

BRISTOL  
ZONING BOARD OF ADJUSTMENT  
June 4, 2019

**APPROVED:**

**See minutes of 7/2/19 jrl\_\_\_\_\_**

AGENDA: 19VAR03 VARIANCE: MIKE & MICHELE HENLEY, 116 Holiday Hills Drive, 110-033

ATTENDING: Alan DeStefano (Chairman), Richard LaFlamme (Vice Chairman), Lorraine Bohmiller, Larry Denton, Melody Mansur

ABSENT: Ashley Dolloff (Alternate)

OTHER: Christina Goodwin (Land Use Manager), Mr. Henley, Will Lively, Edward Schmitt

Meeting opened at 6:05p.m. with a quorum. Ms. Bohmiller is a neighbor and asked to step down. Mr. LaFlamme stated that he knows Mr. Lively but felt that he could be fair and was allowed to remain on the Board. Mr. DeStefano explained that, with less than a full Board, the applicant could choose to continue the hearing until there is a full Board. Mr. Henley chose to continue.

**MINUTES OF MAY 7, 2019:**

R. LaFlamme made a motion, second by L. Bohmiller, to approve the minutes as read. The motion carried.

**19VAR03 VARIANCE: MIKE & MICHELE HENLEY**

Ms. Laferriere read the application, where the hearing was advertised, the abutters notified and stated that there were no phone calls or Dept. Head comments, and that there were 6 written responses received.

The Board looked over the application.

L. Denton made a MOTION, second by M. Mansur, to ACCEPT THE APPLICATION AS COMPLETE. The motion CARRIED.

Mr. Henley stated that he was not aware of the setback rule. The town sent a letter some time ago and he removed the playhouse that is behind the shed. He hasn't heard a word more for 13 years. He has since added items in front of the shed in question, which is about 12 ½' back from the rear boundary line. Mr. DeStefano mentioned that it also encroaches on the side and Mr. Henley said that it does not and stated that the map is inaccurate (a surveyed plan). The shed is 12' x 16'.

Mr. DeStefano then read aloud the 2008 letter from Michele Bonsteel which states that there were 2 sheds that were in the setbacks and needed to be removed. Ms. Goodwin stated that Ms. Bonsteel was the enforcement officer back then and she recently found a copy of the letter. Ms. Goodwin had not been able to reach Ms. Bonsteel as she has since passed on. This issue came up again when Mr. Henley came in for a Variance to build a new house and he was reminded of the problem of the shed and would need a Variance in order for it to remain where it is.

-2-  
ZBA Minutes  
6/4/19

HENLEY VARIANCE continued:

The criteria was then read (Ms. Goodwin read what Mr. Henley had written on the application as he is dyslectic and has trouble reading.

1, Contrary to Public interest: there would be no detriment to the surrounding neighbors. The shed will house tools and beach floats and will not alter the character of the neighborhood. Mr. Henley did not add to this.

2. Spirit of the Ordinance: The Spirit will continue to be observed as the shed does not encroach upon any other private property. If it would help, he is willing to put up a stockade fence to block the view of the shed.

3. Substantial Justice: The shed has been in place since 2007. Its placement is consistent with sheds found through-out the neighborhood. The landscaping has been designed to increase the desirability of the neighborhood and its property values.

4. The values of surrounding properties would not be diminished: The majority of homes there are on 100' x 100' lots. All of the existing neighboring sheds are on the property line. This shed is 13' from the property line.

5AI. 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: They installed the shed and thought they were in the setback requirements. They have not had any complaints since the letter of 2007. Sandy Lively recently had her land surveyed and he found that the shed is 13' from her line.

5All. The proposed use is reasonable because: He responded to the 2007 letter regarding the shed. At the time, they had a child's wooden playhouse behind this shed and they removed it immediately. There has not been any other communication since.

5B. An unnecessary hardship will exist, owing to special conditions of the property that distinguish it from other properties, and the property cannot be reasonably used in strict conformance with the ordinance and a variance is necessary to enable a reasonable use of it: This shed and the patio area which was built several years later, has had many neighborhood birthdays, family dinner, holidays, etc. The area was built with members of their community.

Mr. Henley had no further comments to add other than that the neighbor's sheds are on the boundary line and he has done tasteful landscaping. Ms. Goodwin explained that she was unable to find when a few of the sheds were installed. We have had one removed recently that was recorded. Mr. Henley said that the whole neighborhood comes, and this is a fun place. He did the landscaping 2 to 3 years after the letter. Ms. Goodwin stated that Ms. Bonsteel left in 2010 and we have had 3 officers since which was a problem for continuity.

-3-  
ZBA Minutes  
6/4/19

HENLEY VARIANCE continued:

Mr. Denton asked if there would be a problem to move the shed. Mr. Henley stated that there is a bar and granite in front of the shed. It looks very good. He does not cut corners and he now has more green space since they built the new house. It adds value to the neighborhood.

Mr. Denton asked about the letter and Mr. Henley stated that they thought they were okay. He didn't know it was for both sheds. He can't read well. Mr. DeStefano answered that ignorance of the law is no excuse. The letter was very clear that it was addressing 2 sheds. Ms. Mansur asked how it has come to light now and Ms. Goodwin explained that they came in for a Variance for the new house and the rear neighbor complained about it. Mr. DeStefano asked clarification that the letter came up when they applied for the house and Ms. Goodwin said that it did.

Edward Schmidt, a neighbor nearby, has no malice for the shed. All of the neighbors try to help each other. The shed is not encroaching on anything but woods. He asks for clemency.

