

Amesbury Zoning Board Meeting
Amesbury City Hall Auditorium, 62 Friend Street
Thursday, April 26, 2012

Present: Matt Sherrill, Chair, Donna Collins, Sharon McDermot, Olyce Moore, Ben Osgood, Jr., and Bill Lavoie

Absent: Bob Orem, Sandy Gordon,

Also Present: Denis Nadeau, Building Inspector; Susan Yeames, Recording Secretary

Chairman Matt Sherrill opens the meeting at 7:30 p.m.

Elaine & David Irvine, 17 Ash St., are seeking a **VARIANCE** under Amesbury Zoning Bylaws Section VI, Paragraph B; Table of Dimensional and Density Regulations, to construct a 16' x 20' addition for a family room with insufficient rear and side yard setbacks at **17 Ash Street**, Amesbury in an R-8 Zoning District, Precinct 1.

Sitting on this case – Ben Osgood, Sharon McDermot, Matt Sherrill, Donna Collins, and Olyce Moore.

Hank Tucker, builder, representing David and Elaine Irvine

They would like to put a 16 x 20 addition on back of house. They would like to start a family, house is small, odd shaped lot. Already have a variance for in law apartment for mother & father. Father has passed, would like to create a single story family room.

Matt Sherrill questions from the board? None

I stopped by the property. I sat on this board the last time this property came before us and I certainly understand economics as they are currently. It's not easy to sell and buy new when you want to expand a family. Many people have to make due with what they have. My problem is that I don't like to see the house completely envelop the entire piece of the property. We gave them a variance to construct an addition out front now they want a variance to put add out back. It just seems like there's a lot of building for the lot.

Hank Tucker it's an odd shaped lot and with the set backs this is the only thing they can do.

Matt Sherrill I understand that but do they really need everything they are asking for? Is this going to be a one-story or a two story addition?

Hank Tucker single story, no basement.

Matt Sherrill slab

Hank Tucker no on piers. I don't think they can go up any higher than they are now.

Matt Sherrill this will be a family room. What about bedrooms.

Hank Tucker they have two bedrooms upstairs and the in-law apt is a bedroom kitchen bath and the mother lives there.

Matt Sherrill if and when the mother is no longer with them, what is the plan? Under our bylaw if it's no longer being used as an in-law it has to be taken apart decommissioned so to speak. It troubles me that the house is going to cover so much of the lot.

Hank Tucker the inside of the house is small.

Matt Sherrill does anyone else have anything to say.

Ben Osgood I assume the addition is going on the back of the house.

Hank Tucker yes

Ben Osgood there is a slider there now

Hank Tucker yes – there was a deck, they took it off.

Ben Osgood what were the dimensions of the deck?

Hank Tucker 12 x 16

Ben Osgood pretty much the same addition as the requested addition. Did they have a permit to do the deck?

Hank Tucker I believe it was, there was a swimming pool on the end of it. They are only going out 4 feet more than the original deck. Did you get a copy of the updated survey?

Matt Sherrill out behind the house – is that woods

Hank Tucker woods and brush

Matt Sherrill are there wetlands?

Hank Tucker no, there are wetlands further up the street, nothing behind this house.

Matt Sherrill questions? None

Donna Collins moves to close & discuss, Second by Sharon McDermot.

Matt Sherrill anyone from neighborhood who wished to speak?

Denis Nadeau, Building Inspector/Zoning Compliance Office for the City. I would like to remind you about the case we discussed last month. This is now considered a FINDING not a variance. Even though they create a new non-conformity it's a preexisting non conforming structure. Any pre-existing non-conformity is heard as a Finding.

Matt Sherrill when was this house built. It says 1978 but that is a sale date. Based upon the field card, it is not a pre-existing non-conforming structure. It was built after zoning was put in place so we will still consider this a Variance. How do you feel about the addition as a board?

Donna Collins no problem it's close to the size of the deck and there are woods behind.

