

Ashland Zoning Board of Adjustment Meeting
Minutes
May 1, 2014
Ashland Booster Club

Members Present: Ellison Badger, Elaine Allard, Susan MacLeod (Planning Board representative), Patricia Tucker (alternate, appointed as voting member)

Members Absent: Michelle Fistek

Others Present: Paul Hicks, Susan Hicks, Donald Lester, Tony Guyotte, Fran Newton, Normand DeWolfe, Kathleen DeWolfe

The meeting was called to order at 7:00 pm by Chairman Badger.

Hearing: Case 2014-04. Request for a Variance by Paul A. and Susan L. Hicks for relief from side setback requirements of Zoning Ordinance 2.3c. Property located at 241 River Street, TML: 013-005-002 in the Rural Residential Zone and the Squam Overlay.

Mr. and Mrs. Hicks described their property in relation to the proposed location of an 8'x10' shed. The lot size is just over 10,000 square feet, with home (no basement, crawl space only) built in the center of the lot. There is limited room to either side of the house; the right side has a slope and a culvert. The left side of the lot has enough space to locate the shed 3 feet from the side boundary, leaving enough space behind for maintenance of it without going onto neighbor's lot. The shed will be on blocks, with no foundation, and will be 50 feet from the river in compliance with the state. The ground will be undisturbed; it does not interfere with any other private property or thruway.

Mr. Badger noted that the application was complete, abutters were notified properly. There were no comments received from any of the abutters.

Mrs. Tucker was appointed as a voting member for this meeting by Mr. Badger

A motion was made by Patricia Tucker, seconded by Elaine Allard, to accept the application. The motion passed in the affirmative: 4-Yes (Badger, Allard, MacLeod, Tucker) to 0-No.

Mr. and Mrs. Hicks addressed each criteria for the variance.

- *Variance will not be contrary to the public interest:* The location of the shed does not interfere with the right of way, view, or the neighbors.
- *Spirit of the ordinance is observed:* The ground will not be disturbed. The shed is not a dwelling, is an accessory only. It will be less than 150 square feet and cost will be less than \$800.
- *Substantial justice is done:* The shed will provide a place for storage of lawn furniture, mower, etc., which cannot be stored in the garage or the crawl space.
- *Values of the surrounding properties are not diminished:* This will not diminish the value of the neighbors' properties.
- *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:* The proposed use is reasonable and cannot be done within strict compliance with the ordinance.

Mr. Badger closed the public portion of the hearing.

In response to questions from the ZBA members, it was noted that the plan shows a shed and fence (less than 6 feet high) which belong to the neighbor; the neighbor's shed overhangs the boundary and the fence touches the boundary between the two properties. The Hicks explained that their shed will be 8'x10', peak of roof about 7 feet high, with no interior upper levels, and meets the criteria for 50 feet from the river. Mr. Badger noted that Mr. and Mrs. Hicks cannot meet any other setbacks no matter where the shed goes.

The ZBA members were polled for their responses to the criteria for granting a variance.

1. The variance will not be contrary to the public interest.
Badger (True); Allard (True); MacLeod (True); Tucker (True)
2. The spirit of the ordinance is observed.
Badger (True); Allard (True); MacLeod (True); Tucker (True)
3. Substantial justice is done.
Badger (True); Allard (True); MacLeod (True); Tucker (True)
4. The values of surrounding properties are not diminished.
Badger (True); Allard (True); MacLeod (True); Tucker (True)
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
Badger (True); Allard (True); MacLeod (True); Tucker (True)
 - ii. The proposed use is a reasonable one.
Badger (True); Allard (True); MacLeod (True); Tucker (True)

The variance was granted and the site plans were signed by Mr. Badger and Ms. Allard.

[Paul and Susan Hicks left the meeting at 7:26.]

[Susan MacLeod was excused from the ZBA table to sit in the audience for the next portion of the meeting.]

Requests for Rehearing: Two requests for rehearings were discussed by the ZBA members (Badger, Allard, and Tucker). It was explained to the members of the public that the decisions on the motions for rehearings were being held in public, but that no public input or further input from either party would be heard. It is entirely the decision of the Board whether to grant the rehearings or not.

Motion for Rehearing No. 2 (*McBournie/Bell Re: Administrative Appeal that the Planning Board failed to conduct a hearing on the noise abatement plan submitted to it on 12/18/13*)

- The Motion for Rehearing filed on 1/15/14 should be denied because (a) the appeal for action taken on 12/4/13 is untimely and (b) appeals on procedural arguments are not heard by the Zoning Board of Adjustment.
 - **A motion was made by Patricia Tucker, seconded by Elaine Allard, to deny the administrative appeal from the Planning Board's decision. The motion passed unanimously: 3-Yes (Allard, Tucker, Badger) and 0-No.**

Motion for Rehearing No. 1 (*McBournie/Bell Re: Administrative Appeal from the Planning Board; Motion for Rehearing challenging the ZBA's 12/4/13 approval of Lester's application for special exception allowing expansion of the veterinary hospital use*)

- On 3/20/14, the ZBA ruled on (denied) the administrative appeal.
- Also on 3/20/14, the ZBA discussed the Motion for Rehearing with the intent to deny it, but the ZBA failed to vote on the request for a rehearing.
 - It was explained that if a reconsideration of the Motion for Rehearing is granted, the ZBA will only be ruling on whether to grant the rehearing or not.
 - **A motion was made by Patricia Tucker, seconded by Elaine Allard, to approve a rehearing only on the Motion for Rehearing. The motion passed unanimously: 3-Yes (Tucker, Allard, Badger) and 0-No.**
 - **The reconsideration of the Motion for Rehearing will be scheduled for May 22. Appropriate notices will be sent out.**

[Susan MacLeod rejoined the ZBA at the table for the remainder of the meeting.]
[Donald Lester and Tony Guyotte left during the following discussion.]

Additional Business

The open position (fifth person) of the ZBA has not been filled yet.

The Re-Organization of the Board was postponed.

Rules of Procedure – The draft Rules of Procedure and the application process were reviewed by the Board, with the following suggestions and comments:

- Add designation of a person to sign certified documents.
- Ensure that applicants for special exception and variance have the criteria used by the Board to grant/deny. Allow room after each criteria for applicant to write a response. Give the form to the applicant and ask for its return in advance or make it a part of the actual application.
- Add notation that all supplementary documentation from the applicant should be submitted in advance with the application (not at the time of the meeting).
- Fees and rates for the applications may need to be raised.
 - The \$90 application fee has not been increased for quite some time. Postage is increased when raised by USPS.
 - Planning Board has discussed using a flat fee per abutter (e.g., Holderness, \$8 per abutter) while keeping the application fee stable.
 - Other costs to be considered in determining fee structures include the cost of the newspaper ad (\$30-40?) and the cost of secretarial assistance.
 - Mr. Badger will check with other local land use boards regarding rates and fees.
- Add a note on the application that it is the applicant's responsibility to cover the costs if additional outside expert help is needed.
- Notices of Decisions by the ZBA are to be forwarded to the applicant, Building Inspector, Planning Board, Assessor and Board of Selectmen.
- Investigate whether it is required to post and publish Notices of Decisions.
- **The ZBA members were directed to review and “mark up” the proposed Rules of Procedure and the application forms. Return to Mr. Badger.**

The meeting was adjourned at 7:57 pm.

Minutes submitted by Mardean S. Badger