

**Westmoreland Zoning Board  
Minutes of October 21, 2020**

**Present: Chairman Peter Remy, Vice-chairman Barry Shonbeck,  
Brian Merry, Nancy Ransom, Ernie Perham, John Harris.**

The Westmoreland Zoning Board met on October 21, 2020 at the Westmoreland Town Hall to consider the application of CKB properties for a Variance in order to change the status of a building on its property located at 1659 Route 12 from Commercial to Residential. At 7pm Chairman Peter Remy opened the hearing and invited Katie Beam, owner of CKB Properties to address the Board.

Attorney Michael Bentley whom she had hired to make her case to the Board introduced himself and described the history of the property which is that the owner in 1988 built the three buildings now on the lot, the middle building intended as a General Store. But even then the commercial use was not successful as the General Store eventually went out of business. Neighbor Johnny Matthews had been invited to tell the board that the neighbors had no objection to Ms. Beam's plan and actually preferred to have it be a residential use rather than a possible gas station with bright lights shining all night. Most of Westmoreland is residential and the use seems to fit right in. The Commercial industrial zone is centered in East Westmoreland and the area around Ms. Beam's property is residential and farm land. The situation is that the property in question is a one acre lot which has three separate buildings sitting on it. At present two of the buildings are used as residences and the third building is empty and classified for Commercial use.

Ms. Beam had done her best to comply with the Commercial use. She had rented the space twice to women who were enthusiastic about running a thrift store. Unfortunately both stores were not successful and did not last long. There are no other commercial properties in the area and Route 12 traffic is going past at 55 miles per hour.

Previous enterprises also failed. Ms. Beam said she would have no trouble renting it out as a residence. Attorney Bentley said that is the reason for requesting the variance. Previously there had been a problem with the septic system on the property. Attorney Bentley said that Tom Forrest, who designed the system, said that the design was specifically for three residential properties. Mr. Forrest had given Ms. Beam a document certifying that the present system could handle the three houses.

Attorney Bentley began to go through the criteria for granting a Variance.

1. Granting the Variance would not result in any diminution of the value of surrounding properties.

Johnny Matthews, a neighbor of the property said that no property had suffered any devaluation.

2. Granting the Variance would be of benefit to the public interest.

Mr. Matthews said that in his view making all three properties residential would make it more conforming to the surrounding properties.

3. The Variance needed to be based on a unique feature of the land.

Attorney Bentley spoke to that, saying that the unique feature of the land is that there are three buildings on one lot. Having one or more of the buildings empty was not of value to the town. The town needs low cost housing.

4. Granting the Variance would not go against the spirit of the Ordinance. Attorney Bentley said that this is a time when the town needs relief from that. It is the least intensive use of that building. It is less dangerous. It is not contrary to the spirit of the ordinance

The spirit of the ordinance seems to be protecting the town from unwanted and misplaced growth. Granting the Variance for a building which already exists could not be considered growth and having it used as a living space for a good tenant is preferable to leaving it empty.

Chairman Remy asked how the other two buildings are being used. Ms. Beam replied that the buildings on either side of the middle one are occupied by tenants.

Mr. Shonbeck asked if the 225 gallons per day assumed by the septic designer would be adequate.

Ms. Beam replied that originally the building in question was planned as a lawyer's office with three employees.

Mr. Shonbeck asked if the septic is functioning at a level that could support three buildings.

Attorney Bentley replied that if the system did fail it would need replacing and CKB properties would have no issues with replacing it.

Chairman Remy clarified that the buildings would be for single families with two two bedroom buildings and one one bedroom building.

Mr. Shonbeck asked about the source of water for the property. It is a single source. With a dug well, he asked. No, it is a drilled well.

Chairman Remy reminded the Board of the Ordinance that there is a minimum square footage of 620 square feet for a dwelling. Attorney Bentley said he would like to add a Variance for that to the application.

Mr. Merry asked if the property could support enough parking. Attorney Bentley said that was an issue for the landlord and there should be a limit.

Chairman Remy remarked that there is a lot going on at the property. Attorney Bentley agreed but said that in 1988 the town allowed the buildings to be built.

Chairman Remy said that CKB should have been aware of the difficulties, being a realtor.

Attorney Bentley argued, "What is the alternative? Leaving it empty does not improve the property. What is Plan B? CKB's answer is relief from the Ordinance.

Mr. Harris asked what had happened to the thrift store, the previous occupant. There had been two attempts at a thrift store but neither had been financially viable Ms. Beam reported. She also said that when she bought the property all three buildings were residential. She was planning to renovate the middle building to be a two bedroom unit.

Mr. Shonbeck inquired about the boundary line of the property and Ms Beam located it for him.

Neighbor, Johnny Matthews explained that there are two septic tanks that drain into a common leach field.

Chairman Remy asked who had given the septic system a rating of poor.

Ms. Beam replied that all of the recommendations in that report had been fixed and it no longer was rated poor.

Mr. Matthews said the neighborhood would like to see all the buildings occupied.

Mr. Shonbeck asked about the buffer zone outlined on the map. He was concerned that a family with kids might be putting them in a dangerous situation, with some of the traffic going by faster than the 45 mph it was rated for.

Mr. Paul, a businessman who also had a business near Route 12 said that he had been on the Planning Board for a short time and the Planning Board had been afraid to grant permission to new businesses and it had negatively affected the town because new businesses were

deterred by the difficulty of getting planning permission. He did not think that allowing a Variance would be a detriment to the neighborhood.

Chairman Remy said that the Ordinance states one residence per lot. Asking for three houses on one lot is a bit too much.

Attorney Bentley asked what is the alternative? How long must the owner wait for a new commercial tenant to show up? There is no benefit to the town to leave it empty. Mr. Paul agreed.

Attorney Bentley remarked that Chairman Remy was twisting himself into knots trying to deny the Variance.

Mr. Shonbeck asked about the state's right of way on to the property. Attorney Bentley explained that the state had the right to maintain the right of way for plowing, etc.

Ms. Ransome asked Chairman Remy to state the detriment if the Board granted the variance. Chairman Remy said he really didn't have one.

At that point Chairman Remy announced that he still felt uncomfortable enough with the discussion that he would not ask the Board to vote that evening. The general rule for the ZBA is to not make something that is non-conforming even more non-conforming. He is still not reassured about the septic system. Attorney Bentley said they brought the letter from Tom Forest that says the system is adequate. He will talk to Tom Forest and clarify the situation.

He would delay the vote until the next regular meeting on November 18, 2020 in order to have time to consult with the town attorney, Silas Little.

Attorney Bentley clarified that the next hearing would need a new application in order to address the Variances needed for square footage and setbacks.

Chairman Remy complimented Attorney Bentley on his presentation of the case as reasonable and thoughtful and not emotional. He appreciated the tone of the discussion.

Mr, Shonbeck moved to continue the meeting. Mr. Perham and Ms. Ransom seconded the Motion and all voted in favor.

At 8:20 pm Mr. Perham moved to adjourn the hearing. Ms. Ransome Seconded and all voted in favor.

Attorney Bentley clarified that the next hearing would need a new application in order to address the Variances needed for square footage and setbacks.