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9/3/2020 1:10pm
Klaude Dowey

Petitioner: Charles Bell
Case No. 925A
Date Filed: May 14, 2019

The Littleton Board of Appeals conducted a continued virtual hearing on August 20, 2020, at 7:50 PM via the Zoom program hosted by Littleton Community Television, Shattuck Street, Littleton, for an Appeal under Section 173-167 from an Order of the Assistant Zoning Officer ("Zoning Officer") to Cease and Desist alleged Zoning Violation at 474 Great Road, Littleton. Notice of the hearing was given by publication in the Littleton Independent, a newspaper circulated in Littleton, on May 31, 2019 and June 7, 2019, and by mail to all abutters and parties in interest. Present and voting: Members, Sherrill Gould, Cheryl Hollinger, Rod Stewart, Marc Saucier, and John Sewell, Members. Present and not voting were Alternates, John Field, Kathleen O'Connor and Jillian Shaw.

The Petitioner, originally represented by Attorneys David M. Rosen, presented evidence that the Zoning Officer issued a determination that Petitioner was conducting a home occupation in a residential zone which had exceeded the statutory limits of home occupation under the Zoning Bylaw. Counsel reported to the Board that the history of the property was that at Town Meeting several years earlier, that property was "rezoned" into the Beaverbrook Overlay District, allowing the underlying use, as well as business use, and that the rezoning was a *quid pro quo* to enable the Point, a commercial development across the street to proceed.

In fact, Petitioner had surrendered some of his land in a friendly "taking" to cooperate with the Point, a development the Town favored. Unfortunately, it was discovered in researching for this appeal, that when the Town Meeting voted the zoning overlay change, it was overlooked that the properties in the overlay district require a minimum of 3 acres and Petitioner's land was under an acre. The Board took notice that the 3 acre limitation was overlooked as an unintended consequence of the Town Meeting vote, and suggested Petitioner apply for a dimensional variance for the undersized lot. The Board, with agreement of the Petitioner, agreed to continue the matter on several occasions to enable the variance and any other permitting actions to take place.

Subsequently, Petitioner applied for and obtained a dimensional variance as to the 3 acre lot size and began the process of applying to the Planning Board for site plan approval. There followed a change of counsel due to a tragic death, and Attorney Paul Alphen appeared on behalf of the Petitioner at the hearing on August 20, 2020.

Attorney Alphen submitted a letter stating that the Littleton Zoning Bylaw, Section 173-5, limits the powers to be exercised in relation to "cease and desist" and compliance and enforcement orders to the Building Inspector, and absent a Town Meeting Vote conferring that power on an assistant, the Assistant Zoning Enforcement Officer lacks authority to issue such orders.

Town Counsel opined by written letter, that Counsel for the Petitioner was correct in asserting that limitation and the Board was without the power to uphold the enforcement orders of the Assistant Zoning Enforcement Officer.

No abutters appeared in opposition.

The hearing was closed for deliberation.

FINDINGS: The Board found that there was no authority to review the actions of the Assistant Zoning Enforcement Officer and that the matter was moot.

DECISION: The Board grants the Appeal of the Petitioner, finding that the Order from the Littleton Building Department of April 2, 2019 is null and void.

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: 
Sherry Gould, Chair

Dated:

Deed Reference: Book 50495, Page 15.

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