

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

Building Code Appeals Board
Docket No. 05-328

Laurence Misrok,)
Appellant,)
)
v.)
)
Town of Lee and Donald Torrico,)
Appellees)
_____)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant asks the Board to grant a variance from 780 CMR 111.4 (Water Supply) of the Massachusetts State Building Code ("MSBC") for 70 Antelope Drive, Lee, MA. In accordance with MGL c. 30A, §10 and §11; MGL c. 143, §100; 801 CMR 1.02 et. Seq.; and 780 CMR 122.3.4, the Board convened a public hearing on November 21, 2006 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and representing the Appellant was the Design Engineer, Paul Scarpa. Present and representing the Town of Lee Building Inspections Department was Building Commissioner Donald Torrico ("Commissioner Torrico"). There was no representative present from the Town of Lee Fire Department.

Exhibits¹

The following Exhibit was entered into evidence:

Exhibit 1: Copy of Tri-Town Health Department opinion letter

¹ The Board takes administrative notice of its own records. 801 CMR 1.01(10)(h)(administrative notice); M.G.L. 30A, §11(5).

Findings of fact

1. There are three adjoining lots, 267, 268 and 313, on Antelope Drive and Leisure Lee Road which are owned by the Appellant and his daughter.
2. The property affected by this decision is the unimproved lot ("Lot 313") located at 70 Antelope Drive, Lee, MA ("subject property"). (Board records submitted prior to hearing).
3. On or about July 17, 2006, the Appellant submitted a 'Request for Plan Review and Building Permit Application' along with the construction documents to the Town of Lee Building Inspections Department ("Building Department") seeking approval to construct a single family dwelling on Lot 313. (Board records submitted prior to hearing).
4. On or about July 24, 2006, Commissioner Torrico informed the Appellant that his request for a building permit was rejected because the water supply for Lot 313 was not in compliance with 780 CMR 111.4 because Lot 313 did not have its own water supply located on the land where the subject property was to be constructed. (Board records, submitted prior to hearing).
5. There is a shared well located on Lot 268, which is adjacent to Lot 313, which provides a water supply to Lot 268 and Lot 313. The proposed location of the well is the only place the well can be sited to service all three lots. (Board records, Testimony of Paul Scarpa).
6. On or about September 5, 2006, the Appellant filed this appeal with this Board. The relief sought by the Appellant was, "the issuance of a building permit to construct a foundation for a single family home at 70 Antelope Drive, Lee, MA" which would require this Board to grant a variance from M.G.L. c. 40 §54. (Board records submitted prior to hearing).

Discussion

There are two laws at issue in this appeal, M.G.L. c. 40 §54 and 780 CMR 111.4. The text of 780 CMR 111.4 is taken verbatim from M.G.L. c. 40 §54. M.G.L. c. 40 §54 states, "No building permit shall be issued for the construction of a building or structure that would necessitate the use of water therein, unless a supply of water is available therefore, either from a water system operated by a city, town or district, or from a well located on the land where the building is to be constructed, or from a water corporation or company, as defined in section one of chapter one hundred and sixty five."

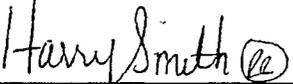
At the conclusion of the hearing, a motion was made to grant the Appellant's request for a variance from 780 CMR 111.4 (Water Supply) of the MSBC because the three adjoining lots are owned by one family; the Tri-Town Health Department's regulation allows for the use of shared wells, and shared wells exist in neighboring communities. The Appellant's request for a variance was originally granted by this Board

but after careful reconsideration this Board has concluded that granting this variance is akin to granting a variance from a General Law and this Board does not have the authority to do so. Therefore, this Board must **DENY** the Appellants request for a variance from 780 CMR 111.4 (Water Supply). This Board hereby recommends that the Appellant form a water company as defined by M.G.L. c. 165 §1. If the Appellant proceeds with this Board's recommendation and forms a water company he will be in compliance with M.G.L. c. 40 §54 and will not need a variance. Motion carried 3-0.

Conclusion

The Appellant's request for a variance from 780 CMR 111.4 is hereby **DENIED**.

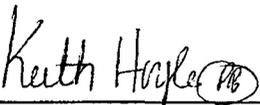
SO ORDERED.



HARRY SMITH



ALEXANDER MACLEOD



KEITH HOYLE

DATED: April 5, 2007

** In accordance with M.G.L. c. 30A § 14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after the date of this decision.*