

Meeting of the South Hadley
Zoning Board of Appeals
Wednesday, November 9, 2016, 7:00 PM
Room 204, Town Hall

As Approved November 28, 2016

Call to order at 7:00

Members Present: Martha Terry (MT), James Bright (JB), Barbara Erwin (BE), Christine Quigley (CQ) and Jacqueline Dupre (JD)

The minutes of the August 15 meeting were read. MT requested that in the section regarding changes to “the application for variance”. To change the second paragraph on the second page to read as follows:

ZBA rules MT propose to change/add on the *variance* application. “The petitioner, appellant, or agent shall file six copies of a complete and accurate application, petition, or appeal form, together with two required plans and associated material, with the ZBA.” Also add the following as well “Please be sure to complete the application completely. Failure to do so may result in the application being denied. (The only change to that paragraph is the word *variance* which was added for clarification.

BE made a motion to approve the minutes with the change. JB second. All were in favor.

MT and BE reported that they attended a very informative conference on 40b.

7:10- Public hearing appeal by Kathleen Footit, 63 Laurie Ave. Regarding the decision by the assistant building commissioner regarding the placement of her stockade fence. She is requesting to allow it stay where placed and not move or take it down.

BE read the notice of public hearing.

MT explained how the meeting was going to be conducted.

Kathleen Footit stated her case. There has been an existing fence there since 1989. The rear section of fence is what is in contention. It was replaced last year. She contends that it was replaced it in the exact same holes. Ms. Footit received a letter from Assistant Building Inspector that their fence was not in compliance with the zoning by law. She is requesting not to move her fence because it would be a hardship.

The former Assistant Building Inspector, David Gardner spoke. He stated that the boundary marker is on the inside of Ms Footit’s fence. It is very clear that the fence is on the property of the person who is making the complaint. He stated that MGL 40a states that it is the property owner’s responsibility to establish the proper location of a fence before they erect said fence.

It is not the responsibility of the abutter to tell their neighbor before or while they are erecting the structure.

Ralph Fontaine, 69 Laurie Avenue spoke in support of Ms Footit.

Pauline Fontaine, 69 Laurie Avenue spoke about how a long time ago there was a lot of farmland there and when the fence was initially installed it could have been okay.

Mathew Jenkins, 62 Laurie Avenue said that he has good neighbors and expressed his frustration regarding the people filing the complaint.

BE asked if it could be considered "preexisting non-conforming." David Gardner said because they took it down it no longer fell into this category. Had they just repaired a section at a time it would have been considered a repair and would fall into this category.

MT question David Gardner regarding non-conforming structures. He replied that the intent of 40a was to give property owners recourse if they have a complaint. A property owner can't build something back in the same violation. MT read from the zoning bylaw that stated that grandfathering doesn't apply unless it was built before 1946.

Cher McManus, 57 Laurie Avenue stated that Footit's fence was replaced in July over a period of several days. Her fence was replaced over a few days as well during that same time frame. Six or seven months after the last fence was installed there was a complaint. She stated that her installer told her it was okay to put the new fence in the same location. MT stated that it was incumbent on the property owner to find out what the zoning by law was prior to installing a fence so that it was installed following the zoning by law. That zoning bylaws are different in every town.

Cher McManus, 57 Laurie Avenue questioned the accuracy of the pins. She asked how "can the Assistant Building Inspector issue a violation if he is not sure they are in violation. No one knows whose pins they are." David Gardner states when he sees a pin that's the only evidence that's where the line is. It's up to the property owner to know where the property line is.

James Mytkowicz and Sarah Havlak, 54 Michael Drive presented photos showing where their property line was. She stated that all of the other fences abutting the property all line up except for these two. That is while they filed a complaint.

Cher McManus explained the jog in the fence that is on the Footit property has always been recessed. McManus fence was on the property line. There was a lot of discussion regarding placement of boundary pins.

Lyndsey McManus, 57 Laurie. Says "pins popped out of nowhere." Questioned why the jut is a huge problem. Wished neighbors would have asked them to move the fence. Spoke about the

financial hardship of having to move the fence. She and her mother are not physically able to move the fence. She wished that they were more neighborly.

Kathleen Footit, 63 Laurie Avenue spoke again about this process being unfair and the stress has exacerbated medical problems.

MT stated that the ZBA would accept a letter from a surveyor establishing the rear property line and the location of the fence. That she and perhaps Ms. McManus could share the cost of establishing this rear boundary line thereby reducing the overall cost to both of them.

This ends part one of the notes of the Zoning Board of Appeals public hearing, November 9, 2016.

Christine Quigley is taking notes from this point forward.

Respectfully submitted,

Jacqueline Dupre

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These minutes are a continuation of those taken by Ms. Dupree, and commence from 8:20pm.

Ms. Footit expressed concern about the cost of a survey.

Ms. Terry explained that a property owner must know their property line.

