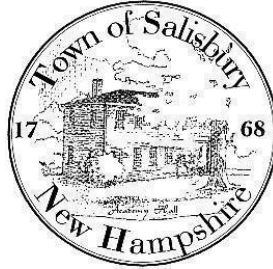


Town of Salisbury, NH
Zoning Board of Adjustment



Approved Meeting Minutes
November 10, 2022

Board Members Present:

John Bentley	ZBA Chair	Present
David Kelly	ZBA Vice-Chair	Absent
Loretta Razin	ZBA Member	Absent
Gary Williams	ZBA Member	Absent
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	Present
Jennifer King	ZBA Recording Secretary	Absent

Members of the Public:

Jocelyn Henry, Megan Whyte, Gayle Landry and Johnathan Wiggin

Zoom Attendees: None

Chair Bentley called the meeting of the Salisbury Zoning Board of Adjustment to order at 7:12 p.m., after passing out four different documents (NHMA legal advice, RSA 91-A and Fisher vs. Dover 1980) to the members in attendance.

Approval of Minutes - Tricia Thompson **motioned** to accept the draft minutes of October 13, 2022 with one correction to a comment at the end of the meeting made by Gayle Landry, Eric Maxwell **seconded** the motion and the motion passed unanimously.

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 – Mrs. Whyte asked if reviewing her application was worth

it because she would need three votes and the Chairman abstained last time which seems like a waste of time, she feels there should be more people here. Chair Bentley stated in one of the handouts, it speaks to the numbers from the ZBA handbook. Chair Bentley explained the NHMA Attorney's advice can be discussed but it will not be released to the public due to attorney client privilege. Chair Bentley stated because the board voted once and didn't have three concurrent votes the variance is denied and there is no option for a rehearing, there is only one bite at the apple essentially (Fisher vs. Dover 1980). Chair Bentley stated what is cited in the ZBA handbook muddies the waters but the board voted and that's the trigger. Mrs. Whyte asked Chair Bentley why he didn't vote. Chair Bentley replied he wasn't sure where the board stood on the application. Mrs. Whyte feels like the Chair has done her a disservice by not voting. Chair Bentley stated historically he (as Chairman) would only vote to break a tie vote which has been his policy for many years and he wasn't sure of the footing on this until he spoke with the Attorney, if he would have had to vote he would have voted it down and he didn't want to do that until after the board had done its homework to give her every opportunity to reach the variance but under the law an abstention counts as a no vote, so the variance has been denied. Mrs. Whyte asked how we move forward and Chair Bentley replied it is up to the board to decide tonight. Tricia Thompson stated some of the information in the Attorney's letter answers some of Mrs. Whyte's questions that we were supposed to answer. Mrs. Whyte stated at the past meeting she thought some of the information was going to be relayed through the Zoning Assistant (ZA) because the zoning board members could not correspond directly with her but she sent the assistant an email asking about the information and the assistant's response, was that all of the information would be presented during the next meeting when all of the zoning board members would be in attendance. Chair Bentley replied that is what we just did. Mrs. Whyte stated because Chair Bentley didn't vote and the board didn't know the procedure her variance has been denied due to their short comings. Mrs. Whyte asked if she could reapply and Chair Bentley replied no, that is what the attorney says. Mrs. Whyte stated the Chair should be the most knowledgeable. Chair Bentley stated she could file a motion for an appeal, which would come back to this board. Mrs. Whyte stated she feels this whole process has been unfair because Dave Kelly is member of the board and there has been a lot of bias. Mrs. Whyte asked how long has the board had the letters and Chair Bentley replied a couple of days. Mrs. Whyte stated she feels like the information has been sprung on her and she has had no time to prepare. Chair Bentley stated the letter / advice is from an attorney from the NH Municipal Association, which the Town is member and is not for release to the public. Mrs. Whyte asked what the process is for the appeal and Chair Bentley replied he would have to look it up. Mrs. Whyte stated the board has had the letter since last week and the board should have had an answer in regards to the appeal process, she feels like her time is being wasted as well as theirs. Mrs. Whyte asked if the board could not utilize the legal advice. Chair Bentley replied it would leave the Town exposed, if they didn't take the advice. Tricia Thompson stated she understands the frustration but when a lawyer says the board can't do it, we can't do it and you can only take one bite at the apple. Eric Maxwell agreed with Tricia's comments. Tricia Thompson made a **motion** to accept the attorney's letter and the variance id denied due to the 1st vote being invalid. Eric Maxwell **seconded** the motion and the **motion passed unanimously**.

Public Hearing - Johnathan Wiggin has requested a Variance from the Zoning Ordinance of the Town of Salisbury, Article V, Section F; in order to construct an addition which would be located in the side yard setback located in the Residential Zone and Agricultural Zone for property fronting on 22 Warner Road, Tax Map 240, Lot 38.1

– The Board opened the public hearing at 8:01 p.m. Mr. Wiggin stated he is building a garage with a master bedroom and bath above it and his contractor thought the side yard setback was 25 feet but it is actually 35 feet. The board reviewed a sketch of the 24' x 27' addition. Mr. Wiggin noted that the septic is on the other side of the house, there is some ledge near the well and if the addition was to be constructed on the back side of the house it would obstruct the garage doors. Chair Bentley noted there are two letters of support from abutters. Eric Maxwell made a motion to close the public hearing at 8:09 p.m.

The board reviewed the five criteria, which were all met by the applicant. Chair Bentley made a **motion** to approve the Variance for 22 Warner Road. Tricia Thompson **seconded** the motion and the **motion passed unanimously**.

Adjournment - Tricia Thompson **motioned** to adjourn the meeting at 8:29 p.m. Chair Bentley **seconded** the motion and the **motion passed unanimously**.

Respectfully Submitted,
April Rollins
Recording Secretary Pro-tem