Sharon McDermot I agree

Ben Osgood feels the same way

1. The substantial hardship is the shape of lot
2. How is it due to the soil, shape or topography of the land or structures? – again shape of lot is triangular.
3. It does not generally affect the district
4. There would be no detriment to the public good if the variance were granted
5. The petition does not derogate from the intent of the bylaw

Motion by Sharon McDermot to close and vote. Second by Donna Collins

Olyce Moore - yes

Donna Collins – yes

Matt Sherrill - yes

Sharon McDermot – yes

Ben Osgood, Jr. – yes

The application for FINDING has been approved. Two weeks to file with Clerk, 20 day appeal period thereafter.

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**Ghamami Rev. Trust, Sheila E. Grant, Trustee, 10 Valley View Way, Methuen MA 01844** is seeking a **SPECIAL PERMIT/FINDING** under Amesbury Zoning Bylaws Section XI, Paragraph K.1; Residential Conversions to convert a two-family dwelling into a three-family dwelling at **209 Main Street, Amesbury** in an R-8 Zoning District, Precinct 6.

Sitting on case: Bill Lavoie, Olyce Moore, Donna Collins, Sharon McDermot, Matt Sherrill

**Thomas Neevy** – land use planner, represents the trustee  
Intent is to convert 209 Main Street, a 2-family to a 3-family. Previous owner had 4 units some demolition involved. Renovate historic building. Site plan submitted showing exterior plan and a unit plan for interior remodeling – shows the site plan garage and apart in rear have been removed as well as shed & outbuilding. If approved will develop as condo. There will be sections of the exterior property set up for each proposed condo. Front of building will be common land. It will bring value to the property. There will be no additions to the building. Want to create 6 parking spaces. There are 4 now. There is 12,800 sq. ft lot less building on the property. Added parking have 60% open area shows interior plan. 1<sup>st</sup> floor 2,000 sf, 2<sup>nd</sup> floor 932 sf 2 bedroom, 3<sup>rd</sup> floor 1,000 sf 2 bedroom. The basement will be segmented into laundry area and storage areas. All new furnace and substantial renovation drive way look tight they can back up and turn around without backing out onto Greenwood. It all meets the turning standards.

**Matt Sherrill** Questions for the Board? Public??

**Julie Nedelka**, 207 Main Street - The exclusive yards will abut her property and she is concerned about what will be in the yard.

**Tom Nedelka**, 207 Main Street – what’s to become of the slab

**Thomas Neevy** - the slab will be paved over partially and the rest will be a patio.

**Tom Nedelka** outside fire escapes?

**Thomas Nedelka** All egress modifications will meet code.

***Motion by Sharon McDermot to close & discuss. Second by Donna Collins.***

The proposed change currently exists in the Table of Uses. It is desirable to public convenience / welfare. It will not create undue traffic/impede pedestrian safety. It will not overload public systems. Special Condition of Section XI have been satisfied (below). It will not impair character/health/welfare of the district. It will not create excess of use in the neighborhood.

1. Does it predate zoning? – yes built in 1960
2. How is it non conforming? – left side and rear set backs
3. Will it be more or less detrimental to the neighborhood? – less – it would be better - no change
4. Does it create any new nonconformity? – no

***Motion by Olyce Moore to move the question and vote on the application for special permit. Second by Sharon McDermot***

Bill Lavoie – yes  
Olyce Moore – yes  
Donna Collins – yes  
Sharon McDermot – yes  
Matt Sherrill – yes

The Application for SPECIAL PERMIT is approved to convert 209 Main Street from 2-family to 3-family condominium. Two weeks to file decision with Clerk, 20 day appeal period thereafter.

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Harry J. Southard, Trustee of the 438 Main Street Realty Trust, c/o Greg Southard, 497 Main Street, Amesbury MA 01913 is seeking a **SPECIAL PERMIT/FINDING** under Amesbury Zoning Bylaws Section IX, Paragraph B.1; Extension and Alteration to tear down existing barn and construct additional living space on existing footprint, enlarge living area and add a deck at **438 Main Street, Amesbury** in an R-20 Zoning District, Precinct 1.

