

**BRANDON DEVELOPMENT REVIEW BOARD HEARING
JUNE 26, 2014
APPEAL #5580
LANDOWNER: STEPHEN A. ATWOOD
APPELLANT IN APPEAL TO ENVIRONMENTAL COURT: JUSTIN BORAH
INTERESTED PARTY IN APPEAL TO ENVIRONMENTAL COURT: MARY E. COOMBS**

Board members present: John Peterson, Eric LaRock, Samantha Stone

Others present: Janet Mondlak, Secretary, Jon Andrews, Interim Zoning Administrator, David Ploof, Stephen Atwood, Raymond Denny, Justin Borah, Mary Coombs, Jim Leary

The hearing was opened at 7:01 pm.

The warning was read and found to be in order.

Samantha Stone said she was not present during the initial hearing but has made herself aware of the proceedings by reading all the materials and listening to the audio recording.

Jon Andrews, Stephen Atwood, David Ploof, Justin Borah, Raymond Denny, Jim Leary, and Mary Coombs were sworn in.

Samantha Stone asked if everyone agreed that the hearing is for the discussion of setbacks only. Jim Leary, attorney representing Justin Borah, said that is agreed.

David Ploof said he no longer lives in the town of Brandon. Samantha Stone said that means he is no longer an interested party.

Leary said he is representing Justin Borah. The scope of the hearing is about the setbacks. He said he received items from Tina Wiles [former Brandon Zoning Administrator]. There is a site plan that was submitted when Atwood subdivided years ago. Atwood agreed that the documents may be admitted into evidence.

Leary presented:

Exhibit A: State Subdivision Permit dated March 4, 1992, Case No. EC-1-1370

Exhibit B: Warranty Deed dated May 4, 1992, creating Atwood's subdivided lots.

Exhibit C: Copy of the sketch submitted in Atwood's application #5580 to the DRB. This is the plan for the lot showing the mobile home, setbacks, and fill.

Leary said the proposed mobile home is for Lot #2. He said the dimensions are set forth on the plan approved by the State of Vermont. He referred to the warranty deed and reviewed the dimensions from point to point. Leary said paragraph 5 [his notes on the copy of the deed] reinforces the notion that the distance from point to point on Carver St is 100'.

Leary said on the sketch submitted by Atwood, it shows the distance as being 105', not 100'. The length of the mobile home is 61'. Leary said as such, the mobile home is one foot over the setback requirement. He said Atwood has not identified he can meet the setback on either side.

Leary said the subdivision permit states there will not be deviation from the plan without approval from the Division of Protection. Leary said it is clear the length of the property is 100' and there are onerous burdens with regard to the setback. He said he does not think Atwood could demonstrate he can satisfy the setback. Leary said there is no ambiguity in the deed with regard to these points in the front.

Justin Borah said he had nothing to add. Leary said when the two lots were created, Atwood could have made the lots any dimension he wanted.

John Peterson asked about the length of the lot at the back and it was stated that it is 109'.

Stephen Atwood submitted a packet of information which was labeled Exhibit D. Atwood reviewed the contents of the packet:

Page #1 - Copy of the Remand Notice from Environmental Court dated May 21, 2014 158-11-13 Vtec

Page #2 - A copy of the original drawing showing the proposed plan submitted with the original application. Atwood said there is no footage noted. The second page of #2, is the same drawing, enhanced with more information. Atwood said there is 105' where the mobile home actually sits. The lot is 9' wider in the back than the front. He said the lot gains in width as it moves in depth. He said as you go back 30', he is able to gain the foot.

Page #3 - A blow up of the map showing the two lots. Lot 1 is on the right, it is marked 77' at the rear and 177' in the front. That is shown on the town map. Atwood said the drawing increases in width from Carver Street, western boundary, heading to the eastern boundary.

Page #4 - A blow up of a 2 x 3' map, a survey map done by Laura Baker. He said from this map, his property, Booth's [north of his] and Mary Coombs property [south of his], all gained footage from what was shown on the town map. Atwood said he gained 4' in the front. Atwood said John Andrews, [current Interim Zoning Administrator] physically measured between the marble markers and he came up with 181'. Andrews took photos. Atwood said this reinforces the fact of the gained footage.

