

**Town of Weston  
Zoning Board of Adjustment**

SENT VIA US MAIL AND EMAIL

In re: Leah and Brandan McCanna, 104 Route 100, Weston  
Request to Zoning Board of Adjustment (ZBA) to Reconsider Decision Denying Variance Application  
Parcel ID # 13-00-17  
Permit Application ZP-17-20

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April 9, 2021

Dear Leah and Brandan:

This is the ZBA's follow-up letter to its letter dated April 2, 2021. In the April 2, 2021 letter the ZBA informed you of its decision to grant your request for reconsideration of the ZBA decision denying your variance application for an existing storage shed on your property. Your request for reconsideration was made pursuant to 24 V.S.A Section 4470. As described in the April 2, 2021 letter, this follow-up letter explains why the ZBA is granting your request and the process for going forward with the reconsideration.

Background – Original Request for a Variance

In 2020, Leah and Brandan McCanna (Applicants) filed an application for a variance for an existing storage shed on their property because it did not meet setback requirements of the Weston Zoning Regulations. Their application was denied based on their non-compliance with Criterion 5 under 24 V.S.A. § 4469(a) which requires that: "the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation from the bylaw and from the plan".

In denying the variance request, the ZBA found that the application did not meet Criterion 5 because there were potentially other alternative locations for the storage shed or structure (for example, attached to the house/porch) that could have met Weston's setback requirements or at least represent a lesser deviation from the Zoning Regulations than the current location, and, furthermore, that the Applicants had not provided sufficient evidence or rationale of the reasons that a storage shed or structure could not be located in a place to better comply with the Zoning Regulations.

At the variance hearings, the Applicants testified that it would be less costly to have a free standing storage shed in their backyard rather than to attach a shed onto their house/porch. They further said that the location of their septic system made attaching a storage shed to the house/porch impossible. They offered no testimony of where the storage shed might be located that would constitute a lesser violation of the Zoning Regulations. The ZBA found that the information provided by the Applicants during the variance hearings regarding the location of the septic system was

anecdotal, and since no evidence was provided on possible other locations, they had not met the requirements of Criterion 5. With respect to cost, there was no testimony on the cost other than the Applicants stating that it would be less costly to have a free standing storage shed. It is well established in Vermont case law that cost is not a factor to be given much, if any, consideration in a variance request.

#### Request for Reconsideration

The Applicants requested in a letter emailed to the Zoning Administrator (the "Appeal Letter") dated March 23, 2021 that the ZBA reconsider its denial. In the Appeal Letter, the Applicants state that their "appeal is to your justification for denial of criterion 5."

1. Location of the septic system. The Applicants contend that the location of the septic system was discussed and physically pointed to at the site visit and that they were unaware that the ZBA was not clear on the exact location until the final hearing. In order to be clear about the location of the septic system, the Applicants submitted photos with the Appeal Letter showing the location of the septic line. They also submitted a report from Uncle Bob's Septic showing the location of the septic tank, pipe from the house, and the leach fields. (The Applicants contend that the Uncle Bob's report was submitted previously to the Zoning Administrator with the original variance application, but the Zoning Administrator did not find the report in the files.) In the Appeal Letter they stated that the "septic location remains an obvious obstacle .....and restricts the potential for a feasible addition to the footprint of the existing home."
2. Cost. The Applicants state that while cost was a major consideration in their decision not to add onto their house, it was not the only reason. They were not comfortable adding a shed to their house which is an "antique" and they did not want to alter the period architecture. They also did not want a number of connected additions. They did mention that spending \$25-\$100K on a small storage shed was something they did not wish to pursue.

The ZBA finds that while the additional information provided by the Applicants in the Appeal Letter on location and cost by itself would not be sufficient to reverse the ZBA's variance decision, the ZBA is persuaded that granting the request for reconsideration would allow the Applicants the opportunity to provide additional information and arguments beyond those submitted with the Appeal Letter to the ZBA on why "the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation from the bylaw and from the plan". (24 V.S.A § 4469(a)(5)).

Accordingly, the ZBA grants the Applicants request to reconsider the ZBA's denial of the Applicants' request for a variance for its storage shed as it relates to Criterion 5, subject to the following procedures:

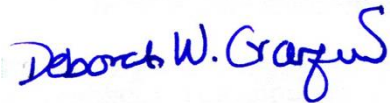
1. There will be a new hearing and site visit to consider the merits of the reconsideration request.
2. The new hearing and site visit for the matter will be warned by the Zoning Administrator (costs, notification etc. borne by the Applicants).
3. The sole issue before the ZBA at the new hearing will be Criterion 5 (24 V.S.A § 4469(a)(5)).

4. The Applicants will have the burden of proof to present evidence and make arguments on why their variance request complies with Criterion 5. They will be able to introduce new evidence and arguments but only relating to the issue that formed the basis for their request to reconsider.
5. Any proper interested party could be heard or introduce evidence on that issue, but not on any other.
6. The ZBA will render a decision after the new hearing in the same manner and subject to the same requirements as before.

In preparation for the hearing, the Applicants should be aware of and consider the following:

1. In connection with the reconsideration decision, the ZBA will consider the information submitted with the Appeal Letter. But, it is important that the Applicants provide additional new information and any new rationales for why the variance should be granted under Criterion 5.
2. In rendering its decision and based on advice to the ZBA from Vermont League of Cities and Towns, the ZBA must make its decision as if the existing shed did not exist. In other words, as if the Applicants were coming in with an application to put a new storage shed on their property. Therefore, the Applicants need to be clear about the purpose of the structure, how the proposed structure would meet the needs of the Applicants, and if the structure does not meet zoning requirements and needs a variance, how and why the location of the proposed shed would meet the requirements of Criterion 5 (i.e. is the least deviation from the Zoning Regulations to meet the Applicants' needs).

Sincerely,



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Deborah Granquist, Chair of the Zoning Board of Adjustment

Cc: Members of the Zoning Board of Adjustment  
Zoning Administrator  
Select Board  
Town Clerk  
Chair of Planning Commission  
Wes & Nancy Westlund  
Philip & Karen Schneidermeyer

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