

## **Zoning Board of Appeals Meeting Minutes**

Minutes of December 7, 2016

Hearing on the petition of Lori Wilkesman of 524 Main Street, Danielson, Ct for a Special Permit for placement of a Utility Shed on a pre-existing non-conforming lot located at 1 Wildwood Lane, Leicester, MA

Members present: David Kirwan, Chair; Jim Buckley, Clerk; Vaughn Hathaway, David Orth and Paul Schold

Alternate members present: Jim Reinke, Mary Moore, Dick Johnston

Meeting called to order at 7:30PM

Mr. Kirwan gave instructions on the hearing procedures and then asked for the certified mailing receipts.

Ms. Lori Wilkesman said she did not have the proof of mailing, but did send notice to her abutters.

Mr. Hathaway explained that the receipts were needed to show the mailing was done and the abutters were notified. He explained if the abutters were not notified and the Board made a decision to approve, it would be very easy for someone to file an appeal on that decision.

Ms. Wilkesman said she spoke to each of her abutters personally and they all got their letters.

Mr. Hathaway said the Board needs to see the proof.

Ms. Wilkesman said she will try to find the proof of mailing receipts, but asked what would happen if she can't find them.

Mr. Hathaway explained from a legal perspective, any decision made would be null and void.

Mr. Kirwan felt a stamped certificate from the post office showing notification was received should satisfy the requirement.

Mr. Michael Shivik mentioned the post office did offer proof of mailing and Ms. Wilkesman should be able to get a copy.

Mr. Hathaway said from his perspective, the Board could proceed with the hearing, with the understanding that if anyone raises the question of not being notified, it would invalidate anything done here tonight.

Mr. Buckley said if there isn't proof abutters received notification, the Board can't proceed with the hearing because there could be people who may have wanted to attend who didn't know.

Mr. Kirwan said if the Board got a copy of the certificate of mailing, he didn't feel that would negate someone from saying, even though it was mailed, they never got it and it can't be proven that it was received.

He asked the Board if this special permit was to be approved, could a condition be put on it that the applicant submit proof of mailing prior to receiving a building permit.

Mr. Hathaway wasn't sure if that would be sufficient because the requirements say Certified Mailing and from a legal perspective, an abutter could claim never receiving notice.

Ms. Wilkesmans said if she were to get the special permit, would she still be allowed time to submit proof of mailing.

Mr. Reinke explained without having something stating the notice was received, there would potentially be testimony missing, positive or negative.

Mr. Buckley noted this would need to be continued in order for the petitioner to provide proof notice was sent to the abutters. If that cannot be produced, then the process would need to start all over again.

Mr. Kirwan explained the Board agreeing that the individual stamp provided by the post office will not adequately satisfy the requirements.

Mr. Orth noted not finding a Registered Plot Plan with the application showing the location of the shed on the lot.

Ms. Wilkesmans submitted a copy of the lot taken from the Assessor's Map, with a hand drawn sketch of the shed's location.

Mr. Reinke asked if a certified surveyor did the sketch. Ms. Wilkesmans said no, but the shed is in the exact same spot where the trailer was.

Mr. Hathaway said he already has concern with abutter notification and for a Registered Plot Plan, that needs to be put together by a certified surveyor. He explained that if the Board were to approve this and someone decides to question the shed being too close to the lot line, there wouldn't be a plan showing it wasn't.

Ms. Wilkesman said the Building Inspector told her as long as she is putting the shed in the same place, it should not cause a problem, because the shed was smaller in the back than the trailer and she had more land in the back.

Mr. Hathaway said he believed her, but there was no plan showing that to be true.

Mr. Kirwan explained that at some point, the structure could have been moved too close to the lot line without knowing and without having a registered plan, potentially it could be on someone else's lot.

Ms. Wilkesman said her father put the trailer there before selling the remaining property to her neighbor. She wanted to assure the Board that the shed had not been moved and was in the same spot.

Mr. Reinke explained when property titles get transferred, buildings get located or relocated down to the inch off property setbacks and the Zoning Bylaws regulate where buildings can be located on a lot. The lot is defined by the Zoning Bylaws that the Board and property owners are guided by.

The Board cannot make decisions on trust; they can only make decision as defined in the Bylaws. Unless the Board is shown exactly where the shed is located on the lot, is when the Board could make a decision according to that registered plot plan.

Mr. Hathaway said as far as guiding Ms. Wilkesman, it sounds like the Board agrees a hearing cannot be held without a registered plot plan.

Ms. Wilkesman understood the Board had to do what was required, but she needed to understand what she needed to do. She knows she cannot afford to pay to have a registered survey done.

Ms. Moore said because this was brought to the building inspector's attention means somebody complained about the shed.

She said all the rules needed to be followed and a survey will cost a lot of money, but the rules are for everyone's protection.

Ms. Wilkesman said after the camper was vandalized, she got a copy of the report. Some hoodlums on the lake have been vandalizing properties in the area.

Mr. Orth reviewed and stated that a Registered Plot Plan being needed showing where the shed will be located on the lot and to have the certified mailing receipts.

Ms. Wilkesman said she would look into getting a survey done.

Mr. Kirwan advised not doing the mailing until after the survey was completed, because the survey could take some time. Once the survey was complete, she can call the office to schedule the hearing.

He said if Ms. Wilkesman found more time was needed, she can submit a written request for another continuance. Ms. Wilkesman agreed.

After further discussion, all agreed to continue to February 1<sup>st</sup>, 2017.

MOTION: Mr. Buckley moved to continue the public hearing on the petition of Lori Wilkesman of 524 Main Street, Danielson, Ct for a special permit for placement of a Utility Shed on property located at 1 Wildwood Lane, Leicester, MA to Wednesday, February 1, 2017 at 7:30PM

SECONDED: Mr. Reinke – Discussion: None – VOTE: All in Favor

Meeting adjourned at 8:15PM

Respectfully submitted:

*Barbara Knox*

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