

ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2023

APPROVED: October 3, 2023

AGENDA: REQUESTS TO CONTINUE:

23VAR06 - GOODRUM - #219-028 – 179 TEN MILE BROOK ROAD (Continued from July 11th)

23SPX09 - KELLY/BARNARD - #104-120 - 128-BROWN'S BEACH ROAD (Continued from Aug. 1)

23SPX11 – SITEMAN - #217-095 – 994 NORTH MAIN STREET

23 SPX10 – LITTLEFIELD - #115 -035 – HIGH STREET

23VAR11 – RYBECKY - #105-011 – 271 PIKES POINT ROAD

23VAR12 – RYBECKY - #105-011 – 271 PIKES POINT ROAD

CASES:

23SPX13 – GAUDET - #114-021 – 41 MAYHEW STREET

23VAR09 – STEBBINGS - #107-107 - 56 LAKESIDE ROAD

23VAR10 – SHORTT - #216-094 – 777 NORTH MAIN STREET

ATTENDING: Larry Denton, Lorraine Bohmiller, Melody Mansur and Andrew Litz

ABSENT: Richard LaFlamme (Vice Chair)

OTHER: **Staff:** Christina Goodwin (Town Administrator) **via Zoom**, Joanne Bailey (Land Use Manager), Donna Sullivan (Land Use Administrative Assistant) **Applicants & Public:** Li Zhad and Jeff Gaudet, Trudy Woodward, Mr. James Langill, Mrs. Michael Thibodeau, Daniel Stebbings, and Joel Austin-Shortt

Due to the absence of the Vice Chair, Ms. Bailey indicated the Board needed to nominate a member to Chair for the meeting. Ms. Mansur nominated Mr. Denton to serve as Chair for this meeting. Mr. Litz seconded. The motion carried by roll call vote 4-0-0.

NEW BUSINESS:

REQUESTS FOR CONTINUANCE:

Ms. Sullivan informed Acting Chair Denton that applicants were notified that there was not going to be a full Board present this evening and that they could request continuance if desired. She stated that several submitted letters requesting continuance and asked if the Chair wished to act on these individually or all of these in one vote. Mr. Denton asked for a motion to allow for reading of all requests and hold one vote to ratify all at one time. Ms. Mansur motioned to review all 6 requests and vote on all with one motion. Ms. Bohmiller seconded. The motion carried 4-0-0.

Ms. Sullivan read the Continuance Requests into the record listing each of these cases as follows:

23VAR06 - GOODRUM - #219-028 – 179 TEN MILE BROOK ROAD

23SPX09 - KELLY/BARNARD - #104-120 - 128-BROWN'S BEACH ROAD

23SPX11 – SITEMAN - #217-095 – 994 NORTH MAIN STREET

23 SPX10 – LITTLEFIELD - #115 -035 – HIGH STREET

23VAR11 – RYBECKY - #105-011 – 271 PIKES POINT ROAD

23VAR12 – RYBECKY - #105-011 – 271 PIKES POINT ROAD

Ms. Bohmiller motioned to accept these requests to continue to next month. Ms. Mansur seconded. The motion carried 4-0-0.

ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2023

CASES:

23SPX13 – GAUDET - #114-021 – 41 MAYHEW STREET

Ms. Sullivan read the application #23SPX13 requesting a Special Exception to allow short-term rental in the Village Residential District. She noted the public notice information and listed the 6 abutters notified. She stated that no phone calls or responses were received. She stated that Department Heads were notified, and PD responded with no comments, Water/Sewer commented that they had no problem with this if the property remained two units. If an additional unit is to be added, they would need to contact Water/Sewer for service updates.

The Board reviewed the application to determine if it was complete.

Ms. Mansur motioned to accept application #23SPX13 as complete. Mr. Litz seconded. The motion carried 4-0-0.

Acting Chair Denton asked the applicants Mr. and Mrs. Gaudet to speak to their application to allow them to use the property at 41 Mayhew Street as a two-unit short term rental. Currently these are rented long-term. The Gaudet's answered questions from the Board. Board members and staff asked questions about parking, the number of bedrooms in each unit, current rental status, and timing to move to short-term rentals. Mr. Gaudet stated both units had 1 bedroom each. Questions about parking were addressed by Mr. Gaudet confirming that each of the units are allotted 2 parking spaces. He stated that parking was sufficient and added that when it was not rented there would be no cars. He also mentioned that he owned the church parking lot at the corner of North Main and Mayhew Street so this too could be used.

