



Office of the  
LITTLETON BOARD OF APPEALS  
Littleton, Massachusetts 01460

received  
9/10/14 11:20AM  
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Petitioner: Michael and Colleen Lelievre  
Property Address: 76 Tahattawan Road  
Case No: 834A  
Date Filed: August 4, 2014

The Littleton Board of Appeals (the "Board") conducted a public hearing on August 21, 2014 at the Littleton Town Offices, 37 Shattuck Street, Littleton, MA on the petition of Michael and Colleen Lelievre for a Variance pursuant to the Town of Littleton Zoning Bylaws Section 173-27 and 28 for relief of road frontage at 76 Tahattawan Road. Notice of the hearing was given by publication in the Littleton Independent and the Lowell Sun, newspapers circulated in Littleton, on August 7 and 14, 2014 and by mail to all abutters and parties in interest. Present and voting were Acting Chair, Vice Chair William Farnsworth, John Cantino, Jeff Yates, Members, Marc Saucier and Rod Stewart, Alternates. Present but not voting was Alan Bell and Patrick Joyce, Alternates.

Submitted with the application were:

- Letter to the Board dated July 22, 2014 from Mark C. Darling, Counsel for the petitioners
- Written Statement of Michael and Colleen Lelievre In Support of Request for Variance, dated July 2014
- Attachments, EXHIBIT 1 – 9, which includes the Deed, Plan (September 10, 1979), Mortgage Inspection Plan (June 9, 2005), Littleton Assessor's Plan, Littleton Building Inspector's Records of Permits, Judgment of Land Court, Decision of Land Court on Summary Judgment dated October 5, 2010, Decision of Land Court after Trial dated April, 6, 2012, and Plan of Land dated June 26, 2014.

Submitted to the Board prior to the Hearing:

- Letter to the Littleton Zoning Board of Appeals dated August 9, 2009 [sic] ("Rec'd 8/11/14 for Appeals Board MA Toohill") from Julyann Westby Allen and David G. Allen with Attachments; Affidavit Pursuant to G.L. c. 183, Section 5B which includes Exhibit A: Judgment dated April 12, 2012 and Exhibit B: Decision (Summary Judgment) dated October 5, 2010.
- E-mail from Theresa Schwulst to Michelle Cobleigh, dated August 21, 2014 for the Littleton Board of Appeals with letter attached.

The letter to the Board from Julyann Westby Allen and David G. Allen (the "Allens") states that they "will not be able to attend and are requesting that this hearing be postponed until your September meeting". The letter includes "we wish to comment on the petition of the Lelievres". Mr. Mark Darling, Esq., representing Michael and Colleen Lelievre (the "Lelievres"), in an email dated August 15, 2014 and in person at the Hearing, objected to the continuance and specifically requested that the Hearing go forward as originally scheduled. Mr. Lelievre was in attendance and agreed. The Board recognized that the Allens had submitted several documents with information and that several points of interest were presented. The Hearing continued.

Mr. Darling presented the petition with an outline of the many years of legal issues over the ownership of the property and summary of the court cases. The Lelievres were advised when they purchased the property that the frontage satisfied the Littleton Zoning Bylaws when the house was

originally constructed, a Building Permit was issued March 18, 1981 with the "Final Occupancy Approval" signed 8/16/84. Mr. Darling stated that the original purchase of the property and creation of the lot was in 1979. At that time the property was recognized to meet the Littleton Zoning Bylaws 173-28 "Street frontage exception" with "lot shall have frontage of at least thirty-five (35) feet". In the court case of 2006, the Land Court determined that the frontage was not owned by the Lelievres. The Allens filed a law suit in land court in 2006 with Final Decision in 2013 with determination that the front portion of the Lelievre's lot, which provided the frontage for purposes of the Zoning Bylaw, was actually owned in fee by the Allens. The Decision indicated that Lelievres retained the right to access the remaining portion of what was previously understood to be their lot by way of a ten (10) foot wide easement. Mr. Darling and the Lelievres are requesting a variance from the frontage requirement to allow the lot with zero (0) foot frontage but with a ten (10) foot easement so to allow the continued residential use of the property. Mr. Darling indicated that the shape of the lot with 3.5 +/- acres of land and no frontage created a hardship such that the owners would not be allowed use of the property. Further, the lack of frontage has resulted through no fault of the Lelievres; the lack of frontage is instead a result of the Land Court's ruling, which was based on title matters that predated the Lelievres' involvement with their lot.

