

TOWN OF MILAN ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, SEPTEMBER 22, 2010

MEMBERS PRESENT:

Jack Grumet, Chairman
Rocky Mancini
Guy Russell
John Schneider
Philip Zemke

MEMBERS ABSENT:

None

ALSO PRESENT:

William Gallagher, Supervisor
Marion Matthison, Town Board Liaison

Chairman Grumet opened the meeting at 7:04 p.m.

Public Hearings:

- **Betsy Rothstein** – Ms. Rothstein was present for the public hearing for her applications for area variances to bring existing structures into compliance and a special use permit for an accessory dwelling unit on property located at 262 Field Road, tax grid number 6570-00-205385. Chairman Grumet read the legal notice that was posted in the paper and sent to neighboring landowners. Ms. Rothstein displayed her survey dated September 10, 2005 and said this is a pre-existing, non-conforming property with two structures and two sheds. She would like to convert the existing structure to an accessory dwelling unit. The structure is pre-existing and non-conforming having been built around 1950 and needs several variances. Ms. Rothstein said she started building the principal dwelling on the property around 2001 and finished around 2005, and her intent once the house was completed was to convert the cottage into a home office. She has since incorporated the home office into the principal dwelling. She would like to have the option of being able to have someone live there if, as she gets older, she requires some help and she would prefer not to have that person live in the house. As far as the front setback for the principal dwelling, the house itself meets the required 85 feet. However, while building the house, she decided she wanted a small front porch and she never considered the front setback when adding the porch. Ms. Rothstein said back when she built the larger shed, she asked if it needed a building permit and was told it did not but was never told not to place it within the setback area. Several years later, she had a small wood shed built and, again, she did not know that it could not be in the setback area. The wood shed is on cinder blocks and is movable but she would rather not go through the expense of moving it as it has been in that spot for many years. Ms. Rothstein showed the layout of the proposed accessory dwelling unit. There is a kitchen in there now but currently, it is not a functioning kitchen. She has no plans to make it a functioning kitchen unless she needs someone to live there to help her. The structure is roughly 700 square feet, and Ms. Rothstein said she lived in that structure for 18 years. Chairman Grumet said by code, if a room has a closet it is defined as a bedroom. The room listed in this building as a storage room has a closet so by definition, that room is another bedroom. Ms. Rothstein said but in the room labeled as a bedroom, there is no closet. Mr. Zemke asked if the cottage has to be limited to one bedroom. Chairman Grumet said if it is a two bedroom it

should be listed as a two bedroom on the property card. The Board of Health approved the septic system for two bedrooms because that is what was on the application but there is a 1,000 gallon tank installed which, according to the building inspector, is more than sufficient capacity for three bedrooms. Next, the Board looked at the layout of the principal dwelling. Ms. Rothstein said she did not build the house to the original design so she sketched over that design to show what is actually existing. There is a walk out basement with no bedroom in the lower level. There is one big open space and then a storage area and mechanical room. The storage and mechanical rooms are finished like a basement but the larger area is finished off. The footprint of the house is 30 x 40 and the upper level is identical to the lower level. The upper level has a kitchen, living room, bedroom with bath, and a half bath. It is also a big open space. When asked why she wanted the special use permit, Ms. Rothstein said she was injured last winter and could not get around and that, along with the fact that she is getting older, made her think she may need some kind of help someday. She would prefer to stay in her own house forever. In terms of vision, she would not utilize the special use permit unless it was under an extreme situation such as for medical reasons. Chairman Grumet pointed out that the permit goes to the homeowner, not the dwelling, so if the house was ever sold, the permit would not automatically transfer. The new owner would have to apply to the ZBA for their own special use permit if they wanted to continue the use. Chairman Grumet said one of the requirements of the permit is that the septic tank has to be further than 10 feet away from either dwelling. Ms. Rothstein showed the septic area and where the tank is. Both buildings share the system, another permit requirement. Mr. Zemke asked her why she couldn't move the shed. Ms. Rothstein said she could move it but would rather not go through that expense; it's been there since 1988. The smaller wood shed has been there for probably about 15 years. Mike Ortiz owns an adjacent property and said he was present to see how the process works. He said he understands the new dwelling is where Ms. Rothstein is living and the existing small dwelling would be the accessory. His question was is there a requirement in terms of acreage when you have a dwelling like this? Chairman Grumet said some of the requirements the ZBA considers is that the accessory dwelling will not have an impact on the environment and a minor impact, if any, of the neighborhood or community. A special use permit is generally granted in situations where the benefit to the applicant outweighs the detriment to the community. The special use permit process allows the ZBA to take a close look at the neighborhood and applicant's requirements. Mr. Ortiz asked why acreage isn't an issue in this instance. Chairman Grumet said the accessory structure is pre-existing, non-conforming, having been built prior to zoning, and is not being changed in any way. Both dwellings will share the same septic system, which is another requirement. The Board of Health confirmed that the septic is adequate to handle the additional bedroom. Chairman Grumet read an excerpt from the Master Plan which stated the town looks favorably upon affordable housing. Mr. Ortiz asked if accessory dwellings can be rental units and Chairman Grumet said they can be, however, it will not be in this instance. He said all situations are different and the ZBA considers each application on its own.

