

Zoning Board of Adjustment

Meeting Minutes May 31, 2023

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These minutes were produced first by Office 365's voice-to-text transcription of an audio recording of the meeting. Then, ZBA software was used to drive [Open AI's GPT 3.5](#) model to convert the transcription into grammatical sentences and paragraphs. Words actually spoken are enclosed in quotes.

Bean Application for a Variance

Summary of Proceedings

- The Washington Zoning Board of Adjustment meeting is called to order with several members present
- Backlog of minutes are approved unanimously
- The second reading of the amended Rules of Procedure is accepted as written
- Harlan Bean presents his case for a variance application, but there are measurement discrepancies
- Bean requests to keep the shed for storage purposes, but is willing to remove the deck and overhang
- Questions are asked about the completion of the garage and the timing of tree cutting on neighboring lots
- Bean believes it's fair that trees were taken down before building the garage, but is not sure when it happened
- Bean is concerned about privacy with his neighbors and wants to keep a shed for storage and family get-togethers
- Hatch clarifies that only a hardship arising from the property itself can be considered for granting a variance
- Florence took photographs of the property and is skeptical that the shed is causing a hardship
- Bean wants to keep his property clean and good for the neighborhood and property values, but is willing to remove the shed if necessary
- The discussion is centered around an application for a variance
- Some members of the board believe that the application should not be considered due to previous decisions and principles established in past cases
- There are also concerns about the accuracy of measurements and the lack of demonstrated special conditions or unnecessary hardship
- The board discusses what should have happened at the original hearing and the correct setbacks that should have been considered
- A variance from LUO 201.5 was required due to the size of the new garage
- Florence moves that the variance application submitted by Harlan and Marie Bean be denied for four reasons
- Marshall seconds the motion
- The motion is passed and the application for a variance is denied
- The meeting is adjourned and the next scheduled meeting will be on June 28, 2023

Detailed Minutes

Florence Good evening. It's 7:00pm and time to bring the May 31, 2023 meeting of the Washington Zoning Board of Adjustment to order. Present this evening are: Mr Harlan Bean, to present his application for a variance; Board members Andrew Hatch, Linda Marshall and Gary Carney; Executive Administrator Deb DeFosse; and myself, Board chair Mark Florence.

- Florence** Although new Board member Joe Tapp has been duly appointed by the Select Board, and has signed his Oath of Office, he unfortunately can't be here tonight.
- Florence** The first order of business is to approve a backlog of minutes. First, I move that we approve the minutes for our March 13 meeting, at which we heard the Caruso appeal.
- Carney** Seconded.
- Florence** All those in favor?
- All** Aye.
- Florence** The motion passes unanimously and the March 13 minutes are approved.
- Florence** Next, I move that we approve the minutes for our March 27 meeting, at which we heard the Mensh Appeal from an Administrative Decision.
- Carney** Seconded.
- Florence** All those in favor?
- All** Aye.
- Florence** The motion passes unanimously and the March 27 minutes are approved.
- DeFosse** In addition, I circulated earlier today the minutes of the April 26 meeting, at which the Board elected a new Chair and Vice-Chair, and also conducted the first reading of the amended Rules of Procedure.
- Florence** I move that we approve those minutes.
- Carney** Seconded.
- Florence** All those in favor?
- All** Aye.
- Florence** The motion passes unanimously and the April 26 minutes are approved.
- Florence** Next on the agenda is unfinished business. I move that the second reading of the amended Rules of Procedure be accepted as written. At our June meeting we will have a final reading and then vote to adopt them. After that, we will be able to modify our rules by a simple vote.
- Hatch** Seconded.
- Florence** All those in favor?
- All** Aye.
- Florence** The motion passes unanimously.
- Florence** Mr Bean, it's now your turn to present your case for your variance application. But before you do, I'd like you to address some measurement discrepancies Board member Carney and I discovered during our site visit to your lot. *[Florence circulates a document detailing differences between claimed and observed measurements of house, garage, and shed. This document is reproduced in the Notice of Decision].*
- Florence** My biggest concern is that the shed is in fact 21.5' x 14' rather than 12' x 10' as you claimed.

