

Petitioner: Vernon and Linda Hartwell
Case No. 917A
Date Filed: January 23, 2019

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The Littleton Board of Appeals conducted a public hearing on February 21, 2019, at the Shattuck Street Municipal Building on the petition of Vernon and Linda Hartwell to appeal the Building Inspector's Decision of January 23, 2019 through town counsel that vacant lots owned by Vernon Hartwell as Trustee of Rainy Day Realty Trust had merged with the abutting house lot owned jointly by Vernon Hartwell and Linda Hartwell, or in the alternative to grant them a variance as to the vacant lots at Grove Road and Washington Drive, Littleton, Ma. Notice of the hearing was given by publication in the Lowell Sun and the Littleton Independent, newspapers circulated in Littleton on January 25, 2019 and February 1, 2019 and by mail to all abutters and parties in interest. Present and voting: Sherrill Gould, Chairman, Member, Rod Stewart, and Alternates John Sewell and Jillian Shaw.

The petitioners, represented by Atty. Robert Markley, explained that they were appealing the determination of Town Counsel transmitted through the Building Inspector's department, that lots they submitted for "grandfathered" small lot determination had merged with their house lot and were therefore not "grandfathered" and not buildable. They also presented an alternative request that if the Board upheld the determination of the building department, then Petitioners were seeking a variance for the vacant lots based upon hardship.

The history of the property is that Vernon and Linda Hartwell acquired 30 Dahlia Drive, a single family residential dwelling on a lot approximately 10,000 square feet in size, in 1981. Vernon Hartwell as Trustee of Rainy Day Realty Trust subsequently purchased abutting Lot U17-341 ("Parcel 1"), containing approximately .138 acres, as a vacant parcel of land in 1989 from Pauline Hooper. On advice of counsel, they were instructed to take title in a trust which was created for the purchase and which intentionally did not have a common interest with the husband and wife tenancy on their abutting home. In 1990, the Trust again purchased a vacant lot of land, U17-366 ("Parcel 2") from the Town of Littleton, acquired in tax title. This lot was approximately .166 acres and did not abut the home, but did abut the "Parcel 1". There were no stated restrictions on the deed to that parcel. In 2013, the Trust purchased another vacant parcel via the Abutter Lot Sales Program, Lot U17-365 ("Parcel 3"), which contained .1 acres. This lot did not abut the house lot but did abut Parcel 1 and Parcel 2. The deed to that parcel stated specifically that "the Property (Lot 365) shall be combined for purposes of future conveyances with the abutting property owned by Grantee (ergo, Rainy Day Realty Trust), located on Grove Road, Littleton, Ma.,Lot 341....and 366..." Nowhere did it state that it was to be merged with the house lot of Vernon and Linda Hartwell. Additionally, there was a restriction that "the Property may only be used for....garden, side-yard, landscaped open space...parking...septic...or an addition to the existing structure located on the abutting lot (which was Lot 341 and Lot 366)".

The three vacant lots combined have 17,600 square feet of area and more than 50' of frontage. The deed to Parcel 3 by its terms merged the 3 vacant lots but was silent on

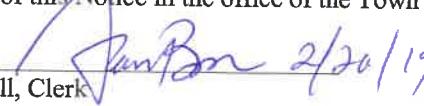
the question of merger of the vacant lot or lots with the house lot. When counsel for the town rendered his opinion that the lots had merged, his letter referenced two specific reasons for the merger with the house lot. The first was a citation to the 1989 case of *Planning Board of Norwell v. Serena*, 27 Mass. App. Ct. 689 (1989), a case that essentially redefined the way cities and towns treated the merger of vacant lots after 1989; and he cited his opinion that the vacant lots were under common control with the house lot, although his letter stated that when he asked about the details of the trust, it was not furnished to him.

The Building Department did not send a representative to challenge the appeal but submitted a letter explaining the history, without taking a position. One abutter appeared only to ascertain that the Petitioners were not creating a subdivision of more than one additional building lot.

FINDINGS: The Board found that the Petitioners had exercised due diligence in the face of the law in effect in 1989 to distinguish the first acquired vacant lot, Parcel 1, as a separate and distinct ownership entity from their house lot and that at no time since or prior was the lot (Parcel 1) contiguous to the house lot ever held in common ownership with the owners of Petitioners' house lot. The Board found that the Rainy Day Realty Trust was controlled solely by Vernon Hartwell and not by husband and wife, and therefore, the sole Trustee, Vernon Hartwell, could convey or encumber the vacant lot (Parcel 1) separately from the house lot and without the consent of the wife at any time, a controlling interest, which the Board found was separate and distinct from the ownership of the house lot, which required husband and wife to join in any instrument of conveyance. The board further found that the Town, by its own, restrictions, had established a merger of the 3 vacant lots (Parcels 1, 2, and 3) but not any of them with the house lot, and therefore, those 3 lots, always held in separate ownership by the Trust would and should continue to exist as a separate and distinct lot, provided, however, that the smallest lot, (Parcel 3) could not be used to site a house. Finally, the Board stated that the size of the lot as combined (17,600 s.f.) was consistent with the neighboring lots and others which have received "grandfathered" status in the past. The Board found that the history of the lots and their acquisition did qualify them for "grandfathering" but not for a variance.

DECISION: The Board voted unanimously to DENY Petitioner's request for a Variance, but to GRANT the appeal of the Building Inspector's decision, provided that Parcel 3's restrictions as to use of that parcel would remain in effect and that the 3 vacant lots, U17-341, 365 and 366, had combined to form one "grandfathered" building lot.

Appeals, if any, shall be made pursuant to G.L. 40A, Section 17 and shall be filed within twenty days after the date of filing of this Notice in the office of the Town Clerk.

Signed: 
Alan Bell, Clerk

Dated: February 25, 2019
Deed Reference: Book 61310, Page 548

Book 19589, Page 241
Book 20852, Page 66.

I hereby signify that twenty days have elapsed since the filing of the above decision by the Board of Appeals and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

True Copy Attest:

Town Clerk

Littleton, Massachusetts