

TOWN OF STOCKBRIDGE, MASSACHUSETTS

ZONING BOARD OF APPEALS

APPLICANT PERLMUTTER JAMES & STEPHEN H & TOM PERLMUTTER

PREMISES AFFECTED: 22 Beachwood Drive, Stockbridge, MA.

REFERRING The applicant is requesting a variance pursuant to the Stockbridge Zoning Bylaws, Section 7.2.2 requesting a Variance with regard to property at 22 Beechwood Drive

DATE OF DECISION November 29, 2022

On November 29, 2022 the Zoning Board of Appeals heard an application submitted by PERLMUTTER JAMES & STEPHEN H & TOM PERLMUTTER pursuant to the Stockbridge Zoning Bylaws, Section 7.2.2 requesting a Variance to create two building lots from the property at 22 Beachwood Drive; one conforming lot of 2.01 acres and the other nonconforming lot of 1.88 acres.

FINDINGS:

The ZBA Board asked for an opinion on the application from Town's Counsel Miyares Harrington (MH). Attorney Christopher Heep responded in a letter to the Board on November 23, 2022 with an opinion that in summary said that "the proposed lot division is not lawful, and that a variance could not be granted to permit the division and allow the creation of a second home lot". Acting Board Chair Miles Moffatt read the paragraph that included this statement to the people gathered at the meeting, including the applicants, their attorney from Cain Hibbard, and several members of the public that were attending the meeting virtually.

Also noted in the letter from Attorney Heep was the relevance of the doctrine of merger. This had been noted to perhaps be relevant to the variance application, since the applicant's family at one time owned four parcels that were merged into one lot by the Town. Attorney Heep noted in his letter that "the doctrine of merger requires the combination of the applicant's four parcels of land. As the total acreage is less than what would be required for two separate lots, it would not be possible that some but not all of the original parcels be merged. They must be treated as a single lot, and cannot be artificially divided in any manner which results in the re-establishment of nonconforming lots".

The Board then allowed comment from the applicants. The Perlmutter family spoke as to their desire to divide the land to allow them to build another house to accommodate other members of the family to live in Beechwood. They have been living in Beechwood since the 1960s and desire to have more room for their extended family. Attorney for the applicants, Elisabeth Goodman of Cain Hibbard encouraged the Board to visit the site to see in person the layout of

the lots, access from the local roads, and other features as shown on the survey. The Board then asked for comments from the public, and a few of them spoke as neighbors of the Perlmutter's, voicing their support for the creation of two lots and building a new home.

The Board reiterated that it cannot accept the application on grounds of statements from the Town's attorney, and the fact that the applicants would be creating their own hardship in dividing the land, creating a nonconforming lot (a new lot less than the 2 acres required by zoning). The Board stated that another meeting to visit the property and re-convene to consider the application is not necessary. Attorney Goodman concurred that nothing regarding the conditions of the application is going to change that would warrant another meeting. Chair Moffatt then asked the Board members to vote on the acceptance or rejection of the application for a variance.

VOTED:

The chair asked the Board members to vote on the application. A "yes" vote would indicate acceptance of the variance; a "no" vote would indicate denial of the variance request. The vote was as follows:

Jim Murray: no

John Hyson: no

Patricia Andrew: no

Mark Mills: no

Miles Moffatt: no

Note that Board Chair Thomas Schuler was not present for the discussion and voting; he recused himself since his family owns a parcel abutting the property that is subject to this application. Alternate Board Member Catherine Chester was present at the meeting, but did not need to vote since there was a quorum of Board members.