

TOWN OF KINGSTON
ZONING BOARD OF APPEALS

MINUTES
MARCH 16, 2022

Members

Paul Dahlen – Chairman
Doug Dondero – Vice Chairman
Lane Goldberg
Robert Mullen
Kevin Wrightington

Mr. Dahlen called to order the meeting of the Zoning Board of Appeals at 7:00 pm in Room 200, Kevin Wrightington Second. Also, in Room 200: Doug Dondero, Lane Goldberg and Robert Mullen.

Appointment

7:00 PM Applicant seeks a special permit from the Zoning Board of Appeals per §4.2 nonconforming structure use, or lot subsection 4.2A number 4(a) in order to raze and rebuild a single-family dwelling. Structure is conforming and lot meets dimensional requirements but lacks adequate frontage based on today's zoning. Brian Sullivan and Paul Bucci, 35 Bay Farm Road, Map 37, Lot 12.R-40, architectural plans William F. Lee, II, AIA.

Mr. Goldberg read the 7:00 PM Appointment for 35 Bay Farm Road.

Motion made by Mr. Goldberg and second by Paul Dahlen to open the 7:00 PM Appointment and a vote of 4-0-0.

VOTE: I move to open the Appointment of 35 Bay Farm Road.

Brian Sullivan, 35 Bay Farm Road, proposes to raze and rebuild a smaller house with a 3-car garage, separate building in back. There is only 100 feet of frontage. It looks like there is a lot of frontage, however, Bay Farm Road only goes down about half the way and then it becomes a private way and therefore, is lacking some frontage.

Mr. Dahlen asked Mr. Sullivan if he is on the corner lot? Mr. Sullivan replied that it only looks like a bigger lot but that is because halfway across it, it becomes a private way. Mr. Sullivan provided the Board with a site map of the property and Mr. Dahlen asked Jason Silva, Town of Kingston Building Inspector to review said site map for Paul.

Mr. Silva explained that the lot and setbacks are all conforming, the house is pre-existing. The only thing that is non-conforming is that it does not have the adequate frontage. Jason stated that all of the structures and additional work is conforming.

Mr. Dahlen stated that when Zoning was created this is one of the anomalies to which Mr. Silva responded, exactly. This frontage issue is going to continue to render the lot non-conforming. Not spatially, however, it falls under the provision that it needs 200 feet of frontage. Mr. Sullivan stated that it looks Bay Farm Road continues right past his home, however, it does not. It turns into a private way.

Mr. Wrightington asked Mr. Sullivan if his driveway is on the private way? Mr. Sullivan responded no it is on the frontage on Bay Farm Road. At this time, Mr. Sullivan approached the Board table and showed Mr. Wrightington the map in which he is speaking. Mr. Dahlen held the map up for the public's viewing. Mr. Wrightington asked if the parking was okay and Mr. Sullivan responded, yes.

Mr. Dahlen asked if the public would like to speak either for or against this and a member of the public did get up to speak, a Mr. Stephen Fried of 37 Bay Farm Road. He supplied some information from 38 years ago as to how this lot came to be and stated that the road should have kept going but did not. He is not against this taking place at 35 Bay Farm Road.

Mr. Dahlen asked if anyone else in the public would like to speak for or against. No one else asked.

Motion by Mr. Dahlen and seconded by Mr. Goldberg to close the hearing. 4-0-0.

Motion by Mr. Dahlen and seconded by Mr. Wrightington to approve. 4-0-0.

Appointment

7:05 PM In accordance with MGL 40A, §8. A public hearing will be held to hear the appeal of the zoning enforcement officers actions taken on zoning complaints dated June 24, 2021, September 13, 2021 and September 27, 2021. Submitted by the Zifcak's alleging 33 Brook Street of zoning violations. Continued from March 02, 2022.

Mr. Goldberg read the 7:05 PM Appointment for 33 Brook Street.

Motion made by Mr. Goldberg and second by Mr. Wrightington to open the Public Hearing of 33 Brook Street and a Vote of 4-0-0.

Mr. Dahlen asked Attorney Dan Hill, who represents the Zifcak's and the Lally's who are the Petitioner's here, and they live at 35 and 37 Brook Street, respectfully, if he will be reading the email he sent to the Board and he stated he will summarize what was written on the memo.