Page #5 - Atwood said this is a letter written by Jim Purdy, the person who subdivided the land in 1992. Now he ran the measurements through his CAD system. Jim Leary asked for an objection and said this is hearsay; Purdy is not here and Leary said he cannot cross examine the witness. Sam Stone noted the objection and allowed the document. Atwood said Purdy ran the measurements through his CAD software and calculated the length at >181' between the marble markers. Atwood said Tina Wiles (former Zoning Administrator) had confirmed that number and so did Jon Andrews. Atwood said 4' more was found than what is written on paper. Atwood said since he owns both parcels of land, he can put 4' where ever he wants. Atwood invited the Board to come down and measure for themselves.

Jon Andrews submitted a packet of photos, marked Exhibit E. They show his measurements at the lot, the western boundaries of the marble markers. He said it measured slightly over 181'. He said none of the other facts have changed. The town submits this permit should be upheld.

Samantha Stone asked Leary or Borah if they have taken measurements at the lot. Neither answered the question.

Leary said his cross examination will show the markers are not referenced in the deed from Atwood to himself. The deed did not say "from this marker to this marker." It says 100'. Leary said that if Atwood wanted to reference the markers in the deed, he could have.

Atwood said at the northern boundary, the marble marker, there had been an elm tree. There was a lot of brush and he did not find the marble marker until years later. He said the tree is now gone. Atwood said he went by his deed and so did Purdy, when he did the subdivision in 1992.

John Peterson asked if there is any evidence besides the marble marker about the boundaries. Atwood said the markers are in line with the stone wall and the trees, against the Booth boundary. Peterson asked if it was referenced in the deed and Atwood said no.

Eric LaRock asked if there are any other warranty deeds to the piece of property. Leary did not answer. Atwood said he bought the property in 1986.

Samantha Stone asked the method Andrews used to take the measurements. Andrews said he laid the tape along the sidewalk and a 90 degree angle to the road. He measured at the front of the lot. He said the survey is correct, Atwood should have more land. Leary said that is if you measure from the markers and his argument is that it is not the correct way to measure.

Stone said the important thing is to measure where the trailer is going to sit because the lines are not perpendicular. Stone said there should be more than 100' as you go 30' back. Leary said there could be

other measurements to come up with a precise distance. He said he does not disagree that there is a spot, but he does not think Atwood has demonstrated where the spot is.

Atwood said he found 104' and he only needs 101'.

Mary Coombs said it was determined that the spot is not known and the only way to know is to have a survey done. She said the markers are not mentioned in the deed. Coombs said she works for a surveyor and she knows that marble markers are not precise.

Leary said Purdy does not profess to be a licensed surveyor.

Peterson said it is difficult on these lots to know for sure. Markers were placed years ago and might not reflect exact places.

Andrews asked what a surveyor would use to determine and Coombs said pins, marble markers, etc. She said it has to be justified by what is in the deeds. This is a subdivided lot. There is a lot of work needed to determine the original parcel. She said she has a concern because the marble marker was not mentioned in the deed

Andrews said the argument is over 6" on each side of the mobile home.

Atwood referred to Purdy's letter saying 3 of the 4 boundaries were depicted on a survey plat for the adjacent property. He said this same survey was used to plot boundaries on the 1992 site plot. There were 3 boundaries depicted. He said the letter says the 177' dimension shown on the 1992 plot plan was taken from the Town of Brandon tax map. Atwood said in actuality, there is 4' more.

Coombs said Purdy makes reference to the town map as his starting point for his dimensions. Leary said Purdy is not here for cross examination. Andrews said Purdy is not a licensed surveyor.

Stone said Atwood can enter this as evidence and the Board will take it under consideration. This is a quasi-judicial board and not a courtroom. It will all be taken under consideration.

Atwood said Purdy now, 20 years later, used his CAD system and the CAD came up with a length of 181.4'. Coombs said the information he used was the same as when he did it by hand.