Sitting on this item: Bill Lavoie, Olyce Moore, Matt Sherrill, Sharon McDermot, Ben Osgood

Paul Gagliardi representing the property owner. They propose to tear down an existing shed and reconstruct on footprint. House was built in 1870. It does not comply with area, frontage, left and right side yard set backs. Pictures submitted not living space plans are explained adding bedroom, bath and stairway. They are improving the property. The deck will be off the second floor. Not off the first floor. It was a 2-family prior to zoning.

Matt Sherrill Questions from the Board? Audience?

Pat Dwyer – Realtor with Caldwell Banker. What is the plan for the tarred area in the backyard?

Paul Gagliardi - Backyard changes will stay the same.

Pat Dwyer -happy with changes

Jim Dowd – 436 Main Street Pleased to see construction. Questions about the deck. Already tight quarters. Would like to see where deck will be.

Motion by Sharon McDermot to close and discuss. Second by Bill Lavoie

1. Proof that it predates zoning? – Built 1870
2. How non-conforming? - right and left side set backs, area and frontage
3. More or less detrimental to neighborhood? - less
4. Will there be a new non conformity? – no

Motion by Sharon McDermot to close and move on the application. Second by Olyce Moore

Bill Lavoie yes
Olyce Moore – yes

Matt Sherrill – yes
Sharon McDermot – yes
Ben Osgood, Jr. - yes

Application for FINDING to demolish existing barn and construct additional living space is approved. Two weeks to file with Clerk, 20 day appeal period thereafter.

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**MINUTES:**

***Sharon McDermot moves to approve minutes of March 22, 2012. Second by Donna Collins. All in Favor***

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OTHER BUSINESS

Pursuant to GL c. 40A 8 and Section X.H.1 of the Amesbury Zoning Ordinance, Roger Dieker and Susan Dieker, 448 Main Street, Amesbury, c/o Marshall Handly, Esq., Handly & Cox, P.C., 9 Abbott St., Beverly, MA 01915 hereby **appeal** the Decision of Building Inspector Denis Nadeau dated February 8, 2012, denying the request for revocation of building permit #P120100516 for **445-447 Main Street**.

All members sitting on the case.

Matt Sherrill So that the board is award of what this appeal of decision is, you are appealing the building inspectors decision that this was considered a grandfathered lot, is that correct?

Marshall Handly we are appealing his, there was a request for enforcement by Roger and Susan Dieker of the zoning ordinance which was declined by the building inspector and we are appealing.

Matt Sherrill enforcement of what?

Marshall Handly of the zoning ordinance for – it's an R-20 zone, an undersized lot that does not meet...

Matt Sherrill the building inspector determined that this was a grandfathered lot, correct?

Marshall Handly correct

Matt Sherrill and that's what your appealing, you don't like the fact that he had determined that as a grandfathered lot.

Marshall Handly we have requested the enforcement and he has declined it on the basis of his determination that it is a grandfathered lot. I have three pieces of information to hand out.

1. Decision in the case of Dowling vs. Board of Health of Chilmark
2. Excerpt of the 1971 Zoning Bylaw for the Town of Amesbury particularly the definition of lot
3. Case of Sears vs. Building Inspector of Marshfield

This is similar appeal to that of Ganson and Nancy Purcell. The Diekers live at 448 Main Street. They are concerned about the density of the proposed construction and also of traffic safety. I

offer to the board the definition of lot because that is something that and I'm familiar with Attorney Paul the town counsels opinion as well as attorney Perkins. Both of those opinions are predicated on the representation in the plan which is attached to the appeal as exhibit c and d. the representation on those plans that this lot contains 6,401 sf of land. If you look at the definition of lot it is an area or parcel of land or any part thereof not including water area in common ownership designated on a plan filed with the administrator of this bylaw by its owner or owners as ad separate lot and having boundaries identical with those recorded at the Essex county registry of deeds. I have offered you the Dowling vs. Chilmark case and I would just direct your attention to footnote 4. of that case in which the appeals courts speaks to the relevance of the bylaw definition of lot notwithstanding the fact that in the Dowling vs. Chilmark case as in the case here, we're talking ...and in any case of a 40A6 a grandfathered lot. You're talking about a lot that presumably came into existence before the zoning bylaw, before the definition. But the appeals court here points out that the definition is relevant in fact it applies. In this case, if you look at the plans C & D as to what makes up this 6,401 sf of land on which both Attorney Colling and Atty Perkins rely, you will see that a substantial portion of that land is water area. It's not dimensioned but it's included. And you'll see that because it says to tide line. The tide line is within the flow of the Merrimack River. You don't know as you look at this what the square footage of this property is that is conformant with your definition. Further, you have nothing on record in the registry of deeds and this has been stipulated by council for Mr. Coyle, there is nothing in the registry of deeds that has any indication of the meets, bounds dimensions of this parcel. There are no recorded plans, there are no recorded dimensions anywhere. This lot is only described with reference to abutting parcels. The side lines are never set out. There is nothing there that would allow you to determine where they are. If you look at the Dowling vs. Chilmark decision, the appeals court in that case says that ...

