

Approved:

## **Zoning Board of Appeals April 22, 2020 Meeting Minutes**

### **Call to Order:**

**Mr. Brian Heath, Chairman, called the meeting to order via Virtual Zoom Meeting to Attend Via Video, Meeting ID: 351 732 844, at 7:00pm**

### **Attendees:**

Present: Brian Heath, Chairman, Gerry Chipman, Vice Chair, Anna Klimas, Member

Absent:

Staff Present: Jennifer Burke, Community and Economic Development Director, Jasmin Farinacci, Executive Assistant

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### **I. 7:00 PM: Public Hearings\***

Chairman Heath reads an opening in regard to the remote access of this meeting due to current orders to not have meetings of more than 10 people. The meeting is being recorded. Each member is stated as being present. The process of the virtual hearing is disclosed.

- 1300 Vernon Street – Special Permit

Chairman Heath states that Section 5.30 of the Zoning Ordinance was under discussion and the Board had requested outside council. Since Town Council had a conflict of interest with the project, the Board received outside council from Attorney Delaney. Chairman Heath states it was the interpretation of Attorney Delaney that Section 5.30 did apply, that the structure on the lot had been abandoned and if any uses of the lot were to happen they would have to meet current Zoning Ordinance Standards. Attorney Brenan states that he had an opportunity to review Attorney Delaney's letter and it is his understanding that Attorney Delaney feels that Section 5.40 of the Zoning Ordinances are not applicable and Section 5.30 of the Zoning Ordinances are applicable. Attorney Brenan states that the proposed structure on the lot does meet current Zoning Ordinances and Building Commissioner Steven Solari had determined the lot to be a pre-existing non-conforming lot.

Chairman Heath states he does not agree with Attorney Brenan's interpretation of Attorney Delaney's letter. Under Section 5.30 the property in question has been abandoned, and the non-conforming uses of the land and the building have been lost. Chairman Heath states in order to utilize the lot it is required to meet all zoning requirements, in which footage is not met. Under Section 8.12 there is a minimum required width of access to the lot that is not met either. Chairman Heath states that he has discussed his point of view with Attorney Delaney and it is his belief that the lot does not meet the frontage and would require a Variance under a retreat lot or under residential building requirements.

Present before the Board: Attorney Ed Brenan

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Attorney Brenan states that it is his interpretation that under Section 5.30 they lost the right to re-build the structure where it exists, but that the proposed structure could be moved to another area on the lot and meet all areas of zoning except for frontage, but believes this house is a grandfathered lot. The lot has been in existence prior to zoning and has maintained its perimeter since 1919. The word “otherwise” under 5.40 would allow the Board latitude to allow the structure to be re-built under Attorney Brenan’s opinion. Attorney Brenan states they maintain the status of a pre-existing non-conforming lot. Attorney Brenan states they are requesting the Board allow the applicant to move the structure to another area on the lot and re-build it.

Member Klimas states that on page 5 of Attorney Delaney’s letter does discuss the word “otherwise” in Section 5.40 and determines that the house was deteriorated by neglect, not a natural act out of someone’s control, and gives examples such as an earthquake.

Present before the Board: Larry Silva, Silva Engineering Associates

Mr. Silva states the building was flooded during storm events, which is why it was abandoned. The access to the lot even became compromised at times. Mr. Silva also states that Mr. Solari determined that this is a legal residential lot, and does not believe that has changed.

Attorney Brenan states that in Attorney Delaney’s summary he re-states that the structure cannot be re-built where it is because it has lost status as a re-buildable structure, and Attorney Brenan states he believes a new building could be constructed in a different area. The construction of a new house would not increase the existing non-conformities of the house. Attorney Brenan believes a new structure could be re-built on the premises.

Chairman Heath states that he believes that would be true if 5.30 did not apply to this case, but it does apply.

Commissioner Solari states that in his determination letter he stated that the building would be required to be built in the same location.

Present before the Board: Manny Bugginga

Mr. Bugginga states that he doesn’t know if the lot is grandfathered or not, but states that the proposed construction would meet the current zoning requirements and also that he is making a substantial improvement for the neighborhood due to flooding from the wetlands. Mr. Bugginga states that if the grandfathered lot is non-conforming, he is still benefitting the neighborhood and that he is looking for a residential lot, he is not looking to creating a development, but this project would be an improvement.

Mr. Silva states the 24’ culvert that is proposed in the project will alleviate the flooding experienced by the neighborhood, and that it is a substantial investment. Mr. Silva states they are requesting to re-construct the access for one home on 28 acres.

Chairman Heath states that he understands this project would create a benefit to the neighborhood, however, this is how zoning works, and sometimes there are lots that are not accessible. Chairman Heath states this project is not supported by the public and that his interpretation is that under 5.30 the right to

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utilize the property is lost, which requires proper frontage, that this lot does not have. Chairman Heath states that Attorney Delaney shared his opinion.

