

APPEAL PURSUANT TO M.G.L. C.40A, S.8 AND M.G.L. C.40A, S.15

Pursuant to M.G.L., c.40A, s.8, M.G.L., c.40A, s.15, I, **Peter Frei**, resident and citizen of Holland, MA 01521, living at 101 Maybrook Road, **appeals** herewith **the denial of my request to remove, dismantle, or demolish a dwelling located off of Stafford Road, Holland, Massachusetts.**

Said dwelling with address 166 Stafford Road is located on Lot 20 as shown on a plan recorded in book of plans 341, page 61, at the Hampden County Registry of Deeds, and is owned by Albert West & Renee Thibault, and formerly owned by Eric Johnson. Said dwelling is in violation of the zoning laws under M.G.L. and local by-laws.

The denial of my request by Jack Keough, Zoning Officer and Building Commissioner in the town of Holland is in error, and here is why:

Jack Keough is mandated to enforce the zoning laws and by-laws.

Regardless of which scheme was employed to grant the special permit the Zoning Officer referred to in his decision, the permit is outside the law. M.G.L., c.40A, s.6 provides in part:

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage.

There is no legal scheme that would relive any special permit granting authority from the requirement of the minimal requirement of fifty feet of frontage pursuant to s.6. The requirements of s.6 can also not be waived utilizing the granting of a variance. M.G.L. c.40A, s.10 provides in part:

The permit granting authority shall have the power [...] to grant [...] a variance from the terms of the applicable zoning ordinance or by-law [...]

The power by the permit granting authority is limited to zoning ordinances and by-laws. The terms of M.G.L. can not be varied by any authority, not even by the justices of the Supreme Judicial Court.

The petitioner and previous owner's claim that there was a dwelling in the 1850's does not bring any relief either. The law only allows the replacement of an existing structure or dwelling. A structure that does not exist can not be grandfathered.

An in-depth analysis of the legal situation can be found at:
http://www.01521.com/ots/Johnson_landgate.htm

This Board therefore must reverse the erroneous decision by the Zoning Officer and issue an order to remove, dismantle, or demolish said dwelling.

Holland March 31, 2008,

Peter Frei, 101 Maybrook Road, Holland, MA 01521