

COMMONWEALTH OF MASSACHUSETTS
CITY OF BROCKTON
ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS held a meeting in the Council Chambers, City Hall, Brockton, Massachusetts, on Tuesday, February 12, 2013 at 7:00 pm.

IN RE: 13-05. Petition of JAMES M. BURKE, 48 North Pearl Street, Brockton, MA, a Variance for a change of number of adults allowed in the adult day care from 120 to 210 people in a C-2 Zone, located at 764 N. Main Street.

PETITIONER'S STATEMENT: Attorney James M. Burke and his client Alex Matov, presented to the board, Exhibit A, New Proposed Plan, Exhibit B, Old Proposed Plan and Exhibit C, Plot Plan. Attorney Burke and Mr. Matov is before the board seeking a variance or a modification of the variance presented on May 8, 2012, to allow an expansion of Adult Day Care clients with existing parking and open space. The petitioner stated, the Adult Day Care has been operating since 2007 and currently have approximately 120 senior clients and 20 personnel, Attorney Burke proposed to expand the foot print of the facility in order to add 90 more senior clients and 10 more personnel. Petitioner also stated, approximately 30% of the current personnel utilize public transportation and the facility is almost never occupied to the 100% occupancy level. Owner of the facility, Mr. Matov went in front of the zoning board prior, seeking a variance to add a family fun center to the facility, which is currently an Adult Day Care and childcare facility. That proposed plan was denied. The building is 20,000 square feet with two parking lots, 20 parking spaces for the daycare and 21 for the Adult Day Care. In regards to the children daycare center, the petitioner stated the facility could occupy a maximum of 65 children and there are currently 34 children enrolled. Mr. Matov operates seven other Adult Day Care centers in Massachusetts. Councilor-At-Large Robert Sullivan was present and was in favor of the petitioner's proposal.

OPPOSITION:

DECISION: Denied, did not carry.

BASIS: No hardship dealing with the locus was found by the board. Granting would derogate from the intent of the zoning by-laws and will negatively impact the orderly development of the neighborhood. Board questioned density of use and the limited egresses to the premises, in the event of an emergency. The locus was reviewed in total and the board determined a severe safety condition existed with senior citizens and the children's occupancy.

VOTE:

Motion to Grant by: Paul Merian

Seconded by: Stephen Bernard

IN FAVOR: (1)

Atty. Anthony Eonas, Chairman

Richard Francis, Fire Chief

Stephen Bernard

Paul Merian

Susan Nicastro

OPPOSED: (4)

Anthony A. Eonas
Cliff Hill
Stephen Bernard
Paul Merian
Susan Nicastro

James M. Casieri
James M. Casieri, Clerk

A true copy. Attest:
Anthony Zeoli
Anthony Zeoli, City Clerk

CITY CLERK'S OFFICE
BROCKTON, MA
2013 MAR 13 A 1 36

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Anthony Zeoli

**COMMONWEALTH OF MASSACHUSETTS
CITY OF BROCKTON
ZONING BOARD OF APPEALS**

ZONING BOARD OF APPEALS held a meeting in the Council Chambers, City Hall, Brockton, Massachusetts, on Tuesday, February 12, 2013 at 7:00 pm.

IN RE: 13-06 Petition of **KEVIN J. JONES, JR.**, 259 Winter Street, Brockton, MA, for a Variance from Art. III, Sec. 27-12, to overturn decision of Building Superintendent as to buildability or grandfather rights of a lot in an R-1-C Zone, located at **PLOT 14 CARRLYN ROAD.**

PETITIONER'S STATEMENT: The petitioner, Kevin J. Jones, Jr., as represented by counsel, Richard Wainwright, Esq., requested that the board reverse the decision of the Building Superintendent. Attorney Wainwright recited the procedural history of the matter which has spanned the last eight years. He informed the board that the Building Superintendent determined that the lot in question was not buildable, irrespective of the fact that the deed for this property was recently reformed in court. Attorney Wainwright also argued that the Building Superintendent's reliance on a prior building permit application which described the property as a single lot was erroneous as the owner at the time of construction did not sign the application and the information provided was based on the builder's assumptions. Via affidavit, Mrs. Gardner, the previous owner, stated she recollected that her father believed he owned separate lots and that her father always intended to own separate lots, which could be sold and built on individually. The deed description has been reformed to describe the property not as a single unit, but rather as three separate and distinct parcels. Attorney Wainwright stated if the Zoning Board overturns the Building Superintendent's decision, Mr. Jones will combine the lots, which will result in a 15,000 square foot lot. Mr. Jones will then seek a variance to split the 15,000 square foot lot into two 7,500 square foot lots. Attorney Wainwright presented the deed which had been reformed by the Probate Court so that the metes and bounds description of the property described two separate lots, as opposed to the original single lot description. The petitioner argued that because the original buildable lot determination was based in large part upon this description, and since the description of the deed was reformed by the Probate Court, there is no basis for the Building Superintendent to find the lot to be not buildable. Upon questioning by the board, Attorney Wainwright acknowledged that the Probate Court which reformed the deed was unaware of the zoning board's original decision, which found the lot to be not buildable based, in part, on the description, and/or the litigation which ensued thereafter.

OPPOSITION: The following people appeared in opposition to the application: Attorney James D'Ambrose and Jean D'Ambrose of 30 Carrlyn Road, Brockton, MA, as well as Ronald DiMarzio and Jacqueline Dimarzio of 27 Carrlyn Road, Brockton, MA.

