

TOWN OF SUTTON
Zoning Board of Adjustment
Pillsbury Memorial Hall
Meeting Minutes
February 20, 2013

Present: Zoning Board of Adjustment Members: Bill Hallahan, Chair; Dane Headley; Derek Lick; alternate, Sue Reel (members, Ed Canane and Doug Sweet; and alternate, Carla Krajewski were absent); Laurie Hayward, Land Use Coordinator; and interested members of the public.

The meeting was called to order at 7:04 PM, by Bill Hallahan.

Administrative: It was moved to approve the previous minutes, for the January 16, 2013 meeting, as written; seconded and voted unanimously.

New Business: The Land Use Coordinator handed out the first Monthly Report of Land Use Open Conditions and Other Issues. She explained that, on a monthly basis, the report is being given to members of the Board of Selectmen and the Planning Board as well as the Zoning Board of Adjustment. She suggested that rather than address the report and the issues highlighted at this meeting, perhaps the members of the Board could take the report home and let her know if they had either questions or additional information and then the Board could take up the updated report at the next meeting.

Public Hearings:

Public Hearing: Kuhlman Case 2013-03, Christine Kuhlman, property owner and Michael Crocitti, builder, present: Chairman of the Board, Bill Hallahan, moved to open the public hearing; the motion was seconded and unanimously voted. The Public hearing was opened at 7:12 PM. Derek Lick asked about the road. Bill Hallahan responded that it is a 2 rod road. Bill Hallahan read the Ordinance section for which a variance is sought. At the request of the chair, Laurie Hayward read the notice regarding the application for a setback variance for balcony that overhangs road frontage set back. Bill Hallahan explained that there are only 4 members of the Zoning Board of Adjustment in attendance. He explained that as the Board is usually 5 and at least a favorable vote of 3 is required, applicants have the option of holding off until the next month's meeting. Going forward the applicant must understand that they must have 3 members vote in favor and if that does not happen, they cannot ask for a re-hearing. The chair asked about fees and the Land Use Coordinator replied that all fees have been paid. Mr. Hallahan explained this appeal is an after-the-fact variance application. Mike Crocitti provided the Board with the history of the project that resulted in the need for this variance. He explained that they really didn't think that the balcony would be an issue. He also explained that there was some confusion with the DES; however, they have resolved this with DES and know what to do going forward. Mr. Hallahan stated that he understands that the

owner and builder have moved to correct the situation. He noted that the variance is for a small balcony which is only 6 inches into the setback. He also, noted that he went to the site and saw that many of the other neighboring houses were also close to or within the setback in that area. **Mr. Hallahan moved to close public hearing, Dane Headley seconded the motion, and it was unanimously voted to close the public hearing.**

Mr. Hallahan called for the completion of worksheets. Derek Lick spoke about the intent. He mentioned that the encroachment on the setback is only by a small amount. He stated that he felt that the use is a reasonable one. The use of the deck is not inconsistent with uses in the area and would have no negative impact on the neighborhood.

The Chair moved and Dane Headley seconded and it was unanimously voted to close deliberation and take a vote.

Derek Lick moved and Dane Headley seconded, to approve the application for variance without condition. **Bill Hallahan offered a second motion to change the decision from approved without conditions to approve the variance with the condition that the owner makes sure that DES is involved in and that any future projects on the property have DES permits as required.**

Motion: A motion was made by Mr. Hallahan and seconded by Mr. Headley and voted unanimously to approve the requested variance with the condition discussed.

There being no additional input, Chairman Hallahan moved to close the public hearing on this case and Dane Headley seconded the motion and it was unanimously voted to close the meeting on Case 2013-03.

Public Hearing: Patterson Case 2013-04, John Patterson, Theresa Patterson present:

Laurie Hayward read the notice of public hearing. Bill Hallahan read the ordinance. Mr. Hallahan then read the memo from Laurie Hayward to the members of the board. That memo described the information that the Patterson's had provided in her meetings with them and provided additional information that was available in the town files regarding previous permits and including drawings and other information about some structures on the property and covering many years. It included the Patterson's explanation that the shed under consideration in Variance #1 was a replacement for one that was moved by the septic company that replaced their septic system a decade before and moved the shed to the location within the side setback. Mr. Hallahan asked the Patterson's whether the memo correctly expressed their situation and Mr. and Mrs. Patterson agreed that it did. Mr. Hallahan asked the Patterson's what septic company moved the shed. Mr. Patterson said that he did not remember their name and did not think they were still in business.

