

*Town of Milford*  
**ZONING BOARD OF ADJUSTMENT-APPROVED**  
**FEBRUARY 15, 2024**

**Non-Public Hearing**

**ZONING BOARD OF ADJUSTMENT MEMBER TRAINING**

**Present:** Andrea Kokko Chappell, Chair  
Michael Thornton, Member  
Dan Sadkowski, Member  
Tracy Steel, Member  
Rich Elliott, Member  
Terrey Dolan, Director of Community Development  
Susan Smith, Planning Board Member  
John Ratigan, Milford Town Counsel

**Recording Clerk:** Jane Hesketh, Community Development

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**Meeting Agenda**

1. Call to Order
2. Board Member Training Session with John Ratigan, Esquire, Milford Town Counsel
3. Next Meeting(s): • March 7, 2024 • March 21, 2024

**1. CALL TO ORDER**

Director Terrence Dolan started the meeting with an introduction of Milford Town Counsel Attorney John Ratigan. T. Dolan explained the meeting is closed to the public for comments, but open for observation; the meeting is strictly for training purposes and will be recorded for future reference. He then turned the meeting over to the committee for questions and discussion.

**SPECIAL EXCEPTION vs VARIANCE**

Member Dan Sadkowski started by saying he would like to better understand the **difference between a Special Exception and a Variance**; he asked if a Variance is primarily for new construction. Attorney Ratigan confirmed that point then added the five criteria are different from a Special Exception. M. Thornton stated one goes with the property and one goes with the owner, but he wants to ensure he is not misunderstanding. This point was discussed. M. Thornton stated his understanding has been the Special Exception stays with the property and a Variance will terminate when ownership changes; the new owner would be given a set amount of time to apply for another Variance. A. Kokko Chappell stated it is the other way around and cited a Special Exception for a Home Business; T. Dolan acknowledged what A. Kokko Chappell stated. Attorney Ratigan added with a Special Exception the criteria can vary since each case usage is different whereas with a Variance the criteria are always the same for each case. The criteria is the key word. T. Dolan then referred to the criteria under the Milford Zoning Ordinance Article 10 (Administrative Relief) for Home Businesses; **10.023 HOME OCCUPATIONS** *Any special exceptions issued hereunder shall automatically terminate when the applicant no longer resides in the dwelling unit.* It was agreed this then confirms that a Special Exception goes with the owner. A. Kokko Chappell gave an example of a business that may be sold such as an Auto Body Shop; the new owner would still need to apply for a Special Exception because the original does not automatically transfer to the new owner. She also stated a new owner, under a Variance, has one year to re-apply for the Variance on the property.

1 MINUTES OF THE ZBA MEETING FEBRUARY 15, 2024

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4 SPECIAL EXCEPTION vs VARIANCE

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6 T. Dolan then cited from the Milford Zoning Ordinance Article 10 (Administrative Relief); **10.011 Any request**  
7 ***for a permit of any nature required under this Ordinance which will require a variance from the prescribed***  
8 ***standards of this Ordinance shall be made only by the owner of the property in question or his duly appointed***  
9 ***agent.***

10  
11 M. Thornton added this is what he understood about a Variance going with the owner. A. Kokko Chappell stated  
12 that is contradictory from what she has understood; only one variance is required for a property. This was  
13 discussed and it was pointed out in order to be presented again, it must be substantially different from the  
14 original request.

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16 FINANCIAL CONSIDERATIONS

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18 M. Thornton then asked about considering the **financial aspects of a case**; his understanding has been this is not  
19 something that can be considered but now it can be under certain circumstances. He would like to get a better  
20 understanding on this point. A. Kokko Chappell added she understands this ruling applies to Affordable  
21 Housing and asked if Attorney Ratigan had information on this. Attorney Ratigan stated Affordable Housing  
22 refers to Workforce Housing and the costs for the units are based on the location. A. Kokko Chappell then cited  
23 a ruling by the Supreme Court; *if an individual is coming before a Zoning Board and stating that in order to*  
24 *provide Workforce Housing the individual will need a certain number of units that are not considered*  
25 *Workforce Housing because the applicant would not be able to afford it otherwise, therefore, under this*  
26 *circumstance the aspects of finances can be considered under the criteria for hardship.* M. Thornton then asked  
27 how much latitude this gives the Zoning Board; the Planning Board does look at the financial aspects of a  
28 project. He agrees it gives the ZBA some latitude and he knows of some cases before the State Senate under a  
29 program called Housing Champions which is designed to allocate funding to assist towns; if this should pass he  
30 stated he does not know what latitude this will give towns specifically the Zoning Board. A. Kokko Chappell  
31 gave an example of a hypothetical case whereby an individual after retirement applies for an ADU in their home  
32 and cites financial hardship if they cannot get a second income from the property; under this case the financial  
33 hardship cannot be considered. M. Thornton then gave a hypothetical case of a retiree with a large structure who  
34 wants to develop Affordable Housing in order to subsidize them being able to continue to live in the unit; how  
35 does this get handled?

