

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, JUNE 8, 2011

MEMBERS PRESENT:

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

MEMBERS ABSENT:

None

ALSO PRESENT:

Chairman Grumet opened the meeting at 7:00 p.m.

Public Hearings:

- **James Benincasa:** Mr. Benincasa was present with his attorney, Warren Replansky, to continue with the public hearing that was opened and held over from the April 27th ZBA meeting so that Board members could conduct another site visit on the Benincasa property and the Odak property next door. Chairman Grumet read the public notice and opened the public hearing. Mr. Replansky referred to section 200-59 of the zoning code and expressed concern that the Board was applying outdated standards when considering an area variance application. Mr. Zemke referred to Section 200-60(2) as the standards the Board uses and Mr. Replansky agreed they were the updated standards consistent with Town Law. Mr. Replansky said they are dealing with two issues. One is the garage which should not be an issue. It is unclear when it was constructed but it was prior to current zoning requirements. When his client purchased the property in 2003, a municipal search was done which showed no violations on the property. In 2007, Mr. Benincasa applied for a building permit to construct a second story on the garage. He was issued the building permit, constructed the second floor and was issued a Certificate of Occupancy. The garage poses no detriment to neighboring properties, it has been there forever, and causes no problems. There is no environmental impact even though it is only 12 feet from the property line. No one has raised an issue about the garage. If a variance is necessary, we would hope the Board would grant it.

Issue number 2 is the prior use of property. When Mr. Benincasa purchased the property, there was a much more intensive use for animal husbandry that existed. Animal husbandry is a permitted use in the A3A zoning district defined as “the keeping, grazing, feeding and care of animals other than household pets” such as chickens and pigs. There is no question that the use of the property, that being the raising of pigs for 4H and for chickens, is in compliance with the zoning law. The issue is the structure itself. Mr. Replansky said Mr. Benincasa received a letter from Dale Davison, the previous property owner, which states she used the property to raise animals for her daughter, Erica, and they had a pony, muscovies, gerbils, hermit crabs, tarantulas, rabbits, dogs, and a cat. They had a turn out shed for the pony and later for goats for Erica’s 4H project. They also raised pigs, 4 pigs most years, and started them in stock panels when they were small and turned them loose in the garden as they got older. They also raised a beef calf on this

property. The rabbit project went from 1 to at least 50 and they had as many as 20 goats. Mr. Replansky said the use of this property for 4h, ag and animal husbandry in the way that it is currently being used is a use that has historically been a use on this property in a much more intensive way prior to the current use. We would maintain it is a nonconforming use that can be continued. He emphasized, per a comment from the previous public hearing, that this is not a commercial ag use. The use of this portion of the property and the shed and the lean to in the back are used for 4H purposes for Mr. Benincasa's sons. Mr. Replansky thought that may not have been adequately explained at the previous public hearing. Mr. Benincasa said when he bought the property in 2003, as soon as he saw that it was for sale, he met with Dale who told him the property's history since 1991, and he came to the Town Hall and was told there were no restrictions on keeping live stock. He said his wife was diagnosed with cancer in 2002 and that was when we decided to move. The reason we bought this house was for what we could do there with the understanding there were no restrictions. According to Dale, she had been using the property for animal husbandry since 1991 and she had pigs in there for 10 years before he bought the property. As a result, the property seemed like perfect fit for us. She stored the pigs in the garden but she had livestock panels. Mr. Benincasa said he had previously spoken to Tom Odak about the pigs and it was never an issue. Mr. Odak gave him tips and ideas on how to feed them etc. We had those conversations and were always open about things. It was always known that we had pigs and it was never a problem. Over the past winter, he was contacted by Stephen Cole, the building inspector, which was his first indication of a problem. At first, he thought the shed was right on the property line. Mr. Benincasa applied for the variance and the ZBA did a site visit. To show good faith, Mr. Benincasa hired a surveyor to get an exact measurement. He had estimated 12 feet from the line but the exact dimension is 16.4 feet. At the first public hearing, the meeting went from discussing the shed to the pigs which caught him off guard. He thought the variance was about the location of the shed. Mr. Benincasa said they talked to the previous renters of the property next door, their kids played together, and the issue of the smell of the pigs never came up. Mr. Benincasa said he contacted the previous renters and they told us the day they moved out, there was an extreme odor in the yard. They moved out in the March/April time frame. We got our pigs at least five months after they moved out so the smell could not have come from pigs that were not there. There are horses and cattle down the street and dead animals in the woods. Who knows where the smell was coming from but that is life as it goes in the country. Mr. Benincasa said the ZBA did a second site visit and he talked to some of the people who told him they could not detect any odor so he asked, was there any smell? Chairman Grumet said some Board members detected a smell, some didn't. Mr. Benincasa said when you have livestock, there is the possibility for that but as far as he knows, it was never an issue in the past. Again, they spent time with the previous tenants and it was never an issue. There were never any complaints. Since he has become aware of complaints, we have discussed gutter run off in the pig area and he said he is moving things around to dry that area out. He said his son is in there every other day to clean out the manure to remediate run off problems. Again, there are horses across the street and cows down the street, and Mr. Benincasa also has a St. Bernard. Regarding the issue of the pond, Mr. Benincasa said the pond is in great shape and he brought pictures. He said there is no reason to stock bass because there are plenty in the pond. He showed a picture

