

TOWN OF BETHLEHEM  
Zoning Board of Adjustments Meeting  
March 20, 2023  
Minutes

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Present: Andrea Bryant, Christopher McGrath, David Van Houten, Ruth Heintz, and Josh Lieberman

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Andrea Bryant opened the meeting at 6:00 pm

First order of business, elect new officers.

David Van Houten nominated Andrea Bryant as Chair. Chris McGrath seconded and a unanimous vote in favor followed.

David Van Houten nominated Ruth Heinz as Vice Chair. Chris McGrath seconded and again a unanimous vote followed.

The board reviewed the minutes from February 20, 2024. Chris McGrath motioned to accept the minutes as presented. David Van Houten seconded the motion, which passed 4-0 with Josh Lieberman abstaining.

Andrea reopened the public hearing from 2/20/24 for the Jones Variance.

The board reviewed the checklist, determined it was complete, and began to review the variance criteria.

Criteria 1: Granting the Variance would not be contrary to the public **interest** because:

The applicant pointed out that all the abutting property is undeveloped at this time and the 15' reduction for the side setback does is not currently contrary to the neighbors' interest. It was further pointed out that the applicant had reached out to all the neighbors to see if there were any concerns.

David Van Houten pointed out that the property owned by the White Mountains School would be most affected by the reduced setback and asked Angela if she had reached out to them. Angela stated she tried numerous ways to get in touch with them but had no response.

Andrea asked Angela what kind of response she received from her other neighbors. Were there any concerns? Angela responded she had spoken with everyone and there were no concerns.

Andrea Bryant noted the reduced setback would not be a detriment to public services. There was a concern regarding the Gadwah's waterline which is 4' below, however it is no longer in use.

Chris McGrath motioned to accept criteria 1. David Van Houten seconded the motion which passed unanimously.

Criteria 2: If the variance were granted, the spirit of the ordinance would be observed because:

Ruth Heintz feels the spirit of this criteria is to protect the neighbors' properties and add that at this point in time granting the variance would effect any abutting properties, especially the White Mountains School Property which shares a direct property line in relation to the reduce side setback.

Andrea Bryant asked Tracy Bentley, the only abutter present, if she had any concerns. Tracy was curious about how the new ADU would be advertised when renting. Andrea responded that currently this ADU would be used by the Jones' son. Chris McGrath did point out that at some point, if this became a short-term rental it would need to conform to the new STR ordinance.

Chris McGrath motioned to accept criteria 2. David Van Houten seconded the motion which passed unanimously.

Criteria 3: Granting the variance would do substantial **justice** because:

The proposed location for the ADU has, over the years, had fill added to expand the driveway and parking area. Granting the variance will reduce the need for added fill for the placement of the concrete pad required for this ADU and reduce the odds of damaging the existing water line described in the attached Fiduciary Deed.

David Van Houten motioned to accept criteria 3. Chris McGrath seconded the motion which passed unanimously.

Criteria 4: Granting the Variance would not diminish the value of surrounding properties because:

David Van Houten does not see how this project is going to affect the value of any of the abutting properties. It's a new building next to the existing building, its not impeding anyone's view.

Andrea adds that the White Mountain School property is totally wooded so the new building won't be seen by anyone at the school.

Andrea Bryant motioned to accept criteria 4. Josh Lieberman seconded, the motion which passed unanimously.

#### Criteria 5: Unnecessary Hardship

- a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in **unnecessary hardship** because:
  - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Please see the above comments about our shared water line.

- and -

- ii. The proposed use is a reasonable one because:

It reduces the odds of compromising the Gadwah's gravity fed water line & reduces our costs for bringing in more fill.

- b. Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

As explained, the required 30' distance from our northern boundary triples the distance our neighbor's gravity fed water line is covered therefore increasing the odds of compromising that water line. The distinguishing factor here is that our spring (in the past as outlined in the attached Fiduciary Deed and as described by Will Gadwah, has provided access to water to two of our neighbors. Apparently, our simple little ol' surface well is one of the most reliable sources of water in our neighborhood- we have never run dry during droughts--! suppose this is a distinguishing feature for our property.

Josh feels the risk of damage to the waterline is a bit of a reach, but having to add less fill seems like a good justification for the proposed location.

David feels this is the most sensible place to put this new building.

Chris McGrath motioned to accept criteria 5. David Van Houten seconded the motion which passed unanimously.

The Variance for side setback is granted to Angela and Barry Jones for their property located at 845 Old Franconia Rd.

Andrea Bryant closed the public hearing at 6:35.

Andrea requested the ZBA to look at the revised Variance Application she has been working on and offer

feedback. The intent of the new Variance Application is to offer guidance and instruction on how to complete the application.

Ruth Heintz requested the ZBA review slides from a ZBA in New Hampshire webinar in conjunction with the review of the Variance application. [ZBA Basics in New Hampshire \(nhmunicipal.org\)](http://nhmunicipal.org)

A conversation took place regarding the procedure for receiving a ZBA application. It was decided that a ZBA member will come into the office to review a new application prior to a date being set a public hearing.

Josh Lieberman suggested referring the applicant to the GIS mapping on the Town's website for mapping assistance for the required checklist materials.

The Board reviewed Criteria 2 on the NHMA presentation, which suggested that the ZBA *"examine the effect of the variance in light of the goal of the zoning ordinance, which might begin, or end, with a review of the comprehensive master plan upon which the ordinance is supposed to be based."*

David Van Houten suggests that the Board needs to define the spirit of the Master Plan by diving into the Master Plan to find the language that's appropriate for any Variance application that comes in and offers to take this on.

It is suggested that some of the language from the NHMA webinar be imbedded Variance Application in an effort to guide the applicant to answer what is the spirit of the ordinance, or what about your request matches the spirit of the ordinance?

The Board reviews Criteria 3,4, and 5 before deciding to do some more research before reconvening on 4/30/24 to discuss further.

David motioned to adjourn at 7:24. Andrea seconds, motion passes 4-0.

Respectfully submitted,

Dawn Ferringo  
Planning and Zoning Board Clerk