

NOTICE OF DECISION

Washington Zoning Board of Adjustment

Case No: 25-73

Date of Decision: 5/31/2023



The Selectmen, any party to the action, or any person directly affected has a right to appeal this decision. For complete information, see [RSA 677:2 Rehearing and Appeal Procedures](#). This notice has been placed on file and made available for public inspection in the records of the ZBA. Copies of this notice have been distributed to the applicant and the Board of Selectmen.

Applicant	Harlan and Marie Bean
Address	30 Webber Rd, West Whatley, MA 01039
Owner	Harlan and Marie Bean
Lot	41 Hemlock Circle 25-73 (merged with 25-72)

You are hereby notified of the decision by vote of the ZBA of the following variances.

	Variance	LUO	Decision
1	Current shed to remain in place, building coverage 10.9%	201.5	Denied

References

RSA 674:33	Powers of Zoning Board of Adjustment	https://tinyurl.com/3s33w79d
RSA 677:2	Rehearing and Appeal Procedures	https://tinyurl.com/mr3erk82
LUOs	Washington Land Use Ordinance	https://tinyurl.com/yrdscxba
Application	Application for a Variance	https://tinyurl.com/2kww7rjk
History	Summary and history of application	https://tinyurl.com/3n4p5v5n
Permit	Permit for Construction, issued by Select Board 1/7/2021	https://tinyurl.com/mrjc83ra

Findings of Fact

No authority to act

On 1/7/2021, the Select Board granted a [Permit for Construction](#) to the applicant of a 32 x 26' garage, with the explicit condition that the existing shed be removed. This condition was not appealed.

While the Select Board acted pursuant to the findings of the ZBA in its December 2020 hearing, the Board concludes that this permit constitutes a contractual agreement between the applicant and the Select Board which it has no authority to void. Its conditions are binding and are not reversible by variance.

No material change in criteria to obtain a variance

It is well settled ([Fisher v. Dover](#)) that the ZBA may not review subsequent applications for the same project absent a material change of circumstances affecting the merits of the application.

“...successive variance proposals must demonstrate either (1) material changes in the proposed use of the land or (2) material changes in the circumstances affecting the merits of the application.”

The Board finds that neither of the conditions (1) nor (2) exist. The current application seeks the same relief from the same circumstances as presented in the original 11/4/2020 application. Therefore, this second application is barred under the *Fisher v. Dover* rule.

Measurement discrepancies

Combining the findings of several independent site visits, the Board determines that several measurement discrepancies materially affect the application.

	Claimed		Measured	
	Sq Feet	% Coverage	Sq Feet	% Coverage
House	28x28 (784)	5.26%	28x28 (784)	5.26%
Deck			12x10 (120)	0.80%
Shed	12x10 (120)	0.80%	21.5x14 (301)	2.01%
Garage	32x26 (832)	5.59%	36x32 (1152)	7.72%
TOTAL	1736	11.65%	2357	15.81%

Given: The combined lot size of 25-72/73 is 14905 sq ft, or ~0.34 acres.

Significantly:

- Shed size is not 12 x 10' as represented, but instead 21.5 x 14'
- Lot coverage is not 10.9%, but instead 15.81%

The Board concludes that, notwithstanding its inability to consider the variance request as outlined above, these discrepancies undercut the foundation of the application to the extent that mandates its denial.

Failure on its merits

In the event that the above findings were reversed, the Board has considered the application *de novo* and on its merits, and concludes as follows.

Variance Criteria	Satisfied?
Variations must not be contrary to the public interest	No
The spirit of the Land Use Ordinance will be observed	No
Substantial justice will be done	No
The values of surrounding properties will not be diminished	Unknown
Literal enforcement of the Land Use Ordinance would result in unnecessary hardship	No

Public interest and spirit of the LUO

The shed contributes to the overcrowding of the land unduly and to a marked degree.

Substantial justice

[Photographic evidence](#), both presented by the applicant and obtained by Board members, does not show that the one benefit to the applicant – privacy – is significantly enhanced by the shed.

Diminution of property values

While the applicant represented that three abutters have verbally expressed their support for the preservation of the shed, none appeared to testify and no notes of their statements were presented. The Board also expressed skepticism that moving the contents of the (small) shed into the (large) garage would force the contents of the garage to be stored in the open.

Unnecessary hardship

The Board finds that no special conditions pertain to the applicant's lot that would render the variance sought to be reasonable.