

**CITY OF WESTBROOK  
ZONING BOARD OF APPEALS  
July 12, 2016 7:00 P.M.  
MINUTES**

Present: Aaron Burns (Chair), Philip Brown (Vice-Chair), Michael Lemay, Nancy Milton Heath, Sherri Quint, Karen Axelsen (Alternate)

Absent:

Staff: Richard Gouzie, Jennie Franceschi

Legal: Natalie Burns

Aaron Burns (Chair) called the Westbrook Zoning Board meeting to order at 7:00 p.m. in Room 114 of the Westbrook High School.

**Old Business**

**1. Approval of Zoning Board of Appeals June 14th, 2016 minutes**

**Aaron Burns** any changes to the minutes as provided in our packet?

No changes

**Aaron Burns** any objections to approving the minutes in the packet?

No objections

**Aaron Burns** minutes are approved.

**Public Comment**

**Aaron Burns** any members of the public or the Board wish to address the Board on any matter?

**Philip Brown** at our meeting on June 14<sup>th</sup> we gave consideration to a side yard variance on Nasson Avenue. The need for the variance was based on the desire to split the present 100 x 150 lot into two 100 x 75 foot lots to enable the sale of one lot to a family member.

According to the request both lots would meet the 7500 square foot requirement of the zone. Through extensive discussion it was clear that a number of Board members were skeptical that the variance criteria could be met, particularly in relation to the question of feasible alternatives.

It appeared that one feasible alternative was to divide lots with a dog leg property line in a way that would meet both set back requirements and the area requirements of the new lots without a variance. Instead the Board discussed and eventually approved a different scheme with would solve the setback requirement while also creating a lot with less than the required 7500 square feet. In finding with this method of division it appears to me that the Board failed to effectively consider again the question of alternatives before our decision.

Having personally advocated to this decision it is painful to consider the reconsideration at this junction. However; **I move to reconsider the vote from June 14, 2016 meeting to grant a**

**minimum lot size variance to Roberta Arsenault at 16 Nasson Avenue Tax Map: 43, Lot: 58, Zone: Residential Growth Area 1.**

Doing so; I would seek advice from Counsel as to the timing and procedural issues involved.

**Aaron Burns** a motion to reconsider is a privilege motion and needs to be taken up immediately on the making of it. Is there a second on the motion?

**2<sup>nd</sup> by Sherry Quint**

**Aaron Burns** we will move on to discussion of the motion, public comment will be put aside until after we are done debating this motion. I will take public comment in association with the motion as well.

I invite the City's Attorney to address the Board on the procedural requirements for a motion to consider under 26 MSRA 2691.

**Natalie Burns** thank you Chairman, under the provisions Title 30A Section 2691 the Board has the authority to reconsider a motion that was made at a previous meeting. Under the provisions of the statute if the Board votes to reconsider the Board must complete all action of the reconsideration within 45 days of the original vote.

At this point the Board should certainly discuss whether it wants to reconsider and I did want to say that if nothing else the Board needs to consider the fact that the nature of the variance was completely changed and there was not new notice given as there should have been and a new hearing.

**Aaron Burns** do any Board members wish to ask questions of Ms. Burns or otherwise discuss the motion.

**Mike Lemay** will she be able to answer our questions after discussed?

**Natalie Burns** I am here.

**Aaron Burns** is there anyone from Administration that wishes to speak on the motion?

No comment

**Aaron Burns** any members of the public or the applicant wish to speak on the motion?

**Rebecca Ledue** not at this time.

**Aaron Burns** if the Board reconsiders its prior decision on the motion, the question would go back to the Board as if we had not voted on it in the first place. My understanding under Title 382691 we have to complete all proceedings on the reconsidered vote within 45 days of the original decision. That would mean we would need to schedule a special meeting before the end of this month to make that deadline. Is there going to be a room available for that?

**Linda Gain** if the Board takes action tonight the special Zoning Board of Appeals meeting is scheduled for the 26<sup>th</sup> of July.

**Aaron Burns** a couple of things to keep in mind, if you are voting to reconsider the approval, it does not necessarily mean that you would decide to take a different action than you took the first

time. You would just simply take a fresh cut by hearing the evidence, listening to a more fulsome presentation by the City and what their concerns are and making your mind up on that basis.

If you are reconsidering the only thing you are voting to do is to on the 26<sup>th</sup> have a fresh hearing on the motion with additional evidence.

Anyone have any questions or concerns? Any further discussion on this motion to reconsider? Is there anyone from the public that wants to speak for or against?

No discussion

**The vote is 3-2 in favor (Michael Lemay and Nancy Milton Heath opposed)**

**Aaron Burns** the chair will schedule a special meeting of the Board on the 26<sup>th</sup> at 7:00 pm. anyone who wishes to speak for or against the application at that time please do so. If anyone has any written submissions they can provide them to the Board in the advance of the packet deadline which is Friday the 22<sup>nd</sup>.

Anyone wish to address the Board?

