

## TOWN OF POMPEY ZONING BOARD OF APPEALS MINUTES

The Zoning Board of Appeals of the Town of Pompey held a meeting on September 10, 2018. In attendance: Chairman David Tessier; Members Patrick Frazee, David Hale, Don Neugebauer and Kevin Sharpe; Attorney Jeff Brown and Town Clerk Ann Christmas.

Chairman Tessier called the meeting to order at 7 p.m.

He stated that this is a continuation of the August 13, 2018 Public Hearing for a variance for property located at 2224 and 2226 Ridge Road to reduce the frontage from one lot from 200' to 167' and reduce the other lot from 200' to 50'. The property owners are Norman P. Coppola, Judith Anne Coppola, Nathaniel Coppola and Mary Coppola. The application is made by Ben & Julie Richardson. The Coppola's are represented by Julie Richardson who is the contract purchaser of the property.

Pat Frazee questioned if the property was ever subdivided; did the property owners know they didn't do a legal subdivision; were they aware that the Town had rejected their subdivision and variance applications?

Chairman Tessier stated that the Zoning Board in 2010 rejected the variance application first and then the Planning Board rejected the subdivision application.

Don Neugebauer questioned if a subdivision is approved by both the County and the Town. Chairman Tessier stated that several years ago the County put in a process that they need verification that subdivisions have been approved by Towns.

Attorney Brown informed the Board on what he had found out since the last meeting:

- The Building Permit was signed on April 19, 2011
- The Zoning Board denied the variance on June 28, 2010
- The Planning Board denied the subdivision on October 18, 2010 and six months later the building permit was issued by the Building Officer

David Hale commented that he can't understand how the applications were denied by both the Zoning Board and Planning Board and the property owner still went out and obtained a building permit.

Attorney Brown read the following from the October 18, 2010:

***“NORMAN COPPOLA SUBDIVISION: Lot line adjustment to create road frontage for a landlocked parcel on the east side of Ridge Road north of No. 5 Road West***

*Lloyd Sutton—the Zoning Board of Appeals denied this application, so it needs to be acted on by the Planning Board.*

*Motion by Miller, seconded by Mann that based on referral to Zoning Board of Appeals was denied and review of Coppola Subdivision that this subdivision application be denied. All in favor.”*

Chairman Tessier stated that Lloyd Sutton did what he needed to.

The application was for a two family house. Chairman Tessier understands it is a single family home. According to our Code there is enough acreage for a two family house.

Attorney Brown stated there is no Certificate of Occupancy.

David Hale asked if there was septic approval.

The electric was approved on May 22, 2012 with final approval on August 20, 2013; The Plumbing permit was approved on August 27, 2013.

David Hale commented that he doesn't feel it is right that you are denied a variance, then you build a house and then come back before the Board to make it okay.

Motion by David Hale, seconded by Kevin Sharpe to continue the Public Hearing on the two variance requests at 7:20 p.m. All in favor. Motion carried.

Julie Richardson stated that her office had started to look into the history of this property. The two lots were divided in the Bays Subdivision in the 1970s. She feels that the lots have already been subdivided. In 2010 they were trying to make it a flagshaped lot. The back parcel is landlocked. The Coppola's owned both parcels and use their own driveway to access it. It is on the tax rolls and is no longer a vacant parcel. The search will tell when the parcel existed. She realizes an error was made and they want to correct it.

Pat Frazee questioned if our Code does say that a lot needs road frontage. Chairman read the Code you need road frontage. He also questioned if the Board could reduce it to zero frontage. No you couldn't as there would be no place to have a driveway. He then asked if there could be 10' of frontage. Chairman Tessier stated that it is decided on a case by case basis.

David Hale and Pat Frazee both stated that they feel that Lloyd Sutton should have known not to issue the building permit and the landowners knew that they should not proceed as they were denied twice.

Don Neugebauer commented that he isn't sure how this happened and he would like to help solve it but questioned if the Board would be setting a precedent.

Norman Coppola stated that when he saw Lloyd Sutton initially he wanted to do a right of way but Lloyd recommended that they go for a subdivision. He thought it was approved as he read something in the Planning Board minutes. He also said that he had spoken to Lloyd Sutton recently and he thought that it had been approved.