of the bass that his son caught in that pond last week. There are thriving bass in the pond. He said the pond is self contained and does not feed into anything. There is no inlet and no outlet. The pond runs off three to four weeks in the spring and that's it. As far as contaminating the Roe Jan, the pig manure from four to five pigs is five miles away so he does not see that happening. Mr. Benincasa said they started their own 4H club and have 13 members who are at the meeting. He has a letter from the Cornell Cooperative Extension stating his participation in 4H. They are raising the pigs for 4H purposes only. Mr. Replansky said there have been comments that this is destroying the community. He read segments from the Supervisor's Message off of the Town's website stating "Agriculture remains a small but highly cherished part of the Town's diverse activity"; "Residents are fortunate to enjoy a somewhat rural lifestyle and we are committed to maintaining it so. Individuality, privacy and diversity are highly valued here and we prefer to avoid suburban development concepts and way of life. We welcome to our community those who enjoy a bucolic lifestyle and share a willingness to sustain it." He said having a couple of pigs and 4H does fit into the parameter of this community. Mr. Benincasa said he has also brought the animals into the children's school so the classes can enjoy them, he has brought them to the Pine Plains FAA festival in the fall, he has brought them to the preschool. The animals fit into the community. Last month was the first time we heard anything about an odor. Everyone thinks pigs are smelly and dirty. That can be the case if they are not taken care of. Mr. Benincasa said he will change the gutter to keep the area drier and his son will remove the manure on a consistent basis. Mr. Replansky said the pigs are not there year round. Mr. Benincasa said they are there from the middle or end of April to sometimes August, sometimes November. It depends on the animals. He said he is not going to slaughter them if they are not up to a good weight. Mr. Replansky said the issue here is the structure and not the use. If the structure were moved to within the conforming setback, the use could occur there. If the structure were removed, the use could be continued. This Board needs to weigh the impact of the structure being 16 feet from side yard. Testimony has been received related to this permitted use. If you denied the variance, you would deny the use rather than the structure being too close to the property line. If the structure were within the required setbacks, Mr. Odak would have the same objections, which is an unfair reputation pigs have for causing problems. So many times when neighbors have disputes, one of them will come back and say I will start a pig farm. The building being 16 feet to the property line does not have a detrimental impact. Mr. Replansky said he suspects if the building had been used for storage and there were no 4H pigs, we would not be here. Take a look at the structure itself. The enclosed structure is used for storage. The open shed is used for the pigs. We could take the lean to and move it here on the side and that would decrease the non-conformity to 24 feet. We are willing to do that to mitigate. In addition, Mr. Replansky said his client will adhere as he has stated to sound ag practices for the raising of pigs. We contacted Ag and Markets for guidance and according to his information, his client is in compliance with at least the minimum standards for raising pigs. He will adhere to that. As a condition if you see fit to grant the variance, he will attend to the remove of manure in a different manner to remove the problem. This substantially reduces the nonconformity. This use is consistent with the neighborhood in terms of it is adjacent to an ag district, A3A is an ag district, Mr. Odak has his farm with farm animals which produce odors from manure on occasion, there are three horses