Attorney Hill stated that for the last couple of years 33 Brook Street, a single-family home, has had chickens, a rooster, and some goats. His clients looked up the Town zoning by-laws and they believe that there should be a special permit for this type of use. They asked the Building Commissioner for that determination and at first the Building Commissioner agreed then he disagreed stating that this is an allowable accessory.

Attorney Hill stated that 33 Brook Street, 5.5 acres in the R-20 Zone, mostly wetlands that starts out at 100 feet in the front and gets wider in the back. It is a deep lot that goes all the way back to the Jones River. There were 3 goats, 6 chickens and 1 rooster of which there was a perimeter fence around the property with a shed / chicken coop type of structure in the back. The animals were housed in the 100-foot section of the house directly out back of the home and the animals go right up to the property lines. The keeping of farm animals for non-commercial uses is not allowed as of right, however, it would be if it were a farm. Our Section 5.2 by-laws have a provision that requires a special permit for the keeping of livestock including poultry for non-commercial uses.

Attorney Hill stated that in Mr. Silva's decision, in his email, he cites 3 factors: the first being the size of the lot is 5 acres and Attorney Hill stated that it is not how big the lot is it is that most of it down back is wet lands and the animals are being kept up by the home in the 100-foot area, not in line with Section 5.2 that requires a 30-foot set-back for livestock. The second factor is that the animals were described as pets, not livestock. Another client of Attorney Hill stated "animal husbandry" which was stated in his client's Town's by-laws, however, Town of Kingston does not have that specific language within its Town's by-laws. Section 5.2 does not make the distinction between "pets" or "breeding". The third factor is the Right to Farm, which Mr. Silva pointed out. Attorney Hill stated that within our by-law it states for agricultural commercial use, it doesn't apply to non-commercial and the argument that Mr. Silva made is that 5.2 only applies to principal uses, not accessory uses.

Mr. Dahlen then asked Attorney Hill what the definition of livestock was? Attorney Hill responded that there is no definition. That is where things get muddled, per Mr. Dahlen, you have 5.5 acres of property, how much property do I need so that I can purchase a horse? There is no set acreage. Mr. Dahlen then stated you can buy a \$10,000 horse or a \$1,000 donkey for work, there is no specific definition for livestock. Attorney Hill stated that our by-laws do say "livestock, including poultry", adding that if it is not livestock, then they may not be allowed at all.

Mr. Dahlen asked Attorney Hill what he is looking for out of this as an outcome? Attorney Hill responded that he and his clients would be happy if this requires a special permit. This way there is a way that can be spoken about regarding how to handle the animals. Mr. Dahlen asked where Attorney Hill is the lawyer, what would be the trigger point for the special permit? Kevin Wrightington stated that that is why the Agricultural Board has been working on this to come up with a decision, but you have not gone to any of their meetings. Attorney Hill responded that he can follow up with that Board.

Mr. Goldberg asked if they could have Jason Silva's input at this time. Mr. Silva stated that this is not an appeal of his decision. Mr. Silva believes that this should be brought to a debate brought before Town Meeting on the wording in the by-laws; if they need to be added to or changed. Mr. Silva asked if he himself acted appropriately within the by-laws at the time, based on their complaint and there a couple of things: this is now a moot case as the owners of property moved and their animals are no longer there, therefore, there is no action that can be taken. Also, we cannot take this action today and apply it to other properties throughout the community because this is specific to the appeal. Mr. Silva and his department followed up on this case and spent many months and between 40-60 hours in the Building Office working on this complaint. They have spoken to Town Counsel, Police Department, the Town Planner, Paul Armstrong, and the Agricultural Commission in addition to being a Right to Farm

Community, that is how they came to this determination. Mr. Dahlen had asked Mr. Silva again if the owners of 33 Brooks Street have moved along with their animals and Mr. Silva's response was yes, they have moved. Mr. Dahlen had stated to Attorney Hill that now that the owners have moved, you are trying to put something to a lot of a different owner. It is now a moot point as the owners have moved. Attorney Hill stated that if a special permit were to be a part of this property, then the new owners coming in would have that permit to abide by. Mr. Dahlen then stated that they cannot do that, you cannot tell the future if the next owners will have animals or not. Mr. Dahlen stated that if the Board does put the special permit in place, then they would have to do that with the entire street. Attorney Hill stated that they would not, and Mr. Dahlen asked why not? If one house with 5.5 acres of property is issued a special permit, why wouldn't the home next to it? Mr. Goldberg stated that the next property owner's move in, if they have animals in question, then they would have to start the process over again and go before the Board. Mr. Goldberg stated that he was unaware that the owners have since moved out and that changes everything for him. Mr. Goldberg told Attorney Hill that the Abutters may be better served if this was brought before Town Meeting for a by-law modification.

