

Minutes from the Westhampton Zoning Board of Appeals

November 19, 2020 7 pm

Town Hall—Public Hearing for the Variance Application (217V) of Deborah Burkhalter

Board members present: Richard “Bill” Tracy, Chair; Laurie Sanders, Clerk; John Kelsey, Peter Ignatovich, David Loven.

There were eight members of the community present.

Chairman Bill Tracy opened the public hearing at 7 pm to consider the variance application of Deborah Burkhalter to amend a property line between 14 and 18 South Road, properties which she currently owns.

The hearing was legally posted in the Daily Hampshire Gazette and at the town hall. All abutters were properly notified.

Tracy asked Deborah Burkhalter to present her case. She stated that she has lived at 14 South Road since 1996 and in 2002 purchased 18 South Road. This summer she decided to sell 18 South Road and following a property survey discovered a property line discrepancy, which created a property line setback violation. Her application is to redraw an interior property line to correct the existing setback violation. A studio that she had built is on lot 18 and not lot 14. She said that this was a complete surprise and that the former owner of lot 18 never used the gazebo that had stood on this same foot print. She is requesting a variance that will allow the transfer of a small portion (less than 1/10 acre) of property from Lot 18 to Lot 14. She would like to retain ownership of the studio and the prospective buyers of Lot 18 South Road are supportive of the transfer. Ms. Burkhalter submitted letters from her three immediate abutters, all of whom were supportive of the transfer.

She spoke to the town’s building commissioner Tom Quinlan and reported that while he agreed with her on principle, the final determination rested with the ZBA.

Tracy asked if it was correct to say that the variance is seeking to correct an existing setback violation (the studio is currently within a few feet of the property line). Burkhalter agreed.

John Kelsey asked when the studio was constructed, and Burkhalter said around 2015. Kelsey asked its approximate size (Burkhalter 11’x 11’), and if the building inspector had been consulted. She said the former building inspector had been contacted but had stated a building permit was not needed because there was an existing foundation and footprint. It was a constructed (vs pre-fab) building.

Tracy opened questions from the audience. David Blakesley, former Highway Superintendent, asked if the town’s drainage easement was exclusively on Lot 18? Burkhalter said that she had been in touch with Bill Jablonski, the current Highway Superintendent and he had said that the easement was entirely on Lot 18 and that the change in the lot line would make no difference.

Tracy asked if anyone wanted to speak in favor of the application.

Pat Miller, an immediate abutter, said that she had lived for 42 years next door and everyone had always assumed that the gazebo and now studio went with lot 14. She said that there was no impact. Bill Tracy noted that Pat and Bob Miller had submitted a letter in support.

Mr. Stanton, the future owner of Lot 18, said that he felt that the studio should stay with the property of Lot 14 and he was in favor of granting the variance.

David Blakesley said that he was in favor because it corrected a lot line violation.

Tracy asked if anyone in the audience was opposed. No one was opposed.

Burkhalter said that there was no other way to interpret the site but that the studio belonged to Lot 14 and she would suffer a financial hardship in the future if she sold Lot 14 without the studio.

With no additional input from the public, Bill Tracy entertained a motion to close the public hearing. Peter Ignatovich made the motion, Dave Loven seconded. All were in favor.

Bill Tracy stated that the survey had revealed that the structure (studio) was out of compliance and that the Variance was needed because both lots are non-conforming.

Reviewing 6.11 of the Westhampton by-laws, committee members agreed that there was:

- 1) The straightening of the boundary would have no impact on zoning, and would eliminate the setback violation, so that criterion (a) was met.
- 2) In the absence of a variance, the applicant would suffer financial hardship, which met criterion (b).
- 3) That based on feedback from the abutters and presentation, there was no negative impact to the neighborhood, allowing criterion (c) to be satisfied.

Ignatovich, Loven, Sanders and Kelsey agreed. Kelsey stated that it is hard to meet all three conditions, but all three were met, and there was no downside to approval and there was no other way to accomplish correcting an existing setback violation.

Kelsey made a motion to approve the variance application 217, which shows moving an existing lot line to a new location as shown in the plan dated September 3, 2020, and prepared by Harold L. Eaton and Associates, registered professional land surveyors for Deborah Burkhalter and included in her variance application.

Ignatovich seconded.

All were in favor and approval was unanimous by Sanders, Ignatovich , Kelsey, Loven, and Tracy.

Tracy and board members informed Burkhalter that a 20-day appeal period follows. At that time, the Town Clerk will notify her and she can record the variance as approved at the Hampshire County Registry of Deeds.

A motion to adjourn the hearing was made by John Kelsey. Loven seconded. All in favor. The hearing was adjourned at 7:26 pm.

Respectfully submitted,

Laurie Sanders, Clerk