Julie Richardson stated that she had spoken to Fred Hill and he suggested they apply for a 50' variance. Doesn't think any of the neighbors would sell her property to get into the house another way. Marty Bays didn't want to sell any land and didn't think they would need it. She also said that Norman Coppola had all of the inspections completed; the decks weren't finished and that is why no Certificate of Occupancy was issued. Errors were made and she hopes we can correct them and move forward.

David Tessier commented that errors were made. An option is to remove one of the houses. If the Zoning Board approves the reduction in frontage it is setting a bad precedent. It is not up to the Zoning Board to fix the errors of the Building Officer. He doesn't like it that the Zoning Board's decision was ignored and a house got built.

Julie Richardson didn't feel that it was a disregard of the decision but a mistake. Two people thought it was approved. The Coppola's are the kindest people and genuine.

Attorney Brown said the cleanest thing is for a variance.

Kevin Sharpe stated that this house will never be sold then. People won't be able to get a mortgage. He felt that it would be more of a hardship for the Coppolas' than the Richardsons'. He questioned if there were any other houses in the Town similar to this. Chairman Tessier said there was one on Gibbs Road where the Code Officer allowed two houses to be built on one lot and the Town Attorney at that time said that was okay. When they wanted to sell the second house they were denied a variance and subdivision and eventually they removed the house. Attorney Brown also stated that the Town is now pursuing enforcement of Hunter Springs because the new Code Enforcement Officer didn't agree with the previous Codes Officer.

Chairman Tessier stated that we can't correct an error with another error.

Motion by Don Neugebauer, seconded by David Hale to close the Public Hearing at 8:15 p.m. All in favor. Motion carried.

The Board then went thru the Area Variance Criteria:

1. Can the benefit be achieved by other means feasible to the applicant:

Chairman Tessier said one of the houses could be removed and combine the lots; Pat Frazee and David Hale thought this was extreme. Perhaps an easement or right of way. It was decided that there are other options and means to achieve this.

2. Undesirable change in neighborhood character or detriment to nearby properties:

Chairman Tessier stated yes; doesn't have the 200' of frontage to preserve rural character. David Hale the house sits like any other normal house. Pat Frazee stated that it wouldn't change that property wouldn't change the rest of the Town but it has the potential to be a detriment to nearby properties.

3. Is the request substantial. All agreed it was substantial to have 2 houses with a total of 200 road frontage.
4. Will the request have adverse physical or environmental effects. No environmental effects; just an extra driveway.
5. Is the alleged difficulty self created. Yes. The house was built with full knowledge of two denials.

Attorney Brown informed the Board that each case before them is fact specific and would not set a precedent.

Pat Frazee stated that the Board created a small road frontage on the ESF land on Purcell Road.

Kevin Sharpe questioned what can be made right from the wrongs in this case. DOT has said the site distance is adequate and there are no safety issues. When the Coppola's came in 2010 they were requesting a 25' variance and now they would like a 50' variance.

Motion by Don Neugebauer, seconded by Pat Frazee to grant the variances as requested pursuant to the survey from Christopherson dated July 2, 2018 and based on the criteria that the land was subdivided; there is an easement and a building permit was issued and that there will not be a precedent going forward.

Discussion took place before the vote.

Chairman Tessier stated that there was no Town approved subdivision. Attorney Brown stated that it was subdivided prior to 2010. There is a verbal easement as both families lived in both of the houses on the property.

Chairman Tessier also stated that approval of this variance would set a bad precedent.

Kevin Sharpe questioned how many variances have the Board approved before now that had buildings on them. The fact of the matter is that a house was allowed to be built thru no fault of the Zoning Board. He also stated that in 2010 he made the motion to reject the variance.

Pat Frazee said he is always asking that the Town of Pompey be a kinder and gentler place. He feels the only way to make this right is to bulldoze the house but he feels this is too extreme.

David Hale feels there will be problems with the driveway and lights going into the house in Lot 2.

David Hale stated that a building lot requires 200' of road frontage; how did the Building Officer issue a building permit.

David Hale asked for a condition to be put in the motion for cedars to be planted at the lot line of Lot 2 to prevent nuisance lights. After discussion he withdrew this condition.

Roll call vote on the motion was taken:

Pat Frazee	Yes
David Hale	No
Don Neugebauer	Yes
Kevin Sharpe	Yes
David Tessier	No

Motion carried.

Motion by David Tessier, seconded by Kevin Sharpe to adjourn at 9:20 p.m. All in favor. Motion carried.

Respectfully submitted,

Ann Christmas  
Pompey Town Clerk

