

TOWN OF MASON BOARD OF ADJUSTMENT
27 April 2015
Unapproved Meeting Minutes

Call to Order at 7:30pm

Tim Kelly, Chairman

Roll Call of Board Members

Vice Chairman Christine Brigham, Bob Bergeron, Bill Rendle

Alternates

Clerk Pat Letourneau, Mike Davieau

All members are duly sworn in.

Board reviewed 30 March 2015 minutes

Motion: to accept the minutes as written made by Christine Brigham. Seconded by Bob Bergeron. The motion **passed** unanimously.

Hearing of 15-001 E-57 McDonald started at 8pm.

Mark and Mary McDonald contest an Administrative Decision made by the Mason Board of Selectmen
on November 25, 2014 with the denial of relief under Article IV, Paragraph P.

The application and certified letter receipts were read by the Clerk.

The Chair informed the public of hearing procedures and introduced the voting members.

Voting members: Bob Bergeron, Mike Davieau, Bill Rendle, Christine Brigham and Tim Kelly
Applicants had no objection to voting members.

Applicants: Mark, Mary, Mason and Max McDonald.

Attorney Silas Little represented the Applicants.

Abutters: Jeff and Jen Messer

Selectman Charles Moser spoke for the Mason Board of Selectmen.

Mason citizens William Weiss and Wolfgang Millbrandt were also present.

The letter dated April 20, 2015 to the Office of the Board of Adjustment from Abutters Marla Berry and Peter Goldsmith was labeled Exhibit A.

15-001 E-57 McDonald
Exhibit A

RECEIVED
APR 21 2015
BY: [Signature]

Marla S. Berry
12 Old Ashby Road
Mason, New Hampshire 03048
(603) 557-7267

April 20, 2015

Office of the Board of Adjustment
Town of Mason
16 Darling Hill Road – Mann House
Mason, NH 03048

Re: Appeal hearing on Mark and Mary McDonald's shed located on 9 Old Ashby Road, Mason, NH.

Dear Board of Adjustment,

We have received Notice of an Appeal hearing that will be held on April 27, 2015, regarding the McDonald's being denied relief under Article IV, Paragraph P, of the Mason Town Ordinances.

We will not be able to attend the hearing on that date. Please accept this correspondence as a formal objection to the relief being sought by the McDonald's. We do not believe Article IV, Paragraph P, of the Ordinance applies to a shed. We believe Article V, Paragraph 5 and Paragraph 7 of the Ordinance are the applicable standards. Article V, Paragraph 5 addresses a shed as an accessory building. Article V, Paragraph 7, clearly states that "No building shall be located within 35 feet of any right of way or lot line".

In addition, Article III, Paragraph A, of the Town Ordinances addresses the Interpretation and Application of rules, regulations and ordinances. It states that "Whenever any requirement of this Ordinance is at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, **the most restrictive, or that imposing the highest standard shall govern.**" The McDonald's are arguing that the shed falls under Article IV, Paragraph P. The town's position is that the shed falls under the Article V, Paragraph 5. Therefore the Town must apply the most restrictive standard to the McDonald's request.

In view of the above, We would respectfully request that the Board of Adjustment deny the McDonald's request for relief.

Applicants: Given the reliance of wood burning in New Hampshire, this is a conventional accessory structure as opposed to a farmstand. The way the general provision was written makes this case since woodsheds are not mentioned but that does not mean they are not allowed. If that were the case, this would make this to be exclusionary when interpreting the ordinance. There is no mention of woodsheds in Article V but they are mentioned in Article IV. There are no specific provisions for signs, farmsteads, fences etc under Article IV but are not specified in the Zoning Ordinance. The statutory interpretation is that all parts should have force and effect if you meet the requirements of accessory structure therefore since accessory structures are not in Article V they must be exempt.

Equal effect to different parts of the ordinance. A customary accessory structure is covered by Article IV subparagraph P as a common meaning of words not subject to setbacks.

Board: There are provisions for a customary accessory structure that must be met. Why did you apply for a building permit?

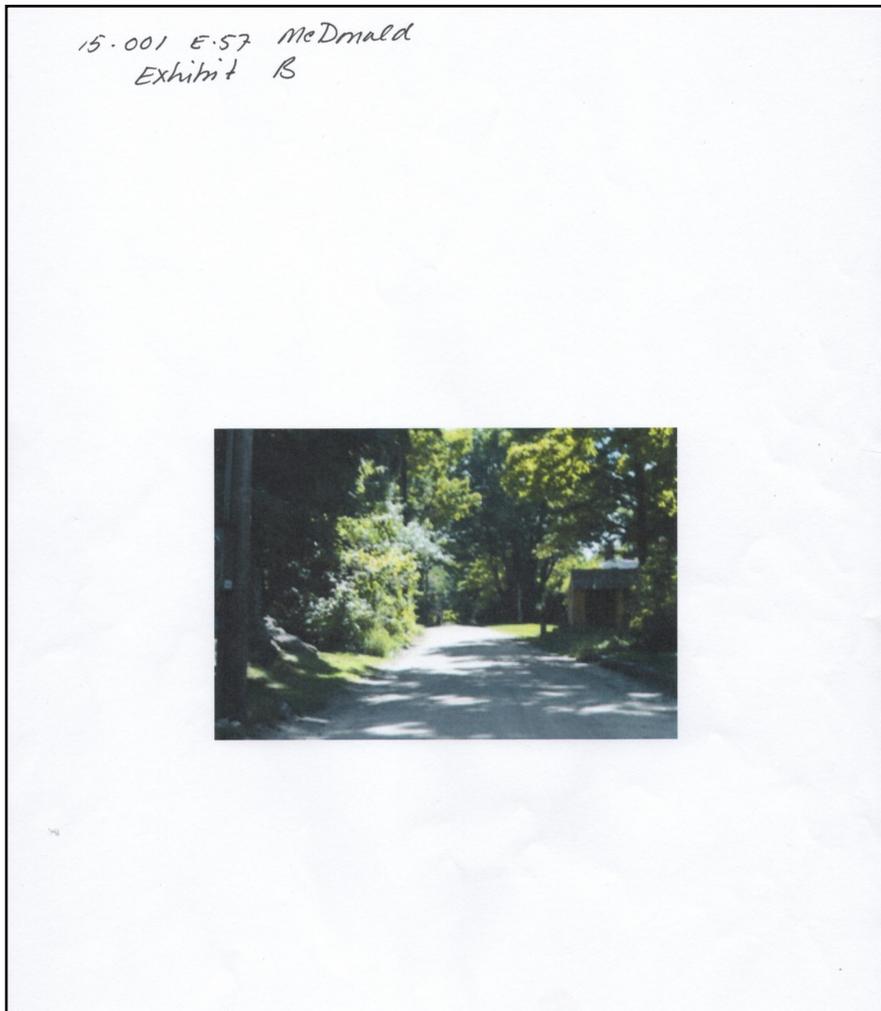
Applicants: The town attorney, Bill Drescher, suggested it. The permit is not the issue. Interpretation of the ordinance is why we are here. The shed is not a building, but a structure, a customary accessory structure