- Bean** I remember a few years ago when we were discussing coverage for our garage, I asked about the overhang and was told that the measurements were wall to wall. I didn't measure the overhang on the original shed or deck, and it wasn't included in the original application. Removing the shed would bring us below the 10% coverage limit, but I didn't realize the lot had 15% coverage. Combining the two lots led to the need for the original variance, and if we hadn't combined them, we wouldn't have exceeded the coverage limit. I have no issues with my neighbors' properties.
- Bean** I think that the removal of the shed will make my backyard and my neighbor's backyard completely open to each other, and that will affect our privacy. My request for the shed to stay is primarily for that reason. I have kept my lot clean and neat, and I don't have equipment outside like trailers and such. The shed is significant because it would allow me to store my inherited toys like a jet ski, snowmobile, snow blower, and lawn mower. I am willing to remove the deck off the back of the shed and the overhang because they don't serve any purpose.
- Florence** When was the garage completed?
- Bean** I'm not sure how to answer your question because there were still some things that needed to be done for the garage. However, the structure was completed and wrapped up in the spring of 2022, which was just about a year ago in May 2022.
- Florence** And when were the trees cut on your neighbors' lots?
- Bean** I believe it's fair that the trees were taken down before we built the garage. I'm not sure when it was done, but it was prior to our planning and construction. Another tree had to be taken down recently in the fall, which was closer to the deck. You can see the fresh cut behind the deck.
- Florence** So are you saying that those trees were taken down prior to the December 2020 meeting, when you came before the Board and applied for a variance to build your garage?
- Bean** I wouldn't bet my life on it, but I think that if the trees were cut down and the septic system was installed, it was all done within a close time frame. I don't remember exactly when it happened, but I do remember being surprised when we came back and saw the backside of the house was open. If my wife and I were aware of it at the time, we would have been more concerned about the privacy issue.
- Carney** I recall visiting your lot in December 2020, but I don't remember seeing any freshly cut trees. I do remember a number of large boulders in front of the old cottage that made it difficult to measure.
- Bean** Yes, you are correct. We had all those boulders removed.
- Bean** I admit that there are things I wish I could have done differently, but when we were working on the project, we were focused on getting it done quickly. We didn't want to delay it over a shed that wasn't a big deal at the time. However, I have recently received my tax bills and the town is still recognizing the property as two separate lots, which is causing me to be taxed more.
- DeFosse** You would have to talk to the Assessors about that.
- Florence** I visited your lot last Wednesday and took a couple of photographs that I'd like you and the Board to review.
- Bean** Did you not receive the photographs I emailed on May 9? *[The Board reviews and compares photographs of Florence's phone and Bean's printouts.]*

- Bean** I am explaining that from the driveway, you cannot see the cut. The coverage is not very extensive, especially when the foliage is out. However, without growth, it's the same angle, and you can see it from the deck. I am concerned about the privacy with my neighbors, and I don't want any trailers in my garden. The shed is big enough to store a lot of things, and my house has become a great place for family get-togethers.
- Hatch** I want to make clear that, while "unnecessary hardship" is an essential criterion for granting a variance, your perceived lack of privacy does not qualify as such. Only a hardship arising from the property itself can be considered.
- Hatch** I am also concerned that the foundation for your variance application is that, by not demolishing your shed as agreed, the building coverage of your lot would only be 10.9% where 10% is allowed; whereas, in fact, as we now know from Florence's measurements, coverage will be 15.81%. This number appears to undercut and justification for your application.
- Florence** It seems to me, Mr Bean, that if you wanted to reverse the agreement you made with the Select Board to demolish your shed, you should have appealed back in January 2021, especially considering that the trees had been cut and your lot exposed at that time. It's too late now, as there is a strict 30 day window in which an appeal can be filed.
- Bean** As an observer, I am impressed with the zoning board's expertise and attention to detail. However, my request to keep a shed requires an appeal process that does not rely on technicalities or jurisdictional issues. I understand that leaving my trailers outside may not cause hardship, but it is not visually appealing.
- Florence** I'm skeptical that whatever fits in your shed, which is only 120 square feet inside, would force you to move so much outside of your 1200 square foot garage.
- Bean** I have a 120 square foot shed that I want to be there. It's unlocked and if you look inside, you'll see that its contents are significant: a trailer, cabinets, lumber, and other things. I want to keep my property nice and enjoy my big yard, but the shed is a hardship for me. I don't want to have to use a trailer to accomplish what I want to do. I have the biggest open yard piece of grass on Valley Rd. and it surprises me that I'm over on the coverage numbers. I don't want to cram trailers and tractors on my property like many other people do. I wish we had talked a week ago, as I would love for you to come up and see what I mean. I have to move things around just to enjoy the garage and have a place to keep stuff out of the rain. What's in the shed is a lot of things that can't get wet and shouldn't get wet, so if I have to remove the shed, those things will have to go on the trailer. I'm not trying to use this as a chip against the town, I just want to keep my property clean and good for the neighborhood and property values. I know that removing the shed will cause some other things to be taken away, but I'm willing to do that to keep my property nice.
- Hatch** We're going around in circles. Can we get back on point and determine if we are in a position to make a finding tonight?
- Florence** Although a timely appeal back in January 2021 would have been Mr Bean's best option, and the application before us for a variance is problematic, I'm not sure what other options are now available. An equitable waiver possibly, but all we can do tonight is to consider the application before us.
- Florence** Does anyone have any more questions for Mr Bean? Mr Bean, do you have any more comments you wish to make?

