

TRUSTEES OF ROBERT T. DAWES
APPEAL FROM UNFAVORABLE ACTION
OCTOBER 2, 2017

The public hearing was held in Stow Town Building and opened at 8:50 p.m. to hear the Appeal From Unfavorable Action of the Building Commissioner filed by **Trustees of Robert T. Dawes Trust** concerning appeal from unfavorable action of the Building Commissioner related to **Parcel 19 on North Shore Drive**. The property contains 33,000 sq. ft. and is shown on Stow Property Map U-4 as Parcel 19.

Board members present: Edmund Tarnuzzer, Charles Barney, William Byron, Bruce Fletcher, Mark Jones (associate).

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on September 14 and 21, 2017. He recited the criteria to be met for favorable action. The hearing notice had been forwarded by certified mail, return receipt, to all abutters. Those abutters present were Cindy Curly, 166 Barton Road; and Marika Barnett and Istvan Ver, 106 North Shore Drive.

Edmond Tarnuzzer noted Town Counsel's advice on this appeal, that neither Massachusetts General Laws c.40A s.6 nor the Zoning Bylaw provides for the requirement of a special permit for the construction of a dwelling on a non-conforming lot such as the one at issue. Edmond Tarnuzzer said that under the advice of counsel, the Board should issue a decision finding that the applicant must submit plans to the Building Inspector, and that the principal aim of zoning is to establish conformity.

Edmond Tarnuzzer asked for any public comment, and noted that there was none.

Mark Jones asked if there are any general plans for building a structure on the land. Paul Alphen, attorney for the Trustees of Robert T. Dawes, said that there are no immediate plans, but rather this was a step taken for his clients' long term estate planning.

Mark Jones noted that floor area and height are not in M.G.L. c.40a. Paul Alphen said that there is case law which refers to setback requirements.

William Byron asked if the lot itself does not require a Special Permit and if this could be interpreted that the land could be purchased and a dwelling built without any restrictions as to setbacks. William Byron asked if it is possible that this would allow a developer to build out to the lot line. Paul Alphen said that whatever is built would have to be in keeping with the character of the neighborhood, and that Title 5 holds some requirements. Paul Alphen said that there would be no specific setback requirements, and that this is how grandfathered lots are treated in Massachusetts. Paul Alphen said that case law asks that a developer be as consistent as possible with local bylaws, so it will be incumbent upon whomever may buy and build on the land to build something reasonable.

William Byron asked for more clarification around what is reasonable. Barbara Carboni, Town Counsel, said that the Board is not allowed to require a special permit, and that while it seems strange that a lot can be built upon with seemingly little constraints, a reasonable effort to comply with local bylaws is expected, though they can't be forced to.

Craig Martin, Building Inspector, said that there would still be a submission to the Building Inspector, and that he would look to having reasonable setbacks and compliance on height restrictions, as chapter 40a does not refer to height. Barbara Carboni agreed, saying that anything excluded from chapter 40a would be required.

On motion of Mr. Jones, second by Mr. Barney, it was voted unanimously to close the hearing.

The hearing was closed at 9:43pm.

On motion of Mr. Tarnuzzer, seconded by Mr. Byron, it was voted unanimously that a Special Permit is not required, though the applicant must submit plans to the Building Inspector conforming to all Bylaw requirements.

Respectfully submitted,
Valerie Oorthuys