

**Ashland Zoning Board of Adjustment  
Amended Meeting Minutes  
Thursday, September 9, 2021**

CALL TO ORDER: Charlie Bozzello, Vice Chair of the Board, called the meeting to order at 6:30 PM.

MEMBERS PRESENT: Mardean Badger, Charlie Bozzello, Alan Cilley (alternate)

OTHERS PRESENT: Barry Gaw, authorized agent for the property owner, Paula Hancock

Charlie Bozzello advised Barry Gaw that a proper Zoning Board should have five members. Barry can ask for a five-member board. With this request the meeting would be postponed. Barry's other option is to go forward with this meeting with only a three-member board. Barry chose to go forward with a three-member board. Charlie Bozzello appointed Alan Cilley, alternate, as a voting member for this meeting.

PUBLIC HEARING

Barry Gaw, authorized agent for the property owner, of 72 Ridge Road (T/M/L 021-002-009-016) came before the Zoning Board of Adjustment because a local bank in reviewing the documents on this property discovered that the documents did not meet the setback regulations contained in the Zoning Ordinance. Barry Gaw submitted an application for a Waiver for Dimensional Requirements to the Zoning Board. Barry advised that a house was constructed on this property and has been in existence for at least the past 12 months or more before the discovery that the setback regulations for the property did not meet the Zoning Ordinances. This necessitated the submission of a Waiver for Dimensional Requirements.

Barry advised the board that the development at Leavitt Hill was begun in 2004. The present plan for the development began with its first property sale in 2014. The 2014 plan is a blend of a build environment that takes into account the natural environment and balances the built environment with open space. The developers had an understanding that they would follow a Cluster Plan that would follow a normal Site Plan Review format. Under their Cluster Plan/Site Plan the setback regulations would be observed for the perimeter of the development but not observed when planning the individual lots. The developers wanted to create an "old school" development that was similar to the layout of the Rockywold Deephaven property in Holderness, NH. From 2016-2019 development sales were slow.

Barry advised that he came before the Planning Board in 2004 to discuss in more detail the issue of setbacks. As a result of that meeting an understanding was established that the setback regulations would apply only to the perimeter of the development and not apply to the individual lots in the interior of the development. This understanding was not reflected in the minutes or the cluster/site plans.

Barry advised that when the property at 72 Ridge Road was submitted to the bank for a change from a construction loan to a mortgage loan the bank advised that the property did not meet the setback requirements of the Zoning Ordinance – i.e. the building setback should be 35' from the road and 25' from the side boundaries. The actual building is less than 35' from the front boundary but is 75' from the road; the building is less than 25' from the side boundaries. The setback should be 35' from the road; this property was 75' from the road so does not conform with the regulation. When the bank discovered the discrepancy, it triggered the waiver that is before the Zoning Board.

The Board moved to the Equitable Waiver for Dimensional Requirements questions. The Equitable Waiver of Dimensional Requirements is requested from Article 2.3c of the Zoning Ordinance relative to Setbacks; to permit the waiver of the setbacks.

1. Does the request involve a dimensional requirement, not a use restriction?
2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town. Or explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser. How the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation.
3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.
4. Explain how the cost of correction far outweighs any public benefit to be gained.

The Board members made the following points:

- The structure that was constructed on the property has been there for over a year. When the property at 72 Ridge Road was submitted to the bank for a change from a construction loan to a mortgage loan, the bank advised that the property did not meet the setback requirements of the Zoning Ordinance.
- The property was developed according to the original understanding established in the 2004 discussions relative to setbacks, i.e. that the setback regulations would apply only to the perimeter of the development and not apply to the individual lots in the interior of the development.
- All side abutters of the property as well as abutters across the street were properly notified. No problems/issues were expressed by any of the abutters.
- There are no vacant lots abutting this property. All abutting lots have been sold.
- It would be a very expensive project to demolish the current structure and enforce the setback requirements of the Zoning Ordinance.
- There were no parties/abutters present to speak in opposition of the application.

Charlie Bozzello closed the Public Hearing at 7 PM. Mardean Badger made the motion: To approve the application and the Waiver of the Equitable Dimensional Requirements for 72 Ridge Road (T/M/L 21-002-009-016). Charlie Bozzello seconded the motion. Roll call vote: Mardean Badger: yes; Charlie Bozzello: yes, Alan Cilley: yes. With three votes in the affirmative and 0 in the negative the motion passes. A Notice of Decision will be sent to the applicant.

#### DISPOSITION OF MINUTES

The Board reviewed the minutes of their Thursday, July 15, 2021, meeting. Mardean made a motion to approve the minutes. Alan seconded the motion. Roll call vote 3-0.

The Board reviewed the minutes of their Thursday, August 19, 2021, meeting. Charlie made a motion to approve the minutes of August 19. Alan seconded the motion. The motion passed on a 3-0 roll call vote.

#### 2022 BUDGET PROPOSAL UPDATE

The Board discussed the proposed changes to the 2022 Budget. The following changes were made:

- The legal line be increased to \$3,000
- The Advertising/Public Notices line be increased
- The Postage line be increased.

- Fred Welch, Town Manager, recommends that an estimate be inserted for advertising/postage on the expenditure side, which will be offset by the fees collected on the income side.
- Previously, the General Expenses line included the Secretary expenses, along with supplies and references. Contracted services should not be included in General Expenses. The Secretary expense has been removed from the General Expenses and given its own line item. The General Expenses estimate has been lowered for 2022.

#### ADJOURNMENT

Charlie Bozzello made a motion to adjourn the meeting. Mardean Badger seconded the motion. The meeting adjourned at 7:30 PM.

*Minutes submitted by Paula Hancock*