

Zoning Board of Appeals

Scott Murphy, Chair
Mary Kate Daly
Shannon Greenwell
Al Porro
Michael Sheehan



**Director of Community
Planning and Economic
Development**

Paul Halkiotis, AICP

Assistant Planner

Sarah Dixon Bouchard

December 7, 2021

Minutes

Present: Scott Murphy, Chair
Shannon Greenwell
Mary Kate Daly
Paul Eysie
Ben Beutel

Call to Order: The virtual meeting was called to order at 7:00 p.m. by the Chairman, Mr. Scott Murphy.

Mr. Murphy stated that Mary Kate Daly would be filling in on the agenda's hearing for Michael Sheehan, who was unable to attend. Ms. Bouchard confirmed that Ms. Daly had submitted her signed Mullin Rule form. Ms. Daly confirmed that she had viewed the entire hearing from November 9 2021.

Public Hearings:

Case #21-23 Shaw Street (continued from November 9)

David Hern Jr., Esq., attorney for the applicant, summarized the request for the variance and the efforts that had been made since the continuance was issued. He stated that the applicant had discussed the proposal with abutters. Concerns expressed by abutters included height, drainage, construction noise and street conditions. Mr. Hern responded to these concerns, explaining that the application was not seeking relief from the height limit in the bylaw's dimensional requirements, that no known drainage issues are present, that a pre-blast survey would be the responsibility of the builder should ledge become an issue, and that he had discussed the street condition with Andy Murphy in the Town's Engineering Department.

Mr. Hern referenced previous decisions of the town on Pleasant and Rock Streets and stated that the town has repeatedly granted variances to create lots without frontage.

Mr. Hern stated that the subject parcel was reduced in frontage by takings from adjacent lots, and that half of the parcels on Shaw Street do not meet frontage requirements. He asked if the frontage requirement serves any public interest in the parcel under consideration.

Mr. Murphy asked if the other lots referenced had variances for frontage. Mr. Hern described variances for other dimensional requirements. He referenced a case that went to the SJC in 1982, where the SJC upheld a view that town zoning cannot deprive the owners from all practical value in the land, leaving owners with only burden of paying taxes on it. He described his clients' lot as unusable to the current owners.

Mr. Hern referenced a 1998 SJC case where a ZBA decision to grant a variance for a lot subject to taking of land from the MBTA in order to allow the lot to be buildable. Mr. Hern stated that it is obvious in the 1966 land division for the subject parcel that the Planning Board intended to make it a buildable lot.

He stated that granting the variance will generate income for town, put the lot to use, and prevent visual blight from lack of maintenance.

Mr. Murphy stated that the proposal is still missing one factor, and there is no unusual soil/shape/topography. He refuted the suggestion that the zoning represents a taking by the town. He stated that the Board is not bound by past precedent.

Mr. Hern said the cited cases are zoning cases. Mr. Murphy responded that the case before the Board needs to meet the requirements and is not a taking. Mr. Murphy says every variance that is not granted may limit the use of the property. Mr. Murphy stated that the applicants purchased the lot as is, and even though they did not create the conditions, the lot itself has not changed since current ownership.

Mr. Hern replied that the current owners bought the lot in accordance with the 1966 plan showing a buildable lot. Mr. Murphy responded that in 1966, the lot would need a variance, which Planning Board did not have the authority to grant.

Mr. Eysie, Ms. Greenwell and Mr. Beutel had no further questions.

Ms. Daly asked about the cited cases and their connection to this case where lot shape requirements are concerned. Mr. Hern replied that in this case, there is no particular uniqueness about the shape itself, but that the shape was created due to takings and the 1966 land division, as in the Adams case.

Mr. Murphy opened the hearing to the public for comment.

Patricia Russo, 13 Shaw Street, stated her objection to the variance based on concerns of water table disturbance, ledge, and pest infestations

Carol Ryan, 24 Shaw Street, stated her concerns about the water table and ledge. She questioned the history of Shaw Street as a private/public way. Mr. Hern responded that it is an accepted way as of 1913 and that neighbors should call Andy Murphy with questions.

Mr. Giampa, property owner, stated that he doesn't think there is ledge.

Giovanna Serratore, 12 Shaw Street, stated concerns about the new structure, street overcrowding, road condition and water utilities to the site.

Motion:

Ms. Daly made a motion to close the hearing. Ms. Greenwell seconded the motion. A roll call vote was held and the motion carried 5-0.

Mr. Eysie asked to confirm that the 1966 plan represented two new lots created by the Planning Board. Mr. Murphy responded that is what the plan seems to say, but a variance would still have been needed. Mr. Eysie stated his view that homes on the street have similar dimensions and it would be unfair to the applicant not to grant the variance. He stated that the lots were created by Planning Board.

Mr. Murphy stated that the Board has to consistently apply variance standards.

Ms. Greenwell stated her agreement that the variance doesn't seem detrimental to the neighborhood, and that the vacant lot actually looks out of place. She asked Mr. Murphy about any certain cases he intends to be consistent to.

Mr. Murphy responded that he is trying to be consistent to the bylaw, which should be applied to all cases.

Ms. Greenwell stated that there is public good to create more housing, especially that which is in context with the neighborhood.

Mr. Beutel stated his view that the history of ZBA acting on lot shape considerations isn't strong. He stated that all criteria must be met for a variance and this application does not satisfy all criteria.

Mr. Hern asked for a one minute opportunity to discuss with client.

Mr. Hern returned and submitted a verbal request to withdraw the application.

Motion:

Ms. Greenwell made a motion to grant leave without prejudice. Mr. Eysie seconded the motion. A roll call vote was held and the motion carried 5-0.

Approval of Meeting Minutes –

Motion:

Ms. Daly made a motion to approve minutes for 10/12/21. Ms. Greenwell seconded the motion. A roll call vote was held and the motion carried 5-0.

Motion:

Ms. Greenwell made a motion to approve minutes for 11/9/21. Mr. Eysie seconded the motion. A roll call vote was held and the motion carried 5-0.

Administrative Updates

Ms. Bouchard gave updates about meeting space and upcoming applications for January.

Adjournment

Motion:

Mr. Beutel made a motion to adjourn. Ms. Greenwell seconded the motion. A roll call vote was held and motion passed 5-0.

The meeting adjourned at approximately 8:33 p.m.