

HANSON BOARD OF APPEALS
Minutes of Public Hearing December 12, 2023

Board Members present: Sean Buckley, Chairman
Michael Fleming, Vice-Chair
Christopher Costello, Clerk

Petitioner: Deborah J. Perkins Trustee – Case#23DC21
82 Tavern Waye - 7:00 PM
Section 13 Appeal

Atty. William Sims for the Petitioner Deborah J. Perkins
Atty. Matt Provencher for Board of Appeals

The Petitioner is filing the appeal on the decision of the Building Inspector to deny a building permit for 82 Tavern Waye Map 100 Lot 29A Hanson assessors Map.

Property is located in Residence AA and Agriculture Recreation zone.

Building Inspector/Zoning Enforcement Officer Kerry Glass commented that based on the Planning Board's determination that the plan as submitted does constitute a subdivision under MGL Chapter 41 Section 81L. The Board determined vehicular access from lots (Lot 100--29-0 and 100-29AH) as shown on the referenced plan do not meet the access requirements for hammerhead lots under Section VII(B)(4)(d) of the Hanson By-law. This was sent to Town Counsel and they are in agreement of the Planning Board's decision. It is for those reasons that he is unable to issue a permit at this time.

The comments from Town Planner Tony DeFrias and members of the Planning Board based on an application filed by Kevin Perkins on February 23, 2023 for the creation of three "hammerhead"/"pork chop" lots on Tavern Waye. The Planning Board has concerns regarding conformance with sections of the by-law in regards to the access requirements between Lot 100-29A-H. The separation distance between these two lots is shown as 10.02 feet. The Planning Board believed that the distance between these two access portions should be equal to 175 feet which is the frontage requirement for the zoning district. The Planning Board asked for advice from Town Counsel and based on that advice denied the Form A plan and filed the decision with the Town Clerk. The applicant had opportunity to appeal this decision under MGL Chapter 41 Section 81 BB – no appeal was filed. On April 25, 2023 the Planning Board received a Form A application from Mr. Kevin Perkins depicting Parcel A. Parcel A was not described or proposed as a "hammerhead/pork chop" lot and was approved by the board as a parcel. The board labeled Parcel A as non –buildable under current zoning.

Atty. Sims spoke as a representative of Deborah J. Perkins Trustee along with her son Kevin Perkins who is the general contractor for the proposed house to be built on the lot. Sims wanted to outline at the beginning is to walk the Board thru the outline of what parcels are in play here and what is not. Sims pointed out that 86 Tavern Waye is not the subject of this petition. Parcel A has 2.189 acres. Everything falls within Section VII. Which calls for a separation between the access portions for contiguous lots. The most important part of the proposed plan right now is the separation between the access portion from Parcel A and the

access portion for the only other abutting property #86. The proposed plan calls for this 10' portion which separates both access portions. At some point the term abut and the term contiguous will be discussed as they apply to this particular situation.

At this point Kevin Perkins spoke. We are talking about Parcel A – 2.189 acres – proposed use is a single family dwelling. There is an existing single family dwelling at 86 Tavern Way and an existing single family in front at 80 Tavern Way. Perkins spoke about the application and the denial letter from the building Inspector. As Mr. Sims indicated the denial letter was cited incorrectly. The building inspector references that he reviewed the plans for 86 Tavern Way when in fact the application was for 0 Tavern Way Parcel A – it is not 86. This property the way it sits has been divided – plans have been recorded – it was endorsed as an ANR endorsement the way it currently sits. The lots are in separate ownership and this is not a proposed plan this is existing conditions-this is the layout and configurations of these three lots. The building inspector did reference the zoning district in question is AA and it requires 175 feet of frontage separation. If you read Section VII.B.4(d) it states that no access portion of another hammerhead lot shall be allowed to abut within that distance equal to the frontage requirement of the zoning district of the lots. Nowhere in the sentence is the word separation. That is the building inspector injecting criteria of his own; Perkins wants to make sure that the Board is aware of that. Hammerhead/pork chop lot provision Section VII.B.4 in its entirety –does anyone know how long that has been in existence? The reason he is asking is this has been around a long time that had someone felt that the intent of this by-law was created is not being met by this wording – there has been ample opportunity and plenty of town meetings that this could have been proposed for amendment. What we have is what we are working with.

Section VII.B.4 in its entirety – he has submitted attested copies of the actual by-laws. He has submitted definitions that he wants to touch upon. Perkins wanted to discuss the word “abut.”

Atty. Sims said they have researched the terminology of the word “abut” – per dictionaries the term “abut” comes up with border on, touch on, property that is next to and abuts another property- so essentially what we are talking about here is you have to have contact between the borders of each property in order to comply with the word “abut.” There is no touching of any shape or form – it does not comply. Sims went on to say that this is critical in the analysis of this proposal. We are talking about the access portion of parcel A, access portion for 86 Tavern Way and there is all the way from the street level all the way to the back not a single portion of 86 Tavern touching the access portion of Parcel A.

Atty. Sims talked about the definition of the word abut – and not try to expand beyond the legal definition. The 10' expansion of the property provides the barrier to prohibit any abutting on the access way. Atty. Sims went on to say that all other Boards in the town have approved this – Conservation, Bd. of Health, Fire police.

Atty. Provencher, Town Counsel, gave his opinion on this proposal stating that one thing has not been addressed by the applicants at this hearing and that is specifically the communication you read into the record from the Town Planner. Mr. DeFrias wrote a letter to the Board indicating that on 2/22/23 the Planners received a Form A application on dividing these two lots into buildable lots. The Planning Board heard arguments that were similar to the ones being discussed tonight and voted to deny approval of a definitive subdivision which is a division of land that creates two or more buildable lots substantially on the basis that the access concerns and the by-laws. They received an opinion from Town Counsel's office indicating that the best reading of the by-law was that it would require 175' separating between those lots. Provencher's understanding is that the applicants did not appeal that decision denying a

definitive subdivision approval. After that occurred the applicant returned to the Planning Board and applied for an ANR subdivision plan – which was to create one buildable lot. The Planning Board voted to approve that ANR plan and endorsed it noting that Parcel A is not a buildable lot. Provencher;s understanding is that it has not been appealed and so the approval of the creation of this parcel and should have been recorded in the Land Evidence of the Registry of Deeds shows that parcel A in not a buildable lot and what is being presented to this Board tonight is that they went to the building inspector to apply for a building permit and were denied on the basis that the original subdivision plan creating two buildable lots was denied – the plan on file here in Town and what is recorded showed Parcel A is not buildable – that is the reason for the denial.

Mr. DeFrias letter makes it extremely clear that to act in the fashion and issue the approval the applicant is seeking would be to functionally overturn the decision of the Planning Board. He feels that they did not make an appeal on time and so the issue is that there is no viable path to follow.

The Board decided that it was best to continue the hearing to better assimilate all the information presented.

Motion made to continue the hearing of Deborah Perkins Trustee to January 23, 2024 at 7:00 pm: Sean Buckley
Second: Michael Fleming
Vote: 3-0