

# Effingham Zoning Board of Adjustment

## Meeting Minutes

December 7, 2022

**Members Present:** Jim Pittman (Chair), Tim White (Vice Chair), Mike Cahalane, Lawrence Edwards, Alan Taylor

**Others Present:** Nate Fogg (Land Use Clerk), Brian Taylor, Corey Lane

Meeting called to order at 7:00pm

**Review of Agenda:** The Chair added that we would need to review the minutes of the September meeting as they were not properly approved by a quorum of members present at the September meeting.

**Review of Minutes:** The Chair announced that the minutes of the November 2, 2022, minutes were not complete owing to minute-taker Nicole Maltese's resignation. Therefore, the Board would be unable to review them until they were completed based on the audio recordings of that meeting.

### **Review of Application for Appeal from Administrative decision for the Meena case:**

The Chair reminded the Board that at the last meeting it was determined that the application did not appear to include a full list of abutters, and so, could not be accepted as complete. He asked Mr. Fogg if he had resolved the question of the missing abutters and whether he thought the application was now complete. Mr. Fogg responded that he did believe the list of abutters was now complete and he would be ready to notice them upon the setting of a hearing date. The Chair questioned whether the proper fees were now submitted. Mr. Fogg said they were not yet up to date, but he fully expected it would be resolved in time for the hearing.

Ms. Lane protested that she thought we were only meeting to reschedule the hearing and felt we were improperly discussing the application, which should be done at a public hearing. The Chair explained that this step was necessary to confirm that the application paperwork, including the abutter list, was complete, to properly notice all interested parties ahead of a public hearing. The Chair asked Ms. Lane if she knew someone who had not received notice and who should be on our list? She declined to offer that information "in this forum" and included that "you should have them."

Mr. Cahalane offered that Ms. Lane's argument had merit but agreed that a "chicken and egg" situation existed whereby it was not possible to have a properly noticed hearing if the abutter list was not correct.

Mr. Taylor questioned whether the accuracy of the information submitted was the responsibility of the applicant and not the Board. He suggested that if the application was incomplete because the submitted information was incorrect, then one option for the Board would be to simply discard it and not move forward with it.

The Chair noted that at the last meeting attorney Johnson was present and had no objections to the proposed procedure. The Chair incorrectly stated that he was associated with the applicants, but Ms. Lane pointed out that he represented Meena LLC, not the applicants. The Board agreed that her statement was correct.

Ms. Lane requested that record show that "due process" was not being met because there had been a notice stating that the December 7<sup>th</sup> meeting was to be held at the Effingham Elementary School and people were unaware that it was instead being held at Town Hall. Despite communications to the various attorneys of the change, no one was present at the school to let anyone know of the change, which, she felt, potentially denied abutters and interested parties the opportunity to attend the meeting.

The Chair agreed that there were problems with the notification process, which necessitated the postponement of the public hearing, and that the attorneys for the parties were notified, but there was not enough time to post a public notice of the change in the newspaper, etc.

Brian Taylor suggested that the Board discuss whether the application appeared complete but wait until the night of the public hearing to accept it. For the record, the Chair asked Mr. Taylor to state his relationship to the case. He stated he was from Freedom but saw himself as an abutter by virtue of regional impact. Mr. Cahalane agreed with Brian Taylor's suggestion. However, he questioned his assertion that he qualified as an abutter.

The Chair opined that he would be agreeable to moving the acceptance of the application as complete until the scheduled public hearing.

Ms. Lane questioned when we would be addressing whether this had regional impact status. The Chair responded that we would not because the scope of the application was limited to the decision of whether the Planning Board erred in its decision interpreting the Ordinance. He then read the actual wording from the application and repeated his opinion on what was to be the focus of the hearing.

Mr. Cahalane agreed that the scope of the hearing would be very narrow, and he expected public input could be limited as a result.

The Chair reiterated that Mr. Fogg and Mr. Cahalane had determined the abutter list was complete based on their joint review. The Board unanimously agreed to table consideration of the application as complete until the date of the public hearing.

A discussion ensued regarding the public hearing date. The Chair stated that the Effingham Elementary School would be available for the next scheduled Zoning Board meeting date of January 4, 2023. Mr. Cahalane offered that he thought we should try to schedule it earlier. The Chair suggested that the holidays would likely be an impediment to having all parties available in the week leading up to Christmas.

Mr. Taylor moved, and Mr. Lawrence seconded, to schedule the public hearing for Wednesday, January 4<sup>th</sup>, 2023, at the Effingham Elementary School. The meeting to start at 6:30 PM, with the public hearing to start no sooner than 6:45 PM. The motion passed unanimously.

#### **Review of Variance Application from Randall Dustin, Iron Works Road**

The variance application is related to placing a shed within a ten-foot non-conforming setback on two sides because of a small corner lot size. The Chair recognized there were two different applications attached, one referencing Section 402, and the other Section 708.

Mr. Fogg had reviewed the application and found it was not complete as it was missing the abutters list, layout sketch, and a check for the application. Mr. Cahalane estimated there were likely three or four abutters based on a quick look at the tax map.

Mr. Cahalane requested that applications be sent out to Board members when they are received so they would have an opportunity to review them before coming to meetings. Mr. Fogg indicated he would try to do so.

It was discussed if the applicant would qualify for the accessory building exception under section 607, but that section requires a fifteen-foot setback, so that section might become an element of consideration in the variance application.

The Chair asked Mr. Fogg if he would be willing to work with the applicant to determine the abutters list and property sketch showing the shed location. It was also recommended that the variance application form be regenerated to reference sections 402, 607, and 708. Once the abutters list was determined, the applicant would need to submit a check for the application. Mr. Fogg agreed to work with the applicant.

The Board discussed the possibilities for a hearing date and agreed that we would need to wait until the applicant corrected the deficits in the application until any additional action was taken.

### **Review of September Minutes**

A short discussion was held regarding the previous approval of the September minutes occurring without a quorum of the present members at that meeting. The minutes were reviewed again, with reference to the notes made from the October meeting. Mr. Cahalane moved to approve the minutes as amended, seconded by Mr. White. They were approved by Mr. Cahalane, Mr. White, Mr. Taylor, and Mr. Pittman – the attendees at the September meeting.

### **Replacement for Minute-taker**

The Chair restated that Nicole Maltese had resigned her position as minute-taker for ZBA and the Planning Board in mid-November. It was shared that Theresa Swanick, Planning Board Chair, was pursuing possible replacement candidates. The Chair stated that Ms. Maltese had not completed the minutes from the October meeting, but the Chair would complete them from the audio recording. Mr. Cahalane mentioned that it would be good if we could get someone who could generate the minutes within the five-day requirement.

### **Upcoming Elections**

The Chair noted that several ZBA members were up for re-election in 2023. The sign-up period was coming up at the end of January. Terms expiring are Mr. Pittman, Mr. White, and Mr. Cahalane (who had been appointed as a member to fill a vacant seat in 2022). Mr. Cahalane said he did not intend to run, but he would offer to serve as an alternate member. Mr. Pittman stated that he did not intend to run. Mr. White said that he was also not planning to run.

### **Adjournment**

Motion to adjourn made by Mr. White. Seconded by Mr. Taylor. All in favor. Meeting adjourned at 8:16pm.