

**Zoning Board of Appeals
Meeting Minutes**

Minutes of February 1, 2017

Continued Hearing from December 7, 2016 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 nonconforming lot located at 1 Wildwood Lane, Leicester, MA

Members present: David Kirwan, Chair; Jim Buckley, Clerk; Vaughn Hathaway, David Orth
Alternate members present: Jim Reinke, Dick Johnston

Meeting called to order at 7:32PM

Mr. Kirwan explained this was a continued hearing from December 7, 2016 in order to get a Registered Plot Plan and for abutter notification to be sent.

Instructions given on hearing procedures.

Voting at tonight's hearing: David Kirwan, Jim Buckley, David Orth, Vaughn Hathaway and Dick Johnston

New Correspondence received: a letter from Carol Nelson stating her opposition to the petition, read into the record by Mr. Kirwan

Submitted into evidence: return receipts from the certified mailing to abutters and a plot plan.

Mr. Kirwan opened the meeting to the applicant to address the Board.

Ms. Lori Wilkesman submitted the plans received from her surveyor. She explained the structure as being a shed and would not be used as a dwelling. There will not be septic system or a bathroom. This will be simply a place to change into their bathing suits, which they have been doing since 1939 when her parents purchased the property and this would not be a place for her mother to stay. Her mother is 91 years old and resides in Florida.

She said she was the caretaker of the property. The previous structure was an antique camper they used, but that was vandalized. She did receive a copy of the police report on the vandalism. She has spoken with her neighbors, who live there and they were in support of this. She had the survey done, as the Board asked, showing the proper setback.

Mr. Kirwan asked if there was the possibility of anyone using the shed to sleep over night.

Ms. Wilkesman said it would not be used for any overnight stay.

Mr. Kirwan asked to confirm the shed would be strictly for daytime use and enjoyment of the lake.

Ms. Wilkesman confirmed that the shed will only be for daytime use. It will not have septic or any water hook-ups connected to the structure. They will have an electric connection for a security camera.

She felt by removing the vandalized trailer and replacing it with the shed, increased the value of her property and surrounding properties in the area.

Mr. Kirwan questioned the plans being registered. Mr. Reinke said they weren't because there wasn't an engineer's stamp on the plan. Mr. Kirwan asked if a Registered Engineer did the plans.

Ms. Wilkesman said Laprad Land Surveying did the plans and she thought it didn't get stamped because she hadn't paid her fee yet.

Mr. Kirwan said the plan looks professionally done, but wasn't stamped as a registered plan.

Ms. Wilkesman noted the surveyor might be stopping by, but she wasn't sure.

Mr. Hathaway explained a stamped plan assures the Board what they are looking at or approving, is what will happen.

Mr. Kirwan said from the last meeting, the Board agreed the meeting could not proceed without a stamped Registered Plot Plan. Even though, originally, it was believed the shed was on the applicant's property and the fact is, it is not. He asked if the plan was to move the structure.

Ms. Wilkesman said the structure has not been moved yet. The proposed plan shows where it will be moved, because the survey showed the shed being 1-foot over the property line.

Ms. Tracy Goodman said her mother owns the adjacent lot to Ms. Wilkesman's lot. The 1-foot over, was on her mother's property.

Mr. Kirwan said according to the existing plan, a corner of the structure goes onto the neighboring lot and that was the point for having a Registered Plan done.

Unfortunately, there still wasn't a Registered Plot Plan.

Mr. Orth noted that the structure is still existing on the neighbor's property.

Ms. Wilkesman said she was working with the surveyors on getting the structure moved and she understood the proposed plan showed that.

Mr. Hathaway explained the plan needs the surveyor to stamp the plan, with a stamp, licensed with the State, certifying the plan is correct.

Ms. Wilkesman asked if the meeting will need to be continued again.

Mr. Kirwan felt the meeting would need to be continued in order to get an engineer's stamped plan.

Mr. Al Papesch said his mother-in-law owns the lot the trailer currently extends over on and asked to review the plans submitted.

He said their main concern was with septic and a well being installed there. As far as the structure goes, it looks like more of a home.

Mr. Kirwan explained that was not what this hearing was for; she would not be able to turn that into a home.

Ms. Wilkesman said that it was not her intention to turn it into a home.

Mr. Papesh explained the two lots next to this, where the shed is currently on and the trailer used to be on, were not her lots.

Mr. Kirwan explained the shed will not be there and will be moved away from that property line.

Mr. Papesh said they were also concerned about the septic and the use of the structure.

Mr. Orth explained there would not be septic and the structure would only be used as a changing room.

Mr. Kirwan explained if this Special Permit were to be approved, there will be restrictions included on the use, to assure it would not turn into a habitable house.

Ms. Wilkesman agreed.

Mr. Hathaway explained putting conditions on the special permit means if she was found to be in violation, the Building Inspector could order it to be removed.

Ms. Wilkesman agreed everything needs to follow code and that was why she was here.

Mr. Kirwan asked the Board how they wanted to proceed.

Mr. Orth felt a permit could not be issued until the structure was in conformity.

Mr. Hathaway agreed and explained after that the project was complete, the Building Inspector would inspect the structure to make sure it was done in conformance with the proposed plan.

Ms. Wilkesman said she was trying to do all that.

Mr. Kirwan confirmed the hearing will need to be continued in order to get a Registered Plot Plan and the structure moved.

Mr. Hathaway explained usually a new structure wouldn't exist and with this application, the Board was hearing it after the structure was there. He would want to see the structure placed in accordance to the proposed plan, especially when the existing structure was shown being over the line.

Mr. Kirwan reviewed that the Board wanted to see a Registered Plot Plan showing the building in its new location and having it in its new location, so the structure will need to be moved.

Mr. Hathaway said usually the process is the Board grants the special permit and the building is built. Then the Building Inspector would inspect the building to make sure it was done to what was approved. The Board isn't likely to approve the special permit without it actually being moved, only because the structure already exists.

Mr. Orth noted a Registered Plot Plan confirms the area where the structure was placed.

Mr. Reinke noted the shed was placed on the lot without a permit and that started the ball rolling on getting the ZBA involved. Ms. Wilkesman indicated the shed was bigger.

Ms. Wilkesman said it's less than 14-feet wide, but was a lot longer.

Mr. Reinke felt Ms. Wilkesman would not be able to legally move the shed without getting a building permit, which requires receiving a special permit from the ZBA.

He didn't have a problem with the plan as submitted, other than it not being stamped.

Mr. Hathaway said he would feel more comfortable to say she wouldn't have to move it, if the Building Inspector inspected the structure before approving the building permit.

Mr. Kirwan asked if the Board gets a Registered Plot Plan showing where the shed will be placed, is there a potential for the special permit to be granted before moving the shed.

Mr. Reinke agreed the shed could be moved before receiving approval from the Building Inspector, but suggested before the Board made a decision, asking the audience for their comments.

Mr. Kirwan noted a decision was not being made on this tonight, its only being discussed.

Mr. Orth asked to confirm that once the Board has the Registered Plot Plan showing where the shed was being placed, the Special permit can be granted.

Mr. Kirwan agreed and said then have it inspected by the Building Inspector confirming the placement of the shed. Mr. Hathaway agreed.

Mr. Reinke noted the plan was probably emailed to Ms. Wilkesman from a file without the stamp. He wouldn't have a problem listening to testimony and as long as the plan didn't change, then require she submit a stamped copy of the plan showing zero changes.

Mr. Al Papesh said where the shed is currently located is on the abutting property and their main concern was the shed being hooked into septic and being used as living space.

Mr. Orth said the shed will be moved and will not be habitable. The lot was not big enough for a well and septic.

Mr. Papesh questioned an accessory shed being allowed on a lot without a main structure.

Mr. Hathaway explained that the petition came to the Board as a pre-existing nonconforming structure, because there was an existing structure on the lot before the shed.

Mr. Kirwan said abutters concerns are very valid and when the Board addresses the special permit, as part of the record, there will be permanent restrictions put on it. Such as, no septic or bathrooms and will not be a habitable dwelling. It's a shed that will be used as a changing room for swimming in the lake. If the restrictions are ignored, there are methodologies to address those concerns with the Town. For right now and the way it was presented to the Board, it's a fancy shed.

Mr. Hathaway summarized what the Board was asking to see. One, was for a registered stamped plan be submitted to the Board and to be reassured that the shed will be moved to the spot shown on the plan, or at least, know that the Building Inspector will confirm the location of the shed. Ms. Diana Provencher, 46 Charles Street and an abutter said she didn't have a problem with the shed and asked for a copy of the plot plan for her review. She asked if the abutting properties and owners names were shown on the plot plan. Mr. Kirwan noted that they were.

Mr. Kirwan asked the Board if we could require that the Building Inspector, following placement, make sure the shed was built and placed as shown on the plan.

Mr. Reinke said in order for her to get a building permit, she would need to show the correct plan clarification.

Mr. Hathaway felt the Board could require that process to take place.

Mr. Reinke agreed asking the Building Inspector for a letter of confirmation.

Mr. Kirwan reviewed the Building Inspector's letter that stated, "Ms. Wilkesman would need to apply to the ZBA for a special permit in order to keep the shed on her property. Even though it was a bit longer than the camper by a few feet, it met the setback requirement of 40-feet in the rear, so variance was not required, however a special permit is required because she changed the size of the unit to a larger structure."

Mr. Reinke said Ms. Wilkesman wants to permit the shed for being a nonconformity and then she would have to apply for a permit from the Building Inspector.

Mr. Orth said what has not been addressed was the shed's location being invalid.

Mr. Hathaway agreed. He asked to make sure that Ms. Wilkesman checks with the Building Inspector first before moving the shed.

Mr. Orth said the Building Inspector said a special permit was needed for the structure and the Board was questioning where the structure was located as not being proper. Ms. Wilkesman does need a special permit for the shed, but it also doesn't meet the setbacks.

He felt the Board needed a Registered Plot Plan to verify where the shed will be going and then issue the permit for the shed itself. Now the question was what assurance does the Board have that the shed actually gets moved.

Mr. Reinke said by Ms. Wilkesman going to the Building Inspector and applying for a building permit, would be the next course of action. She should have already applied for a building permit, but a copy wasn't included with the application.

Ms. Wilkesman said she had applied for a building permit and that's what brought her to the ZBA.

Mr. Orth explained the proper procedure was applying for building permit before placing the shed on the property. He said the problem was the structure already being there and not permitted at all. The Building Inspector did note in his letter that a permit can't be issued because it's bigger than what was there and needed a special permit.

Mr. Kirwan further explained that assuming the Board approved the permit, Ms. Wilkesman would take the special permit, along with a copy of the Registered Plot Plan, to the Building Inspector's Office. Assuming he approves the permit for the structure to be moved, the Building Inspector then would go out and make sure the shed was moved to where it's supposed to be. Mr. Hathaway said if approved to include a condition with the special permit, having the Building Inspector verify the shed's location as shown on the Registered Plot Plan.

Mr. Papesh suggested having As Built Plans submitted and to pin the corners on the location of the shed. Mr. Reinke agreed and felt it was for the protection of the applicant.

Mr. Kirwan reviewed what Ms. Wilkesman would need to provide to the Board at the next meeting.

A Registered Plot Plan showing the location of the new shed and assuming it will be approved, it will be approved with conditions. The approval would be taken to the Building Inspector and she then would apply for a permit to move the shed. She was to have the surveyor pin the location of the shed as shown on the registered plan. By having all that done, should put the shed into compliance.

Mr. Reinke asked if there were any abutters, who object to having a shed there that is bigger than what was originally there.

Mr. Papesh said they did not have objection as long as it was in compliance.

Mr. Kirwan asked for any further comment or questions, hearing none asked for a motion to continue.

MOTION: Mr. Reinke moved to continue the public hearing for a Special Permit on 1 Wildwood Lane to Wednesday, March 1st, 2017 at 8PM in order to get a Registered Plot Plan and a copy of the denied application for a building permit.

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

Meeting adjourned at 8:20PM

Respectfully submitted:

Barbara Knox

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