36  
37 T. Dolan brought up a previous case heard by the ZBA which involved a property that was being converted to  
38 small rental units; the outcome was that 2 of the units had to be offered as Affordable Housing for five years. A.  
39 Kokko Chappell recalled the case in question; the applicant originally did not want to make it Affordable  
40 Housing even though he applied for an Affordable Funding grant. The applicant originally cited financial  
41 hardship if he had to convert the entire 12 units to Affordable Housing which the ZBA could not consider under  
42 the hardship criteria. It was not until the applicant agreed to convert 2 of the 12 units to Affordable Housing  
43 could the ZBA then consider the financial hardship; otherwise, the increased density would not allow approval  
44 of the application. A. Kokko Chappell continued with more information on this case with the bottom line being  
45 there was no hardship and the increased density was an issue. T. Dolan noted the parking was also an issue for  
46 the conversion of this property to rental units. A. Kokko Chappell stated the ZBA, in order to assist the applicant  
47 with his request to convert an already existing 12 unit structure to rental units, presented him with the option of  
48 making 2 of the units Affordable Housing for the required minimum of 5 years under the grant. There was  
49 further discussion about this case.

50  
51 T. Dolan asked what the Metzger Standard is. Attorney Ratigan stated he was not quite sure but did talk about a  
52 presentation he attended providing information. T. Dolan then asked if there was a way to prevent frivolous  
53 appeals on cases that require time, money and resources; he cited the presentation he also attended and thought  
54 there was an RSA to cover this. Is there a way for town's to prevent being impacted by these types of law suits?

## MINUTES OF THE ZBA MEETING FEBRUARY 15, 2024

Per Attorney Ratigan, of course due diligence should be done for every case, but cases can be dismissed if procedures are not followed properly and the dictated time frame is not met. Attorney Ratigan then elaborated on the numerous requirements that need to be satisfied by the complainant.

The conversation returned to the converted motel case; the benefits of this conversion were discussed as well as the progress of the conversion. There was a change in the original plans to have these units as small studio apartments. The units are now being converted to one bedroom apartments. This was talked about in regards to the negative aspects and the cost for the units which really does not make it affordable, and presents a parking problem. Discussion continued about the new units. In addition, the idea of ADU's and Tiny Homes was brought up in view of the high cost of rental units. This topic was discussed in terms of the sizes and requirements in regards to permits as well as the use of sheds which could be used for housing.

A. Kokko Chappell asked: When a case comes before the ZBA, and it is suspected an applicant is not being truthful, what can the ZBA do? Attorney Ratigan stated a decision does not have to be made in one meeting; more information can be requested and there are regulations that can be enforced via the building inspector should the applicant not provide the information requested by the ZBA. A. Kokko Chappell offered a hypothetical example: there is an application for a shed but for whatever reasons, the ZBA senses it is not going to be used in the traditional sense as a shed but as a living space, and it will be placed in the set back. The ZBA learns the actual usage plans; what can the ZBA do if it cannot be validated? Attorney Ratigan pointed out an occupancy permit is required if someone will be living in a building; if there is a shed on a property and then utilities, water and sewer are installed and inspected after the fact, the shed can be shutdown. Additional discussion continued on this topic and how to control this for the ZBA; certain conditions can be applied with the approval, further information can be requested, research may be needed before making a decision, cases can be continued. The subject of enforcing the policies the ZBA decides on was discussed at great length with examples presented.

Mike Thornton brought up the subject of Workforce and Affordable Housing in terms of the number of businesses in the town that are looking for employees. In addition, the property tax assessment for apartments was brought up. The need for Workforce and Affordable Housing continued to be the topic of discussion. Various alternatives were discussed.

