

Zoning Board of Appeals  
June 20, 2011  
Casco Community Center

Members Present: John Devereaux, Sue Durkee, and Lawrence Sawyer, Chair  
Members Absent: Terri Linnell

Staff Present: Elwin Thorpe, CEO and Sandy Fredricks, Secretary

Public Present: Willie Audet, Jr., Jon Berry, Donna Lovely, Richard Lovely,  
Marla Keefe, Kerry Keefe, Edward J. St. Pierre, Dolores B. Curran, Timothy L.  
Curran, Jr.

7:00 PM

Larry Sawyer calls the Meeting of the Zoning Board of Appeals to order.

Agenda:

Larry states we had two items on the agenda, but the Administrative Appeal of the decision of the Planning Board regarding a cellular tower will remain on the table.

Larry states we also have Minutes to approve from the May 16, 2011 meeting.

Larry moves to approve the Minutes of May 16, 2011 as written.

John seconds.

Any discussion? None.

All in favor? 3 yes – 0 no

Chairman Sawyer reads from the Agenda:

Jonathan R. Berry, Esq. has filed an application on behalf of Dolores Curran nee Briggs for a General Variance to permit division of Map 3A, Lot 25 into three (3) parcels as originally conveyed to Mrs. Curran in 1975. The parcels were merged by the Town of Casco during a revision to the Zoning Ordinance. The property is located in a Residential District.

Chairman Sawyer states the following information for the record:

1. Please recognize all statements through him.
2. Please introduce yourself before speaking.
3. Applicant will receive a written Decision within 7 days of this meeting and has 45 days to appeal to Superior Court.
4. Applicant may stay for the Decision but cannot in any way participate in this part of the meeting.

5. If approved, the applicant will receive a Certificate of Zoning Variance Approval with the Notice of Decision and has 90 days to record it in the Registry of Deeds. If you do not meet the 90-day limit, the Decision is automatically void and you cannot appeal for one (1) year.
6. A permit secured by vote of the Zoning Board of Appeals under the provisions of this Ordinance shall expire if the work or change involved is not commenced within one (1) year of the date on which the appeal is granted, and if the work or change is not substantially completed within eighteen (18) months of the date on which such appeal is granted.

### **EVIDENTIARY**

Larry states the application before the Board is the result of a requirement in the Town Zoning Ordinance which required that vacant lots in the same ownership that were adjacent be merged into a single lot. This ordinance change took place several years back.

Larry states the Board is in receipt of the application submitted by Jonathan Berry along with a recorded plan of the development, copy of the deed and a copy of a sketch plan.

Larry asks Jon Berry to present this matter to the Board. Jon states that the application is complete and he will answer any of the Board's questions. Jon states that during the notice process, most of the calls he received were from abutters asking where the lots were located. He continues, that he created a map for himself and there are three (3) in blue not on their list so he doesn't know where the glitch is in the process. Others who had multiple lots at the time the ordinance was changed were afforded an opportunity to take action to preserve those separate lots, while Mrs. Curran did not receive such an opportunity in the absence of notice that the action would take place. All we are asking is for an opportunity to create ownership to protect the three (3) parcels as originally conveyed to Mrs. Curran.

Larry asks if there is a notice requirement regarding the merging of the lots. Jon states not in the statutes, but in our ordinance 3.3.1 B it states:

“No request for amendments or changes shall be referred to the Selectmen for inclusion on the Town Meeting warrant until the Planning Board has held a public hearing on that request, notice of which shall be at least ten (10) days prior to such hearing in a newspaper of general circulation in the Town of Casco and to all abutters of the affected property if a zoning change is being considered”.

Larry asks Jon if he knows when this provision was first enacted. Jon states he is not sure; it is difficult to trace it.

Jon continues that he spent a substantial amount of time with David Morton to determine if there was notice and as best he could tell, there was no notice given to Mrs. Curran at that time.

John asks if we have received any written communication for abutters to this parcel. John is advised we have not received written communication from anyone.

Jon states if we were not talking about approved and recorded plans this would be a different matter. Without written notice Mrs. Curran was not given the same opportunity as other land owners.

Donna Lovely states she owns the lot across from Mrs. Curran. She, too, originally had 3 lots on the corner. She received notification that the 3 lots were in the same name and she had no choice, all 3 lots would be combined unless one was sold or transferred to another owner. She continues, she had to sell one lot to her husband, put it in trust or whatever to be able to keep those lots. What we ended up doing was give one piece to our son-in-law and made 2 lots out of the original 3. This was not something we wanted to do, but we had to do because of the ordinance change.

Donna continues that if the Board is going to give Mrs. Curran her original 3 lots back, will that mean they have 3 lots they can build on rather than one? What does this mean and if that's true, why can't she have her 3 separate lots and 3 buildings? No one offered her a variance. Donna states she does not feel it is right that she and others who had to combine their lots and do things to preserve the property and abide by the Town Ordinance while years and years later someone can apply for a variance to reverse the combining of lots. She will do the same if this is approved so she can have all her lots again as well.

