

Palmer Zoning Board of Appeals

Meeting Minutes

May 21, 2019

I. Call to Order

Chairman Dennis Fountain opened the meeting at 5:00PM. Present were members Norman Czech and Ingrid Thompson. Also present was Town Planner, Linda Leduc and Gillian Davis recording minutes.

II. Public Hearing

Petition for a Variance – 205 Peterson Road, Michael Meilleur

A motion to waive the reading of the list of abutters was made by N. Czech, seconded by I. Thompson. The motion passed (3:0).

A motion to acknowledge receipt of letter from Michael Meilleur, received April 22, 2019, was made by N. Czech, seconded by I. Thompson. The motion passed (3:0).

The applicant, Michael Meilleur spoke to the reasoning behind this variance request. He explained after speaking with L. Leduc and Chairman of the Planning Board, Michael Marciniac it was determined the lot did not meet the dimensional requirements needed to acquire a building permit, by a slim margin. He showed the Board plans that demonstrated the potential locations of the home.

D. Fountain asked how much ledge at the back of the property.

M. Meilleur answered there is a fair amount of ledge as the property drops down further south on the property.

N. Czech referred to the plans submitted and questioned if the possible locations of the home were viable options and what the next steps if they were not.

M. Meilleur responded if the two proposed locations are not viable options, it is may be possible to go further back on the lot, however would require more construction and blasting due to the ledge.

L. Leduc explained the history of the lot and why it is not protected under chapter 40A, §6, specifically for a single lot exemption. The apparent lot on Peterson Road was divided into two lots; 205 Peterson Road (vacant) and 209 Peterson Road (single-family residence). These lots were created on January 1st, 1989. House #209 Peterson Road, improved with a single family home, required that the minimum side-yard setbacks of 30' be maintained. As a result, the internal lot line between the two lots narrows to 144.13' at and around the 50' setback of lot 205 Peterson Road. Both lots were conforming when created in 1989 as the lot width definition did not come into existence until a zoning amendment passed on February 28, 2000. The lots were sold to the Guzik family on November 30, 2001 and were held in common until July 19, 2007. As such, lot 205 Peterson Road lost its grandfathered protection under c.40A, §6, on November 11, 2006.

The Findings:

1. Required Finding #1- Unique Physical Conditions – Soil conditions, shape, or topography of the property, which condition especially affects the property, but does not generally affect other property in the zoning district:
 - a. The permit granting authority made the finding that there was a unique condition related to the shape of the property that does not generally affect other properties in the zoning district. The subject parcel meets all

dimensional requirements (area, frontage, depth) for a lot located in the Rural Residential District. However, at the time of creation, the lot width of 144.13' was a necessary result for maintain the required side-yard setback of the existing structure on the parent parcel. The Board found this situation to be extremely unusual and, further, that prohibition of the grant of this variance would approach confiscation by depriving the property owner of virtually all practical use of his property.

2. Required Finding #2 – Hardship – A literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise:

- a. The permit granting authority made the finding that there was a hardship due to the unusual shape of the land related to the premises for which the variance was sought. The Board found the hardship to be financial in nature in that land court process would be excessively costly and time consuming. Further, the Board found that the applicant did not cause the hardship and that if relief were denied on the basis of a slight or insubstantial departure from the goals of the ordinance the lot would be deemed unbuildable.

3. Required Finding #3- Public Good – Substantial harm or derogation from the ordinance's intent or purpose:

- a. The permit granting authority made the finding that the variance could be granted “without substantial detriment to the public good and without nullifying or substantially derogating from the intent of purpose of such by-law” The situation is unique that:
 1. The lots were conforming when created.
 2. The lots were not in common ownership at the time of the zone change.
 3. Reduced frontage at the 50' setback line of this lot was required to make the house on the adjoining lot comply with the side-yard building setback.

The chairman opened to the public for comments.

Kathleen Kane, 209 Peterson Road, questioned why the petitioner purchased a property, knowing it was unbuildable. She stated, the variance is granted and a home is able to be built, the home would loom over her backyard and be an invasion of privacy. She then, expressed concern regarding the potential blasting and the well-being of her well with the already existing high mineral content of the water.

Brian Leopold, 209 Peterson Road, expressed concerns with ledge and potential blasting. He stated the blasting could affect many people's wells, including his own.

Scott Brothers, 198 Peterson Road, stated he and his family have been abutters to the property for a long time. His mother's property was perc tested, later to find out it was mistakenly on the petitioner's property and it had failed. He added, he too is concerned with the possible blasting and well contamination.

N. Czech explained some of those issues are not within the jurisdiction.

L. Leduc stated this Board is determining whether or no the applicant can or cannot apply for a building permit.

K. Kane asked where and to whom they could voice concerns to, if this Board gives approval.

N. Czech replied, you have a right to appeal it in land court.

M. Meilleur responded that he agrees with abutter's concerns, however this Variance request is to potentially get a “green light” to further investigate the lot.

A motion to approve based on the following conditions:

- #1. Finding Shape, uniqueness created legally in 2000
- #2. Finding Hardship, shape needs to be connected to financial hardships
- #3 Finding Greater Good, Rural Residential single family home that fits within the neighborhood.

A motion to approve the findings listed was made by N. Czech, seconded by I. Thompson. The motion passed (3:0).

III. Old Business

Meeting Minutes – December 18, 2018

A motion to approve the meeting minutes as written was made by N. Czech, seconded by I. Thompson. The motion passed (3:0).

IV. Adjournment

A motion to adjourn at 5:47PM was made by N. Czech, seconded by I. Thompson. The motion passed (3:0).