- Carney** Perhaps I should save this for our deliberative session, but my problem is that the Board already voted on this issue over two years ago, and that it is beyond our authority to reverse that now. Only a timely appeal within the 30 day window could have accomplished that.
- Florence** Mr Bean, whatever we decide tonight, you have the absolute right to appeal and request a rehearing, if done within 30 days.
- Bean** I will not appeal any decision the Board makes.
- Florence** At 7:49pm, I move to close the public hearing and open our deliberative session.
- Hatch** Seconded.
- Florence** All those in favor?
- All** Aye.
- Florence** The motion passes unanimously, and we'll begin our deliberative session. Mr Bean, you have the absolute right to remain and to listen to all our deliberations. The only thing you can't do is make further comments to the board.
- Bean** I'm enjoying myself, so I'll remain.
- Florence** I see four problems with the application, the first two related to the issue raised by Board member Carney. The first is that there was an agreement made on January 7, 2021 between Mr Bean and the Select Board in the form of a permit for construction that required, as a condition subsequent, that the shed be demolished. I don't believe we have the authority to void that agreement.
- Florence** The second problem I see is that there is a well-established principle that the Board can't hear the same application twice. Under *Fisher v. Dover*, it was established back in 1980 that "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." I don't believe that Mr Bean has demonstrated either requirement.
- Florence** My third objection is that the measurement discrepancies, not disputed by Mr Bean, undercut the foundation of the application to such an extent that we must deny it, notwithstanding my earlier problems that suggest we can't hear it in the first place. Building coverage of the lot is not 10.9%, as claimed in the application, but is in fact 15.81%.
- Florence** Finally, if we were to consider this application *de novo*, I believe we should reject it on its merits. No special conditions have been demonstrated and no unnecessary hardship exists.
- DeFosse** I want to point out that when the Select Board issued the permit for construction back in January 2021, along with its requirement for the removal of the shed, they did so as a consequence of the ZBA's decision. Also, when Mr Bean recently met with the Select Board to discuss if that condition could be removed, it was the selectmen who advised Mr Bean to request a variance from the ZBA.
- Florence** I'd like to spend a minute covering what I believe should have happened at the original hearing. First, the rear setback variance should have been from LUO 403.1, not 202. When a building is being altered or expanded, a side or rear setback of only 25' is required. The Board clearly understood this, as the actual rear setback of the old cottage was 24', so a variance of 1' was requested and granted. We've seen several times recently where LUO 403.1 was overlooked.

However, because the new garage was supposed to be on the same footprint as the old cottage, a setback variance would not be needed at all.

Florence In fact, the new garage was not built on the old footprint, so a variance from LUO 403.2 was needed. Also, this new footprint brought the garage to within 36' of the road, so a front setback variance from LUO 202 was also needed.

Florence Finally, because of the size of the new garage, building coverage was greater than 10%, even with the removal of the shed, so a variance from LUO 201.5 was required.

Florence I move that the variance application submitted by Harlan and Marie Bean be denied for the following four reasons:

Florence (1) The Board does not have the authority to void the Permit for Construction signed by the Select Board on 1/7/2021.

Florence (2) The current application does not demonstrate material changes from the original 11/4/2020 application neither in the proposed use of the land nor the circumstances affecting its merits.

Florence (3) The application's claim that removal of the shed reduces the building coverage to a conforming level is not accurate.

Florence (4) On its merits, for the reasons stated above and which will be set forth in the Notice of Decision.

Marshall Seconded.

Florence All those in favor?

All Aye.

Florence The motion is passed unanimously and the application for a variance is denied.

Florence At 8:07pm I move that we adjourn this evening's hearing. It only remains to note that our next scheduled meeting will be June 28, 2023.

Marshall Seconded.

Florence All those in favor?

All Aye.

Florence The motion is passed unanimously and the meeting is adjourned.