

WESTHAMPTON ZONING BOARD OF APPEALS

MINUTES FOR MEETING OF OCTOBER 24, 2017

The meeting was called to order at 7:01pm. Members present: L. Aloisi, J. Kelsey, S. Morrigan, W. Parks, S. St. Marie, and R. Tracy. Members absent: none. Guests present: Some unidentified plus M. Powers, J. Powers, A. Kellogg, M. Hathaway, E. Rickey, W. Jablonski, T. Quinlan, J. Laprade, T. Alexander, G. Curtis, J. Albitz, and C. Provost.

Before starting the regular agenda, the ZBA met Tom Quinlan, the new Building Inspector and Zoning Enforcement Officer. He gave the ZBA information on a special zoning seminar.

Review of Minutes

The supplemental minutes of the July 19, 2017 hearing were distributed. Mr. Tracy moved, and Mr. Kelsey seconded the motion, to approve the minutes as presented. The vote was unanimous in favor of approval.

The minutes of the September 12, 2017 meeting were distributed. Two corrections were suggested. First, there was a typographical error in the minutes, which were dated August 12, 2017. Second, the word "road" was replaced by the word "setback" in the first paragraph of 263 Main Road, at line 3. Mr. Tracy moved, and Mr. Parks seconded the motion, to approve the minutes as amended. The vote was unanimous in favor of approval.

The minutes of the September 26, 2017 minutes were distributed. Mr. Kelsey moved, and Mr. Aloisi seconded the motion, to approve the minutes as presented. The vote was unanimous in favor of approval.

Walk-in Requests

There were no walk-in requests.

Old Business

Zoning Bylaws Review Committee

Mr. Kelsey reported that the bylaws amendments on cell towers and solar were sent to the Select Board. There will be hearings before the Zoning Bylaws Review Committee before May. The Zoning Bylaws Review Committee will present those bylaws amendments for vote by town residents in June. Mr. Kelsey stated that the Committee was working on the Definitions section of the Bylaws. The next meeting of the Committee will occur on Thursday, November 16, 2017 from 7:00-9:00pm. Mr. Kelsey cannot attend, and stated that a ZBA member could attend to observe.

109 Northwest Road

The ZBA received some materials from Ms. Kellogg. The materials appeared to be related to Ms. Kellogg's application for a variance. There were two questions raised, which were not answered, as to where the application for a variance was.

Mr. Tracy moved, and Mr. Aloisi seconded the motion, as follows:

“Because of previous months of study, there is no new information to be gained, and current conditions do not warrant further public hearings. I therefore move by the authority vested in the ZBA, that this Board issue a finding that the current conditions at 109 Northwest Road are not detrimental to the neighborhood, and direct the Building Inspector to issue the necessary building permit.”

Mr. Tracy then stated that the only issue was the setback distance in the front. He made the following observations:

1. Town Counsel agrees a permit could have been issued,
2. The property owners proved that the existing foundation is less non-conforming than the previous structure, proved by the land surveyor's plot plan,
3. The vast majority of roads in Westhampton only have a 50-foot layout; it would have been different if the issue were 10 or 15 feet,
4. It is unfair under the existing circumstances to enforce this,
5. If it created a sight hazard, I would have a different opinion, and
6. Ledge was encountered when the foundation was put in, and removal threatens the well.

He stated that the only issue was the distance in the setback, which he described as 4.2 feet. He argued that for that issue, there is no justifiable reason to go through the variance process, which will be another hardship for no visible gain. He described this as a moral issue, not a legal issue. He stated that all of the problems were caused by the town.

Mr. St. Marie noted that the ZBA could determine that the lot is a prior non-conforming lot and was not discontinued. He further noted that it is the applicant's burden to prove a building permit could be issued based on the second except clause of Chapter 40, Section 6.

Much discussion ensued about the nature of the structure that may have been on the property and the intentions of the Kellogg family. Mr. Tracy stated that it was a legal building lot. Mr. Parks noted that in that case, there was a requirement for a variance.

Ms. Morrigan voted, and Mr. Parks seconded the motion, to vote immediately. The motion failed, with a vote of 2 in favor and 3 against the motion.

Ms. Morrigan asked whether Ms. Kellogg had poured the foundation after notice that an appeal had been filed, and whether Ms. Kellogg had arranged to have the home delivered, even though she had been directed, in writing, by the Building Inspector not to do so. Ms. Kellogg stated that it was the town's fault.