Richard Lovely states he owns one of the lots which he was forced to own. If this goes through, he wants his lots back so he can sell one.

Ed St. Pierre states he agrees with what Mr. & Mrs. Lovely are saying and it is unfair.

Kerry Keefe states he is a direct abutter and is familiar with the property as he maintains the property. He continues that 3 houses on those lots, the environment just wouldn't withstand that situation. He continues that he is concerned about water and septic as well as the layout of the whole development going down the street would be out of character.

Marla Keefe states that over the years she had talked with Mrs. Curran about buying the property from her. At no time did I ever say I wanted a part of the

property or one lot, I always referred to it as one large lot. Mrs. Curran never stated it was 3 lots.

Ed St. Pierre states that you put 3 houses with 2 cars each down there and it will be detrimental to the road much quicker than 1 house. He continues that the road maintenance costs come out of each individual's pocket.

Larry asks Elwin if he remembers when this ordinance took effect. Elwin states he thinks it was the early 1990s. Larry states it was also know as the "Lawyer Employment Act" because all the towns did this around the same time and people were scrambling to create trusts or transfer property to preserve their lots.

Jon states that Mrs. Curran shares the abutters' concerns. She was deprived of the opportunity to retain a lawyer or divide into 2 lots. He continues, as we swore to in the application, she has no intention to build on these lots, she is trying to get her affairs in order and wants to have the property back in the 3 parcels to leave to her nephews. Jon states Mrs. Curran is concerned about being penalized by a Town error.

Richard Lovely states he does not think it is a Town error; these lots are all the same. He points out that Lot #14 is almost the same as Lot #25, etc. He continues that the measurements are incorrect and they have been for years; they are all within the same size.

Donna Lovely states she thinks there should be some kind or agreement that if there is going to be a building on this lot, that there would be only one building or something like that. She continues that she doesn't know how they can have further division down there. There is the road maintenance issue and all kinds of stuff – traffic, atvs, she states she doesn't know how you would even set up 3 more homes on Oak Street. Donna asks what the minimum lot size is now for a lot. She is informed it is 80,000 square feet.

Jon states that no matter what happens with the property, it would have to come before this Board for a Conditional Use Application as this is still a non-conforming lot; under no circumstances is a builder going to be able to come and get a building permit.

Elwin states he believes Mr. Berry is wrong. Our ordinance shows that if it can meet the set backs, it is able to be built if it is grandfathered.

Ed St. Pierre asks how many square feet are there in a half-acre lot. Elwin states that our ordinance is a "builder's acre" which is 40,000 square feet, therefore a half-acre would be 20,000 square feet. Ed states that if combined it is 60,000 square feet, what is the purpose of dividing it back to 3 20,000 square foot lots?

An audience member states that it would be grandfathered to build on those lots.

Larry states it had been 3 lots, then Town Meeting voted to merge vacant lots. Legally, the deeds are 3 lots, but the Town recognized them as one.

Larry closes the Evidentiary portion of the meeting and immediately opens the Deliberation portion.

### **DELIBERATIONS**

Larry asks the Board what they wish to do.

John states, speaking for himself, he would like to see it stay as one lot. Further he states he doesn't think the Town is under an obligation to send notice out simply as someone once said, we can't please everyone all the time. John states it is his feeling that granting this variance would create further problems.

Larry states he doesn't think we necessarily have to give personal notice to everyone in the Town. Notice would have been circulated in the newspaper and through others who suffered as a result. The Town approved the ordinance at a vote and we are here to enforce our ordinances. He continues, he gets the feeling this will be denied and hopes the nephews can get together.

Sue states she agrees with both John and Larry.

John moves to deny the variance request.

Sue seconds.

Any further discussion? None.

All in favor? 3 yes – 0 no

Jon Berry requests the Board to make findings on each of the criteria for hardship.

Larry states, okay; let's do that and begins to address the hardship criteria with the Board:

If you think the property can yield a reasonable return without granting the variance, please raise your hand. Sue and John are confused; Larry rephrases:

Do you agree the property can not yield a reasonable return as it is? Sue states she does not agree; John states he does not agree and Larry also does not agree.

Do you agree the variance is due to the unique circumstances of the property and not the general conditions in the neighborhood? Sue disagrees; John disagrees and Larry disagrees.

Do you agree the granting of the variance will not alter the essential character of the locality? John disagrees, Sue disagrees and Larry disagrees.

Do you agree the hardship is not the result of action taken by the applicant or a prior owner? Sue agrees, John agrees and Larry agrees.

Larry states in order to grant the variance, the Board is required to find all of these criteria apply. In this instance, only one of the criteria applies. The variance is unable to be granted.

Larry moves to adjourn.

Sue seconds.

Any discussion? None.

All in favor? 3 yes – 0 no