Robert Mullen stated that the dichotomy of the Town has changed over the last 20 years. 20 years-ago people had chickens, horses, dogs and believe that Jason has read the laws in place perfectly. If the laws need to be changed here in Kingston, then it cannot be done here within the Zoning Board, it needs to go above us.

Mr. Dahlen stated to Attorney Hill that he can always continue this for as long as you want. Mr. Goldberg stated that the Attorney Hill is on an appeal of a Complaint that no longer exists because the animals are no longer there so unfortunately, if there are more animals that may come to that property, you will have to come before the Board with a new claim.

George Zifcak, 35 Brook Street came to the podium to speak. He understands that the Board is saying that the animals are no longer at this property, however, the rooster would start to make noise around 4:40 a.m. Mr. Zifcak stated that anyone can have pets, roosters, chickens, anywhere in Town without limitation. There are 35 residents that have these kinds of animals, so the Town does know what livestock animals are. In addition, Mr. Zifcak stated that the next owners who move in, could possibly have a rooster and they would have to go through this whole process all over again. Mr. Dahlen stated that where Mr. Zifcak has done his research, he should have this item put on the Town Meeting Agenda and have a request for the by-laws to be changed / modified to reflect his concerns. The Zoning Board of Appeals cannot just change by-laws. Mr. Zifcak is urging the Board to decide on this one instance. The Board again stated they cannot make any determination as the animals are now gone. Mr. Zifcak is asking for the Board to propose that a special permit be obtained by the next owners should they have any livestock. Mr. Mullen expressed to Mr. Zifcak that this is the wrong forum for this to be discussed. Mr. Dahlen asked Mr. Goldberg and Mr. Mullen how they would Vote just to know where they stand; they are not Voting on this but to get an idea how it would be determined at that moment, and both said that they would abstain. Mr. Dahlen stated to Mr. Zifcak that it would have been Voted down as 2 out of the 5 Board members would abstain.

Leslie Lally of 37 Brook Street is now speaking at the podium on behalf of the matter at 33 Brook Street. Leslie claims that Mr. Silva never followed through on the timeline; he sent the owners of 33 Brook

Street a letter stating they were in violation with the animals and that within "X" number of days they would be fined and still nothing happened. Then the residents came to Town Hall to follow up with a Certified Letter and Mr. Silva's response to Ms. Lally was "no". The Board stated that Mr. Silva did do what he was supposed to do along with all his research.

The Board stated to Attorney Hill that they would prefer him to withdraw. Attorney Hill stated that they should make the decision even though it is moot. Mr. Silva then spoke and said that he feels the Attorney is trying to narrow you down to decide based on legal context. If the Appellant's would like to bring in litigious context, then Mr. Silva stated he can bring in Town Counsel for legal support. Attorney Hill stated he would rather the Board dismiss this claim on the grounds of it being moot instead of going to court and there is no precedent set for either side. If there is a problem in the future, they can come back. Mr. Dahlen said that there really is no way that we can be sure that Attorney Hill's clients hold up to the deal on their end; you cannot promise not to appeal something. Mr. Goldberg stated that their decision does not have to be moot, they can determine that there was no finding. Mr. Goldberg stated that we should continue this and speak to Town Counsel.

Motion by Mr. Goldberg and seconded by Mr. Wrightington to continue this until May 04th at 7:00 PM.

VOTE: I move to continue the claim until 7:00 PM on Wednesday, May 04, 2022. 4-0-0.

Appointment

7:10 PM Applicant must seek a special permit from the Zoning Board of Appeals per section 5.2 table of uses in order to construct and run a dog daycare business and boarding of dogs. Caitlin Anderson, 114R Main Street, Map 58, Lot 132.

