

TOWN OF TEMPLE
ZONING BOARD OF ADJUSTMENT
September 14, 2023 Meeting

ZBA Attendees: Deborah Harling, Emily Sliviak, Lucas Tabolt, James Stein, Allan Pickman, Richard Redding

Also in attendance: Cara Nicholl (Minutes), Ashley Saari, Jack Johnson-Marsh, Tom Hanna, Peter Allen, John Kieley, Connie Kieley

Harling called the meeting to order at 6:00 PM

Harling gave a brief recap.

This meeting was called in regards to the August 3rd decision on the Marsh case. There was a motion for a rehearing based on the argument that the Zoning Board did not hold jurisdiction based on the Fisher vs Dover doctrine. The applicant has several points that they feel were not covered. These points should be on the website. The Board believes the application was not significantly different from the ZBA's 2018 appeal denied by the ZBA at that time. The applicant stated that the ZBA's decision conflicts with Judge Temple's order, which they attached.

Harling asked each member as to whether or not the case should be reviewed and what their reasoning is.

Pickman feels the ZBA should accept this new hearing. On August 3, he voted against the motion because there were enough issues of difference with the 2018 application. It is a lot closer to what the original 2018 application is than the decision.

Redding said he understands the Marshes requested a rehearing. Based on Fisher vs. Dover, he voted that the ZBA didn't have jurisdiction. He understands the request to clarify the decision on August 3 and if so, he understands that position. It is his opinion that the matter is settled and no further action is required.

Stein said that he agrees with Redding. He does not believe the two applications are materially different. If it was different, the application could file a new application if it was different. Stein stated that the board could do a better job of clarifying our decision but he does not know if his opinion would change unless he saw more in the application.

Redding clarified that with the August 3rd ruling, that there is no reason to have a meeting based on the ruling of the court.

Harling stated that we would agree to do a re-hearing to discuss further the Fisher vs. Dover doctrine.

Tabolt is in favor of reexamining the ZBA's ruling of the Fisher vs Dover case.

Sliviak has recused herself.

Harling believes that we should agree to a rehearing. She thinks they should discuss and clarify Fisher vs. Dover again and see how the ZBA feels about it. If the board were to decide it did not occur, the second order of business on that day would be to make the decision on regional impact.

Tom Hanna asked if we are postponing the jurisdiction hearing because he wants to bring expert witnesses. Harling responded that if the board decides to do a rehearing, she recommends that we will do a clarification on whether the ZBA feels it has jurisdiction. If the ZBA feels they do have jurisdiction, they will make a decision that night on regional impact. Harling recommended not bringing expert witnesses to the rehearing but waiting until afterward. The regional impact decision will require notification, so bringing expert witnesses would not make sense for the rehearing. It would not be fair to the applicant to bring expert witnesses if the ZBA determines there is regional impact.

Tom Hanna clarified that there will not be a hearing on the merits at the next meeting.

Harling clarified that the ZBA will decide jurisdiction and regional impact. We will schedule a public hearing with the intent to review Fisher vs. Dover. The public hearing will be done with that intent and then decisions will be made.

John Kieley asked if abutters will be informed. Harling said that abutters will be notified with a letter and there will also be a notice in the paper.

Redding asked if there are three propositions. Harling clarified that there are three propositions as follows:

- Deny the motion for rehearing
- Approve the motion for a rehearing
- Approve the motion for a rehearing and consider the merits.

If the ZBA decides there is regional impact, they will still have to adjourn to a later date and notify the abutting towns. Until the abutting towns are notified, a hearing on merit would be put off.

Motion by Pickman to approve or deny the rehearing to revisit the ZBA's jurisdiction and if the board decides they have jurisdiction, they will discuss the regional impact. Second by Tabolt.

Pickman Aye, Tabolt Aye, Stein Nay, Harling Aye, Redding Aye.

The board made the motion to accept the application for a rehearing. The next hearing will include the question of jurisdiction and the question of regional impact.

In scheduling the next meeting, Harling states she would like the ZBA attorney there for it. Harling suggests a tentative meeting of October 19th. Connie Kieley raised a concern that the town attorney should also be in attendance.

John Kieley is concerned that regional towns should be contacted on this matter and not just the abutting towns. Harling said she would speak to John Bolton about this.

Sliviak made a motion to approve the minutes on August 31st. Tabolt seconded.

Pickman moved to adjourn the meeting. Sliviak seconded that motion.

The meeting was ended at 6:21.