Ben Osgood - sir when you are reading would you please refer to the page so that we can follow along?

Marshall Handly I will... In Dowling vs. Chilmark on the second page actually Page 549 of the decision but it's the second page of yours. It says, first full paragraph, *The question before us is whether the subject lot was sufficiently defined as a separate lot on any recorded deed, plan or other instrument, before the Chilmark zoning bylaw took effect. You look at footnote 5 it may be that careful examination of documents in the record would reveal the boundaries of the "remainder" lot. And footnote 7 says if an exact description of the "remainder lot" is available from a perusal of one or two recorded instruments, the lot might qualify as a recorded lot.* You can peruse all the instruments you want at the Essex registry of deeds, you will never be able to identify the boundaries of this lot. There is nothing there. The only document that identifies any boundary is what I have attached to this appeal as exhibit f. this is a recorded plan at the registry and the only boundary (bottom right of plan) you'll see a boundary between lot #46 which is the Purcell lot and the lot now or formerly of A.R. Wiggs, which is one of these two parcels. And it says that sideline is 66.53 feet. If you look at the plan that is on file with the building inspector Plan D, you'll see that they show this line as the sideline as being 81.36 feet. If you look at the course that is set out on the recorded plan it says north 530049 east. If you look at the course set out on the plan that is exhibit D the plan upon which the building inspector is basing his...it's 530848 east. It's not even the same course. So this doesn't...there are no boundaries on this parcel and it's not a lot because it doesn't meet the definition of a lot. There are no boundaries on

this parcel that are, again I quote from your zoning bylaw, “that are identical with those recorded at the Essex county registry of deeds. Further, this is two parcels in common ownership. Chapter 40A section 6 paragraph 4 has two different grandfather provisions. One is for single stand alone lots not in common ownership which are grandfathered indefinitely and the other is for adjoining lots in common ownership which is 5 years from the date of enactment of the zoning ordinance that makes this non compliant. That was 1971, the five years is long gone on this piece of property. Even if you were to find by some stretch that is met your definition of lot and even if you were able to gloss over the fact that none of these dimensions, boundaries points can be found in the registry of deeds you have the 6,401 sq ft that everyone is relying on as demonstratively under water and that has to be excluded by your definition of lot. I would suggest to you that the applicant in this case...I don't waive the balance of the argument...i do believe that it is the applicant's responsibility to establish compliance with the applicable portions of your zoning bylaw and that hasn't been done here. Notwithstanding the fact that you have an opinion of council that's only an opinion. If it were counsel's responsibility to make a decision of the board to interpret and apply your ordinance then this board wouldn't even need to be here. It is up to you to look at the opinion of counsel to verify for yourself that it is based on sound reasoning and to accept or reject or apply it as you see fit. I would urge you to consider that your own ordinance which is application in terms of at least definition would suggest that this plan does not reflect compliance with the ordinance. It does not establish that this is a properly grandfathered lot and until Mr. Coyle is able to demonstrate that he can comply with the definition of that portion of the ordinance and that he does meet the requirements of 40A section 6 that the refusal of the building inspector to enforce the ordinance be overturned and that the ordinance be enforced and the building permit issued for this property be revoked subject to re-issuance upon demonstration of compliance.