The Variance #1 was taken up and it was noted that it is for a fairly large two story shed. Mrs. Patterson explained that they once planned a garage but this is not a garage the leach field would be in the way of driving from the street to the new building. Mr. Patterson explained the shed is built on a concrete slab. The lower story is for storage and repair of his own motorcycles. The second story is for Mrs. Patterson's crafts. Derek Lick pointed out that the unique nature of the property and the requirements for the leach field that seriously limit the Patterson's ability to have the shed anywhere else on the property. Sue Reel asked if height was an issue. Mr. Hallahan said that the height is not an issue in this case.

Mr. Hallahan moved to close and Dane Headley seconded the motion. It was unanimously voted to close the public meeting for deliberation on Variance # 1. Derek Lick spoke and said that he felt that this should be treated the same as a request for new construction. He said that he feels the legitimate basis to grant the appeal is that the property represents a hardship. The unique nature of this lot requires that a shed of the size under question requires that it be built on the spot under discussion. He further noted that the rock wall helps separate the property line and that helps the aesthetics and gives further support as the wall already acts as a visual barrier. Dane Headley agreed that was a good way to look at it and is similar to the way that he sees the issues. Derek pointed out that they couldn't view the started building as a hardship, only that the property makes it difficult to site anywhere else.

There was a call for worksheets on Variance #1. Bill noted that there is no threat to public interest and safety. Regarding the spirit of the ordinance, Derek says that the existing wall is already a buffer that separates the property. The use is reasonable under the circumstances. Regarding diminishing values to surrounding properties, Bill noted that it enhances the owner's property and does not diminish surrounding values. Derek noted it is an improvement on the former decrepit shed that this replaces.

Derek Lick moved that Variance #1 be granted with the condition that the shed in question, on the east side of the lot, which encroaches the property line to within 3 feet of the property line, have no further expansion and that it have a building permit and the conditions of building permit be met.

The Board then took up Variances #2 and #3. Mr. Hallahan asked the Pattersons what their purpose is with all of these sheds. Mr. Patterson spoke and said that the shed near the house is for the pellets for their stove. He explains that they store the winter's worth of pellets in that shed. He says they keep immediate needs for pellets in the house. But at the start of the winter, they have 8 tons of pellets stored and that prevents shortages from occurring later in the year. The second shed on the west side is for garden tools and other items.

Bill Hallahan called for worksheets, Derek Lick seconded and it was unanimously voted. Sue Reel asked if there was any responsibility to enforce before this time if a shed had been at its current location for many years- in other words, if town employees or agents came on the property in connection with earlier permits, for example the permit for the hot tub deck, was there any requirement that they point out other deficiencies. There was general agreement

that there was no such requirement. Bill Hallahan noted that there have been no complaints lodged by abutters in connection with this appeal. One abutter had come to the meeting, Mr. Taras Kasatsky. He had to leave before the completion of the first hearing but did let the Board know his name and that he was an abutter and that he was ok with the Patterson sheds. Derek lick spoke saying that in this case, Variances #2 and #3, he did not find the hardship issue that was there with the larger new shed approved with Variance #1. In the case of the two sheds now under consideration on the west side of the property, he can see other possibilities on the lot these small shed locations. Dane explained that one of the purposes of setbacks is to limit the amount of a lot that can be developed. Derek read the Section on Accessory use that limits this type of use to not more than 40% of total area. He further noted that the law says that: if you can do it somewhere else on the property that is less nonconforming, then you cannot give the variance. That was true of the larger shed, but not the smaller ones.

Motion: A motion was made by Mr. Lick and seconded by Mr. Headley to deny the applications for both sheds on the west side of the property, Variance #2 and Variance #3 and that the Board expressly note that the owner is given sufficient time to move the sheds, allowing until July 1, 2013 to move the sheds from within any setbacks; Dane Headley seconded and it was so voted unanimously.

Other Business: There was a brief discussion about whether to hold a meeting in March. It was agreed that, as there are no public hearing scheduled and the work has been completed on the Zoning Ordinance Revision and the final revision now awaits the outcome of Town Meeting, and that at least two members may not be available that there would not be a March meeting.

There being no additional business, Bill Hallahan moved to adjourn, Derek Lick seconded the motion and it was voted unanimously.

Next meeting is to be held Wednesday April 17, 2013 at 7pm.

There being no further business, the meeting was adjourned at 9:20 PM.

Respectfully submitted,

Laurie Hayward

Land Use Coordinator