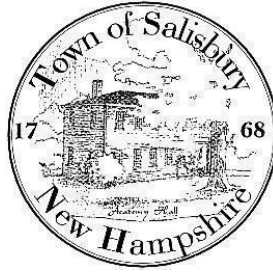


Town of Salisbury, NH
Zoning Board of Adjustment



Approved Meeting Minutes
October 13, 2022

Board Members Present:

John Bentley	ZBA Chair	Present
David Kelly	ZBA Vice-Chair	Absent
Loretta Razin	ZBA Member	Present
Gary Williams	ZBA Member	Present
Tricia Thompson	ZBA Member	Present
Eric Maxwell	ZBA – Alternate	Present
Marcus Zuech	ZBA – Alternate	Absent
Vacant	ZBA – Alternate	
Vacant	ZBA – Alternate	
Vacant	ZBA – Alternate	
April Rollins	ZBA Assistant	Absent
Jennifer King	ZBA Recording Secretary	Present

Members of the Public:

Jocelyn Henry, Megan Whyte, Gayle Landry and Dave Kelly

Zoom Attendees: none

Chair Bentley called the meeting of the Salisbury Zoning Board of Adjustment to order at 7:01 p.m.

Approval of Minutes

Tricia Thompson **motioned** to accept the draft minutes of September 29, 2022 as written, Gary Williams **seconded** the motion which passed successfully.

PUBLIC HEARING- Variance Application Rehearing for Meghan Whyte located at 112 Raccoon Hill Road (Map 247, Lot 2) in order to allow for the construction of a chicken coop within the side yard setback.

Chair Bentley opened the hearing at 7:07 p.m.

Brief discussion occurred regarding the events that led to this meeting. Chair Bentley explained that after the vote was held, it was later discovered that because they did not have at least 3 concurring votes, the vote that they did was invalid and a rehearing must be done.

Meghan Whyte asked some questions for clarification regarding how and when it was discovered that a rehearing was necessary and she asked for a copy of the findings of fact that had been put together from the initial hearing. She also would like a copy of any pertinent minutes and any emails among board members in which this case was discussed. There were no minutes or findings of fact posted when the rehearing was scheduled for September 19th.

Chair Bentley said that she can definitely have copies of anything pertaining to this case. He asked her to provide a re-explanation of the events that led to the construction of their chicken coop.

Meghan Whyte explained that her husband John Whyte spoke with Building Inspector Chuck Bodien informally about building a chicken coop. It was explained that if it was under a certain square footage, then they wouldn't need a building permit for it. There was a misunderstanding about the size and specifics of the structure, and they didn't think it mattered where the chicken coop went. The beginning structure was not an issue, but they then expanded and made it bigger by adding a run with a roof to protect the chickens from animals. This made it more of a permanent structure for which they should have obtained a building permit. It was determined through this process of obtaining a permit that the chicken coop is within the required 35-foot setback. They are trying to do the right thing and understand that they went about this incorrectly. They would like to obtain a setback variance after the fact so that their coop can remain where it is now. They are willing to move it if they absolutely have to. It is in the location it is because it is how it fits best on their property. She gave an explanation of the geography of their property and why there is not another spot on their property that would work well. They wish that this had never happened. They are not trying to set a precedent that it is ok to break town ordinances. She would be fine with including a condition in their variance that results in it being void in the event they sell the property so that no one else could put something else where the coop was.

Meghan Whyte said that they do understand the importance of the setback: it ensures room for the Road Agent or emergency services to access the area, etc. She does have an email from Fire Chief/Road Agent Bill MacDuffie, Jr. stating that the coop does not pose a problem in terms of roads or emergency access. It does not present any sort of safety issues nor does it preclude him from doing his job.

Chair Bentley closed the public hearing at 7:20 p.m.

Board Member Deliberation

Chair Bentley said it is important that they review this application as if the structure wasn't there, and they have to make their decisions within the parameters of if they would allow the variance if the building weren't there.

The Board began to review the application:

1. The proposed use would not diminish surrounding property values because...

Applicant response: "It is well-built, properly installed. Hope to keep the neighborhood looking good."

Meghan Whyte called a **point of order**, asking why they would deliberate as if the structure wasn't there and vote as if it wasn't there? This isn't how the application was approached last time.

Chair Bentley replied that if they deliberated as though it was there the last time, they were not supposed to, so they are trying to correct that

Meghan Whyte stated that the rehearing was called because there were not enough votes, not because they deliberated improperly. He said that any time they review an application, it has to be as though the structure is not there.

Discussion occurred among the Board regarding the proper way to approach this evaluation in light of the fact that the structure in question already exists.

Eric Maxwell feels that the onus was on the applicant to submit all of the supporting documentation when they initially applied. He feels that had they followed the correct procedure at the first hearing, this would have been voted down already.

Discussion on item #1: Tricia Thompson said it is well-constructed and maintained. The area around it is well-maintained. She does not feel that it diminishes surrounding property values.

2. Granting the variance would not be contrary to the public interest because...

Applicant response: "Hopefully it does not negatively impact anyone. The reason for the covered pen is to keep the animals under control."

Discussion occurred regarding what constitutes the "public interest." Chair Bentley feels that the public interest is the Zoning ordinance, their job is to decide if they have to enforce it to the letter or if can they grant a variance. Eric Maxwell referred to the handbook where it states that it would be contrary to the public interest "if it alters the central characteristics of the neighborhood,

threatens the public health, safety or welfare, or otherwise injures public rights.” Tricia said that according to that definition, then it is not contrary to the public interest.

