

Brentwood Board of Adjustment Minutes July 24, 2023

Members Present: Chairman Doug Cowie, Vice Chair Ken Christiansen, Frank Albert, Regan Elliot, ~~Russ Kelly~~
~~–Selectboard Rep~~

Cowie opened the meeting at 7:00 pm and explained the procedures to those present.

Christiansen motioned to give Benedix voting rights this evening, Albert seconds, all in favor, motion carries.

The applications refer to lot 223.048 as being in both the Residential/Agricultural zones and the Commercial/Industrial zone, this was changed via warrant article at Town Meeting in March and lot 223.048 is now located entirely within the Commercial/Industrial zone.

Public Hearing: Variance Application: Applicant/Owner: William K. Warren, Esq. & The Della J. Hett Revocable Trust. Applicant requests a variance from Article III, Section 300.002.001.004 of the zoning ordinance to allow a single family residence on a lot without frontage on a right-of-way in the Commercial/Industrial District where 300 feet of frontage is required. The property, 223.048, is located off of South Road, it is landlocked and entirely within the Commercial/Industrial District.

Warren described the subject parcel, lot 48, as an entirely landlocked wooded parcel of about 3.98 acres with no road frontage. The property owner also owns lot 49, directly to the North, 2.97 acres, with a single family dwelling and 351' of continuous frontage on South Road.

Warren went over the 5 criteria.

1. *Granting the variance would not be contrary to the public interest:* because it will not threaten the health, safety, and general welfare of the Town of Brentwood, and it will not alter the essential character of the neighborhood.
2. *If the variance were granted, the spirit of the ordinance would be observed because:* the variance does not unduly, or in a marked degree, conflict with the ordinance such that it would violate the ordinance's basic zoning objectives. Please see the attached Letter of Explanation for more information.
3. *Granting the variance would do substantial justice because:* granting the variance would not result in any gain to the general public, but denying the variance would result in a substantial loss to the property owner.
4. *If the variance were granted, the values of the surrounding properties would not be diminished:* because, given the characteristics of the surrounding neighborhood and significant tree cover in the vicinity surrounding the subject property, a single-family residence would be nearly unnoticeable.
5. *Unnecessary Hardship:*
 - A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:* the 3.98-acre size of the subject property will provide adequate areas between buildings and rights of way without strict adherence to the ordinance provisions at issue, and denying the variance will not promote health, safety, morals, prosperity, convenience, or general welfare of the Town of Brentwood.

And

- ii. *The proposed use is a reasonable one because:* it is permitted in both the Residential/Agricultural District and the Commercial/Industrial District.

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B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. Because the subject property is completely landlocked, and because between 200 and 300 feet of frontage is required, there is no possible way to use the property for any use permitted in the Residential/Agricultural and Commercial/Industrial Districts.

There was a letter attached to the application that expanded on the 5 criteria that will be kept with the file. The applicant would like to put a driveway easement in from lot 48, along the eastern edge of lot 49, out to South Road, and construct a single family dwelling, in which she would reside and hopes to sell the front lot. The property owner would maintain a generous wooded buffer around the residence resulting in minimal visual impact to surrounding properties. If needed the applicant/owner is willing to adjust/move the easement to maintain a significant buffer between the subject properties and the abutting property to the East.

Cowie opened the meeting to questions from the Board. Christiansen asked about having sufficient access for emergency vehicles, specifically fire trucks. Warren replied that the driveway will be sufficient for emergency vehicles and noted that they will be applying for a driveway permit as required.

Cowie opened the meeting to questions from abutters.

Bob Giusti, South Road, the abutter directly to the East, has several comments and questions. Giusti stated that terms used to describe the buffer between his properties and the applicant's properties are open for interpretation and noted that the density of the buffer can change with the seasons.

Tricia Canty, South Road, prefers to see this property used for a single family residence, rather than commercial development, and asked if that could be condition if the variance is granted. Christiansen responded it could be a condition.