Ms. Footit asked if she reduced the height of the fence, could it stay?

Mr. Gardner stated that she could take down the top two feet and the fence could remain.

Ms. Erwin asked if parties could speak to each other. Ms. Havlak stated that she was open to it and that Mr. Gardener had suggested that they do.

Mr. Jenkins asked who is more in violation. He wished to know if Ms. Footit's fence is more in violation or Ms. McManus's.

Mr. Bright explained that the situation is that the fence is 31 inches off – 5 inches in violation at the closest point.

Mr. Miklewitz indicated on the poster that the setback is 8 inches where it should be 30 inches. Mr. Miklewitz showed Ms. Terry on the map where the fence tapers.

Mr. Bright stated that without a survey, it is difficult for the ZBA to rule on it. He suggested that the neighbors talk about it.

Ms. Terry said the ZBA can either take the building inspector's resolution, or Ms. Footit may have a licensed survey via a letter, which would cost less. She suggested the two parties might share the cost. She asked Ms. Footit how she would like to proceed.

Mr. Bright explained to Ms. Footit that the surveyor could check the few points so that both parties could understand. He went on to explain how the survey would work.

Ms. Terry stated that it must be a stamped survey according to the Town Planner.

Ms. Fontaine asked Ms. Footit as to what year the fence was established.

Mr. Gardner: Asked Ms. Havlak what her plans were to place a hedge.

Ms. Havlak stated that she would like others to follow the regulations as she did.

Ms. Footit asked Ms. Havlak why she did not knock on her door and talk to her about it.

Ms. Terry said the applicant may contest the pins or follow what Mr. Gardner said. Ms. Terry looked up how many days could elapse to continue the hearing.

Ms. Terry asked what Ms. Footit would like to do. Ms. Terry said there are 100 days after filing to make a decision.

Ms. Footit said that she had no choice but to go ahead with the survey.

Mr. Gardner said that it was likely that she could get somebody within a week to survey Ms. Footit's back line.

Mr. Gardner, Mr. Bright, Ms. Footit and Ms. Terry discussed the history of the bylaws regarding fencing.

Ms. Terry asked if Ms. Footit were given three weeks, would that be sufficient – to November 28. Ms. Footit agreed.

Ms. Dupree asked if mediation was a possibility.

Ms. Terry stated that the parties do not appear to want to do it.

Ms. Erwin made a motion to continue this hearing until November 28 at 7 pm in room 204. Seconded by James Bright.

Three aye votes, no nay votes.

Second Hearing:

Ms. Erwin read the public notice.

Appeal filed by: Ms. Cheryl McManus 57 Laurie Avenue, South Hadley

Applicant, Ms. McManus gave history of fencing on her property going back 50 years to when her grandfather owned it. The fence that was there had deteriorated, and she chose to install a stockade fence in place of the chain link fence that was there. She chose a man to do the work who was not currently a fencing professional who told her that as long as she placed the fence on the same spot, that it would be okay. She had trees cut back and had brush removed.

Ms. Terry asked Ms. McManus if she knew her property boundary. She asked Ms. McManus to show her on the poster which Ms. Havlak had brought. She asked Ms. Havlak if she agreed with the pin locations.

Ms. Miklewitz and Ms. Havlak explained that the new fence was not put on the same spot, because the pin was not visible on their property after the fence was placed, and it had been before.

Ms. McManus believed that Mr. Miklewitz and Ms. Havlak are mistaken, and that the fence was put in exactly the same spot.

Mr. Bright said that this is the same situation as the earlier case, and since both property lines are continuous, he suggested that they share the cost of a survey.

Ms. McManus said that she did not think it was her responsibility to get the survey.

Ms. Terry explained to Ms. McManus that it behooves her to get the survey since the complaint is referring to a structure on her property.

Ms. McManus said it will take time for her to manage the survey for many reasons. Ms. McManus said that her neighbor's fence was kicked down. Ms. Havlak explained that the fence was taken down by the neighbor and she did not kick it down.

Mr. Bright suggested again that Ms. McManus get a survey.

Ms. Terry clarified that Ms. Footit and Ms. McManus have three weeks to get the survey.

Mr. Gardner suggested that the price could be less with two properties surveyed.

Ms. Terry asked Mr. Gardner how long the applicants would have to make the change. Mr. Gardner said that Ms. Baiardi, Building Commissioner, would rule on this.

Mr. Gardner had further suggestions for cost saving.

Mr. Miklewitz stated that all fences in the area are measured from the pins.

Ms. Terry said that any homeowner should have a deed and licensed survey.

Ms. Havlak objected to the earlier insinuation that she kicked down a neighbor's fence, and repeated that she did not do so.

Motion:

Ms. Erwin made a motion to continue this hearing until November 28 at 7:15 pm in room 204. Seconded by James Bright.

No discussion.

Three ayes, no nays.

Meeting was adjourned at 9:15 pm.

Respectfully submitted by Christine Quigley