3. Denial of the variance would result in unnecessary hardship to the owner because...

3a. The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

Applicant response:

“I had already built the coop which was under the square footage and added the pen area which makes it over the limit and encroaches the lot.

Tricia Thompson does not feel that this answers this question.

Discussion occurred regarding what constitutes an ‘unnecessary hardship.’ Eric Maxwell feels that the onus is on the applicant to prove that the hardship exists by submitting drawings, blueprints, etc. When they discussed it last time, he was only considering the hardship of moving the chicken coop. Now that they are reviewing this as a new application, he doesn’t feel that he would vote in favor of this.

Tricia Thompson expressed concerns with the way this process has played out. She doesn’t feel they have been at all transparent with either the applicants or the abutters. The only thing they said they were doing was a revote because they didn’t have enough votes. They are now changing the way they are evaluating the application due to new information they have found. This new information was not given to the applicant or the abutters so that they could adequately prepare as well. The applicants could have filled out the application a second time and provided more information and the detail that the Board is looking for.

Eric Maxwell feels that if they had followed the correct procedure, this would have been voted down at the last hearing. He does not feel that it makes sense to have a rehearing based upon incorrect assumptions that were made previously. He expressed concerns about opening the town up to legal liability if this process is not followed correctly.

Chair Bentley does not feel that they can continue the rehearing. They can vote the application down without prejudice, have the Whytes reapply and give them an opportunity to provide information to better prove their hardship criteria.

Eric Maxwell feels they have wasted a lot of taxpayer time and money talking about this for this long.

Tricia Thompson **motioned** that they vote down the application without prejudice and have the applicant reapply.

3b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because...

Applicant Response: "It's a preexisting structure."

The Board determined that this does not answer the question.

3c. The variance would not injure the public or private rights of others, since...

Applicant Response: "Barely visible from the road and in the nature of other structures within the area."

Tricia Thompson noted the email the applicants produced from the Road Agent/Fire Chief.

The Board determined that this answer meets the criteria of this question.

4. Granting the variance would do substantial justice because...

Applicant response: "It will keep the animals safe because it's already built."

The Board determined that this does not answer the question.

5. The use is not contrary to the spirit of the ordinance because...

Applicant response: "It is within the neighborhood setting."

Discussion occurred regarding the "spirit of the ordinance."

Chair Bentley feels that the spirit of the ordinance is to have a buffer between properties.

Tricia Thompson doesn't feel the spirit of the ordinance is to make it difficult for people and punish them when they make a mistake. Since she has served on this Board, they have granted variances for many other things.

Eric Maxwell feels the spirit is directly tied to not being contrary to the public interest.

Discussion occurred regarding the best way to proceed with the application. Tricia Thompson said that the motion on the floor is to deny the application without prejudice so that the applicant can reapply because the Board was not transparent with the new information they had discovered. Eric Maxwell feels that this is information that should have been submitted completely to begin with and should not have to change with this rehearing. Discussion continued regarding said lack of transparency.

Tricia Thompson **amended** the motion to continue the hearing to Thursday, November 10, 2022 so that they find out if the applicant can reapply if denied, or if they can amend the original application with new information as part of the rehearing. Loretta Razin **seconded** the motion, which passed successfully.

Public Comment

Meghan Whyte asked for a copy of the email that was sent among the Board Members regarding the discovery of the vote rule. She is curious to know how it came about. She is wondering who is the best person for her to contact for guidance to ensure that she is included in all future communications. To have gone through this whole process and have it decided one way and then to have it abruptly changed does not feel good or fair to them. She would like to be cc'd on all emails that pertain to her case. Discussion occurred regarding the rescheduling and the misunderstanding over whether or not the applicant would be able to attend the hearing on the 29th. Meghan Whyte said that had they known how this meeting would progress, they would have been a lot more prepared. Tricia Thompson recommended that the applicant to go online and review the law regarding variances. It would help her in filling out the new application.

Chair Bentley said they will reach out to TA Rollins and find out about the rules regarding reapplication (can they reapply if denied? Can they withdraw their application and reapply or can they add information to the original?) He also suggested that the Whytes could go ahead and withdraw the application as well and reapply. Meghan Whyte doesn't feel a lot of confidence with that suggestion and would rather wait to hear the feedback they receive from TA Rollins.

Gayle Landry expressed concern that the recordings aren't being retained. On August 11th, John Whyte was listed as being in attendance. He was not, but she was and was not listed on the minutes. Discussion occurred regarding recordings of meetings and how long they are required to be kept.

Budget Committee Update:

Tricia Thompson said that the BoS approved the budget amount they requested for 2023 (\$450).

Gayle Landry gave an update on the requirement for on how long recordings of meeting are required to be held. RSA 33-A; III-a: "Meeting minutes tape recordings are kept until written record is approved as a meeting. As soon as the minutes are approved, you can reuse or dispose of the tape."

Adjournment

Tricia Thompson **motioned** to adjourn the meeting. Gary Williams **seconded** the motion which passed successfully.

The Board adjourned at 8:34 p.m.

Respectfully Submitted,
Jennifer L. King
Recording Secretary
Salisbury ZBA Meeting
10/13/22