Selectmen: The principles of statutory construction are that the specific controls over the general. Every building is a structure, not every structure is a building. Article V section 5 gives specific descriptions and definitions. Structure is general, building is specific. This shed falls under a specific definition. The list is meant to guide the Board and accessory structures don't necessarily have a roof, The Selectmen agree with Marla Berry's letter.

Board: An accessory building is a customary building incident to main building. Is wood chattel? Article V would note the precise setback legislative intent. Still buildings, beyond "structures".

Selectmen: Wood can be chattel when it is not living. Trees are personal property, real estate, when it is growing. Cut down, it becomes chattel.

Abutters: We are not in favor of the shed. A square is a rectangle but a rectangle is not a square. We all live in the Historic Preservation District. According to Article V letter C this building is an encroachment on us as it is five feet from our lot line. Our home has lost some of its rural character and curb appeal due to the placement of this shed. Picture of shed is Exhibit B.



We have lived there ten years and we don't know if it is spiteful or not, but there is a lot of trash, trailers, tarps and tires around this shed. How is the enforcement of what it IN the shed to be handled? We have NO guarantee that this shed will only be used to store wood.

Applicants: These are the FEMA definitions of buildings. The word structure in Article 14 paragraph A addresses how the Messer's property appeal is not affected.

Selectmen: A building is a structure, The more specific over the general. We have an objection to using FEMA definitions when we have our own.

Applicants: This all started almost a year ago on whether a Variance was even needed. The debris is from construction when we were given the Cease and Desist from the Selectmen.

Board: A fair amount of this ordinance is subjective and we try to determine the intent from the Municipal Association. We cannot make a judgment on statement of purpose alone. A literal interpretation and ascertainment of definition will govern.

Art IV talks about structures not buildings. Roadside stands are for customers. The Article defined accessory building. Setbacks do not apply to all structures but they do to all buildings.

These ordinances were purposely written to allow some leeway. The intent was that everybody would have a fair way to present their position without harming the rural charm of the town and to keep abutters happy. No buildings are allowed in setback.

What they are asking for is not in Paragraph P unless it is a wood shed and that does not make it an accessory structure.

The underlying prerequisites are in the case of Town Council v Bartlett. It was made very clear that Village setbacks apply to buildings but not to structures. In our most literal definition, the structure can "house chattel" which we define as "transportable items that CAN BE MOVED." Very specific, so if this structure only held wood the the setbacks would not apply.

Wood becomes chattel when it is cut down. In a case of ambiguity, the restrictive applies. Town Ordinances are specific. This is a building and therefore subject to setback.

Abutters: To make it crystal clear, accessory structures are further defined in ordinance.

Applicants: This is a 72 sq ft structure. The Building Inspector did not require a permit therefore remains a structure and not a building. It is open faced, not secure in any way. It is not even on concrete. Playset is allowed so why not a doorless shed? The definition of a building is an enclosure and this is a structure because it is not enclosed.

Selectmen: There is no distinction made between enclosed and unenclosed structures nor buildings.

Motion: to close hearing to public made by Tim Kelly. Seconded by Mike Davieau. Motion **passed** unanimously.

Hearing closed to public at 8.59 pm

Rereading of Article IV paragraph P. Each voting member stated their thoughts:

Tim Kelly: I agree with the Selectmen.

Bob Bergeron: The purpose of the Board is to see things in a general way and do what's best for the town. I agree with the Selectmen.

Mike Davieau: This building has a roof and four sides. Future owners could change use. Everyone has to follow setback rules. I agree with the Selectmen.

Bill Rendle: It is framed for four sides. I disagree with the Selectmen.

Christine Brigham: Article P is restrictive. I agree with the Selectmen.

Motion: to uphold the Selectmen's decision of November 25, 2014 to deny a request for a building permit made by Tim Kelly. Seconded by Bob Bergeron,

Voting:

Bob Bergeron: Aye

Mike Davieau: Aye

Bill Rendle: Nay

Christine Brigham: Aye

Tim Kelly: Aye

The Ayes have it by majority vote. **The appeal is DENIED**

The Hearing ended at 9.09 pm

The Board discussed the possibility of using security measures if necessary

Motion: to adjourn meeting made by Mike Davieau. Seconded by Bob Bergeron. Motion **passed** unanimously.

Meeting adjourned at 9.19 pm.