Warren discussed the easement and noted that the goal is to have language in the deed requiring that the wooded buffer that currently exists will remain. Ruth Ann Cooper, South Road, asked if this could also be a condition if the variance were granted, it can.

Warren discussed that the property is unique in that it is completely landlocked, and both the front and rear parcels are owned by the same person. He explained that there is no way to use the property without a variance, and that the proposed use would be keeping with the neighborhood. Cooper stated that this proposal is not keeping with the neighborhood and that there is a long line of front and back lots with the same owner along South Road.

There is no alternative access for this parcel as its southern border is abutted by conservation land owned by the Town of Kingston.

Giusti raised concern about additional traffic at the South Road and Route 125 intersection.

Cooper raised concerns about wetlands on and near the property.

Joshua Jennings, South Road, owner of Meadow's Mirth Farm,

Cowie closed public comment.

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Warren explained that these conditions will go in the deed when/if one or the other parcel is sold.

Christiansen motions to approve the variance with 3 conditions:

1. The subject property will only be used for a single family residence, there will be no commercial activity.
2. The existing wooded buffer between the front and rear lots and the existing wooded buffer bordering the eastern edge of the property will be maintained.
3. The driveway will have sufficient space for a fire truck.

Regan seconds the motion, all others in favor, motion carries.

The application as submitted was for 2 variances, one from section 300.002.001.004, page 11, regarding 300' of frontage in the commercial industrial zone and the second from section 300.002.006.005, page 20, regarding 200' of frontage in the residential/agricultural zone. Due to zoning changes the second variance is no longer applicable, however the applicant is requesting a decision because it affected the Building Inspector's decision not to issue a building permit.

Christiansen motions to accept the second variance utilizing the language of the first variance, Regan seconds, all others in favor, motion carries.

Appeal from An Administrative Decision: Applicant/Owner: William K. Warren, Esq. & The Della J. Hett Revocable Trust. Applicant requests an Appeal from Administrative Decision to allow for the issuance of a building permit, the application for which was denied due to the lot not having frontage on an existing street or road. The property, 223.048, is located off of South Road, it is landlocked and entirely within the Commercial/Industrial District.

Warren went over RSA 674:41 II, explaining that the ZBA may authorize the issuance of building permits where strict adherence to RSA 674:41 I would entail practical difficulty or unnecessary hardship and where circumstances do not require a structure be related to existing or proposed streets. A building permit may only be issued if a lot has frontage on a class V or better road with some exceptions, which would result in the property owner being required to build a road to access her land locked parcel. In this case the property owner is proposing a 50' easement. The ZBA may authorize a building permit if:

- (a) The issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based; and
- (b) Erection of the building or issuance of the permit will not cause hardship to future purchasers; and
- (c) Erection of the building or issuance of the permit will not cause undue financial impact on the Town.

Warren discussed the proposed easement versus a lot line adjustment and the proposed driveway versus a private road. Warren explained that they are proposing a single family dwelling on an existing nonconforming lot of record, it is not going to have any impact on the official maps of the Town as a lot line adjustment would. The easement would be recorded in the deed and would exist in perpetuity resulting in no hardship for future purchasers. Given the conditions of the variance, a metes and bounds description will be needed, further assuring future owners. The applicant is not proposing to use any Town resources, this will be a private driveway. Cowie reiterated that there will be 50' of frontage dedicated to the driveway easement and maintained as such.

Motion made by Christiansen to approve the administrative appeal with the conditions that a metes and bounds description is included in the deed and that 50' of frontage is dedicated to the driveway easement. Albert seconds this motion, all others in favor, motion carries.

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Motion made by Regan to approve the minutes of May 22, 2023, seconded by Albert, all in favor, motion carries.

Motion made by Benedix, 2nd by Regan to adjourn, all were in favor.

Respectfully Submitted,

Jillian Benedix
Administrative Assistant