

Westmoreland Zoning Board of Adjustment

July 17, 2013 Hearings

Draft Minutes

These minutes were approved by the Board on July 24, 2013

The Board convened shortly before 7:30 pm on Wednesday, July 17, 2013 at the Westmoreland Town Hall.

Present: Peter Remy, Chairman; Members: Barry Shonbeck, Brian Merry, Russ Huntley, Nancy Ranson; Alternate members; Ernie Perham, Bill Campbell.

The alternate members participated in the discussions but were not voting members for either hearing.

The Board review the draft minutes of the June 26, 2013 site visit to the Graves Trucking property. A correction was made to the direction of the sound of the blast from an easterly to a northerly direction.

Brian Merry moved to accept the minutes with the correction and Russ Huntley seconded and all voted in favor.

Chairman Remy asked the clerk to read the first application which is as follows:

The Westmoreland Zoning Board will hold a hearing at 7:30 pm on Wednesday, July 17, 2013 at the Westmoreland Town Hall concerning a request by Kyle Keith for a Special Exception as required by the Westmoreland Zoning Ordinance Article II, Section 206.1 for non-conforming uses. This is a continued hearing from June 19, 2013. The applicant also requests a Variance of Section 206.1 to allow an expansion of the present structure by more than 20% and a Variance of Section 206.1 dealing with further intrusion into the setback requirement. The applicant proposes to remove an attached structure at his property located at 770 South Village Road (Map U2, Lot 30) and add a 28 foot by 24 foot attached structure.

Mr. Remy asked Mr. Kyle Keith to speak to his application. Mr. Keith showed the Board a diagram of his lot and the present structure and the location of the proposed addition and the setback distances to the abutting property. He then introduced his son, Chris, who made the presentation.

Chris Keith explained that the present 10x16 foot structure is very rickety and they want to put on a safer and expanded version for storing equipment for their business.

The present structure is 10 feet deep and the proposed structure would be 24 foot deep which would increase the encroachment into the fifty foot setback requirement by 14 feet.

Chris Keith went directly to the criteria for granting the first Variance from Zoning ordinance 206.1 by further encroaching on a rear setback which already does not meet the 50 foot requirement.

The first requirement for granting a Variance states that there will be no diminution in the value of the surrounding properties.

Mr. Keith said there would not be a diminution of value as the new addition would be in the back and invisible to neighbors and passers-by.

Requirement two is that granting the Variance is in the public interest. Mr. Keith said that the present structure is falling apart and the new structure will add value to the property.

The third requirement is that denial would result in unnecessary hardship to the owner because of the unique features of the land.

Mr. Keith said that the size of the lot makes it impossible to do anything because anything they do encroaches even further into the setbacks.

The fourth requirement is that substantial justice will be done.

Mr. Keith said that if he had a conforming five acre lot he would have no problem with the setback requirements .

The fifth standard is that the use would not be contrary to the spirit of the ordinance.

Mr. Merry asked Mr. Keith if they could have a smaller addition. Mr. Keith said that it will be used a storage for equipment for their business. The larger addition will be much more useful.

Mr. Remy mentioned that the presence of what appears to be a wetland area would make it necessary for a site review by the Planning Board because a wetland requires a 75 foot setback.

There is no change to the side setback which falls 15 feet short of the required 50 feet.

Mr. Shonbeck asked to see the drawing to see what the rear setback would be with the new addition. Mr. Keith said the property line isn't parallel to the house so the closest the addition would come to the property line would be twenty feet.

Mr. Huntley asked whether the addition could be put in the front.

Mr. Keith said that it would either be an eyesore or on top of the new septic system.

With no more questions from the Board, and no abutters or other members of the public present, Chairman Remy closed the public comment part of the hearing.

Chairman Remy asked the Board to consider each criteria.

All voting members agreed that there would be no diminution in value of the surrounding properties.

They next discussed the requirement for not violating the spirit of the ordinance.

Mr. Merry asked about how the abutting Dennie property would be impacted.

The Dennie property wraps around the rear and the sides of the Keith property but the house is not close to the property line and the lot is not sub-dividable. All agreed that it does not appear to violate the spirit of the ordinance.

All agreed that justice would be done; that the addition would not be hurting anyone.

All agreed that there would be no loss of value to the surrounding properties.

The Board discussed the hardship issue.

Mr. Perham said it would be a hardship on the town to have the equipment stored out in the front yard. Mr. Campbell said that the 50 foot setback is for a five acre lot, not a half acre lot.

Mr. Shonbeck said that there are options which don't further encroach into the setback so he is struggling with that. Mr. Merry asked if appearance is the only reason for not putting it out front.

Mr. Shonbeck asked about the unique features of the land. Chairman Remy said that it is a small lot but lots of people have small lots and the Board lost a case once because the judge said that a small lot could be of use somehow, even if just for a picnic.

Mr. Shonbeck also was concerned that there is a request for more than the 20 percent expansion. If it were either the setback or the expansion he might not be struggling with granting one Variance. All the Board members voted that the applicants had not been able to demonstrate unnecessary hardship because of the unique features of the land.

Mr. Huntley made a motion to deny the Variance for the setback encroachment which was seconded by Mr. Shonbeck.

All voted in favor of the motion to deny the Variance.

Mr. Remy asked the Keiths if they still wanted to go forward with the application for the second Variance or to pursue the Special Exception application which had been continued from the June 19, 2013 hearing.