Hearing no further comments, Mr. Mancini motioned to close the public hearing. Mr. Schneider seconded. All aye. Motion carried 5-0.

Board discussion followed. Chairman Grumet said the area variances all appear to be straight forward. The house required a front setback from the required 85 feet to 78.6 feet because the applicant decided to add a porch. The large shed required a front setback to 34.8 feet and according to the applicant, the shed could be moved as it is not on a foundation, just cement blocks, and we can consider that but Ms. Rothstein seems to think this spot best suits her needs and the shed is screened from the road. Chairman Grumet said he does not see where it would be crucial to relocate the shed and the Board agreed. The small shed required a front setback to 64 feet and a side setback from the required 50 feet to 13 feet. Chairman Grumet said it is a relatively insignificant small wood shed and he and the Board agreed there did not seem to be any reason to relocate that shed either. The accessory dwelling structure required a front setback to 79.3 feet. Chairman Grumet said the building has been in this location since at least the 1950's. It is pre-existing, non-conforming and it would not be feasible to move it. The Board normally looks favorably on these types of variances.

The last request is the special use permit for the accessory dwelling unit. The Board has heard why Ms. Rothstein would like the permit, to be able to use the second dwelling for living space for help if she ever needs it. Board members agreed it is a reasonable use for the structure, although Mr. Zemke pointed out that if the building remains unused, it will need to be maintained. Chairman Grumet commented on the number of bedrooms which seems to be a gray area. He said there are two structures with two bedrooms which is minimal. There are two rooms in the main house that could be construed as bedrooms, one is labeled a bedroom without a closet and one is labeled a storage room and has a closet. According to the Board of Health, the septic system has a 1,000 gallon tank which is sufficient for three bedrooms. From a town perspective, the assessor's records should reflect two bedrooms if it is a two bedroom house. Mr. Zemke said whether a room is classified as a bedroom or not is part of the housing code; to be called a bedroom, the room has to have a closet but you can put people anywhere. He said he does not see this as an issue as long as the septic system is large enough for basically two families under this scenario. Ms. Rothstein said this system was built in 2001 and has an expansion field. Mr. Zemke said he does not see the number of bedrooms as an issue. Chairman Grumet suggested that the floor plan submitted for this application that will remain in the file should label the room with the closet as a bedroom and the room without the closet as a study.

Chairman Grumet went through other requirements for a special use permit: Parking – by reviewing the survey, there appears to be adequate parking for two dwellings with two bedrooms and access for emergency vehicles. There is Dutchess County Department of Health approval for two bedrooms with the existing septic as that is what was submitted at the time of approval but the Building Inspector indicated that a 1,000 gallon septic tank

is adequate for three bedrooms and the tank is at least 10 feet from the dwelling. The addition of another individual will not affect traffic patterns of the neighborhood. The addition of one more person at some point in the future should not have an impact on the public health, safety, or general welfare of the people in the neighborhood.