Attorney D'Ambrose stated plot 39, 40 and 41 were described as a single parcel in 1955. The property has always been taxed as one parcel and Mrs. Gardener listed the property for sale in 2004 as a single parcel on the MLS listing. If the Zoning Board overturns the Building Superintendent's decision, Mr. Jones would have the three separate lots with 50 foot frontage, which will not fit harmoniously with neighboring homes. In addition, Councilor-At-Large Robert Sullivan was present in opposition of the petitioner's proposal. A letter submitted by Ward 1 Councilor Timothy Cruz, in opposition, was read to the Zoning Board members.

A letter from the law department outlining the history of this case was submitted to the board. Specifically, it was noted that an application for a buildable lot determination had been previously filed; it was determined that the lot was not buildable, resulting in an appeal to the zoning board, Land Court, Appeals Court and Supreme Judicial Court, all of which affirmed the original determination. It was noted by the law department that the relitigation of this matter would be barred by the doctrine of *res judicata* and that the relevant deed was that which was effective on the zoning ordinance became effective.

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DECISION: Denied.

BASIS: The evidence was insufficient to reverse the Building Superintendent's decision. Specifically, the primary piece of evidence put forth by the applicant was a deed reformed by the Probate Court. The reformation of this deed had as its singular goal to circumvent and undermine the Land Court's previous decision on this matter, which decision was affirmed by the Appeals Court. It was specifically noted by the Board, and acknowledge by counsel for the petitioner, that the reformation was made by the Probate Court without knowledge of the previous litigation and without the petitioner bringing it to the Court's attention. Again, this matter had been decided previously by the Land Court and Appeals Court. Further appellate review was denied by the Supreme Judicial Court. Therefore, since this matter has been heard by various courts, including the Appeals Court, the Zoning Board will not ignore those decisions. Also as the Probate Court was not informed of the previous litigation involving the deed to the property, the reformation of the deed has no bearing on the decision of buildability. The reformation of the deed is irrelevant to the inquiry as the deed pertinent to determination of intent to merge lots is the deed in effect at the time of the enactment of zoning. To allow the reformation of the current deed to alter the buildability determination would circumvent the binding case law relative to buildability of undersized lots and would eviscerate the merger provision; any owner simply could reform his or her deed to obtain grandfather status.

VOTE:

Motion to Grant by: Stephen Bernard
Seconded by: Susan Nicastro

ANY APPEAL MUST BE MADE
WITHIN 20 DAYS FROM THIS
DATE MAR 13 2013 PURSUANT TO
M.G.L.C. 40A SECTION 17.

IN FAVOR: (0)

OPPOSED: (5)

Atty. Anthony Eonas, Chairman

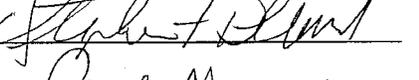
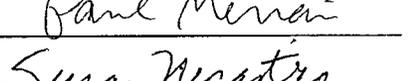
Richard Francis, Fire Chief

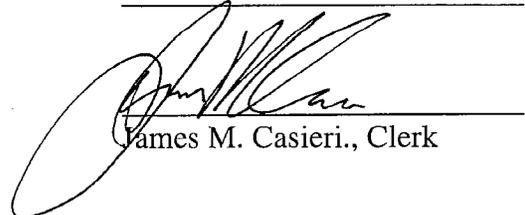
Stephen Bernard

Paul Merian

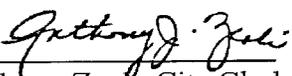
Susan Nicastro





James M. Casieri., Clerk

A true copy. Attest:


Anthony Zeoli, City Clerk

CITY CLERK'S OFFICE
BROOKLINE, MA

2013 MAR 13 A 7:37

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COMMONWEALTH OF MASSACHUSETTS
CITY OF BROCKTON
ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS held a meeting in the Council Chambers, City Hall, Brockton, Massachusetts, on Tuesday, February 12, 2013 at 7:00 pm.

IN RE: 13-09 Petition of **GINO VICTOR**, 96 Echo Street, Brockton, MA, for a Variance from Sec. 27-9, to construct an enclosed porch in an R-1-C Zone, located at **96 ECHO STREET**.

PETITIONER'S STATEMENT: Petitioner Gino Victor presented to the board Exhibit A, Plot Plan and Exhibit B, Floor Plan. Mr. Victor came before the board to request a building permit to construct an enclosed porch in an R-1-C zone. Mr. Victor stated the porch will be half enclosed and half open. The deck will have a sliding door and the siding on the enclosed portion will match the vinyl siding and windows on the home. The room will not be heated and no utilities, but there will be outlets in the room. Mr. Victor's intent is to have a three season room, not to have another bedroom.

OPPOSITION: None.

DECISION: Granted with the stipulation of the home containing no more than five bedrooms.

BASIS: The location of the existing foundation creates a hardship at the site. Granting would not derogate from the intent of the zoning by-laws and will not negatively impact the orderly development of the neighborhood. All representations in petitioner's statement shall be incorporated by reference as stipulations recorded herewith.

VOTE:

Motion to Grant by: Paul Merian
Seconded by: Stephen Bernard

IN FAVOR: (5)

OPPOSED: (0)

Atty. Anthony Eonas, Chairman

Richard Francis, Fire Chief

Stephen Bernard

Paul Merian

Susan Nicastro

Anthony Eonas
Richard Francis
Stephen F. Bernard
Paul Merian
Susan Nicastro
James M. Casieri
James M. Casieri., Clerk

A true copy. Attest:

Anthony Zeoli
Anthony Zeoli, City Clerk

ANY APPEAL MUST BE MADE
WITHIN 20 DAYS FROM THIS
DATE **APR 05 2013** PURSUANT TO
M.G.L.C. 40A SECTION 17.

2013 APR -5 A 8:52

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