

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
April 17, 2008**

Members present:

Donald Foster, Chair; David Curtis, Vice-chair; John Veary, Clerk; Eric Levitt, Member; John Oliveiri, Jr., Associate Member; Carol Zimmerman, Associate Member

Regular Meeting:

Mr. Foster opened the regular meeting at 7:05 p.m.

Roll called. Bills signed.

Mr. Foster advised that they had three hearings scheduled for tonight but before they began Mr. Paul McGillis was present and would like to speak to the Board for a few minutes. Mr. McGillis stated that he was there because of the ongoing problem with Morse Concrete. He noted that some issues were never brought up at the trial, including the 35 foot height restriction. He then displayed some photos. Mr. Foster said that although he sympathized with him and was not trying to diminish what he was saying, the dilemma was that no one could really know which way the camera was pointed when those pictures were taken.

Mr. Foster asked Mr. McGillis if he had been to the Zoning Enforcement Officer. Mr. McGillis replied that he had but Ms. Garbitt had informed him that the Town was not going to spend any more money on this issue. He did not feel, however, that was fair as it was Mr. Darling who had created this nightmare for him and his family and his neighbors. Mr. McGillis noted that the Frates parcel was also being used and the Judge had specifically ruled that it could not be used for any industrial purpose. Mr. Foster noted that it was good that he had brought this to the Board's attention but until the Zoning Enforcement Officer refuses to do anything, there was nothing the Board could do. Mr. McGillis could then file a petition appealing that decision. Mr. Foster suggested that he talk to Mr. Almedia, the plant manager. Mr. McGillis said that he would rather not as last time someone had tried that, he was charged with Assault and Battery. Mr. Foster said he should then try to work with the Zoning Enforcement Officer but he did not know if the Town would be willing to put up the money to step in and go back to Court.

Marzelli hearing – continued:

Mr. Foster reopened the Marzelli hearing at 7:17 and read the April 17, 2008 letter from Attorney Robert Mather. He was requesting a continuance until the Zoning Board's June meeting. Atty. Mather had noted that his client was trying to resolve the drainage issues that had been brought up at the last meeting.

Mr. Curtis made the motion, seconded by Ms. Zimmerman, to continue the Marzelli hearing until June 19, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 7:18.

Mello hearing:

Mr. Foster opened the Mello hearing at 7:19 and read aloud the legal ad. William Rosa was present and representing Mr. Mello. Atty. Rosa advised that the property they were discussing was located at the corner of Main Street and Forest Drive. It originally consisted of two lots. The lot located at 2 Forest Park Drive has 190 feet of frontage on Forest Park Drive and about 200 feet of frontage on Main Street with an area of 33,500 square feet. The lot located at 4 Forest Park Drive has 150 feet of frontage on Forest Park Drive and is 35,250 square feet. The lots were originally acquired by Mr. Mello's father in 1970 and were shown on the subdivision plan. In 1991, as trustee of the revocable trust, he conveyed the properties to his son. At the time, the conveying attorney did not realize that there had been zoning issues and the lots were not placed in separate ownership. Once Mr. Mello realized that the lots had merged for the purposes of zoning, he thought the solution would be to file for an abatement since he had been paying taxes on the lots as individually assessed buildable lots. That abatement was denied, so he is now paying taxes for two buildable lots but is unable to build on both lots.

Atty. Rosa stated that they believed that they could meet the criteria for a Variance here. The lots are in keeping with the other lots in the area, which are similarly situated. There will be no derogation from the intent of the bylaw as they will be consistent with what is in the neighborhood. For these reasons, they feel that the Board can grant them relief.

Mr. Oliveiri noted that he was excusing himself from the hearing as he was an abutter to the property. Mr. Foster then asked Ms. Zimmerman to be a voting member. Mr. Foster next read the various board recommendations and comments into the record. The March 19, 2008, memo from the Conservation Commission stated that they had no issues with the petition. The March 24, 2008, letter from the Planning Board recommended disapproval of the petition as they felt the lots should be considered as two non-conforming lots. The April 1, 2008, letter from the Board of Health said that they had no health reasons to deny the petition but noted that due to nitrogen loading restrictions, both lots would be restricted to a maximum of three bedrooms. The April 15, 2008, memo

from the Board of Selectmen urged caution in regard to the petition and offered the support of Town Counsel if required.

Mr. Foster summarized his understanding of the situation to be that there were two lots under common ownership and the five year time window was allowed to lapse resulting in the lots merging into one. Mr. Mello is now asking to approve the creation of two non-conforming lots. Mr. Foster said that he did want to point out that in the Zoning Board's articulation of the bylaw; hardship did not mean financial hardship. They interpret hardship to mean a physical hardship related to the geography, topology, topography, shape of the land, etc. He did not feel that a hardship argument existed here. Atty. Rosa responded that the hardship would be given the lots relationship to the street and the way it is bounded by three streets, there is no ability to acquire additional property. Mr. Foster disagreed and said that the hardship was that the lot was too small. He said that the two lots have combined into one and that one lot is buildable. The land can still be used as a single lot and the land value is not lost. Mr. Foster also did not feel that a wooded lot would be considered an eyesore in Lakeville. Ms. Zimmerman agreed.

Mr. Foster said that they are asking the Board to create two lots which are far more non-conforming than the non-conformity of the existing one lot, and if they did that they would be hauled right into Court. The Board could not create non-conformities, despite the arguments. Mr. Foster asked what Board members felt. Mr. Levitt agreed with Mr. Foster. He felt that it should not be split into two lots and that there simply was no hardship. Ms. Zimmerman agreed. Mr. Curtis felt that it was unfortunate that they had maintained the same ownership for both lots. Mr. Foster said the other unfortunate part was that they have been paying taxes on two separate lots but that was a battle that was outside the Zoning Board and not part of their consideration.

Mr. Foster asked if there was anything further. Mr. Mello stated that originally the lots had been purchased by his father and they were conforming. His father had donated land to the Town but now the Town will not let him build on the two lots and will not give him an abatement. He felt it was a financial hardship because he has been required to continue paying taxes on two lots. Mr. Foster said that he understood but that the Board could only consider the facts around the petition.

Mr. Veary then made the motion, seconded by Mr. Curtis, to deny the petition on the grounds that you cannot create two non-conforming lots.

VOTE – Mr. Veary, Mr. Curtis, Ms. Zimmerman, Mr. Levitt, Mr. Foster - **AYE**
Mr. Oliveiri – **ABSTAIN**

The hearing closed at 7:44.

Metro PCS Mass. LLC hearing:

Mr. Foster opened the Metro PCS Mass. LLC hearing at 7:45 and read aloud the legal ad. Ms. Joan Costello was present for Metro PCS as well as Mr. Darrin Goldsmith, the radio frequency engineer. Ms. Costello advised that they were proposing to install six antennas on an existing monopole on Freetown Street.

Mr. Foster stated that they were adding to an existing tower that is out in the middle of the woods, they were not going any higher, and nobody was going to see it. He had no problems with the petition. Ms. Costello explained that Metro is new in the area and as long as you stay in the general area, you will have unlimited calling. That is why it is so inexpensive. Mr. Foster asked if there were any additional comments or questions. There were none.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to approve the petition. The **vote** was **unanimous for**.

Mr. Foster then explained to Ms. Costello the timing of the filings, the appeal period, etc.

The hearing closed at 7:50.

Mr. Curtis made the motion, seconded by Mr. Levitt, to approve the Minutes of the January 31, 2008 meeting. The **vote** was **unanimous for**.

Mr. Oliveiri made the motion, seconded by Mr. Veary, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 8:00.