that by the response of the attorneys for the owner, they were arguing this was a small lot exemption when it had already been agreed at the previous hearing that that was not the case. Mr. Legere continued to contend that the Zoning Map prevails and that while the 1957 change in the Bylaw provided for zoning change, it did not specifically cite the lot that is the subject of this hearing. He then mentioned that the original owner, a Mr. Duly, tried to get the Town Meeting article tabled, but was unsuccessful and never filed an appeal of the change in the intervening 90 days.

Mr. Krumsiek mentioned that the zoning change in Article 66 of the 1957 Town Meeting did call out the metes and bounds of certain parcels.

Mr. Legere continued to contend that grandfathering could not apply as the grandfather clause changed over time and cited the “Kimmet” case.

Mr. Michael Khoury, of Madoff & Khoury, attorneys for the new owner, Philip Eramo, stated that they consulted with Town Counsel, the Building Department and the Town Administrator before going ahead to purchase the property and he stated that Article 66 remains in effect. Mr. Khoury questioned the validity of the “Kimmet” case to the point at hand and opined that map changes can render a zoning map unreadable.

Mr. Krumsiek agreed that nothing was affirmatively done to change Article 66.

Mr. Lally inquired if Town Meeting ever revoked Article 66, to which Mr. Legere responded in the negative.

Margery Eramo Young – 54 Buckmaster Road – interjected that the lot had not been in common ownership since August 1957.

The hearing recessed from 8:10PM to 8:16PM to give time to the Board Members to read the “Kimmet” case.

Mr. Khoury stated again that Kimmet did not apply in this case.

Mr. Krumsiek opined that the subject parcel was excepted from the zoning change until 1978 at which time, the grandfathering provisions of the Bylaw changed therefore Section 5.5.1 would apply as there is no retroactive language.

Lindsey Mahoney – 198 Mill Street – contended that the small lot exemption does not apply and she only wants the Bylaw upheld. She mentioned communicating with Nora Loughnane, former Town Planner and current Director, Community and Economic Development for the Town.

Michael Brannelly- 179 Mill Street – mentioned the special permit granted to 168 Mill Street a short while ago which had to conform to C District zoning thereby setting a precedent.

Franco Almenas – 198 Mill Street – mentioned the 2002 zoning map which was approved by Town Meeting and which was pre-codification.

Nora Loughnane – Director, Community and Economic Development – indicated that the Zoning Map is only the Town’s best attempt to show the zoning districts but could be subject to error. She mentioned consultation with Town Counsel and the Building Commissioner and reading a number of cases pertaining to this issue and that the case most relevant was Rourke vs Rothman and that the small lot exemption applies.

Ms. Mahoney explained her purchase of her abutting house and fears the amount of ledge that would be disturbed in order to build a new house next to her.

Ms. Loughnane took the opportunity to clarify her position within the Town and how she came to be involved with this matter.

Mr. Krumsiek stated that he was concerned with case law that might apply to this matter and that so far, he has not seen any that makes him think this is not a buildable lot and that Mr. Eramo has met his burden.

Ms. Loughnane announced that the Conservation Commission will be hearing this matter on September 23, 2015 at 7:00PM at 50 Carby Street.

Mr. Krumsiek mentioned that today, again, Town Counsel agreed that this is a buildable lot.

Mr. Khoury said that Mr. Eramo is related to the Duly family and hence the price for the property was low. He confirmed that he and his client believe Article 66 takes precedence.

Mr. Krumsiek stated that the decision will only concern the correct decision made by the Building Commissioner.

On a motion by Mr. Lally which was seconded by Mr. Stebbins, it was voted unanimously to uphold the Building Commissioner's decision that the aforementioned parcel on Mill Street is a buildable lot under the small lot exemption.

The hearing adjourned at 9:30PM.

ZONING BOARD of APPEALS
MEETING MINUTES
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List of Documents:

Mill Street – Parcel 19-023

- Response from Luke H. Legere, Esq. dated August 24, 2015 to the “small lot exemption” discussions held at the August 10, 2015 Board of Appeals hearing
- Response from Madoff & Khoury dated August 27, 2015 to Mr. Legere’s letter dated August 24, 2015
- Documents received on September 9, 2015 from Lindsey Mahoney, 198 Mill Street, a party to the Appeal which include:
 1. Zoning Bylaw through June 30, 1957
 2. Planning Board Annual Report 2002
 3. Planning Board Annual Report 2003 (2)
 4. Planning Board Annual Report 2004 (2)
 5. Pages 46, 47, 48 of Town Warrant for unspecified year
 6. ALM GL ch. 40, §32
 7. Published Legal Ad dated 7/17/15
 8. Legal Ad for August 10, 2015 Board of Appeals hearing
 9. Filed Continuance Notice dated August 10, 2015
 10. Westwood Community Newsletter – Fall 2003
 11. Letter w/ attachments dated March 31, 2006 from LandVest to Samuel D. Perry
 12. Letter dated August 28, 2015 from Shawn A. Williams, Supervisor of Records to Lindsey Mahoney
 13. Various e-mails during March and May 2015 between Tom McCusker and Michael Khoury
 14. Various e-mails during May between Nora Loughnane and Lindsey Mahoney
 15. Merrikin Engineering Site Plan dated July 17, 2015
 16. Papers relative to special permit and building permit given for 168 Mill Street
 17. Assessors records for Lot 1, Mill Street
 18. Quitclaim Deed from Duly Family to Phillip J. Eramo, Jr. dated June 9, 2015
 19. Westwood Community Newsletter – Fall 2009
 20. Planning Board Report – 1957
 21. Various papers from 1997 and forward regarding the land described as Map 16, Lot 9 off of Gay Street, owned by the Archdiocese of the Roman Catholic Church
 22. Fourteen pages of e-mails between Tom McCusker and Michael Khoury from March through May 2015
 23. Letter dated June 3, 2015 from Joseph F. Doyle, Jr. to Phil Eramo
 24. Paperwork relative to a variance request for the property at 198 Mill Street
 25. Letter dated July 22, 2015 from Phillip J. Eramo Jr to Jane Gallagher and Bill Abel
 26. Three (3) miscellaneous pages of warrant articles
 27. Pages purporting to be warrant articles for the October 9, 1961 Town Meeting
 28. Legal Ad for June 19, 2013 Board of Appeals hearing
 29. 8 ½” x 11” color copy of the May 2015 Official Zoning Map
 30. Various e-mails in May 2015 among Ms. Mahoney, Nora Loughnane and Brendan Ryan, Karon Catrone, Michael Brannelly, Joseph Doyle & Assessors

