**Town of Bethlehem**

**Zoning Board**

**Tuesday June 8, 2021**

**ZOOM VIRTUAL HEARING MINUTES**

**6:00pm**

Present: Chair Andrea Bryant, Vice Chair David Van Houten, Shane MacElhiney, Patrick Doughty, Ruth Heintz.

Alternate: Marti Cook.

Chair Bryant- Meeting called to order 6:11
AGENDA was read
Pledge of Allegiance

Chair Bryant opened the hearing and read the notice for the
Amy Delventhal Special Exception for a burial site at 65 Lewis Hill Road.

**Amy Delventhal Special Exception for a burial site at 65 Lewis Hill Road.**

She read from a prepared statement that was shared with the ZBA prior to the hearing.

 Dear Members of the Zoning Board, April 28th, 2021

This application for a Special Exception is Ex Post Facto. Due to my extreme mental and emotional duress during the time leading to the death and burial of my mother on my land, I did bad research. At no time did I intend to disregard or disrespect the laws of our State or the ordinances of our Town.

Once my mistake was identified, I was deposed (by phone) at length by someone at the State Attorney's Office, who eventually concluded that my actions had been accidental and did not warrant prosecution. As is required, he then turned it over to the County Attorney's Office.

I was Mirandized, deposed, and recorded (in person) by the Bethlehem Police. I was extensively questioned about the possible health and safety factors of where and how this burial happened. I assume that recording was presented to the County Attorney; I never heard anything more about it and further assume that she (Marcie Hornick) was satisfied by my answers.

I believe all of the above stated happened in November of 2019, although it could have gone into December. These events and the fear generated by them greatly increased my mental, emotional and physical exhaustion. By the time I had my feet back under me and had gathered enough information to know how to proceed, Covid was in full swing and taking all of everyone's attention. I decided to wait until things returned to normal before filing. When they didn't, I waited still because it felt important to me that I present to the Board in person.

I offer this as an explanation of why a year and a half has passed without me taking the required steps to make right on my mistake.

I am deeply hopeful that you will find that this request meets the criteria for a Special Exception. I cannot even begin to imagine how one might go about reversing my ill-informed actions. I will accept any and all conditions that the Board may deem fit in order to feel comfortable in granting my request.

Respectfully, Amy Delventhal

**The board went over the application and criteria checklist.**David Van Houton found a typo on the map.  The map lot number was wrong. It will need to be corrected on final. (Map 204 lot 50 or 55 but is where the Arlington is.)
Ruth Heintz motioned to approve the Special Exception checklist as complete.  David Van Houten seconded.  All in favor

Explain how the proposal meets the Special Exception criteria as specified in Article XIX, Section B of the zoning ordinance. Lists all criteria from ordinance)

Criteria 1: The specific site is an appropriate location for the proposed use, structure, or change to a structure, in relation 10 surrounding properties.

Discussion:  Ruth Heintz said it is a change in use for a single burial.  It is not near any property lines.  It’s not near a water source.
The board determined that the location is more than 100 feet from the property line. In discussing the distance from the property line the board discovered that the scale on the map is incorrect. The State stature RSA 289:3 governs the location of a burial site that says it needs to be 50ft from property line and source of water. It is 160 ft from the house. Stature says 100ft.  According to a device that Pat Doughty has and his calculations 1inch equals 40ft is the correct scale. The bar is wrong and needs to be fixed.
Pat Doughty agrees with Amy that the burial site has been there for a year and there have been no changes in the property.
Carol Haywood asked if this Special Exception would be for only one burial.
Chair Bryant said every SE is given to a specific use in the application. and that in the Zoning Regulations a cemetery in District I needs a Special Exception.  Dottie Champagne asked if there would be a difference in the board decision if it wasn’t a year after but a month after it happened. She doesn’t think the year and a half should be used to help determine if it meets the criteria. Shane stated that the time frame doesn’t determine the location.  Martie Cook said that the zoning board looks at each case individually to determine appropriateness.   Andrea asked the depth of the grave.  Mika Delventhal replied well over 6ft.  Andrea said regulations say it should be at least 3 feet.
Ruth brought us back to the criteria whether the site is an appropriate use.
Martie referee to Amy’s letter where she said the State Attorney found no wrongdoing.
Andrea said it is legal in NH to have a grave in your yard.
Cheryl Jensen added that she has known Amy for a long time and believes she would never break the law, she just made a mistake.
Dottie Champagne: Is it zoned for a burial site or not? Andrea Bryant responded that Bethlehem has 5 districts.  In district 1 Main Street cemeteries are permitted. District 1 they need a Special Exception, District 2 they are a permitted use, district 3 they are a permitted use, district 4 permitted, District 5 is only landfill.   Dottie asked who makes the decision.  Patrick Doughty said the zoning Board will through this process. The ZBA is the judicial branch. The decision may be appealed.  David read RSA 289:3 that gives the regulations for burial site.