Ms. Bohmiller asked more questions about the current leases and how he could do short-term rentals when current tenants have long-term leases. Mr. Gaudet stated that if the Special Exception was granted, they would not renew the current leases and then move to the short-term rental model. Mrs. Gaudet stated that part of the purpose of the change was to have a place for family members to stay when visiting. Mr. Litz asked about the use of the attached barn and Mr. & Mrs. Gaudet responded it is just used for storage.

After answering the Board questions, Mr. Gaudet was asked to read his responses to the application criteria for the record.

With no other questions from the Board, Acting Chair Denton asked if any members of the public wished to speak in favor of the application. Hearing no one, he asked if anyone against the application wished to speak. Mr. James Langill of 31 Mayhew Street read a list of concerns of abutters for the record. These concerns included increased traffic, parking on sidewalk, safety for children walking to schools, effects on property values, parties, noise, trespass, and anticipated change to the quiet neighborhood of residences.

Mr. Gaudet addressed each of the items on the list with possible solutions such as background checks with credit checks for short-term renters to address children's safety. He stated that all the listed items would have a similar impact as the allowed long-term rentals. For noise, trespass and other vandalism concerns he suggested that all that is needed is for people to call the police.

Mrs. Gaudet asked about other short-term rentals all over town. Ms. Bailey stated that there are districts in town that these are allowed, but in the Village Residential District it requires a special exception approved by the Zoning Board.

ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2023

23SPX13 – GAUDET - #114-021 – 41 MAYHEW STREET – continued

Mrs. Thibodeau stated her main concern was for safety of the children in the neighborhood. She reiterated that the trash, litter, parking on sidewalk and parties from current and past long-term tenants and she felt that short-term renters may be less concerned for the neighborhood. Ms. Trudy Woodward asked if they were using the AirBnB company for booking people. Ms. Gaudet stated they would be using AirBnB and that AirBnB would be screening renters with the criteria of 1 bedroom occupancy in mind.

With no other comments or questions from the public, Acting Chair Denton closed the public hearing portion of the meeting.

The Board moved on to deliberation and decision on the application. Acting Chair Denton read the criteria questions and responses line by line and asked for a motion and reason for each.

#2 - Ms. Bohmiller motioned that criterion #2 regarding appropriate location **was met** because this building has been used for long-term rental of two 1-bedroom apartments and AirBnB will book accordingly. Mr. Litz seconded. The motion carried 4-0-0.

#3 – Ms. Bohmiller motioned that criterion #3 concerning adverse impact to character of the area **was met** because the applicant has been renting the apartments long-term without issue and the short-term rentals will be a monitored situation. Ms. Mansur seconded. Mr. Denton stated he felt this is not met due to abutter testimony. The motion carried 3-1-0.

#4 – Ms. Bohmiller motioned that criterion #4 addressing nuisance or hazard to pedestrians or vehicles **was met** because the dwelling is used as rental currently and as short-term it will be monitored. Ms. Mansur seconded. The motion carried 3-1-0.

#5 – Ms. Bohmiller motioned that criterion #5 regarding excessive or undue burden on Town services **was met** because the use will remain the same in tenancy. Ms. Mansur seconded. Mr. Litz asked to amend the motion to include that no future renovations increase occupancy or beds. Ms. Bohmiller moved the amended motion. Ms. Mansur seconded. The amended motion carried 4-0-0.

#6 - Ms. Bohmiller motioned that criterion #6 regarding no significant effect upon public health, safety and general welfare of the neighborhood **was met** because the short-term rental use should not cause any additional impacts to public. Mr. Litz seconded. There was discussion about the negative response from abutters and the criteria response from applicant being about parking not public health or safety. Mr. Litz commented that the Police Chief had no response when asked to comment. The motion carried 3-1-0.

Following this review, Ms. Bohmiller motioned to grant the Special Exception 23SPX13 as presented because the majority of the Board agreed the applicant has met all the criteria and the use should not have any new impacts. Mr. Litz seconded. The motion carried 3-1-0.

Acting Chair Denton stated that The Notice of Decision would be processed and would be available from the Land Use Office in a few days. He cautioned the applicant that there was a 30-day appeal period. The Notice of Decision will include the condition stated in approval of Criteria #5.

ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2023

23VAR09 – STEBBINGS - #107-107 - 56 LAKESIDE ROAD

Ms. Sullivan read application #23VAR09 to allow an addition to build a deck and change the stairs' location within the 15-foot side setback. She noted the public notice information and listed the 6 abutters notified. She stated that 1 phone call was received from Mr. William Kohn who stated he had no concerns. Department Heads were notified, and Water/Sewer commented that access to the meter should be kept with any approved addition.

The Board reviewed the application to determine if it was complete. Ms. Mansur motioned that the application was complete. Ms. Bohmiller seconded. The motion carried 4-0-0.

Acting Chair Denton asked Mr. Stebbings to present his application and plans. Mr. Stebbings described the addition of the deck and the need for Variance due to the relocation of the stairs impacting the setbacks.

The Board asked questions about approval by the Association, and it was determined that his Association approved the plans. More questions about other area associations and it was determined that these were abutter associations who were notified, but these did not have governance on his property. More discussion followed about the side setback area impacted.

With no other questions, Acting Chair Denton asked Mr. Stebbings to address the application criteria and read his responses. He read and elaborated on his responses to each of the criteria.

Ms. Mansur asked the applicant why there was no reference to the new deck in any of the responses. There was discussion about the deck impact to setbacks and correction of the stairs allowing the applicant to not step onto the neighbor's property. The discussion asked about lot size and concern for how far the setbacks are impacted with the construction of both the deck and re-location of stairs.

Ms. Goodwin suggested that the Board could continue the case to bring in an updated application addressing the deck in the criteria. The Board and applicant considered this option.

Following discussion, Mr. Stebbings requested to continue his case to Oct 3rd at the Boards suggestion so he may reword his answers to the criteria to include more reasoning about the deck and locate setbacks.

Ms. Mansur motioned to allow the continuance of case #23VAR09. Ms. Bohmiller seconded. The motion carried 4-0-0

23VAR10 – AUSTIN-SHORTT - #216-094 – 777 NORTH MAIN STREET

Ms. Sullivan read application #23VAR10 to allow the applicant to build a solar array within the setback. She noted the public notice information and listed the 3 abutters notified. She stated that there were no phone calls or responses received. Department Heads were notified, with Water/Sewer commenting location of the array appears to be within the Town right of way and if it is it may require locating town water lines to avoid damage and Highway email stating if the array is allowed there should be a condition that the Town/Highway Department will not be held responsible for any damages/issues from snow plowing and other road maintenance.

ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2023

23VAR10 – AUSTIN-SHORTT - #216-094 – 777 NORTH MAIN STREET – continued

The Board reviewed the application to determine its completeness. Ms. Mansur motioned to accept the application as complete; Ms. Bohmiller seconded. The motion carried 4-0-0.

Mr. Austin-Shortt was asked to present his plans and application. The Board asked why he needed to place this array where he wants to locate it at the front of his property. He indicated that his roof and house location was not appropriate for a productive solar array and the location indicated was the best place for maximum solar advantage.

Ms. Mansur asked if there was any concern for neighbors with the location of the array. Mr. Austin-Shortt indicated that he can only see neighbors in wintertime when leaves are off the trees so he felt there would not be any impact to neighbor views. More discussion followed about new technology and how long the solar array will last. Mr. Austin-Shortt stated that he expected to get 10 to 15 years from the array. Ms. Bohmiller asked if he considered an upright array that turns with the sun. He stated he had not, but he had investigated products and was satisfied the product he chose would meet his needs.

Mr. Austin-Shortt was asked to read the application criteria and his responses into the record.

With no more questions from the Board, Acting Chair Denton asked if there was anyone in the public who wished to speak in favor of the application. Hearing no one, he asked if anyone wished to speak against the application. No one from the public responded. He asked if there were any more questions from the Board.

Ms. Goodwin noted the concern from the Highway Department for snow plowing and Water Department Town right of way concern. She asked if the applicant anticipated any issues with town road plowing snow near the array. The applicant stated he did not have a concern for any issue for plowing and noted the array will be above the ground about 4 feet. His concern may be the possibility of a rock being thrown. He said he would accept the liability and would only approach permission to build a pony fence to protect it if it became necessary. Ms. Goodwin cautioned the applicant that the array and any fencing would have to be built on his property and not in the Town right of way.

