

Present: Chairman Mathew Morton, Edna Mosher, John Frink, Russell Cooke, Richard Ford, Planner Tom Morgan.

Absent: Marlon Frink.

Meeting was opened at 7:06 p.m.

Request for Rehearing by Board of Selectmen.

This meeting called to consider a request by the Board of Selectmen for a rehearing on the matter of a lot size variance granted to the owners of a lot on Little Bay Road (Map 23 Lot 7). The Selectmen are of the opinion that development of this lot does not serve the public interest or safety.

Attorney Bernard Pelech, representing the option holder , submitted a written memorandum listing his clients reasons for opposing the request for a rehearing. He stated that to grant a rehearing of a case the Board of Adjustment must find that there is new evidence or that a mistake had been made at the time the variance was granted and, in his opinion, the Board had made the correct decision to grant a variance following two public hearings - that the five criteria had been met. Noted that the Selectmen and option holder had discussed the probability of the Town purchasing the lot with an FAA grant. However, appraisals were required in the application for a grant but appraisal could not be done while the variance and uses of the lot were in question.

Attorney John Ratigan, representing the Selectmen, stated that the Selectmen are concerned about the development of this lot, that (1) there are legal uses the lot can be put to and therefore there are no grounds for relief. (2) The standards for the Runway Protection Zone, as written, make this lot undevelopable. The base (Pease) would be required to purchase to protect the zone. (3) Funds to purchase properties are included in the Pease Capital Improvement Plan - that this is not a good location for a house due to its proximity to the Pease runway and its high exposure to noise. (4) A map of the area shows that this lot is within the Runway Protection Zone and the Selectmen are of the opinion that the variance was given for economic advantage of the owner and that this is not a fit reason to grant a variance.

In rebuttal to Mr Ratigan's statements - Attorney Pelech stated that the property had been in the Runway Protection Zone since the 60's and the previous Boards of Selectmen had done nothing to protect it but had assessed and taxed the lot as a house lot. Also, that the Selectmen were asked to state their intent to purchase in writing and to date this had not been done.

Tim Reiser, option holder, addressed the Board and stated that the Selectmen were misguided and have no argument, that the variance was not for economic advantage but a matter of what is allowed by law - the Selectmen and Attorney Ratigan should agree with the BOA decision so that appraisals can be reached. Mr Reiser stated that he would like to build on the lot but if the Town wished to purchase they should make an offer - he added that he would accept \$110,000.

Selectman Chris Cross stated that the Selectmen have discussed a purchase and sale agreement with contingencies but it is the FAA and PDA that should be making the offer as they control the zone. Mr Cross also noted that the Selectmen are very concerned about the safety issues.

At this point Mr Reiser stated that he would be willing to place the building and septic site in that portion of the lot outside the Runway Protection Zone.

John Frink stated that he was concerned that this zone (Runway Protection) was not in the Newington Zoning Ordinance and could this be spot zoning.

Lulu Pickering, daughter and neighbor, of abutter Marjorie Pickering, addressed the Board . She advised that she had contacted the owner of the property and made an offer of \$70,000, with the intent of keeping the land in conservation use but her offer was rejected. She (Lulu) feels strongly that the land has real value for other uses beside residential.

Chris Cross stated that a re-hearing is necessary and that more information is needed to develop a strategy for development of land around the Pease runway - that nothing has been built on this land since Pease Air Force Base was established.

Attorney Pelech reiterated that the owner had paid taxes on assessment of a home site.

Chris Cross stated that there are multiple airport related zones both State and Federal that overlay the town zoning and take precedent - that the Selectmen have no intention of changing the Town Zoning.

Attorney Ratigan stated that, in his opinion, the request for variance is for economic purposes and the requirement for hardship has not been satisfied.

Russell Cooke questioned if the Town and the Board of Adjustment is responsible for determining uses of this lot outside of the town ordinance - that the option holder had agreed that stipulations would be included in any deed transfer. Attorney Pelech stated that a draft of the stipulations was presented to the Selectmen. (Copy was given to Chairman Morton).

Richard Ford stated that he would like to think that there could be a resolution and did the parties need more time to work out a compromise. Mr Reiser stated that he had waited months and was no closer to a resolution and he is unhappy with the treatment he has received. He also noted that he had agreed to change his original plans to build a duplex and build a single family.

Attorney Ratigan stated that there is a process to get a fair market value and apply for a grant to purchase but it may not meet the time frame desired by the option holder.

Attorney Pelech again noted that the lot can not be appraised while variance is in question.

Sale agreement would be based on the PDA's evaluation - that the source of funds is the PDA and the Town will not pay any overage.

Mr Reiser repeated that he feels he has been treated very unfairly that the town should have protected this lot long ago and not waited until development is proposed.

Chairman closed the meeting to public input at 8:20 p.m. and requested opinions from the Board.

On a motion by Russell Cooke, seconded by Edna Mosher, it was voted to go into non- public session to confer with the Board's attorney Kenneth Murphy.

After discussing some legal points with Attorney Murphy the non-public session was closed at 8:30 and the Board returned to open meeting.

Russell Cooke moved to grant a rehearing although stating, that in his opinion, he sees no new evidence presented. Motion was seconded by John Frink.

In discussing the motion Chairman Morton stated that Board should look at all of the evidence presented in the two previous public hearings and statements made by all of the attorneys present. he then polled the Board. All five members present voted against the motion - the motion was defeated unanimously.

Minutes of meeting held 12/4/00.

Minutes were accepted, with minor corrections to Russell Cooke's name, on a motion by Richard Ford, seconded by Edna Mosher.

Other Business.

Tom Morgan advised that the next meeting of the Board is scheduled for February 5, at 7:00 p.m. to hear a request from owners of AA&M Storage.

Meeting was adjourned at 8:40 p.m. on a motion by Cooke, seconded by Frink.

Pat Main
Secretary