**Patrick Doughty made a motion to accept Criteria 1. Shane MacElhiney second.  5-0 passed**

Discussion: Jessie Delventhal asked for clarification that every case is addressed individually and would like to see his grandmother remain.
Clare Brown cemetery trustee said that this town has 2 cemeteries. From her opinion she wouldn’t like to see burial grounds all over the town. That cemetery is the appropriate place to bury loved ones and to gather.  Mika Delventhal said that not all families want their loved ones in a cemetery and those who want an alternative location should be able to. And some people cannot afford to bury in the traditional way.
Donna Devlin said as the person who is across the street, she 100 precent supports leaving the body where it is.  She believes it would be more of a health issue to change it.

Criteria 2: The proposed use, structure, or change to a structure, will be compatible with adjoining land uses and with the character of the surrounding neighborhood.

  Discussion:  Shane MacElhiney asked what is meant by the character of the neighborhood. David said what is around the property and use. Patrick said the change would be some drastic visual effect or noise that takes the whole neighborhood and change it. Character could be historical, residential, what the area looks like,
Patrick said he does not believe it effects the character because it can’t be seen.
Cheryl Jensen agrees that this will not affect the visual.
Donna Devlin referred to the various character already on Lewis Hill Road. That a burial in the middle of Amy’s property won’t change anything.

**David Van Houten motioned to approve criteria 2. Ruth Heintz second. 5-0 passed**

Criteria 3: The proposed use, structure, or change to a structure, will not generate substantial amounts of noise, odor, or create substantial increase in traffic.

No discussion.

**Dave Van Houten motion to accept criteria 3. Patrick Doughty second 5-0 passed**

Criteria 4: The proposed use, structure, or change to a structure, will not create any other nuisance or hazard.

Ruth doesn’t think there is any evidence before us that a human body that is 6 feet underground is going to cause any hazard or nuisance.
Andrea mentioned in her research she learned that 3-6 feet would be deep enough that animals wouldn’t be attracted. Shane asked about the source of water and was told this is all town water. He questions the impact on the soil and wetlands. There is a ditch around the perimeter of the property to keep the spring runoff contained. And the burial plot is not near that.  There are no wetlands near the burial site.

David asked about the ground settling over time and there will need to be maintained and that could be a condition.  Ruth feels like it will be no more than a trip hazard.
Donna Devlin: Wetlands in 2014 and 15 when the Arlington was being renovated there were quite a few meetings about wetland between the synagogue and rabbi’s house. But Amy’s property isn’t seeping and isn’t going to affect anything.
Shane asked why they are allowed in all other districts but not in District one?
Pat guesses that it may be because the houses are closer together.
David Van Houten asked Amy if anyone asked about wetlands.  She said the mapmaker, Kevin Morris was very thorough.
Ruth read from the Stature that the location of the burial site will be recorded to the deed at the transfer of the property.  Amy said the state told her that she has to go record it as soon as she gets local approval.

**David motioned to approve criteria 4. Ruth Heintz second 5-0 passed.**

Criteria 5: The proposed use, structure, or change to a structure, will be in harmony with surrounding properties and consistent with the spirit and intent of this ordinance.

Shane thinks the spirit of the ordinance is not to have burial in District 1. Patrick thinks we can’t assume what the intent is…just that they wanted to have people to come to the ZBA. And that it is probably to assure that the boundary limits of the RSA are met.

**Patrick motioned to accept criteria 5. Ruth seconded. 4-1 passed Shane MacElhiney: nay**

**Discussion of conditions:**

Get the burial permit from division of vital record division. Tom Smith commented that the RSA says that the deed gets changed upon sale. You can’t just alter deed at any time. Patrick Doughty said The RSA determines what needs to be done that we don’t have to.

David thinks there should be a permanent marker. Amy said the plan is to have a fruit tree at the head and foot. Patrick, this should be restricted to one burial only.

**Conditions:**

Ruth motions conditions **of granting that this if for only for one body**. Seconded by Patrick 5-0 passed

Shane MacElhiney motioned: **that a permanent marker is placed indiscreetly that does not impact the character of the neighborhood.** Seconded by Patrick 5-0 passed

 Reminders: Correct the scale and lot and map number on the Mylar.

Notation of the burial site is to be added upon sale of the property per RSA 289.

Patrick motioned to approve the special Exception for a single grave site in District 1 at 65 Lewis Hill Road with conditions. Ruth Heintz second. 5-0 passed

Closed Amy Delventhal Special Exception for single burial at 65 Lewis Hill Rd.

Minutes: January 26, 2021

Shane MacElhiney motion to accept 1-26-21 ZBA minutes. Dave Van Houten second. 4-1 passed.

Patrick Doughty abstained.

Set next meeting date. September 14th, 2021

Patrick Doughty motion to adjourn. Ruth Heintz second. 5-0 adjourned

Respectfully submitted

Deb Bayley

Planning/Zoning Clerk