



**Town of Becket
Zoning Board of Appeals
557 Main Street
Becket, Massachusetts 01223
Phone (413) 623-8934 Ext. 122**

Meeting Minutes for December 7, 2021

Board Members Present via Zoom: Victoria Bleier, Alvin Blake, Mary Canty, Robin Mathiesen, Sarah Hoecker, Jeffrey Wilkinson, Christopher Milenkevich

Board Members Absent: none

Administrative Assistant: Tess Lundberg

Public Present via Zoom: Joel Bard, William Caldwell, David Colpitts, William Girard

1. Call to Order: Victoria Bleier calls the meeting to order at 5:15 PM. Ms. Bleier introduces the Board members present.

2. Town Counsel Joel Bard: Ms. Bleier invites Attorney Bard to speak.

Attorney Bard reads from the Massachusetts General Law Chapter 40-A Zoning Act, Section 5 and Section 6. Attorney Bard states that Section 6 provides the exceptions for single lots, isolated lots, or lots not held in common ownership. The exceptions are 1) at the time of recording or endorsement the lots are not held in common ownership 2) the lots conform to then existing requirements, and 3) the lots are less than the proposed required but at least 5,000 square feet. Mr. Wilkinson states the quarter acre lots were created in the 1960's. Attorney Bard states the lots were protected if held separately, but if held by one owner the lots would have had to merge in the 1970's when 1 acre zoning began.

Attorney Bard states his opinion is any increase in frontage depth zoning would not apply, the private deed restrictions may prevent building to the lot lines, but hopefully there would be a reasonable discussion with the building inspector to build off the lot lines.

Attorney Bard refers to the earlier document authored by Sally Bell that stated when a subdivision is first approved there is a six-year period where they are protected as non-conforming.

Attorney Bard quotes from page 2 of the document "If you bought a separate lot before 12/7/1976, not adjoining any other lot containing at least 5000 square feet which had at least 50 feet of frontage, it is grandfathered in forever. That protection does not expire."

Ms. Bleier asks what is our plan, going forward, to determine if something is grandfathered? Ms. Bleier states it is going to take a lot of research and she asks who is responsible for doing that research?

Mr. Girard states that typically he does the research. Mr. Girard states when he receives an inquiry if a lot is buildable, he indicates he needs to see the deeds back to the 1970's to determine if the lots had never been combined. Mr. Girard states there have been very few where it was questionable if the lot should or should not be buildable, and in the event of a question he has attorney Bard review it. Mr. Girard states he tells the applicants to have their attorney research it and determine if it should be grandfathered.

Ms. Mathiesen asks if other neighbors could have done that.

Mr. Girard states yes, and that is why he sent the Maggi application to the ZBA. Ms. Maggi had a lot with a challenging topography. Mr. Girard states he knew it was grandfathered and could have been built closer but he thought the ZBA should decide.



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Attorney Bard states if Mr. Girard did, or did not, issue a permit, his decision could be appealed to the ZBA by an abutter or by the owner. An abutter could file an appeal on Mr. Girard's decision at a much later date and the owner would have to deal with it. Attorney Bard states current law says that an appeal to a decision by the ZBA must be done within 30 days.

Ms. Hoecker states the board wants to support the Building Inspector and recognizes that he has a tough job here, but she is concerned that the applicant does not want to compromise.

Mr. Girard states the applicant did compromise with him by going to the ZBA and asking for a 25-foot setback rather than a 10-foot setback. Mr. Girard states the ZBA would be making the decision if they would go with the current zoning requirements or if the property was grandfathered in, and it is very difficult to overturn a ZBA decision. Mr. Girard states he wanted Ms. Maggi to have the board decision behind her, since the board is neutral in this subject.

Attorney Bard states his recommendation is Mr. Girard makes a decision to issue a building permit, based on an owner presenting evidence from an attorney that the lots were never held in common ownership. Attorney Bard states if an owner has not made the case and denies the building permit, the owner can go to the Zoning Board to appeal. Attorney Bard states an applicant can appeal a Zoning Board decision in court but it has to be a factual matter to overturn a ZBA decision. Attorney Bard states in this process there shouldn't be too many chances for mistakes, Mr. Girard grants a building permit only if the applicant is entitled, the ZBA grants a decision only if they think the applicant is entitled, and then an abutter has the right to take it to court.

Mr. Girard states the grandfathering applies to raw land, once a house is built the bylaws cover any existing building. Mr. Girard states they are considered non-conforming structures. Mr. Girard states if it is a conforming structure and they want to build into the setbacks it requires a variance. If it is a non-conforming structure, they require a special permit.

Attorney Bard states they still need to go to ZBA but the standards for a special permit are easier than the standards for a variance.

Ms. Bleier states so only new construction is subject to the grandfathering.

Mr. Girard states it could be a Planning Board or a ZBA issue.

Mr. Blake states it would be helpful to have the board sit with Bill Girard and discuss the details.

Ms. Bleier asks if any members of the public want to speak.

Mr. Colpitts states he appreciates the work of the board and Attorney Bard's clarification. Mr. Colpitts asks if the third lot in Ms. Maggi's could be sold in the future or developed as a separate lot.

Attorney Bard states the three lots are merged into one when she gets a building permit, no other building permit could be issued on that third lot. Attorney Bard states the lots are deemed to be merged in order to get as close as possible to the zoning regulations.

Ms. Bleier asks if anyone has any further questions, hearing none Ms. Bleier thanks Mr. Caldwell, Mr. Girard and Attorney Bard.



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3. Public Input: Mr. Colpitts thanks the board for their work.

4. Any other business to come before the Board:

None

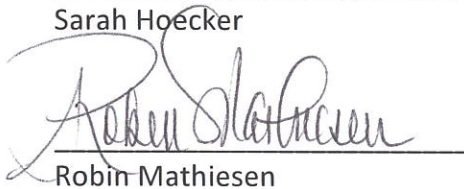
5. Adjournment. Mr. Wilkinson makes a motion to adjourn the meeting. Ms. Bleier seconds the motion. Mr. Blake votes in favor. Ms. Bleier votes in favor. Ms. Canty votes in favor. Ms. Hoecker votes in favor. Ms. Mathiesen votes in favor. Mr. Milenkevich votes in favor. Mr. Wilkinson votes in favor. **Motion passes.**

Meeting is adjourned at 6:23 PM

Meeting Minutes reviewed and approved on January 11, 2022 by:

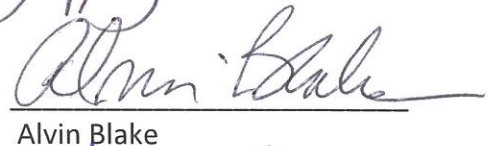

Victoria Bleier, Chair

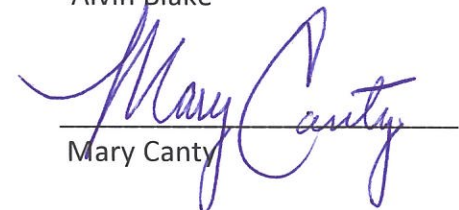
Sarah Hoecker


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