The Keiths decided to alter the size of their proposed addition to 10 feet by 28 feet, maintaining the 10 foot depth of the current structure and squaring off the foot print of the building.

The Board was polled on each of the requirements for a Special Exception.

All agreed that:

The specific site is appropriate for such use.

Such approval would not reduce the value of any property with the district or otherwise be injurious, obnoxious, or offensive to the neighborhood.

There would be no nuisance or hazard to vehicles or pedestrians.

The Board will consider the recommendation of the Planning Board. Chairman Remy pointed out that there is no wetland issue because the building does not further encroach toward the possible wetland and there would be no need for a site review.

Mr. Shonbeck made a motion to approve the Special Exception and it was seconded by Mr. Huntley. All voted in favor.

Powder Pro's Hearing

Mr. Remy asked the clerk to read the next application which is as follows:

The Westmoreland Zoning board will meet on Wednesday, July 17, 2013 at 7:30 pm at the Westmoreland Town Hall to consider an application for a Variance of the Westmoreland Zoning Ordinance Article IV, Section 434.B.2. The applicant, Powder Pro, of 13 Industrial Park Road, Map R-14 Lot 46 in the Commercial/ Industrial Zone requests a Variance concerning the size of a sign attached to his business.

Chairman Remy asked the applicant to introduce himself and explain his request for the Variance.

Matt Cram, owner and president of Powder Pro's, introduced himself and Sarah Bell, his bookkeeper. He apologized for having a non-conforming sign. It was made by Signworks and neither Matt nor Peter Poanessa, the sign maker, was aware that there was an ordinance which was different for multiple businesses on one lot.

Mr. Remy asked what kind of business it is. Mr. Cram said that they powder coat all kinds of products, large and small. They just recently powder coated the cross for the newly built church on Maple Avenue in Keene.

Mr. Cram showed the Board a photograph of the building which houses his business and shows the 31 square foot sign over the door.

He went through the criteria for granting a Variance and made his case for each requirement.

First, there is no diminution of the property values of the surrounding properties. The sign has been professionally designed by a local company and it shows new life in a property which has been vacant for three years.

Secondly, it is in the public interest. The business provides a service for other local businesses and it varies the businesses in the community and is an asset.

As for the unique features of the land, his building within the Industrial Park is set back from Route 12 so that the allowable 12 square foot sign would not be visible or readable as people drive by. Even with the present sign people who are looking for his business do not always see it.

Granting the permit would be just because his business would suffer without the sign and he does not have the money to buy a new sign which would not be effective anyhow.

The sign is not contrary to the spirit of the ordinance. His is the only company in the Industrial Park which is trying to attract business from passers-by. The other tenants in the park like his sign and do not consider it a nuisance or a hazard.

Mr. Merry asked if the sign is lit. It is not.

Mr. Shonbeck asked if the Industrial Park sign lists his business. It does not list any of the businesses.

Mr. Remy asked about the 40 square foot directory sign which the Industrial park is entitled to. The Industrial park does not have a directory sign.

Mr. Remy said that the ordinance seems to penalize the people in the Industrial Park who want to attract customers.

Mr. Shonbeck said that it seems like businesses are penalized for being in the Industrial Park.

Mr. Remy polls the Board members on the criteria for granting the Variance:

All agree that the values of surrounding properties would not be diminished/

All agree that it is not contrary to the public interest.

Four members agree that there is an unnecessary hardship when people in the Industrial Park cannot advertize their businesses as single businesses on a property can. In this case Powder Pro's is denied even the directory sign allowed for the park. Mr. Shonbeck does not agree and votes no.

All agree that substantial justice would be done.

Mr. Remy called for a discussion on what the spirit of the ordinance means.

Nancy Ranson said that the spirit of the ordinance is not to have no sign. She quoted, "A business with no sign is a sign of no business."

Bill Campbell said that most industrial parks would have more than one lot involved. This industrial park has six different buildings which for all intents and purposes exist as six different properties.

Mr. Shonbeck said that this particular property has been given leeway over individual property owners to take on tenants who do not have obtain zoning permission unless there is a very large change in the use of the building. This has a bearing on the spirit of the ordinance.

Mr. Merry said that everyone who comes to the Zoning Board for a Variance has an issue that does not fit with one or more of the ordinances. That is why there is a Zoning Board of Adjustment. It is up to the Board to weigh each application and use its best judgment about the overall effect on the town and, the neighbors, and the applicant. In this case he feels that the criteria for a Variance outweigh the idea of small signs. Russ Huntley and Nancy Ranson agreed with Mr. Merry and think that Mr. Cram's sign does not violate the spirit of the ordinance.

Mr. Remy and Mr. Shonbeck do not agree.

Mr. Remy asked for a motion that would include the condition that lighting for the sign would be downward facing if the motion passed.

Mr. Merry moved to grant the Variance subject to the condition of downward facing lighting.

Nancy Ranson seconded.

Mr. Merry, Mr. Huntley and Mrs. Ranson voted in favor of the motion. Chairman Remy and Mr. Shonbeck voted against. The motion passed with a vote of three for and two against.

Mrs. Ranson moved to adjourn the meeting and Mr. Shonbeck seconded. All voted in favor.

Respectfully submitted by Jackie Cleary, ZBA clerk