A. Kokko Chappell turned the meeting back to legal questions committee member may have.

R. Elliott referred to the following criteria statement: "the use as developed will not adversely affect an adjacent area". R. Elliott asked what needs to be looked at in terms of affecting an area. This is part of a Special Exception. This topic was discussed in terms of decreasing the value of adjacent properties. Attorney Ratigan suggested the ZBA can make a judgement of their own based on the usage. A. Kokko Chappell recalled the case of the request for using a garage in a residential neighborhood for auto body work. More discussion continued. Per Attorney Ratigan, finding of fact for all the criteria is something the ZBA should do when hearing/approving a case in terms of how it would or would not affect the adjacent properties; if it is not clear he suggested a letter be obtained stating the adjacent properties would not be adversely affected. An example of a case involving the Boys and Girls Club driveway extension was brought up and discussed because of the abutter's complaints concerning the adverse effect it would have on their property. Various examples on how to deal with such a situation and examples of abutter's complaints were presented. It was again pointed out the ZBA has the option to table the discussion, request additional information and continue the case to another date.

T. Dolan cited legal information provided addressing the setbacks. He asked Attorney Ratigan if this means the encroachment on setbacks should be handled as a Variance. Attorney Ratigan said it should be a Special Exception.

## MINUTES OF THE ZBA MEETING FEBRUARY 15, 2024

T. Dolan to Attorney Ratigan: should standard procedure at a ZBA Meeting be that each board member be asked if there is a need for them to be recused from hearing a case? Board members spoke up about this; feelings are that each member has the integrity to recuse themselves if need be (Chair has already done that with previous cases). The idea of adding this procedure to a meeting could then be viewed in a negative way for board members. Attorney Ratigan stated the Planning and Zoning Boards he is involved with do not address this issue, then continued by saying it is not unsuitable for the Chair to say something like are there any board members who wish to recuse themselves. He explained this would just be blanket statement by the Chair and each member does not need to be asked. Susan Smith, Planning Board asked a hypothetical question; after a meeting a neighbor or resident gets in touch with her to question results at a meeting which she knows to be false should she give them the correct information. Attorney Ratigan: tell them as a Planning Board member I cannot discuss this but give them the places they can get the correct information such as committee minutes and the GTM videos. Attorney Ratigan emphasized a board member has no obligation to discuss board proceedings with anyone outside of the meetings. T. Dolan emphasized the rules for exparte procedures and if not followed, it could be beneficial to an opposing attorney. It was also noted board members should not discuss cases outside of a meeting with each other; emails should not be a reply all.

D. Sadkowski asked: after a case was approved with certain conditions if a board member can go to the property in question to determine if the conditions are being met. J. Ratigan noted the building inspector will be the one to make sure this is done. Also, while a member could drive by on a public road, they cannot go onto private property. This topic was discussed further and T. Dolan informed everyone about the procedures for how complaints to his office are handled.

It was again pointed out all members have the option to request a continuance on any case if there is a feeling more information is needed or legal counsel needs to be provided. Any conversation on the case falls under attorney client privilege.

Attorney Ratigan told the ZBA they are doing a good job; he has very few appeals from their decisions. T. Ratigan gave a worksheet to Chair Kokko Chappell which each board member can use when evaluating a Variance. It is a tool to help the members when going through the criteria presented for the case; it is not a legal document. This worksheet can be adapted for Special Exception cases.

M. Thornton requested a brief training discussion to be added to the end of shorter meetings. T. Dolan acknowledged that. Susan Smith added that perhaps Attorney Ratigan could provide information from other boards that have cases under appeal; therefore learning from the problems other committees have run into. Attorney Ratigan shared an experience he had with another Zoning Board that did not explain/articulate their reasons for denying a Variance which resulted in an appeal that overturned the Board's decision; he emphasized it is critical each member articulates their reasoning for the decision they will make.

R. Elliott asked Attorney Ratigan what he needs from the ZBA. J. Ratigan: there needs to be a discussion of facts that support each criteria; how each criteria has or has not been satisfied. To the committee, Attorney Ratigan informed them how he can be contacted if the need arises for legal guidance.

M. Thornton brought up a situation with the Brachs Property; currently there is a resident holding up the development of this property. To Attorney Ratigan he asked if this one person can do this. Attorney Ratigan asked if they were an abutter to which M. Thornton replied they are not. Attorney Ratigan said they cannot intervene. M. Thornton continued to provide information since this person has now taken the problem to the court. There was additional discussion on this and Attorney Ratigan stated he would need more information on it.

Meeting Adjourned.

The ZBA Minutes of 3/15/24 were approved 3/21/24