

**Westmoreland Zoning Board of Adjustment  
Minutes of February 24, 2021**

Board members present: Chairman, Peter Remy, Vice-Chairman, Barry Shonbeck, Regular members, Brian Merry, Nancy Ransom, Ernie Perham. Alternate member, Mark Terry.

This hearing had been continued several times in order to take advice from the Town Attorney and from expert witnesses on the efficacy of the current septic system. The first hearing took place in July, 2020. The Board denied granting a Special Exception for the property on the grounds that CKB should have been filing for a Variance rather than a Special Exception.

Ms. Beam came back to the Zoning Board in October with an application for a Variance. For a variety of reasons including the weather, not enough voting members, and attempts to clarify the status of the septic system, each hearing was continued until the following month and finally until February 24th of 2021.

The property in question has three structures on a one acre lot. The largest structure is a traditional house built in the 1800's. The two other structures were built by a former owner in 1988 with the intention of conforming to the new Commercial zoning use for that address.

The present owner, CKB Properties, represented by Katie Beam, bought the property with the intention of using the smaller two structures for Commercial uses but none of the commercial

ventures which were attempted were able to survive financially, due to location on a busy road and located far from a town center. What people did need was housing and Ms. Beam came to the Zoning Board to change the designation from Commercial to Residential use.

The Board Chairman was particularly concerned that the septic system might not be adequate for additional Residential use. Ms. Beam brought statements from the person who had done repairs to the system that the system was now adequate for her plan. In addition, Ms. Beam assured the Board that should the system fail she was fully prepared to have a whole new septic system installed. Ms. Beam brought in Attorney Michael Bentley to argue her case for her.

Attorney Bentley went through the five criteria for granting a Variance according to the Westmoreland Zoning Ordinance section 306.1 which states that the Board of Adjustment may, on appeal, grant a Variance from the provisions of this Ordinance if the Board of Adjustment finds the following facts and such finding is specified in its decision:

- A. No diminution in value of surrounding properties would be suffered.
- B. Granting the permit would be of benefit to the public interest.
- C. Denial would result in unnecessary hardship to the owner seeking it because of the unique features of the land.
- D. By granting the permit, substantial justice would be done.
- E. The use would not be contrary to the spirit of the ordinance.

Ms. Beam brought a butler, John Matthews, to testify that he had no objections to using the structures for residences. Mr. Matthews said he would have more objections to a Commercial use than a Residential use. What if he had an all night gas station across the road from his residence with lights shining in his windows all night long? The area had no commercial enterprises and a residential use would fit the area far better than a commercial use. Having a commercial use across the street would most likely reduce the value of his property.

Granting the permit would be of benefit to the public interest. Westmoreland has very few affordable rental properties. Many families whose children have started their own families would love for them to have a place in town but there are so few to be had.

Denial would result in unnecessary hardship to the owner seeking it because of the unique features of the land. Attorney Bentley argued that the unique features of this plot of land are that it already has houses built on it. What can be done with them if Commercial tenants are not interested and the Board denies a Variance? Unnecessary hardship is self-evident.

By granting the permit substantial justice would be done. Ms. Beam had tried her best to fulfill the Commercial designation of the property as she had looked for businesses to occupy the structures. None of her renters could make a financial go of the property. If she could not get a Variance she would have bought a useless property which would be costing her money in upkeep

2. Granting the permit would be of benefit to the public interest.  
All agreed.

3. Denial would result in unnecessary hardship to the owner seeking it because of the unique features of the land.  
All agreed.

4. By granting the permit, substantial justice would be done.  
All agreed.

5. The use would not be contrary to the spirit of the Ordinance.  
All agreed.

Mr. Merry moved that the Board approve the Variance for the size of the smallest building. Ms. Ranson seconded the motion.  
All voted in favor.

Attorney Bentley suggested that the same motion should also apply to the middle building as well as the smallest building. He praised Ms. Beam's straightforward approach toward compliance. She had come to the Board for permission as some might not have. She had refrained from renting out the smallest building and she is doing her best to meet the conditions and the concerns of the Board.

It became apparent that the Board favored granting the Variance with some stipulations.

1. The buildings must have a functioning septic system.
2. There must be Planning Board approval.
3. She must get building permits.

A motion was made and seconded to adjourn the hearing at 8:30pm.

Minutes taken and recorded by Jacqueline Cleary, Zoning Board Clerk