Will Lively, who was there to represent his Mom, is against the variance. He feels that if his Mom decided to sell, it would be a deterrent and feels the ordinance is the NH way.

Mr. Denton asked when Sandra Lively was aware of the violation and Mr. Lively felt it was when the letter was received. Mr. Henley asked if he would be allowed to put up a fence and Mr. DeStefano answered that a fence can be put up along a boundary or just inside it and the good side must face the neighbor. Mr. Henley stated that the Lively yard is dead trees and you can't even see their house. Mr. Denton asked if he did the changes (patio and bar, etc.) in 2010 and Mr. Henley thought that it was in that area. Mr. DeStefano stated that a fence is a noble gesture, but it still does not stop the setback issue. Mr. Henley stated that this was not done on purpose.

Mr. Lively mentioned the spirit of the ordinance and added that trash is being dumped on their property. There is an old wheelbarrow, pavers, papers, construction items, etc. Mr. DeStefano stated that this would be a civil matter.

Mr. DeStefano then read the 6 letters received: 5 approved of the variance and the 6<sup>th</sup> (from Ms. Lively) listed the many problems she has had and was therefore opposed. She had submitted a small copy of the survey done by Alan Barnard, though it does not show the Henley's shed.

Mr. Henley stated that their covenants are 10' setbacks and Mr. DeStefano said that the ZBA cannot rule on covenants (these can change by the association at any time). The ZBA can only look at the Ordinance which has 15'.

Mr. Henley stated that there is a basket of fieldstone rock, but he thought he owned further back. In winter, construction material blows, and he cleans it up. He has no trouble with Ms. Lively, but she apparently has a problem with him. He no longer has a good feeling for her.

At this time, Mr. DeStefano closed the public portion of the hearing and the Board went through the criteria.

-4-  
ZBA Minutes  
6/4/19

HENLEY VARIANCE continued:

1. Public Interest: L. Denton made a motion, second by R. LaFlamme, that this criteria has not been met. Mr. Denton stated that this violates a setback and there was a letter to remedy previously. The motion carried.
2. Spirit of the Ordinance: L. Denton made a motion, second by R. LaFlamme, that this criteria has not been met. Mr. Denton felt that the whole thing could have been handled better. The motion carried.
3. Substantial Justice: R. LaFlamme made a motion, second by M. Mansur, that this criteria has not been met. The motion carried with one opposed as he felt that the number of officers made this difficult.
4. Values: L. Denton made a motion, second by M. Mansur, that this criteria was not met. Mr. Denton was not sure how this would affect the values. Mr. DeStefano was not sure of value when encroaching on a boundary line or on a setback. The motion carried.
- 5a. Reasonable Use: L. Denton made a motion, second by M. Mansur, that this criteria was met. Mr. Denton felt that a lot of effort had been put into the project though there should have been more conversation with the town. Ms. Mansur added that it is hard to move the shed. The motion carried.
- 5b. Hardship: L. Denton made a motion, second by M. Mansur, that this criteria has been met. Mr. Denton felt this is the same as the previous statement. It has only now come back up. Mr. DeStefano mentioned that this is not a hardship for the applicant. The motion carried with 1 opposition.

R. LaFlamme made a MOTION, second by M. Mansur, to DENY THE VARIANCE FOR MIKE AND MICHELE HENLEY. The motion to DENY CARRIED.

The Chairman signed the Notice of Decision and explained the 30-day appeal period. Mr. Henley stated that he will just move the shed and wanted to know what would be needed for an 8' fence. Ms. Goodwin stated that a fence over 6' needs a permit.

ZBA APPLICATION INSTRUCTIONS:

Ms. Goodwin explained that Tyler Simonds had worked on this and has submitted a draft for us to look at. She planned on discussing this at our next meeting in July.

WILL LIVELY: Mr. Lively came back in to ask how long before the shed gets removed. Mr. DeStefano stated that the town must enforce this. There is the 30-day appeal time when they could ask for a rehearing. If the Board does not feel that there is anything new, they can deny a rehearing. If they determine that a rehearing is necessary, the abutters will be notified again.

SPRING CONFERENCE:

Ms. Mansur had attended the Conference with the Land Use staff. She stated that her first class was amazing and helped her out a lot. One thing that they said was that the completion of the application should be done before it comes to the Board.

-5-  
ZBA Minutes  
6/4/19

SPRING CONFERENCE continued:

Ms. Mansur continued by saying that nothing is personal, that we must follow the rules and are not allowed to help the applicant. The timing is 45 days. When cell towers come in, we must be careful and move on it. Ms. Goodwin stated that we may need a variance on the Cell Tower that has come in. Ms. Mansur added that we should have good form, everyone is to address the Chairman and he/she is to keep control of the meeting. She mentioned that, on a Site visit, where there is a quorum, minutes must be taken. Once a hearing has started, the same people are to review the case. Also, we do not need specific invitations to hold a site visit as the applicant's signature on the application allows for this.' They advise TV recording. Ms. Goodwin thought that we can probably do this at the new building.

NEXT MEETING:

The next ZBA meeting is to be held on Tuesday, July 2, 2019 at 6:00pm. Applicants have until June 7<sup>th</sup> to apply. We have one and possibly two Variances coming in.

With no other business before the Board, R. LaFlamme moved to adjourn with a second from M. Mansur and the meeting adjourned at 7:50pm.

Respectfully submitted,  
Jan Laferriere,  
Land Use Admin. Assistant