**Pauline Holloway** I am confused with what just happened in terms of submission. Can you explain to us what you were talking about?

**Aaron Burns** we are going to have a hearing on the variance application that was made in June. It is being reconsidered. It does not mean that the results are going to be any different, we are going to hear additional evidence on it and the Board will make a decision on the 29<sup>th</sup>.

**Pauline Holloway** I am unclear as to the reason of the reconsideration. I thought the reason we came here tonight is because it had not been advertised properly because it was changed within the meeting? Is that why we are here?

**Aaron Burns** that is one of the reasons. It is being reconsidered and everything is on the table.

**Pauline Holloway** so do we resubmit a packet?

**Aaron Burns** whatever you submitted previously that is in the record already. Whatever written documents that have been provided to the Board, we will have. People should be prepared to make an evidentiary presentation.

**Pauline Holloway** we thought this was happening today. We found out about this meeting yesterday.

**Aaron Burns** that is one of the reasons it is not happening because you have not had enough time to prepare.

**Pauline Holloway** my Mom found her deed description and I remember last time there was a lot of discussion as to what that or how that property was described, whether it was one lot or multiple lots. To me that would be a good piece to give to you.

**Aaron Burns** I cannot give you advice as to how to make your presentation. We did discuss that and you may find that useful to present to the Board.

**Pauline Holloway** okay and I am at a loss as to what else we could do.

**Aaron Burns** I think what you could do is pretty much what you did last time plus whatever additional information you want to put in there.

**Natalie Burns** Mr. Chair, I think also if the applicant wants to pursue the minimum lot size variance then there should be an amendment requesting the alternative to the side setback variance or the minimum lot size variance because that was part of the problem with the Board's action as it acted on a variance application that was not before it.

**Aaron Burns** the motion to reconsider, it was amended at the last hearing, and so what we have is the lot size variance. If the applicant wanted to put something to the Code Office to ask for either A or B that is fine also.

**Natalie Burns** I think that could be as simple as just a letter saying that is what you would like. I do not think you have to submit a whole new application but you would have to say you would like to amend the application to request in the alternative.

**Aaron Burns** write a letter to the Board of Appeals through the Code Office saying that you would like the Board to consider a side yard setback variance or the lot size variance.

**Pauline Holloway** we asked for a setback variance and it was changed to a lot size variance was added in the meeting.

**Aaron Burns** that is what was not advertised, but just to be clear the variance approval is being reconsidered so it means everything is on the table. We are not partially reconsidering whether or not to grant a variance. It may not change, I do not know, it is being reconsidered.

**Nick Ledue** for us to meet on the 26th if we put on the application either or the last time, then we wouldn't have to do this? Is it just because we changed it during the meeting and we should have put both on the application?

**Aaron Burns** I do not want to get into speculation of what could have been done differently, it is being reconsidered. You should make your pitch on all the merits of the variance application or in the alternative, minimum lot size application that you are looking for.

**Nick Ledue** when we got it recorded we would have to do that again if something else gets approved?

**Aaron Burns** I do not know. If it is granted again and it is the same variance as last time, I do not know if you need to re-record.

**Pauline Holloway** what happens to that recorded paper?

**Natalie Burns** the variance was always subject to an appeal for a 45 day period. Even though you record it; it does not become final for 45 days, so if there is something in the registry that says there is a variance and something happens and it is not the variance that you end up with or you do not end up with a variance something will need to be recorded in the registry indicating that.

**Pauline Holloway** that was not made clear to us that it had a 45 day trial period.

**Aaron Burns** that is in the Ordinance.

**Natalie Burns** that is also in the Statute. All Board of Appeals decisions have a 45 day appeal period and are also subject to reconsideration. Nothing wrong with you recording it but it is subject to those two things.

**Pauline Holloway** so we should hang on to that piece of paper, get ready to tear it up or after the 45 days?

**Natalie Burns** it may need to have something else will have to happen. But we can discuss

**Pauline Holloway** got you

**Aaron Burns** you are required to record it within 90 days of the approval, you can record it earlier than the 45 days if you want to. I can count on one hand that we have moved to reconsider. It is unusual once it has been granted that it is going to be reconsidered. It does not create a problem by doing that.

**Pauline Holloway** okay, we did not know that. We wondered what happened to that piece of paper

**Aaron Burns** people record things in the registry all the time, they just sit there and if someone wants to look it up they can. There is no magic to it other than it has to be done.

**Pauline Holloway** but it can get superseded or changed or negated.

**Aaron Burns** it could get amended. It is going to be reconsidered so if it is denied then it is denied.

**Pauline Holloway** thank you

**Aaron Burns** anyone else have any questions?

No questions

**Aaron Burns** do I hear a motion to adjourn?

**Sherri Quint** move to adjourn

**2<sup>nd</sup> by Phil Brown**

**Aaron Burns** any objections?

No objections

**Adjourn**

*THANK YOU, respectfully submitted, Linda Gain [lgain@westbrook.me.us](mailto:lgain@westbrook.me.us)*