

**Ashland Zoning Board of Adjustment
Approved Meeting Minutes
Thursday, December 9, 2021**

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

MEMBERS PRESENT: Alan Cilley, Mardean Badger, Charlie Bozzello

OTHERS PRESENT: Jon Kwiatkowski, applicant, Paula Hancock

Charlie Bozzello appointed Alan Cilley as a voting member of the Zoning Board of Adjustment for this meeting.

DISPOSITION OF MINUTES

The Zoning Board reviewed the minutes from their Thursday, November 11, 2021, meeting. Alan Cilley made a motion to accept the Thursday, November 11, 2021, minutes as presented. Mardean Badger seconded the motion. The motion passed on a 3-0 roll call vote.

Mardean Badger made a motion to go through the ZBA criteria for the application. The motion was seconded. The motion passed on a 3-0 roll call vote.

CONTINUED CASE 2021-05 HIGH LIFE BUILDING COMPANY INC., MAIN AND WINTER STREETS, SETBACK VARIANCES

The Zoning Board had deliberated/discussed Case 2021-05 High Life Building Company Inc. Main and Winter Streets Setback Variances at their Thursday, November 11, 2021, meeting. The Zoning Board moved to a vote on the Case 2021-05 application. The members reviewed/voted on the following criteria:

1. The variance will not be contrary to the public interest.
2. The spirit of the ordinance is observed
3. Substantial justice is done
4. The values of the surrounding properties are not diminished
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - a. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area,
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - ii The proposed use is a reasonable one.
 - b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Criteria 1: The variance will not be contrary to the public interest.

Badger: Yes Bozzello: No Cilley: No

Mardean Badger: Yes, it is in the public interest to see the development of the property. The variances will set the parameters to the development of the property. Development of this property is important.

Charlie Bozzello: Development of this lot is important to determine the public interest. The information submitted to the Zoning Board is insufficient. A more specific development plan is needed. My vote is No.

Alan Cilley: This application is contrary to the public interest and to what is acceptable. The applicant is asking for variances on two properties. The application goes beyond what is reasonable. No.

Criteria 2: The spirit of the ordinance is observed.

Badger: Yes Bozzello: No Cilley: No

Mardean Badger: I think that the spirit of the ordinance is observed. The intent of orderly development allows some variations from the strict ordinance. To develop a lot allow to use variance adjustment requirements. Yes.

Charlie Bozzello: This property needs some flexibility. The ZBA acts in a way that preserves the development benefits the town. It is not clear the benefit to the residents of this property development. No.

Alan Cilley: The spirit of the ordinance is observed. I would like to see development of the property. The proposal submitted to the ZBA is an extreme use of the property, building space footage. No.

Criteria 3: Substantial justice is done.

Badger: Yes Bozzello: No Cilley: No

Mardean Badger: Yes. The variance(s) would allow for the property to be used. The variances will allow the property owner a reasonable use of the property.

Charlie Bozzello: The valid need for a variance. I don't know about the justice. Variances are going to have to be granted for the property owner to use the property. Without further information of a development plan the variances should not be granted now. No.

Alan Cilley: I can't see that this property development will be of substantial benefit to the town. No.

Criteria 4: The values of the surrounding properties are not diminished.

Badger: Yes Bozzello: No Cilley: Yes

Mardean Badger: Yes. The property values will not be diminished by development of this property. There is no indication or evidence that the development of this property would diminish property values.

Charlie Bozzello: The development of this property could impact property values. No.

Alan Cilley: Yes. Whatever is developed on this property will not diminish property values.

Criteria 5: Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

a. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area,

i. No fair and substantial relationship exists between the general public purposes of the

**ordinance provision and the specific application of that provision to the property; and
ii. The proposed use is a reasonable one.**

b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Badger: Yes Bozzello: Yes Cilley: Yes

Mardean Badger: Yes. Without the granting of variances, the property is unusable.

Charlie Bozzello: Yes

Alan Cilley: Yes.

SUMMARY OF VOTES

| | | |
|--------------------------------|----------------------|--------------------|
| Criteria 1: Badger: Yes | Bozzello: No | Cilley: No |
| Criteria 2: Badger: Yes | Bozzello: No | Cilley: No |
| Criteria 3: Badger: Yes | Bozzello: No | Cilley: No |
| Criteria 4: Badger: Yes | Bozzello: No | Cilley: Yes |
| Criteria 5: Badger: Yes | Bozzello: Yes | Cilley: Yes |

Mardean Badger advised that the purpose of the ZBA is to approve or not approve setbacks. The ZBA does not evaluate the development of the property. The evaluation of the development of the property falls to the Planning Board. The applicant needs to come to the Planning Board to evaluate the development of the property.

Charlie Bozzello: The application submitted to the ZBA does not have enough information pertaining to plans for the property's development. The development plan is too open-ended.

Alan Cilley: In order to make a decision on this application, the ZBA needs to look at the information presented on the application. The applicant needs to come back to the ZBA with another plan that is more detailed for the development of the property.

Charlie Bozzello: I would encourage the applicant to continue the application process. The applicant is free to go to the Planning Board and the Building Inspector to obtain more information relative to the proposed use of the property and any ordinance limitations that the property owner will need to consider when putting together a new more informative development plan/proposal. The applicant can then bring the new development plan/proposal back to the Zoning Board to obtain any variances.

Alan Cilley: The ZBA needs to deal with only the information presented in the application as it is presented to the ZBA board.

Charlie Bozzello: Without more information about the development plan, I don't see the town's best interest in this present proposal.

Mardean Badger: I would recommend that the applicant discuss with Susan MacLeod, Land Use Assistant, and the Planning Board how to proceed from this point. The applicant should prepare a development plan. The applicant can then go to the Planning Board, discuss the new development plan. The Planning Board can conditionally approve the development plan with the understanding that the

applicant will need to come before the ZBA for the granting of variance(s). The Planning Board and ZBA meetings could be individual meetings with each board. Or the applicant can ask for a joint meeting of the Planning Board and ZBA. At that time the applicant can make a full presentation of his development plan/proposal. The applicant can go to the Planning Board; then to the ZBA and then back to the Planning Board. The applicant can talk with Susan MacLeod, Land Use Assistant, the Building Inspector, and the Planning Board. The purpose of the ZBA application is to set a footprint within which the applicant can work.

Alan Cilley made the following motion: To deny the applicant variances with what has been presented to the ZBA at this time. Charlie Bozzello seconded the motion.

Mardean Badger: Yes.

Charlie Bozzello: No vote. I am unable to determine a yes or no vote. I am not interested in denial but need to know more.

Alan Cilley: Deny application.

The ZBA has denied the variances.

A Notice of Decision will be written by the ZBA Chair and the Land Use Assistant. The applicant will have 30 days to appeal this decision. The appeal will come back to the ZBA. The ZBA will decide if the ZBA will hear or not hear the appeal. The Rules of Procedure specify that the ZBA shall decide within 30 days of the close of the Public Hearing. The ZBA can extend this regulation.

ANNUAL REPORT FOR TOWN REPORT

The Annual Report summarizes to the public the number of cases the ZBA decided and how many of those cases were granted. The summary will include the number of current board members and the number of members that should be on the ZBA. ZBA members were asked to review the draft of the Annual Report and submit comments, corrections to Susan for further revision.

ADJOURNMENT

A motion was made and seconded to adjourn. The motion passed. The meeting adjourned at 8:10 PM. The next meeting of the Ashland Zoning Board of Adjustment will be Thursday, January 13, 2022.

Minutes submitted by Paula Hancock