

**ZONING BOARD OF ADJUSTMENT
JULY 6, 2016 MEETING
DRAFT MINUTES**

Board members present included Chair Christopher Carley, James Monahan, Rob Harrison, and Andrew Winters. Also present: Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

23-16 Private Reserve LLC.: Applicant wishes to subdivide a parcel of land into 2 lots; one lot having 200 feet of frontage and the other lot having 171.61 feet of frontage and requests a variance to Article 28-4-1(h) Table of Dimensional Regulations, to permit a lot with 171.61 feet of frontage where 200 feet of frontage is required for property at 86 Bog Road in a RO Residential Open Space District.

Mark Sargent of Richard Bartlett & Associates testified. The parcel is 23.91 acres with 445.84' of frontage. It is bisected by a zoning district in the west half. The westerly half is RO and easterly half is RM. Currently there is a single family home on the west side of the property that is under construction. The majority of the property is wetlands. He reviewed the topography of the land. The proposal before the Board would create one new lot which would encompass the existing house that is currently under construction. That lot would meet all zoning criteria. The remainder would be 22.86 acres with 245.84 feet of frontage, but only 171.64 feet of frontage being contiguous.

Carley asked about contiguous vs. non-contiguous frontage. Mark Sargent showed him on the map that was submitted. They originally looked at the property for more development, about 18 townhouses. The sewer and water is located at the far easterly ends of the Vineyard development. The cost to extend the water/sewer was costly. They abandoned the idea of the 18 townhouses and decided to create one additional lot. There is 74' of frontage that is left for the road plus the 171.64 feet would be around 245.84 feet.

Mark Sargent went through the criteria. The unnecessary hardship is the non-contiguous frontage. The intent of the Ordinance is to ensure a lot has sufficient access. Granting of the variance will not be contrary to the spirit of the ordinance as the lot will have adequate access to Bog Road. It is not contrary to the public interest as the request is minimal. The proposed lot will exceed the minimum lot size. Substantial justice would be served as it would allow reasonable use of the property. The proposed lot will be used in a similar manner as surrounding properties. He noted that the western abutters had concern for further development. They have walked the property with the Conservation Commission as they were looking at putting the rest of the lot in a Conservation Easement. The response that he received from the Conservation Commission is that they would wait to see what approvals they were able to obtain.

Harrison asked if the White's lived westerly. Mr. Sargent said they did. Harrison asked if they had reached out to them to see if they would sell you frontage. Mr. Sargent said that they have not. Why couldn't a cluster development been created? Mr. Sargent said that a cluster development wouldn't have worked because the area is so flat that the drainage system, curving, etc. wouldn't work. And they would still need the frontage requirements. It wouldn't be economically feasible. Monahan asked what distinguishes this property from others. What is special about it that creates a hardship? Mr. Sargent stated that the property is over 20 acres. They do have the frontage, but prior to them buying it, several lots were subdivided out of the front of it and created the issue with the frontage. Winters reiterated that the reason why is because the prior owners divided it up? Mr. Sargent said that was correct. Harrison asked if the property was the LaPierre property. Was it purchased from the LaPierre's? Are they the ones building the homes now? Mr. Sargent said that was correct. Carley asked if the drainage had worked out you would have created another City street. Mr. Sargent said that was correct. Walker noted that part of the issue with the Conservation Commission is that they are not sure that this is a parcel that they want to include with what they are already responsible for. It is his understanding that the map line for the future street is now going to be maintained as future trails. That is a possibility.

In favor: none.

In opposition: Paul Henley and Blair Newcomb who own a unit in the Vineyards on Bog Road. They abut the other side of this property. He has questions. They are happy to hear that the 18 unit proposed development will not be going forward. Their concerns are that they are definitely against this subdivision if in the future it would make it easier for a larger development to take place. They are pleased to hear about possibility of Conservation Easement on the back of the property. Ms. Newcomb is interested in the Conservation Easement being a condition of the variance being granted.

Code: Walker noted the letter from the White's.

Carley said the letter was dated June 30, 2016 from Mike and Cathy White. They feel there is no hardship. They feel lots will not have adequate access. They don't feel it is a minimal request. They are concerned with future uses that could be detrimental to the swamp area.

Walker stated that he spoke with Beth Fenstamacher, Senior Planner for the City who noted that when this property came before the Planning Board in 2016 they were granted 2 waivers to not extend water or sewer lines at that time. Planning is advising the Board that they will not support additional waivers.

Monahan asked Walker how approving this would eliminate the possibility of the 18 unit development. Walker said that could be a conditional of approval. They made the statement that they are abandoning that process as they can't extend the water and sewer requirement. There would be no frontage available if it were subdivided like this.

Rebuttal from Mark Sargent. They have requested a waiver from the Planning Board regarding water and sewer. He feels this development is the best way to protect the land vs. the 18 townhouse development. His client is willing to have a condition on the approval that the property couldn't be further subdivided.

DECISION: Carley gave an overview of the testimony heard by the Board. The appellant is willing to state for the record that they will not further subdivide the lot.

Harrison is having a hard time finding what the hardship was for the parcel. He feels that maybe they should explore the option of working with the neighbor to buy some of their frontage.

Carley said that the intent of the Ordinance is stated and the frontage has to do with density. Winters thought frontage was for access and lot coverage was for density. Carley explained. Walker stated that the frontage works in conjunction with the lot size. Frontage is to assure good separation between buildings, etc. Harrison said the problem is that the frontage is not contiguous. Carley felt that they didn't create this situation. You could argue that there are certain characteristics of the lot. Winters asked if the majority of the frontage is wetlands. Walker said yes.

Monahan asked if their hardship was that it is a big piece of property that you can't build on most of it because it is wet. Carley said that's not typically seen as a hardship due to open space regulations.

Winters thought that the frontage requirement was to maintain the distance and not build too densely. There is plenty of space on the lot. The setbacks will be met. There will be access. They didn't create this problem, it came to them. He supports the variance.

Harrison said that the oddity here is the road frontage is in the RO but the house will be built in the RM.

Carley asked Winters if the Spirit and Intent of the Ordinance was met in his opinion. Winters said he believed so. Winters said there would be more open space between the homes. If every other requirement is met and there is no problem with access then the frontage doesn't, in his opinion, impact the density.

Monahan thinks it meets the spirit of density if the condition not to subdivide further is included.

A motion to approve the variance with the condition that no further subdivision take place, seconded by Monahan and passed by a 3-1 vote with Harrison in the minority. It is also understood that plans for a condominium development have been abandoned.

MINUTES: A motion to grant the Minutes from the June 2016 meeting was made Harrison, seconded by Monahan and passed by a 4-0 vote.

ADDITIONAL INFORMATION

In February 2016 the City came before the Board for property located at 51 Bradley Street and the case was Tabled by the Board. The City has decided to withdraw the variance request without prejudice. Walker believes they are going to put the property on the market.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT