

MIDDLESEX ZONING BOARD OF ADJUSTMENT
Wednesday, June 8, 2017
6:00 PM
Middlesex Town Clerk's Office
5 Church Street
Middlesex, Vermont 05602
(802) 223-5915

MINUTES

Present: ZBA members John Demeter, Daniel Crisp, Charlene Bohl, Phil Hyjek and Zoning Administrator Mitch Osiecki.

Call to Order

John Demeter calls the meeting to order at 6:01 pm.

John leads a discussion of the rules of procedure and explains procedures for the organizational meeting.

Motion: Phil Hyjek nominates John Demeter as Chair. Daniel seconds. **Motion carries.**

Motion: John Demeter nominates Daniel Crisp as Vice Chair. Phil seconds. **Motion carries.**

Organizational Meeting adjourns at 6:08 pm.

T. Josh Jackson Zoning Permit #17-15 Hearing

Hearing convenes at the home of T. Josh Jackson, at 110 Portal Road at 6:35 pm.

Present: ZBA members John Demeter, Daniel Crisp, Charlene Bohl, Phil Hyjek and Zoning Administrator Mitch Osiecki. Also present is Josh Jackson, appellant.

John introduces members of the ZBA to Josh Jackson.

Josh shows the layout of his property and explains where he proposes to site his garage/workshop. He explains the challenges his property presents with respect to the setbacks from a stream. He briefly describes several steps he's already taken as well as some he intends to incorporate to minimize any environmental impact of his workshop.

Hearing suspends at 6:50 pm.

Hearing reconvenes at Middlesex Town Clerk's Office at 7:15 pm.

John reads into the record the public warning of the hearing.

John briefly explains the rules for the hearing.

John polls members of the ZBA and confirms that no one has any conflicts of interest that would prevent them from rendering a fair and impartial decision.

John swears in Josh Jackson and stipulates that there are no interested parties in attendance.

John affirms that Josh Jackson has no additional written testimony to submit beyond that included in his application package. Josh notes that his application includes a petition in support of his project signed by the vast majority of residents of Portal Road. Josh notes that he was not able to secure signatures from two direct abutters. One is Gordon Grunder, whom Josh spoke to by phone. Josh said offered to attend the hearing in support of the project. The other direct abutter, Sammi Yassa, lives in California and Josh was not able to get in touch with him.

John invites Josh to summarize his proposed project.

Josh explains that he seeks to build a combination garage and workshop to be used for a home-based timber framing business. The business currently has another shop in Vershire. The business is structured as an employee-owned company, three of whom work out of a temporary, tent-like structure at Josh's property. Upon applying for an application to build a permanent workshop, Josh discovered that the zoning regulations specify a 75 foot setback from waterways. Josh is asking for a variance, because the location of his septic field and topography of his property makes it impractical to site the workshop in a location other than where he has proposed.

Josh also mention that under the definition of a home industry, he is supposed to do all of his work indoors and is not allowed to store any materials outdoors. He explains that due to the size of the material he works with, it is sometimes necessary to work outdoors and also to store material outdoors.

Josh explains that he has chosen a location that is likely to minimize environmental impact of his work, but this location is approximately 40 feet from the waterway at its closest point.

John clarifies that Josh is seeking two remedies from the ZBA. The first remedy is a variance from the 75 foot setback from a waterway. The second remedy, however, is not a variance but rather a conditional use permit.

Daniel explains that in regards to relief from the waterway setback, there are two avenues for relief. The appellant can ask for a variance or a setback waiver. He says that the setback waiver is the path of least resistance for a property owner. When seeking a variance, there are five criteria that must be met. One of those criteria has generally been interpreted by Vermont courts such that in order to grant the variance, there must be no other location on the property that the structure can be sited. On the other hand, a setback waiver may be granted as long as the parcel on which the setback waiver is requested has legally been in existence prior to November 2, 2004.

John stipulates that this hearing will evaluate the request for a conditional use permit for a home industry as well as a setback waiver from a waterway.

Charlene states that from a brief review of lister records, it appears that the parcel has been in existence since prior to November 2004. The ZBA agrees to continue under the assumption that this condition has been met, but will confirm prior to rendering a final decision.

Discussion as to whether the conditional use request or the setback waiver should be taken up first. Since both the conditional use and setback waiver are evaluated using the same ten criteria, the board agrees to evaluate both items by evaluating each of the criteria concurrently.

Evaluation of Josh's application with respect to Section 5.4 of the Zoning Regulations, which covers Conditional Use Review.

Specifically, conditional use approval may be granted by the ZBA upon finding that the proposed development will not result in adverse effect on:

1. Site Features (which includes surface waters, wetlands, critical habitat areas, ridgelines and steep slopes). Josh reiterates that the proposed site will have the least impact on the site features.
2. Access. Board deems this to be of no concern.
3. Circulation. ZBA deems this to also not be an issue of concern.
4. Parking, Loading, Service & Outdoor Storage. Again, N/A.
5. Layout & Site Design. Other than the requested setback waiver, Josh says the site design will conform to the Town Plan zoning district objectives.
6. Landscaping & Screening. ZBA determines no issue once again.
7. Storm Water Management & Erosion Control. Josh states that the proposed structure will not increase storm water runoff over current site layout. He is continuing to add features, including shrubbery, in an attempt to mitigate runoff and erosion.
8. Lighting. Josh states that there will be minimal exterior lighting, which will be consistent with lighting typical of a garage or barn.
9. Bylaws in effect. ZBA deems that other than setback request, there are no conflicts with any other regulations.
10. Sign Requirements. Josh states that he will probably want to put up a sign eventually, but is not seeking permission for one at this time.

Evaluation of Josh's application with respect to Section 3.9 of the Zoning Regulations, which addresses Protection of Water Resources.

In particular, subsection (A) Surface Waters and outlines criteria the ZBA must consider before allowing a structure within the 75 foot setback. Discussion of those criteria:

1. Reasonable provision is made for protection of water quality. Members concur that Josh has sufficiently addressed this during site visit and subsequent testimony.
2. Building placement will better reflect historic settlement patterns and character of surrounding area. Josh reiterates that proposed location of structure conforms to this point.

In addition, there is a specification that an undisturbed, vegetated buffer strip shall be maintained for a minimum of 25 from all streams. Members concur that this item has also been sufficiently addressed.

Phil raises a question as to whether the State requires that corridors next to a river be maintained within 50 feet, and whether the ZBA has the authority to override that corridor restriction. Discussion ensues. The determination of the members is that the scope of their oversight needs to be restricted to the Zoning Regulations, but that they advise Josh to ensure that he's in compliance with State law.

Discussion of any restrictions the ZBA feels might be warranted with respect to the conditional use request. Daniel suggests that any exterior lighting should maintain the character of the neighborhood. Josh agrees that that is a reasonable request. Daniel further recommends that Josh formalizes his intent to control storm water runoff through use of wood shavings and planting of shrubs. Josh agrees to this request.

Members agree that, subject to the determination of the legal existence of the lot prior to November 2, 2004, they are prepared to vote on both the conditional use request and the setback waiver.

Motion: John moves that the Board grants the conditional use permit for a home industry, subject to the conditions proposed by Daniel regarding lighting and storm water runoff/erosion control.

Votes for the above motion: Yes – John, Daniel, Charlene, Phil. No – None. **Motion carries.**

Motion: John moves that the Board grants the setback waiver, subject to the determination that the parcel has been in existence prior to November 2, 2006 and that Josh ensures compliance with State law regarding stream corridor.

Votes for the above motion: Yes – John, Daniel, Charlene, Phil. No – None. **Motion carries.**

Meeting adjourns at 8:02 pm.

Respectfully submitted,

Mitch Osiecki, Zoning Administrator