



Katrina Koshivos <koshivosk@graffton-ma.gov>

**RE: Opinion regarding 81L**

1 message

Ginny Kremer <ginny@bbhlaw.net>  
To: Katrina Koshivos <koshivosk@graffton-ma.gov>  
Cc: William McCusker <billmccusker@charter.net>

RECEIVED

Mon, Jun 29, 2020 at 11:38 AM

JUN 29 2020

Zoning Board of Appeals

Hi Katrina & Bill:

The applicant is correct that the Palitz case stands for the fact that a variance is necessary, because the nonconformity is not protected by c. 40A, s. 6. However, I don't see how that can be interpreted to mean that the strict conditions for issuing a variance are met simply because the lot was created via G. L. c. 41, s. 81L. In fact, I would argue that the fact the lot was created using Section 81L means that the hardship was self-created, making the unusual lot shape argument unavailing.

The revision of the lot lines pursuant to the 81L plan resulted in the creation of new nonconformities, which requires the issuance of a variance. See, Palitz v. Zoning Bd. of Appeals of Tisbury, 470 Mass. 795, 801 (2015). The zoning violations would not commence at the time of the recording of the plan, but instead would occur once a lot is sold (thus removing the lots from common ownership). See, Bruno v. Zoning Bd. of Appeals of Tisbury, 93 Mass. App. Ct. 48, 53 (2018). The Bruno case is instructive--as in this case, the property owner in Bruno created new lots for existing structures via a plan endorsed pursuant to G. L. c. 41, § 81L. In that case, the property owner did not sell one of the lots until several years later. Subsequently, an abutting property owner sought enforcement against the existing structure. The Appeals Court held that the lot line revision created a new zoning nonconformity, thus stripping the existing structure of any protection from zoning enforcement it may have had pursuant to G. L. c. 40A, § 6.

I see nothing in these cases that suggests a variance is warranted based upon the lot creation via Section 81L.

Let me know if you have any questions or would like a more formal opinion.

Thanks,

Ginny

Ginny S. Kremer, Esq.  
Blatman Bobrowski & Haverty, LLC  
9 Damonmill Square, Suite 4A4  
Concord, MA 01742  
(o) 978.371.2226  
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RECEIVED TOWN CLERK  
GRAFTON, MA  
2020 JUN 30 AM 11:19

**From:** Katrina Koshivos <koshivosk@graffton-ma.gov>  
**Sent:** Monday, June 29, 2020 10:38 AM  
**To:** Ginny Kremer <ginny@bbhlaw.net>  
**Cc:** William McCusker <billmccusker@charter.net>  
**Subject:** Re: Opinion regarding 81L

Ginny,

Sorry about that I will update your email address.

Here is the attachment.

Katrina Koshivos  
Town of Grafton  
Zoning Board of Appeals  
30 Providence Road  
Grafton, MA 01519

508-839-5335 ext. 1157

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**Town Hall offices are open to the public by appointment only. Please call the department you need and set up an appointment. Please visit the RED BANNER on the town web site for updates.**

On Mon, Jun 29, 2020 at 10:34 AM Ginny Kremer <[ginny@bbhlaw.net](mailto:ginny@bbhlaw.net)> wrote:

Hi Katrina:

I think you may be accidentally using an old email address. Please make sure your emails are to me at [ginny@bbhlaw.net](mailto:ginny@bbhlaw.net)

I did not receive the attachment – can you please send it again?

Without seeing it, I completely agree with Bill's analysis. But I will take a look and report back.

Thanks so much,

Ginny

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Ginny S. Kremer, Esq.

Blatman Bobrowski & Haverty, LLC

**9 Damonmill Square**, Suite 4A4

Concord, MA 01742

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**From:** Ginny Kremer <[KremerLaw@outlook.com](mailto:KremerLaw@outlook.com)>

**Sent:** Friday, June 26, 2020 6:29 PM

**To:** Ginny Kremer <[ginny@bbhlaw.net](mailto:ginny@bbhlaw.net)>

**Subject:** FW: Opinion regarding 81L

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**From:** Bill McCusker

**Sent:** Friday, June 26, 2020 9:29:39 AM (UTC-05:00) Eastern Time (US & Canada)

**To:** 'Ginny Kremer'

**Cc:** 'Robert Berger'; 'Katrina Koshivos'; 'Bill McCusker'

**Subject:** RE: Opinion regarding 81L

Ginny,

Allow me to elaborate a bit further.

It is Attorney Leino's position that the fact that the parcel was created via 81L is the unique condition of this lot that then creates the hardship. That's the key point in question. As you know variances can be granted when there are unique circumstances owing to the shape, topography or soil condition that create a hardship. I don't see how 81L can be considered the unique circumstance here.

I'd be happy to discuss this further if it will help.

Bill

**From:** Katrina Koshivos <koshivosk@graffton-ma.gov>  
**Sent:** Thursday, June 25, 2020 9:16 PM  
**To:** Ginny Kremer <kremerlaw@outlook.com>  
**Cc:** William McCusker <billmccusker@charter.net>; Robert Berger <bergerr@graffton-ma.gov>  
**Subject:** Opinion regarding 81L

Ginny,

At our ZBA meeting this evening the attorney for the applicant was discussing a decision on a lot that was created out of 81L.

I have attached that attorney's narrative for your review.

Bill McCusker would like you to review and give him an opinion as to what the Board can do relative to case law and issuing a variance.

Thank you,

Katrina Koshivos

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Zoning Board of Appeals  
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Grafton, MA 01519

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<https://www.grafton-ma.gov/home/news/local-annual-election-postponement-information>

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