Leary said Atwood has suggested that if the initial application stated 105' this would be treated differently. He said if he does a title search and sees something state 100' and then a permit shows 105', it becomes a title problem. Leary said the Board is not authorized to change boundary lines.

Ray Denny said what if this was a 50' trailer and not a 61' trailer. It would be well within the setbacks. He said there has been issues with vernal pools, trucks, fisher cats, and the amount of fill. The whole objection has nothing to do with setbacks. It has to do with the fact that they don't want a trailer in there.

David Ploof, former owner of 46 Carver, said he sold the house recently. He wrote the court and said he sold and the court said he is no longer an interested party. The trailer is 64' x 14'. He said that is on the tag. Not 61'. He said you can't add 5' to a lot without surveying it. When you survey, there could be a survey marker near a marble marker. They can move. The 105' was never discussed in the original appeal. We all took the 105' in the front. If you take the 105' where he can put in the trailer. Ploof referenced a letter to the Court in Dec. 2013 that he was told to use 105' by the Zoning Administrator and "we were shut down." Ploof said it was lopsided. He said it has to be surveyed. A tape measure is not enough. A survey is the law. You can't move markers, it is illegal.

Coombs said with regard to Wiles and Atwood, there is a letter dated January 21, 2014 from Atwood to the Court with regard to his issues with why the neighbors are raising the issues. Coombs said the western boundary shows 105'.

Atwood said the town map and his deed shows 100'. That is the original amount he had on the application. He said in order to ensure accuracy, Wiles came and used a measuring wheel and found parallel to Carver St., it is 105'. Atwood said that Wiles said the 105' should be used. He said he yielded to her advice and changed his original application from 100' to 105'. Atwood said he argued the point with Wiles. There is a piece of tin, U shaped, that sticks out from the trailer. The footprint of the trailer is actually 60' and then it sticks out like a picture window. The piece is detachable and not welded on. Atwood said on the tag of the mobile home it said 64' and the State of Vermont needs to issue a permit for when it goes down the road from the factory, and they needed the length. It is 64' with a tongue. 43" x 43" and when that comes off, it is 60'.

Ray Denny said the tongues are never left on the trailer.

Leary said looking at the warranty deed, it says it goes in a westerly direction to a southerly boundary 100'. It doesn't say a straight line. That would make the calculation even more difficult because we don't know where the line is.

Ray Denny said it is obvious a line means a straight line.

Atwood referenced the letter from Purdy, who wrote that he contacted Dave Swift, Regional Engineer for District #1 Drinking Water and Groundwater Protection Division, to advise him of the issues in dispute and to request his advice regarding if there should be a Site Plan amended. Purdy said that Swift said it is not the Division's policy to amend applications for such minor adjustments. Leary objected saying that neither Purdy or Swift are present.

Andrews said the footprint of the trailer is 60'. Atwood said it is plus the 1' that sticks out. Ploof gave a picture of the site to the Zoning Administrator.

Atwood confirmed the overhang is detachable.

Coombs said James Purdy is not a surveyor and is attesting to things that should come from a licensed surveyor. Coombs asked if the piece can be taken off. Is it structural? Can it be cut away? We don't know what is there. Coombs showed a blown up photo of the trailer and discussed the seam and the sheetrock or metal screws. She said proof is needed about the depth. She said without being surveyed, we don't know what is on the lot.

Andrews said it seems that this issue could be resolved if this U shape piece is removed and if it meets the setback without out.

Stone referenced section 106 of BLUO, Setback Determination: "To determine adequacy of setbacks of the primary structure to a property line or right of way, the line shall extend from the closest portion (including jutouts and overhangs) of the structure to the property line or the edge of the right of way, whichever is less."

Leary suggested measuring the mobile home, rather than the site.

Stone said the Board feels they have sufficient information and are not going to conduct a site visit. Stone asked if Andrews has specified the size of the mobile home. Andrews said it is specified in the permit.

Ploof reviewed roof construction for the Board.

Being no further question, the hearing was closed at 8:10 pm.

Respectfully submitted,

Janet Mondlak
Recording Secretary