The letter from the Allens commented on the petition and was discussed by the Board. They asked "their (the Lelievres) property is already non-conforming so why are they coming before the board to attain the same status?" The Allens, further, outlined the creation of the lot and the subsequent court cases. The Board recognized that any Petition submitted must be heard and a decision made.

There were no town officials at the hearing and no comments received.

Terry Schwulst and Neil Johnson submitted a letter to the Board via e-mail (received 8-21-14). They state that they "have lived at 59 Tahattawan Road since July of 1990. Although the neighborhood has seen some changes over the years, one thing that has been there is the driveway at 76 Tahattawan Road."

**FINDINGS:** The Board made the following findings:

1. The lot was created in 1979. A Building Permit was issued March 18, 1981 with Final Occupancy Approval signed on 8/16/84.
2. The lot has been used as the site of a single-family residence since that time.
3. Michael and Colleen Lelievre purchased the property and home on June 30, 2005 with a deed and plan showing frontage along Tahattawan Road and were advised that the frontage satisfied the Littleton Zoning Bylaws when the house was constructed.
4. The Allens filed a case with the Land Court in 2006 claiming that they owned, in fee simple, a portion of the lot. The portion that the Allens claimed to own included the area of the lot used to provide frontage for purposes of zoning. The Land Court ultimately ruled that the Allens owned this area in fee simple. As a result of the Land Court's ruling, the Lelievre's lot now has no frontage on Tahattawan Road or any other street.
5. The lot as originally laid out has a pork-chop shape that is unique and not characteristic of other lots in the area. The lot as it exists as a result of the Land Court's ruling also possesses an odd shape that is not characteristic of the other lots in the area, including but not limited to the fact that does not have frontage on any street, only access by means of the easement.
6. A literal enforcement of the frontage requirement will result in hardship. Specifically, this lot established in 1979 and used for residential purposes since 1984 will become unlawful for lack of frontage.
7. This hardship resulted through no fault of the Lelievres.

8. The granting of the requested variance would not allow some new use or new development that would impact the Allens. It would allow the residential lot to exist lawfully despite the lack of frontage, and would allow the longstanding residential use to continue. The Board did not find any harm that would occur to the Allen's use of their property as a consequence of requested variance.
9. The site is appropriate and no significant nuisance, hazard or congestion will be created and that there will be no substantial harm to the neighborhood or derogation from the intent of the bylaw. As noted, the grant of the variance will allow the owners to continue the longstanding residential use of this lot, which more than satisfies the area requirements under the bylaw and for which practical access is ensured by way of an easement. The lot is in a purely residential neighborhood and the continued use of this lot for residential purposes is in harmony with intent of the Zoning Bylaw.

DECISION: The Board voted unanimously to GRANT, under Section 173-27 and 28 of the Town of Littleton Zoning Bylaws, a Variance from the required frontage to zero (0) feet for 76 Tahattawan Road, and to allow the continued residential use of the property.

Appeals, if any, shall be made pursuant to M.G.L. C. 40A, Section 17 and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Town Clerk.

The Variance shall not take effect until a copy of the Decision bearing the certificate of the Town Clerk is recorded with the Middlesex District Registry of Deeds in accordance with the provisions of M.G.L. C. 40A, Section 11 and 15 stating that twenty (20) days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal has been filed it has been dismissed or denied.

If the rights authorized by this Variance are not exercised within one (1) year from the date of granting it shall elapse in accordance with the provisions of M.G.L. C. 40A Section 10.

Signed: Jeff Yates Jeff Yates, Clerk

Date: 10 SEP 2014

Book: 45525, Page: 526

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I hereby certify that twenty (20) 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: \_\_\_\_\_ Print name  
Town Clerk, Littleton, Massachusetts

Date: \_\_\_\_\_