Chairman Grumet reviewed the area variance Findings and Decision for the following area variances to Table B and Section 200-18.A(2):

House	front setback from required 85 feet to approx. 78.6 feet
Large Shed	front setback from required 85 feet to approx. 34.8 feet
Small Shed	front setback from required 85 feet to approx. 64 feet side setback from required 50 feet to approx. 13 feet
Access. Dwelling	front setback from required 85 feet to 79.3 feet side setback from required 50 feet to 6.7 feet

An undesirable change would not be produced in the character of the neighborhood because one more person utilizing that bedroom would be an insignificant impact. The benefit sought by the applicant cannot be achieved by an alternative to the variance because the structures are pre-existing and the accessory dwelling unit is pre-existing, non-conforming. The variances would be considered substantial if this were new construction but these structures are existing and the variances will bring them into compliance with the zoning law. The variances will not have an adverse impact on the physical or environmental conditions in the neighborhood because the structures are pre-existing and are not being changed. Two of the difficulties were self-created in that the applicant wanted a front porch and a shed and neglected to consider the setback areas. Based on these factors, the ZBA determined that the benefit to the applicant outweighs the detriment to the neighborhood or community. There were no conditions attached to these variances.

Mr. Russell motioned to accept the Area Variance Findings and Conditions for the Rothstein variance application. Mr. Mancini seconded. All aye. Motion carried 5-0.

Chairman Grumet reviewed the findings for the special use permit for the accessory dwelling unit. The main dwelling is owner occupied, the floor areas meet the square footage requirements, the building will maintain the same appearance as it does now with no expansion of the existing structure, this is a pre-existing, non-conforming lot of 2.09 acres and does not meet the minimum lot acreage but the accessory structure is pre-existing, non-conforming and will not be altered, added to or reconstructed, the existing septic system has been approved by the Board of Health for a two bedroom dwelling, and a survey has been provided. The Town encourages alternative housing which is why special use permits for accessory dwellings are allowed. The dwelling and accessory structure have been existing since 2001 and are screened from the road. The application is consistent with the Master Plan which encourages the availability of affordable housing which meets the needs of all residents.

Mr. Zemke motioned to accept the Findings for the Special Use Permit. Mr. Schneider seconded. All aye. Motion carried 5-0.

Applications:

1. **Tim Shepard and Anita Chapdelaine** appeared before the Board regarding their area variance application to construct a garage 17 feet from the front property line on property located at 35 Webster Coon Road, tax grid number 6472-00-343681 in the A3A zoning district where 85 feet are required. Mr. Shepard said they have just moved into the house and at present, there is no garage. There is a gravel driveway with an offset parking area in front of the house which seems like a logical place to put a garage. The garage would be 17 feet from the front property line but in-between their property line and the road is a 35 foot right of way that belongs to the Town so from the garage to the end of the road would end up being 52 feet. The same driveway will be used whether the garage is there or not. The property is like a gully around the driveway; the land slopes up around the outside of the driveway which is why this location for the garage makes sense. It would be a 1.5 story, 2 car garage to allow for some storage space. It should not be visible from the road except during the winter and then only minimally visible due to the evergreen trees. Their architect seems to think they could slide a garage right into that spot with having to do any excavating. Mr. Zemke said the application states a variance to 17 feet but the architects drawing says 14.5 feet so he suggested the applicants stake out the building and then measure to avoid having to come back if they don't ask for enough of a variance. Chairman Grumet said the additional 35 foot right of way owned by the Town will provide a large buffer on top of the 17 feet.

The Board agreed that the application was complete enough to schedule the public hearing for the October 27th meeting providing the applicants submit the correct dimension no later than October 13th. Mr. Russell motioned to set the date for the public hearing for the Shepard/Chapdelaine area variance application to be held at the October 27, 2010 ZBA meeting. Mr. Zemke seconded. All aye. Motion carried 5-0.

Administrative Items:

- Approval of Minutes: Mr. Schneider motioned to accept the minutes of August 25, 2010 as presented. Mr. Mancini seconded. All aye except Chairman Grumet and Mr. Russell who abstained. Motion carried 3-0

Mr. Zemke motioned to close the meeting at 8:30 p.m. Mr. Russell seconded. All aye. Motion carried 5-0.

The next meeting will be held on Wednesday, October 27, 2010 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board