

HOUSING APPEALS COMMITTEE  
ANGLEWOOD HOUSING DEVELOPMENT LIMITED PARTNERSHIP

Decision # **90-06**  
Appellant: **ANGLEWOOD HOUSING DEVELOPMENT LIMITED PARTNERSHIP**  
Appellee: **KINGSTON BOARD OF APPEALS**  
Date: **September 12, 1996**  
RULING ON PROJECT CHANGE

The following ruling was issued orally September 12, 1996 pursuant to 760 CMR 31.03(3). Exhibit 14, referred to in this ruling and on file with the Committee, consists of five sheets of plans: Sheet 1, "Definitive Subdivision Plan...", 1/13/92, rev. 1/31/92, 9/8/92, 5/16/94; Sheet 2, "Utility, House Location, & Landscape Plan...", 5/5/94, rev. 5/16/94, 5/30/95, 6/16/95; Sheet 3, "Profile...;" Sheet 4, "Construction Details...;" Sheet 5, "Construction Details...."

There are two issues raised here: the frontage and the setback. For the frontage, we don't have a situation where you have people agreeing to a 50-foot frontage, ...and the developer squeezed into its plans, without any numbers being listed or anything, some frontages that really looked like

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they might be 50, but are actually 40 or 45. In that case, I think I might be quite sympathetic to the Board.

But, instead, what we have here is plans that have gone through a number of iterations, and, in every iteration, they've

shown what they quite clearly show now: that these are very oddly shaped lots, which are sometimes called porkchop-shaped lots. That's obvious to anyone glancing at the plans, and that's clearly an issue.... There's a serious planning issue as to whether you permit those kinds of lots or not. But, the point is that people have been aware, I think, for a long time, that the kind of proposal the developer was making here required that shape lot.

Similarly, the unusual and, I might even say, somewhat creative design here is relevant to the setback on the two lots that we're discussing today. It's certainly not one of the most creative or aesthetically pleasing plans I've seen, but it's a long distance from one of the worst. It is not someone just drawing a straight road and lining houses up along it.

There is clearly an attempt here to make this development fit with the site, particularly with the beautiful pond that we all saw on the site visit. The houses are placed at different angles in relationship to each other and to the road. And, in particular, the two lots, Number 8 and 11, sit angled to the roadway so that it's only the closest corner of the house that is less than a... 20-foot setback from the edge of the easement, which if my calculation is right,

is more like 19 feet from the edge of the roadway. ... That clearly mitigates the closeness a little bit. They're not just sitting flat on the road.

... I've seen plans where the houses are set there; they look like they're roughly 20 feet; there are no numbers on the plans; and, in fact, if you scale it off later, it turns out that it's less.... And in a situation like that, there would be no question that the written document talking about 20 feet would be the controlling document.

But, we don't have that here. We have plans that have numbers written in quite clearly. There's one neglected on sheet 1, having to do with the frontage, but that's quite insignificant, since it was still clear that it was a small porkchop.

The other thing that... is important to realize here is that engineers have been reviewing these plans continually.... We all realize when it comes down to these nitty-gritty issues of site design, it's the engineers that are really the experts, and it's the lawyers that try to reduce those things to writing to satisfy the legal process. Engineers work from plans. They don't work from long, narrative documents....

I think there's no doubt from what's been going on in this case, that people have been working very hard on these plans. ...That's something that I'm thinking about in making this decision, that engineers have been deeply involved in this, and that at every circumstance, counsel have told

me that they have been consulting with the engineers, and the plans have been going back and forth between lawyers and engineers and

the parties.

Another thing that I'm looking at in deciding how to proceed today is that the written language of both the disputed sections of the Agreement for Judgment, both subsections (b) and (c) of Section B(1), don't just state the requirement, but then they end with a clause saying, "substantially as shown on the plans." ...That clearly indicates... that these plans should be looked at very seriously. I won't go so far as to say that the parties intended that they control, but I believe the plans should control. Not only because it says that in the Agreement, but... generally,... even if it weren't true in the Courts, I think it should certainly be the case in the administrative practice before this Committee, because it has always been my policy to tell parties that if you want absolute clarity, plans drawn by an engineer need to be filed, and we will rely on those. And, I think, because people tend to do that in the normal course of business in these areas, that's the appropriate way to go.

It's no accident that subdivision control law relies on plans that are drawn and recorded, and it doesn't rely on lengthy narrative. Hundreds of years ago, all out titles were based on

lengthy narratives that drive title searchers crazy, and increasingly we're moving toward a system that works better. People are registering land and filing plans.

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In the subdivision area, we rely on plans drawn by engineers, signed by the controlling authority, and filed as public documents.

With regard to the substantiality of [the requested change]..., the big decision that clearly affects local concerns in this case is whether unusually-shaped lots like this should be allowed, and whether houses relatively close to this loop street near the pond should be allowed....

In all the iterations of this plan, it is shown that there were going to be unusual-shaped lots, and that the houses were going to be close. The Board, in entering into an Agreement for Judgment with these plans in front of it, knew that that was the basic design that it was approving. There is no way, when looking at these plans, that anyone could think, even just looking at... the length of the street, that there's any way that these lots were all going to meet a 50-foot frontage requirement.

Personally, I think that this... should have been handled more in the nature of a correction, but it can also be viewed as a change. If it's viewed as a change, it's certainly insubstantial, because the basic nature of this development has not changed in any way.

Therefore, I am ruling that this is an insubstantial change, and our regulations permit me to approve the change requested.

That doesn't seem quite the way the issue is couched here today, but just so there be no misunderstanding, let me

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say what I am doing. I'm either approving the change, or what I'm

saying is that the Agreement of the parties, which was formalized by a decision of the Housing Appeals Committee, indicates that this development can be built as shown on these five plans which are Exhibit 14, ...and that anything that is explicit on that plan controls anything that... is in the written documents. [If] the written document, the Agreement for Judgment,... addresses [an issue that is not on the plan, then] that applies as well. Both of these things constitute the comprehensive permit, but the plan drawn by the engineer is the controlling document.

This ruling may be reviewed in accordance with the provisions of G.L. c. 40B, s. 22 and G.L. c. 30A by instituting an action in Superior Court within 30 days of receipt of the written memorandum.

Date 9/20/96

Housing Appeals Committee

Werner A. Lohe Jr.

Chairman

End Of Decision