Motion by Mr. Goldberg and second by Mr. Wrightington to open the public hearing and a Vote of 4-0-0.

VOTE: I move to open the public hearing of Dog Daycare Business and Boarding of Dogs. 4-0-0.

Mr. Dahlen asked the Applicant, Caitlin Anderson, how far out they are from the Planning Board? Are they done or still waiting on some information that they need? Ms. Anderson stated that they had a meeting with Planning Board on Monday and sent over a letter stating that everything was all set, and they want to speak with the Fire Department to be sure they can get around the building. Water access they would need is not in the fenced in area and can be accessed so that is fine and getting to the trash, there is no problem there, either. Ms. Anderson spoke with Deputy Hatch at the Fire Department, and he said that it was suitable for what they are planning to do there. If there are to be separate fenced in areas, more than one, then they would each need a gate for easy egress in case of an emergency.

At the podium is John Hajjar, Landlord of 114R Main Street, residing address is 134 East Howard Street, Quincy, MA. The Planning Board is working on a few mark-ups regarding access as Ms. Anderson had alluded to. Planning was pre-disposed to approving it and continued it for 2 weeks as Ms. Anderson had to provide a bit more information. Ms. Anderson offered to share her computer screen, as she appeared

via ZOOM for this meeting, to show the Board her letter from Valerie Massard in Planning Department. Mr. Dahlen declined stating he will only recognize paperwork in hand, not over a computer screen; something with Town letterhead on it otherwise he cannot assume it is true. Mr. Goldberg stated that there was a letter from the Planning Board. Mr. Dahlen spoke to the public stating that he has given the information, however, not all of it because it is not complete yet. Things may change or things may stay the same as far as the plans are concerned, the Board is uncertain how it will go at this point; basically, Planning is not finished with them yet, it was continued and now they are on to Zoning. Mr. Hajjar stated that Ms. Anderson would like to move forward and was told that everything has been addressed and that she can move forward. Mr. Dahlen stated that because it is not 100% complete yet, square footage may change, any changes big or small could still happen.

Mr. Dahlen asked his Board if they want to hear this tonight or continue it once it is fully complete with no surprises. Mr. Dahlen asked Mr. Mullen, Mr. Wrightington, Mr. Dondero and Mr. Goldberg and all stated they wish to wait until Planning Board is finalized with plans. Mr. Anderson spoke and stated that he was told everything was all set and okay with Adam Hatch of Kingston Fire Department. The letter from the Planning Board was supposed to be a way of showing that it is okay for the Anderson's to present tonight. Mr. Dahlen explained that they need to finish with step 1 and then Zoning is step 2. Mr. Dahlen asked if he had all the necessary paperwork thus far and the Applicants responded yes you do.

Mr. Dahlen expressed how he would like the Applicant's to be here in person and they responded that they were allowed to Zoom this meeting as the hearing with Planning Board has been continued twice. The Anderson's are away this week so that is why they are not physically present at meeting.

Mr. Dahlen held up a site plan to the Anderson's that does not show any fencing, etc. Mr. and Ms. Anderson stated they would be here for the next meeting in person with all the necessary documents in hand. Mr. Dahlen asked the Anderson's when they would like to have this continued and they responded, as soon as possible. Mr. Dahlen asked when their next meeting is with the Planning Board and Ms. Anderson responded, the 28th.

Motion made by Mr. Dahlen and second by Mr. Dondero to continue this hearing on April 06th at 7:05 PM.

VOTE: I move to continue this dog daycare and boarding hearing until 7:05 on April 06, 2022. 4-0-0.

Mr. Dahlen asked if we have someone informal here for the 7:15 Appointment, 21 Shore Drive? No one came forward and Mr. Goldberg asked if anyone was on ZOOM for this appointment? No one has attended.

Motion made by Mr. Goldberg and second by Mr. Dondero to approve February 16, 2022, Meeting Minutes.

VOTE: I move to approve the February 16, 2022, Meeting Minutes. 4-0-0.

Motion made by Mr. Dahlen and second by Mr. Wrightington to adjourn.

VOTED: to Adjourn. 4-0-0-0

Adjourn at 8:28 PM.