Mark Griffin – Janos & Griffin represents Steven Coyle property owner

The facts of this case are identical to a previous appeal submitted (Purcell). Nothing has changed since original appeal. The Purcell's appeal to superior court was dismissed. The Building Inspector had sufficient grounds to determine that this qualified as a grandfathered lot because it had 5,000 square feet of lot area and 50 feet of frontage. The attack of the plan seems to be that portions under the Merrimack River. 6,401 s.f. to mean high water mark. Says to tide line but should be mean high water mark. Submitted a letter via email and it that letter the plan has that incorrect notation (to a tide line) and the tide line does have portions of that line that go into the Merrimack River but when calculated to the mean high water mark, it comes out to be exactly 6401 s.f. Definition of lot the deed references the bounds of lots abutting and refers to it as a lot. Submits the Purcell's deed which refers to bounds the same as the Coyle land.

Everett Chandler, Design Consultants Inc., Newburyport the area uses 6401 s.f. to mean high water and determines boundary lines. The definition of the lot is identical to what is in registry of deeds. The plan on record was the surveyor's determination. Describes his duties and defends them. Grandfather of the lots (Parcel 1 Lot 48) as stand alone has 5104 s.f. and has sufficient frontage 64' on Main Street to satisfy grandfather conditions the merger of the two one not grandfathered cannot remove the fact that the other is no longer grandfathered. Summary – little to support overturning of Building Inspectors decision. The plan concurs with building inspectors decision.

Ben Osgood what is law if the line along the river moves naturally?

Everett Chandler it's called accretion (addition of material to shoreline) and relection (removal of material from shoreline). Boundary lines change based upon those additions and subtractions. Mean low water is the boundary of the property.

Marshall Handly on Exhibit D do you see the two courses along Main Street? Did you find any thing of record to support two courses on Main Street? Questions where surveyor got specific dimensions from the registry of deeds

Everett Chandler yes

Marshall Handly what did you find

Everett Chandler the definition of the lot is vague. The process that surveyor goes through in defining the lines is to take the available evidence and records and in this case

Marshall Handly what did you find in the registry of deeds that supports a dimension of 55.4 feet for that course?

Everett Chandler I do not have a specific dimension from the registry of deeds for that course.

Hanley do you have any specific dimension for the second course of 12.54 feet.

Everett Chandler I have no specific dimension.

Marshall Handly do you have any indication from the records at the registry of deeds that the Main Street course is not a straight line? The question is...do the dimensions shown on this plan match those shown at the registry of deeds?

Everett Chandler the location of Main Street and the abutters to your side (Merrimack River) and the opposite side are the defining monuments of the location of the boundaries of this property. That is how the boundaries of this property were determined.

Marshall Handly When you look at property line between Mazzaglia and the Coyle property, did you find anything in the registry of deeds that placed that line? Mazzaglia property did not give a line.

Everett Chandler I do not have in my possession anything that definitively lays down any of the lines.

Matt Sherrill does the board need further information, clarification?

Ben Osgood the definition of lot is this lot is identical to what it was when it was created. It borders just as they say...Main Street, two properties on either side, and the river. That has been proven.

Denis Nadeau, some lots that are down on Main Street have been subdivided by the road. The courts have decided that properties, even if dissected by a road are still considered grandfathered lots. The surveyor has determined that the lot is grandfathered. He made his determination by the information submitted by a registered surveyor.

Matt Sherrill Before you is an appeal of a decision of building inspector denying the request for revocation of a building permit issued for 445-447 Main Street.

Ben Osgood makes a motion to uphold the Building Inspector's decision to deny the request to revoke the Building Permit. Second by Olyce Moore.

Matt Sherrill A yes vote will indicate that we uphold the decision of the building inspector.

Bill Lavoie - Yes

Olyce Moore - Yes
Donna Collins – Yes
Matt Sherrill – Yes
Sharon McDermot – Yes
Ben Osgood – Yes

It's the decision of the Amesbury Zoning Board of Appeals to uphold the decision by the Building Inspector to not revoke the Building Permit. Two weeks to file decision with clerk, 20 day appeal period thereafter.

MOTION to adjourn by Donna Collins. Second by Sharon McDermot. All in favor.

Meeting adjourned at 9:30 p.m.

Transcribed from audio recording
Joan Baptiste