Member Chipman states that he finds interpretation is difficult when it comes to zoning. Member Chipman had previously felt that the application fell under Section 5.40, however, after reading Attorney Delaney's letter he does feel that Section is discussing events that are related to hazards. Member Chipman states that in Attorney Delaney's closing comments states that the application is subject to the Board's interpretation. Member Chipman states it is nearly impossible to read the Zoning Ordinances and understand all that was intended when they were written, but states the Board does have latitude in making decisions. Member Chipman states that he feels this is a classic case of a Town being able to develop a partnership with a landowner to improve a neighborhood and to allow the developer to build a single-family home. Member Chipman states the Town is not going to pay to address the water issues. Member Chipman states he will always err on the side of common sense as long as there is no true degradation from the by-law. Member Chipman states this is an expensive project with phenomenal engineering involved. Member Chipman feels it is incumbent on the Board to use their latitude to interpret the Ordinances to see if there is something positive coming out of it.

Member Klimas states that she does agree that the engineering would benefit the neighborhood and the project. Member Klimas states that the Zoning Ordinances and the letter from Attorney Delaney are clear, and although they are allowed to interpret the Ordinances, they still must follow the ordinances. Member Klimas states that she agrees with Chairman Heath that this would set a precedence. Member Klimas believes this project has lost its protection.

Member Heath states this was before the Board previously and was denied. Member Chipman states he is not familiar with the previous submittal, but believes that the application was previously submitted under a separate section. Chairman Heath states he doesn't believe that submitting the application under a separate ordinance does not make the project viable.

Mr. Silva states that this application is very different from the previous application. The applicant was looking for more than a single lot in the first application, and also did not know that the 15' right of way was a part of ownership.

Member Chipman states he would like to deal with the application in front of them without hashing out the previous application. Member Chipman states that if the Board is to set precedent that there is no interpretation involved then there is no need for the Board because Commissioner Solari is more than capable to enforce the Ordinances as they are. Member Chipman states he believes they must have an open mind about everything in front of them. Member Chipman states that it is part of their responsibility to have a broader vision and to interpret each project individually and that each case should have its merit.

Attorney Brenan states that what is very unusual and unique about this case is that the 15' access has continued since 1919 and the access has serviced the lot since that time and suggests that the lot is pre-existing non-conforming and it was the right to re-build the existing structure is what was lost under Section 5.30. Attorney Brenan states that this is not a self-imposed hardship and asks that under Section 5.30 they not be allowed to re-construct the existing structure, but be allowed to construct a separate structure on the lot that meets all other zoning requirements. The lot not meeting frontage was not in the building from Attorney Delaney.

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Member Klimas states that she appreciates that this is a unique case and it is their job to interpret the Ordinances how they apply to this case.

Mr. Bugginga states they are proposing one house on 28 acres. Mr. Bugginga states if he has a pre-existing non-conforming lot why wouldn't this project be preferable with one house on the lot rather than 15 houses on the lot. Mr. Bugginga asks if the Board believes this is a non-conforming lot.

Member Chairman states he doesn't believe it is a grandfathered buildable lot. Chairman Heath states that he believes the 15' right of way was lost with the abandonment of the lot.

Mr. Silva states that he disagrees with that interpretation. The fact that the lot was already used as a residential lot and the frontage is grandfathers.

Commissioner Solari states that this is a 15' right of way.

Mr. Silva states that it is frontage, not a right of way, that the 15' is part of the lot.

Attorney Brenan states the only portion of the letter from the Building Commissioner that he utilized that the lot was a pre-existing non-conforming lot. Attorney Brenan agrees that he cannot build the house existing where it is, but that he could be allowed to build a house in a different area of the lot.

Member Chipman states that he still believes they should look at every application individually and that they should consider all of the information. Member Chipman states the project before them would have positive impacts and doesn't see anything concrete that states this project cannot go forward.

Chairman Heath asks to close the public comments section of the hearing,

Mr. Silva asks for one moment to find Commissioner Solari's letter. Mr. Silva states that Mr. Solari did use the phrase right of way in his letter, but did state that 1300 Vernon Street is a legal con-conforming grandfathered lot.

**MOTION: Member Klimas moves to close the public comment section of the hearing. Member Chipman seconds.**

**Roll call vote:  
Anna Klimas - Yes  
Gerry Chipman - Yes  
Brian Heath - Yes**

**MOTION: Member Chipman moves to vote in favor of the application.**

**MOTION: Member Chipman moves to close the public hearing.**

**Roll call vote:**

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Anna Klimas - Yes  
Gerry Chipman - Yes  
Brian Heath - Yes

The motion did not receive a second and does not carry. The application is not granted.

**II. Additional Board Business**

- Minutes to be approved: 3/11/2020

**MOTION: Member Chipman moves to approve the minutes of March 11, 2020. Member Klimas seconds.**

Roll call vote:  
Anna Klimas - Yes  
Gerry Chipman - Yes  
Brian Heath - Yes

- Director's Report, if needed

**Adjournment**

**MOTION: Member Chipman moves to adjourn. Member Klimas seconds.**

Roll call vote:  
Anna Klimas - Yes  
Gerry Chipman - Yes  
Brian Heath - Yes