The Board discussed the possibility of conditioning an approval.

Ms. Sullivan noticed someone joining Zoom by phone and asked them to identify themselves. With no response, the caller was muted so they could not interrupt the meeting.

With no other comments from the Board or Public, Acting Chair Denton closed this Public Hearing portion of the meeting.

The Board began deliberation and decision on the application. The acting Chair Denton read the criteria questions and responses line by line and asked for a motion and reason for each.

#1 – Ms. Mansur motioned that the applicant **met** criterion #1 because the applicant does not have another suitable location on his property, and it should not be contrary to public interest. Ms. Bohmiller seconded. The motion carried 4-0-0.

ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2023

23VAR10 – AUSTIN-SHORTT - #216-094 – 777 NORTH MAIN STREET – continued

#2 - Ms. Bohmiller motioned that the applicant **met** criterion #2 because the location indicated is the only place suitable due to limitations of the lot for sun exposure and space. Ms. Mansur seconded. The motion carried 4-0-0.

#3 - Ms. Bohmiller motioned that the applicant **met** criterion #3 because there are limitations with the lot has proposed best option for the array and should not obstruct anyone else. Ms. Mansur seconded. The motion carried 4-0-0.

#4 – Ms. Mansur motioned that the applicant **met** criterion 4, because property values most likely won't change up or down due to the installation of the array. Mr. Litz seconded. The motion carried 4-0-0.

#5 A1 - Ms. Bohmiller motioned at the applicant **met** criterion #5 A1 because the applicant has shown that the lot has limitations in size and by trees located on abutting properties shading his property that he cannot remove. Ms. Mansur seconded. The motion carried 4-0-0.

#5 A2 – Ms. Mansur motioned that the applicant **met** criterion #5 A2 because of the size and exposure limitations on the property. Ms. Bohmiller seconded. The motion carried 4-0-0.

#5 B - Ms. Mansur motioned that the applicant **met** criterion 5 B because although the answer to this criterion does not state hardship, the applicant met the criteria for hardship in 5 A1 and A 2. Ms. Bohmiller seconded. The motion carried 4-0-0.

Ms. Mansur motioned to approve Variance #23VAR09 with the conditions that the Town will not be held liable for any damages as a result of snow plowing or road maintenance; that the applicant locate this all utility and water/sewer lines prior to installation; and that no part of the installation be located within the public right of way. The reasons for the motion to approve were the applicant met all the criteria and proved hardship. Ms. Bohmiller seconded. The motion carried 4-0-0.

The applicant was informed that the Notice of Decision will be available within the week and there was a 30-day appeal period.

MINUTES:

The Board reviewed the minutes for the regular meeting and non-public session held August 1, 2023. Ms. Bohmiller motioned to accept the minutes from the regular meeting on August 1, 2023; Acting Chair Denton seconded. The motion carried 4-0-0. Ms. Mansur motioned to accept the minutes from the non-public session held August 1, 2023. Ms. Bohmiller seconded. The motion carried 4-0-0.

COMMUNICATIONS: None

OTHER BUSINESS:

Ms. Bailey brought up the fact that with all the continuances granted and other scheduled cases the October 3, 2023, would be a long one. She stated that she and Ms. Sullivan reviewed the statutory time limits for the caseload and asked if the Board would be amenable to meeting twice in October to handle all the cases within the timelines. The dates will be October 3, 2023, and October 17, 2023. Members agreed to meet twice in October, but Ms. Bohmiller indicated she had some health issues that may preclude her from being present. Ms. Sullivan stated that Mr. LaFlamme agreed to this and was expected to be present. There was discussion about the backload of resending public notices and abutters notices which will be processed. Ms. Bailey stated that the election of officers would also be on the agenda for the October 3, 2023 meeting to establish a new permanent chair and vice chair.

ZONING BOARD OF ADJUSTMENT

MINUTES

September 12, 2023

LAND USE:

Ms. Sullivan updated the Board about proposed Zoning Amendments from the Conservation Commission and Planning Board that will be coming forward for public hearings and the ballot.

NEXT MEETING: October 3, 2023

ADJOURNMENT:

With no other business before the Board, Ms. Bohmiller motioned to adjourn at 8:00 pm. Ms. Mansur seconded. The motion carried 4-0-0.

Respectfully submitted,

Janet F. Cote
Land Use Associate