

Minutes of Zoning Board Meeting  
Town of Whately, MA  
Town Offices Building, 4 Sandy Lane  
December 5, 2019

Members Present: Roger Lipton, Bob Smith, Kristin Vevon  
Members Absent: Debra Carney, Fred Orloski

Attending: Melinda Rose, 64 Webber Rd.; Michael Schmalz, 64 Webber Rd.; Wendy Curtis, 42 Webber Rd.; Michael Kuehlmuuss, 42 Webber Rd.; Paul Antaya, 50 Webber Rd.

Public Hearing for Curtis/Kuehlmuuss:

Application for a variance to build a barn on property located at 42 Webber Road with a front setback that is shallower than the setback required by Whately Zoning Bylaws section 171-10B(2).

The applicants submitted a packet of eleven 8.5" x 11" sheets and one 8.5" x 5" sheet bearing color photographs of the property and drawings or schematics of the area lots and the plans for the building. Wendy Curtis stated that the house is on a 30 acre lot on a hill. She has lived in it for 30 years, and it was purchased as an existing house.

Ms. Curtis explained that they want to build an equipment storage barn closer to the road than allowed because a slope prevents them from building it elsewhere on their lot. They are requesting a variance allowing a 20' setback instead of the required 50' setback.

Ms. Curtis said there are four apartments and two driveways on the property, and listed several pieces of large, bulky equipment that would be stored in the barn partly as a safety measure to separate the associated gas, oil and the like from the dwelling area. The barn would also look much better than the existing temporary fabric shelter structures that it would replace, she said. Plans call for the barn to be 54' x 30', she said, with the long side facing the road. She added that they will need room to drive up, turn around, and open the doors. The builder has not yet been chosen, she added.

The board discussed requirements of Whately Zoning Bylaws section 171-33. Variances. When asked about alternative options, Ms. Curtis said:

- A smaller barn wouldn't hold all of the equipment to be stored.
- Construction of two smaller buildings instead would be a waste of resources and would be a kind of financial hardship. Their plan would enclose more volume with less siding and roof.
- Building a narrower, deeper barn would mean less accessibility to stored equipment and would make it harder to move the equipment in and out.
- Excavation is not possible due to moisture problems and an apparent ledge.

2.

The next-door-neighbor to the north, Paul Antaya, said he supports the planned project and explained that the former owners had had a barn on the property which used a slope to separate its upper and lower elevations. It bridged the land between his house and the subject house, he said. About the proposed barn, he said the specific hill involved is pitched from the road up to where the building site would be. The road is below this site, he said, so the view would not be negatively affected.

It was noted that currently, there is a barn attached to the house that contains a woodworking shop and a studio space, and that some former tenants had once kept horses there.

Wendy Curtis said that the Olson's property has a 29' setback, as determined by the applicants' measurements of map distances and their measurements of the Olson property. There was discussion of Whately Zoning Bylaws section 171-10B (2), which addresses possible exceptions to the required 50' setback where other lots already have buildings closer to the road. Roger noted that the information is ambiguous and subject to a couple of interpretations. Although other barns may be located close to the road, Roger said, the current board did not authorize those sites with a variance.

The board members explained that they tend to require a professional to do the measuring in order to ensure accuracy and to avoid setting the wrong precedent for future projects. They told the applicants that they need to see exact dimensions done by a professional surveyor, and that the survey should show the exact location of all items located off the road, including the proposed barn. In addition, a visit to the site will be necessary to augment the presentation of the items on the survey.

Bob noted that the board is required to make its decision within 75 days from the November 12, 2019 application date, and that the 75 days will expire the last week of January. Since the board's next scheduled meeting date is January 2, there will be enough time to make the deadline as long as the applicant is able to secure a new survey showing all requirements within that time frame. Roger noted that surveyors are busy people and that this is the holiday season, so getting the work done in time might be difficult for the applicants.

He explained another available option: the applicants could write a letter to the board stating that they want to withdraw their application without prejudice. By doing this, he said, they would be able to reapply whenever they were ready with all materials (another filing fee would be required). Otherwise, there is as danger that the 75 days might simply expire with no withdrawal, and in that case the applicants would have to wait two years before reapplying.

Roger explained that the applicants did not have to decide tonight whether to return on January 2 to continue the hearing, or to withdraw in order to have more time to finish the requirements. He advised them to make an appointment with the Building Inspector, James Hawkins, to discuss Whately Zoning Bylaws section 171-10B (2), which addresses possible exceptions to the required 50' setback. He noted that if the building inspector (who has the function of zoning enforcement officer) is willing to authorize a building permit, the applicants will not need a ZBA variance. If it turns out that a building permit will not be forthcoming, the applicants can then decide whether to gather the required materials in time for the hearing continuance on January 2, or to notify the ZBA of their application withdrawal without prejudice.

3.

The secretary gave her email address to the applicants. Unless she receives their request for application withdrawal, the board will reconvene on January 2, 2019 to continue the hearing.

At 7:45 pm the meeting was adjourned.

*Documents Reviewed (kept in the ZBA files)*

1. a packet of eleven 8.5" x 11" sheets and one 8.5" x 5" sheet bearing color photographs of the property and drawings or schematics of the area lots and the plans for the building.

Mary McCarthy  
Secretary  
Zoning Board of Appeals  
Town of Whately, MA