



# City of Westfield

## ZONING BOARD OF APPEALS

Martin Newman, Chair  
Richard Sullivan III, Member  
Gary Bacchiocchi, Member  
Sofia Williams, Alternate

February 24, 2016

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The meeting was called to order @ 7:00 p.m. Room 315, Municipal Building, 59 Court St., Westfield, MA.

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- Members present  
 Members absent

Staff

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| <input checked="" type="checkbox"/> Martin Newman, Chair         | <input checked="" type="checkbox"/> Jay Vinskey, Principal Planner |
| <input checked="" type="checkbox"/> Richard Sullivan III, Member | <input checked="" type="checkbox"/> Christine Fedora, Clerk        |
| <input type="checkbox"/> Gary Bacchiocchi, Member                |  |
| <input checked="" type="checkbox"/> Sofia Williams, Alternate    |  |
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- Call to order:* Chairman Newman called the meeting of the Zoning Board of Appeals to order at 7:00 P.M. in Room 315, Municipal Building, 59 Court Street. Westfield MA. Members introduced themselves.
  - Public Participation:* Chairman Newman asked if there as anyone in the room who would like to address the Board regarding items not on the agenda. None presented.
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Chairman Newman read the notice into the record for:

the petition of C & M BUILDERS, LLC who seek variance relief from Section 3-40.5 to allow for construction of a house on a lot having less than the required area and/or an appeal from a determination of the Building Inspector that the lot requirement is properly applied. Subject property is known as 63 Hillcrest Circle (Parcel 44R-41) and zoned Rural Residential.

Presenting the proposal to the room was the applicant Carmen Capua of C & M Builders, Inc. Mr. Capua summarized his prepared statement for the record:

February 3, 2016

To the Board of Appeals:

I respectfully seek an appeal from the building inspector denying my application to construct a single family home on a vacant lot on 63 Hillcrest Circle, a 50,616 SF subdivision lot laid out in 1999. I contend the zoning ordinance was misapplied in this instance. The zoning ordinance has the following lot area requirements:

Private water/private septic system 60,000SF  
Public water/private septic system 40,000 SF  
Public water/public sewer 30,000 SF

The zoning makes no provision, and in fact establishes no requirement, for private water and public sewer, which I propose here. However, it is only logical that the 40,000 SF requirement for public water/private sewer should apply. The case could even be made that the public water/public sewer requirement of 30,000 SF is more appropriate, since a private on-site septic system requires more land area than a well. Further, the meaning of the "/" is not clear as to whether it implies an "and" or an "or" statement.

It is reasonable that, where ambiguity exists, it should be interpreted against the drafter City. I therefore ask the Board to overturn the denial, and further to establish a 40,000 SF precedent for these situations, so others will not have to go through the aggravation I have experienced.

If the Board cannot entertain an appeal, I then respectfully request variance relief from the apparent 60,000 square foot requirement, as it meets the merits of a variance. Specifically:

- (1) Owing to circumstances relating to topography of the land, and especially affecting such land, but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of the ordinance would involve substantial hardship. Due only to the topographic elevation of the lot, it is not possible to connect to city water. While I offered to install a booster pump, the Water Department denied me and my only recourse was a well. The situation has created a financial hardship, as I was given verbal approval to proceed with this project and installed a well. Rendering a subdivision lot as unbuildable on this basis is effectively a taking of my development rights by the City and is a substantial hardship which has been imposed on me.
- (2) There will be no detriment to the neighborhood or public good by the addition of a single family dwelling, on a vacant lot which always intended to have a house. It would instead be a benefit to would further establish the permanence of this neighborhood of similar homes. The fact the water comes from a well versus the street will not be discernible to anyone.
- (3) The intent of the ordinance was clearly to have lesser lot area requirements for where either public water or public sewer is used. Plus, the ordinance could not have intended to render unbuildable a lot within a properly laid out development of similarly sized lots. This relief would not nullify nor derogate from the intent of the ordinance.

Thank you for your understanding and consideration.

Respectfully,  
Carmine Capua  
C&M Builders, LLC

Mr. Capua then explained to the Board he was under the impression from the Building Department everything was in order based on the information he had been given. Alternate Williams felt he has done his due diligence.

Chairman Newman asked if there was anyone who would like to speak in favor?

Bill Onyski ~37 Hillcrest Drive. Speaking as a private citizen adding he felt it looks like this is the only lot with private well and public sewer. He felt Mr. Capua does a great job with his building.

Against?

In favor?

Vinsky added part of the issue may be the changes in the building department's personnel which may be has the cause for some inconsistency in interpretation.

Chairman Newman felt the Board could close the hearing and vote tonight. Member Sullivan MOTIONED, seconded by Williams to close the hearing. Chairman Newman added there will be no additional input regarding this application.

- Quiles – Variance – frontage/area – 276 Shaker Road (public hearing is closed)

Member Sullivan gave an update regarding this application. The public hearing is closed the petitioner himself did not attend the hearing. After the hearing was closed it was brought to the applicant's attention that maybe the application should be withdrawn, it was noted that if the application had been withdrawn it would have been wiped clean. The petitioner has asked for an extension until 5-6-16 it would enable the Board to re-open it and have the appropriate members present who attended the first public hearing.

Alternate Williams asked if the Board could extend that far out? Chairman Newman felt it would be fine, they can act before that time. Member Sullivan MOTIONED seconded by Alternate Williams to accept the extension and to schedule a re-opening of the hearing at the 4-13-16 meeting.

The applicants can resubmit the application, correct any errors or provide new information for then. Jay matter of newspaper legal ad fee, Board pay for that? Board agreed to pay for the \$90 legal fee.

Hillcrest Circle Appeal.

Member Sullivan began the discussion there are 2 alternatives with the application. The Board can either grant a variance or the other alternative would be to appeal the determination of the Building Inspector. Discussion regarding which case scenario would be easier, a variance versus an appealing of the determination of the building inspector.

Member Sullivan felt in this situation the applicant has gotten various opinions from the building department which has created this predicament; he feels this is a unique situation adding it's not the petitioner's fault. The builder has a good reputation, neighborhood has shown support, no reason not to approve, he felt this would make everybody happy, the work is already done and money already invested.

Alternate Williams agreed adding it's not addressed directly in the ordinance – public sewer, private water. Chairman Newman felt this is not addressed in the ordinance, he felt it needs to be looked at as a whole to see the general intent; he feels there should not be a complete neighborhood with an empty lot.

It was agreed the 40,000 square foot requirement should apply. Member Sullivan MOTIONED, seconded by Alternate Williams to overturn the building inspector's determination that the property is non-conforming regarding lot size. All in Favor. MOTION passes.

An abutter voiced concerns regarding water issues. He was informed that should be worked out amongst themselves, the hearing is closed. Mr. Capua said he would try to work on the problem.

Review and approval of previous meeting minutes  
Minutes tabled until Member Bacchiocchi is in attendance.

Vinsky informed the members there currently is one application for March 2. He suggested the Board hold off until March 23 to see if there are any more filings. Further discussion among members as to when there would be enough members for hearings. After discussion of members' schedules, it was voted that new applications be administratively scheduled by staff for the April 13<sup>th</sup> hearing. (The Board will not meet in March). All in favor.

Member Williams MOTIONED, to adjourn at 7:37.