There was a request from the audience that each member of the ZBA who voted against the motion state why. The vote was taken, and the motion failed by a vote of 3 for and 2 against.

The ZBA then asked Ms. Kellogg where her formal application for a variance was located, and Ms. Provost provided the application from the room next to the meeting. The ZBA reviewed the application, and found it to be acceptable. Mr. Kelsey moved, and Mr. Tracy seconded the motion, to accept application No. 208 for a variance for 109 Northwest Road as complete and to schedule the variance hearing for November 28, 2017 at 7:00pm in the town Hall. The motion passed unanimously.

Further discussion ensued as to the proposed septic tank, which is also located in the setback. The definition of the word “structure” at 7-12 in the Zoning Bylaws was reviewed, and it was noted that the word “tank,” without any further description, is included in the definition. It was pointed out by a guest that the state law on septic tanks required a 10-foot setback, but that state law also requires towns to follow their local ordinances. Mr. Tracy moved, and Mr. Kelsey

seconded the motion, that the ZBA seek permission from the Select Board to contact Town Counsel by email about whether a septic tank is considered a structure for the purposes of setbacks under Westhampton's Zoning Bylaws. The motion passed unanimously.

Mr. Aloisi agreed to notify the abutters to 109 Northwest Road, distribute the application to the other Boards in town, and to place the requisite newspaper advertisements for the hearing.

250 Southampton Road

Mr. Aloisi reported that notice had been completed for the combined Planning Board and Zoning Board of Appeals hearing scheduled for the Grinning Dog at 8:00pm on November 14, 2017. Mr. Aloisi stated that the abutters would be notified in the week of October 23, 2017.

263 Main Road

Mr. Aloisi reported on the status. The applicants are scheduled to meet with the ZBA on November 14 between 7:00 and 8:00pm to go over their rejected application.

New Business

5 South Road

Mr. Alexander reviewed the situation, where a fire had caused a complete loss at 5 South Road on February 4, 2017. He proposed that the owner would like to build a new home. He cited Zoning Bylaws Section 3.33, entitled Reconstruction, and stated that the new house would not exceed the square footage of the previous structure. Mr. Alexander was asking whether he could do the reconstruction under Section 3.33 or if a special permit would be required. Mr. Kelsey moved, and Ms. Morrigan seconded the motion, that the ZBA make a finding that reconstructing 5 South Road as plans submitted on October 24, 2017 provide, for a 1960 square foot house, complies with Section 3.33 of the Zoning Bylaws, and no special permit is required. The motion passed unanimously.

0 Main Road

Mr. Aloisi reported that the issues regarding this property were pending.

175-195 Reservoir Road

Ms. Morrigan asked about a referral by Ms. Provost to Mr. Aloisi of a person who had questions about frontage and lot size. It was the consensus of the ZBA that such questions should rather be referred to the next regular meeting of the ZBA. Mr Aloisi stated that he would tell Ms. Provost to make such referrals.

Mr. Kelsey moved, and Mr. Aloisi seconded the motion, to adjourn the meeting. The vote was unanimous in favor, and the meeting adjourned at 9:14pm.

Respectfully submitted,

Shirley P. Morrigan
Clerk

DOCUMENTS AND EXHIBITS
USED BY THE ZBA OCTOBER 24, 2017

Seventh Annual Special Zoning Seminar handout (November 15, 2017)

Zoning Bylaws Review Committee handouts
Personal Wireless Service Facilities and Repeaters (Cell Towers)
Special Permit/Site Plan Review Required
Westhampton Solar Bylaw
Definitions

Application for Variance, 109 Northwest Road:

Photographs

Document dated October 4, 2017 containing:

List of abutters,

House plans,

Picture of stairs with handwritten notes,

Quitclaim Deed from Kristen and Peter Huntley

Professional Services Agreement with Holmberg and Howe, Inc.

K & T Concrete Services Proposal

Elite Concrete Proposal

Letter from Charles R. Henshaw

Occupancy Affidavit and Financial Status

Document dated October 9, 2017, from Amber Kellogg and Michael Barbeau

Plot Plan, First Floor Plan, Second Floor, and Documentation of square footage, 5 South Road

Letter from Amanda Zedonis Kemp, to Roger Kellogg re: Estate of Roger T. Kellogg, Jr.