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Holland, MA 01521*

Bk 13962 Pg437 #14109
02-19-2004 @ 12:13p

01-23-04 11:14 RCVD

Case No: 20A02 1-24-04
Petition Of: Eric Johnson
Zone: Residential District
Application: Special Permit

A duly authorized public hearing was held Tuesday December 16, 2003 at 8:30 PM in the Community Room, Holland Town Hall, 27 Sturbridge Road on the application of Eric Johnson for a Special Permit for the replacement of an old structure with a new home on a non-conforming lot as provided by Section 7.0 of the Holland Zoning By-Laws. The property is located on Stafford Road and is zoned Residential.

The petitioners submitted the following documents:

1. Completed application and filing fee signed by the Town Clerk.

The following documents will be required before construction can begin:

1. Eight copies of construction drawings.
2. Eight copies of a formal plot plan.
3. Copy of tax bill to provide deed, book and page number.

Following the Chairman's comments regarding the powers and purpose of the Board, the rights of all concerned, the manner in which the hearing would be conducted, introduction of the members of the Zoning Board of Appeals and the reading of the legal notice Eric Johnson made a presentation to the Board.

Mr. Johnson made a request to build a new home on this 12 acre lot off of Stafford Road. The proposed construction would be grandfathered due to a pervious dwelling that was on this property. There are no current signs of this structure, however, Mr. Johnson has agreed to produce documentation that establishes a previous level of taxation on this land consistent with a dwelling. Mr. Johnson presented informal drawings of a two story 2,000 square foot home made up of three bedrooms and two and a half baths. There is an issue of a disputed right-of-way for which Mr. Johnson presented a land title opinion that supports his claimed right of way.

The following abutters were present.

David Gibson of 3 Causeway Road was present to express his adamant position that the claimed right-of-way that runs over his land is not valid and that he will oppose any attempts to use said right-of-way in court. Mr. Gibson feels that the presented plot plan is

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in error concerning that portion of the right-of-way that is shown as crossing his land. Mr. Gibson in his frustration implied that such a drawing could have been illegally altered with the influence of town officials. Mr. Gibson was informed that his insinuations were out of order and that the board's decision would be based on the facts as presented.

Fernando Merions of the Palmer Beagle Club expressed concern that a future resident might complain about noise from their dog packs when hunting. Mr. Merions stated that his concerns were significantly reduced after seeing the proposed location of the dwelling which is opposite the boundary line of the Beagle Club.

A site review was scheduled for December 21, 2003 at 3:00 PM and a continuance was scheduled for January 20, 2004 at 8:00 PM. Site review attended by board members Sarto Caron, Don Beal, Brian Roche, Christian Petersen and Ron Seaburg. The owner Eric Johnson and his brother Brian Johnson were present as well as abutters David Gibson and Fernando Merions. Mr. Johnson pointed out the proposed construction site and the existing right-of-way as shown on his documentation. The board asked for additional information from both Mr. Johnson and Mr. Gibson. Mr. Merions stated he had no problems with the proposed construction site, however, Mr. Gibson remains adamant that the listed path of the right-of-way that crosses his property is not valid. The board requested that Mr. Johnson provide additional documentation to support the past taxation on this land as well as a copy of an old deed. Mr. Johnson agreed to supply these items at the scheduled continuance.

Continuance held on January 20, 2004 at 8:00 PM. Owner Eric Johnson was present to answer follow up questions from the board. Mr. Johnson produced the requested copy of an old deed and past tax bills that are dated from the 1850s. Abutter David Gibson asked a number of questions regarding the procedures of the hearing, issues that the board could legally take under consideration and the procedures of filling an appeal. Once again Mr. Gibson holds the position that the portion of the right-of-way over his property cannot be improved without his permission. The board informed all parties that the right-of-way issues are not in the authority of the ZBA and would therefore not be ruled on by the ZBA. In addition the ZBA would only be ruling on the issue of the grand fathered status of the non-conforming lot and all issues of the right-of-way will have to be resolved by Mr. Johnson and Mr. Gibson as they see fit. Following questions of the individual Board members the hearing was closed on January 20, 2004 at 8:30 PM.

Having considered the testimony of the petitioner and documentation presented and having had their questions answered by the petitioner, individual members of the Board voting were given the opportunity to express their opinion and reasons supporting their positions. The Board voted **UNANIMOUSLY (3-0) to GRANT WITH CONDITIONS** this petition for a Special Permit as provided by Section 7.0 of the Holland Zoning By-Laws.

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Each member of the Board of Appeals who heard and voted on this petition was polled individually.

CONDITIONS:

1. Eight copies of a formal set of building drawings, eight copies of a plot plan and a copy of a recent tax bill must be submitted before ground breaking for this project takes place and the work shall be in strict conformance with the submitted construction plans.
2. The petitioner shall present copies of the 1850s deed and tax billings so as to become a permanent part of these proceedings.
3. This approval does not relieve the applicant or any other person of necessity of complying with all other applicable federal, state or local statutes, by-laws or regulations.
4. This special permit shall not take effect until this decision of the Board has surpassed a 20 day appeal period, signed by the Town Clerk as no appeals applied for, and recorded in the Hampden County Registry of Deeds under the name of the owner of the land.
5. This special permit is issued to the applicant and shall not be transferred or assigned without the approval of the Zoning Board of Appeals.

REASONS FOR GRANTING THE SPECIAL PERMIT:

1. The Board found the proposed project to build a replacement dwelling to replace a previous structure on this non-conforming lot is grandfathered as supported by documentation presented to this board, supplemented by the site review they conducted, meets the criteria for the issuance of a Special Permit as per Section 7.0 of the Holland Zoning By-Laws.
2. The site review, held on December 21, 2003, attended by ZBA members proved to be very valuable. The owner walked the right-of-way and the proposed construction site with the board plus answered a number of questions from the board concerning the proposed project. Obstruction of view is not an issue for this project.
3. The proposed construction of a new 2000 plus foot home will add utility and value to this non-conforming lot and also enhance the property value of abutters. Obstruction or loss of view will not be a factor for any abutter.
4. Any and all issues concerning legal access to the right-of-way for this property are outside the jurisdiction of this board and as such are not part of this ruling.

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CERTIFICATION:

The following members of the Board of Appeals heard and voted on this petition:
Don Beal, Sarto Caron and Christian Petersen.

APPEALS:

Appeals of this decision, if any, shall be made pursuant to Section 17 Chapter 40A of the General Laws of the Commonwealth of Massachusetts, as amended and shall be filed within twenty (20) days after filing of this decision in the office of the Holland Town Clerk. This appeal must be made to the Superior Court Department.

EFFECTIVE DATE:

No Special Permit or Variance, or any extension, modification or renewal thereof shall take effect until a copy of the decision bearing the Certification of the Town Clerk is recorded in the Hampden County Registry of Deeds, and indexed in the Grantor Index under the name of the owner of record or is recorded and noted in the owners Certificate of Title. The fee for recording or registering shall be paid by the owner or applicant.

LAND AFFECTED:

Stafford Road, Parcel ID # 20-A-02, Holland, Hampden County, Massachusetts.

PROPERTY OWNERS:

Eric Johnson

STATUTORY REQUIREMENTS:

The statutory requirements have been complied with as set forth in the above decision.

COPIES AND PLANS: PARCEL 20-A-02

Copies of this decision and documents referred to herein were filed with the Town Clerk on January 26, 2004.

CERTIFIED January 26, 2004.


Christian Petersen, Clerk

**DONALD E. ASHE, REGISTER
HAMPDEN COUNTY REGISTRY OF DEEDS**