across the street which also produce manure odors on occasion. That is what happens in a rural community. That is why we have the right to farm law which should not be abused but this use fits in with the nature of the community in which this property is located. The property at the rear of this property is owned by the gravel mine. This shed, if moved to 24 feet, even though it is not at 35, is not going to adversely impact the neighboring community, especially if the permitted use is even more carefully practiced by my client. Mr. Replansky said you have the power to impose conditions and if they are not adhered to, the ZEO will issue a violation. As far as the pond issue, opposition to projects should not be made on the basis of speculative or inconclusive statements. No one has tested the water and if it is contaminated, is it coming from the pigs? Evidence shown here is that the pond is alive and breeding fish. We don't believe there is contamination. Mr. Replansky said with all that in mind, we would ask that this area variance be granted. If the Board goes through the criteria, you will see that this meets all the criteria. Being self- created, by your law and NYS law, is not per se grounds for denying a variance. Mr. Zemke asked if this property has the proper space requirements for these animals. Mr. Replansky said Mr. Benincasa conforms to sound practices. The guidelines for hogs are three to four head per acre, adults two to three head per acre. We are within that limit. Mr. Benincasa said per Dutchess County 4H rules, the most they can have is three per year per child. Mr. Replansky said per Ag and Markets, open air housing should provide sleeping and loping areas, they need to allow for natural ventilation and protection from elements, with six to eight sq. ft. of floor area per pig, etc. Mr. Benincasa complies with those requirements. Mr. Schneider said the property was split at one time. When the previous owner, Dale Davison, had all those animals on the property, was it the same acreage as it is now? Mr. Benincasa said yes, Dale had this acreage when she had the animals on the property. Mr. Replansky said the neighboring property owned by Steven Odak received a variance which allowed it to be split into two lots. The major issue being raised by the neighboring property owners is that someone may not want to buy the property because of the pigs which is not a valid reason to deny a variance.

Public comment: Terry Benincasa said if I don't do pigs, I won't have anything to do in the summer. He said we go to the Big E to do hogs and we are thinking of going to Pennsylvania to get some hogs. Right now we have 4. We take care of them ourselves. We go to the Dutchess County Fair and have won a couple of ribbons. Christopher Benincasa said we have 4 hogs in the pig pen and the hogs are the only main hobby we have. If we lose the hogs, we lose everything. Brian Underhill, Poughkeepsie, said he has been raising animals and has been in 4H for 11 years as part of the beef club and swine club. He said 4H teaches responsibility and respect for animals and teaches kids how to become a leader. Each year, he did his own project which came to an end at the Dutchess County Fair. Each year, he was required to do public presentations based on that interest and it was rewarding to know that what I had to say educated evaluators. 4H helps kids get better at public speaking, and teaches responsibility, leadership, organizational skills, and proper care of animals. Raising animals teaches many disciplines beyond the financial side. Anyone who is aware knows no one chooses farming as a life style for financial security. The reason they do is it is unique, it is for the opportunities and learning experiences. 4H is unlike any other extracurricular

activity, it teaches values that can help you out in the future in ag, politics, etc. He said after 11 years, he has no doubts and encourages anyone to join 4H. Connor James said he is one of CJ's friends, has been at CJ's house many times, and has worked with the pigs. He said when CJ first heard he could lose his pigs, he was very upset as he loves them. Connor said he has helped with the pigs and has gone to shows to show his support. CJ has won first, second and third prizes. What he does means a lot and if he lost the pigs, he would be upset and Connor does not want to see his best friend sad. Judith Donovan, Connor's mother, met the Benincasas six years ago and they became good friends. She said her sons got over their fear of animals while they spent a lot of time at the Benincasas and watched the family lovingly take care of the animals, truly take care of them, and teach the kids as they go. She said when she heard about this situation, she thought if they move the lean to, that takes care of it. Pigs and odors don't know boundaries. CJ and his brothers will be very sad if they lose their animals. Carmin Region, Fiddlers Bridge Road, said they have pigs and our neighbors didn't know we had them until they saw them at the fair last year so that's how much they smell. She said her lot is about the same area as the Benincasas, maybe a little less. Steve Odak, a neighboring property owner, said he had one correction for Mr. Replansky. He did not apply for a variance for the lot next door. That lot was a substandard lot at 1.8 acres and he did a lot line adjustment to make it 1.9 so he improved it. He said his other contention was and still is, if Mr. Benincasa had gone through proper procedures and went to the building inspector and applied for a building permit, the permit would never have been granted as the building is within the required side setbacks. The newest comprehensive plan has a whole section on natural resources and the largest thing is protection of water, well, ground, lakes. There was talk at the time but it was not approved of increasing setbacks around ponds and such. This is a real issue here. Another issue is the public nuisance - this is a public nuisance - the smell is unbearable especially with the humidity. We can smell the odor at the existing house. Mr. Odak said he is not against 4H but he did not put up a building without a permit; he did not put a pig pen 12 feet from his property line. Lisa Benincasa said she opens her windows a lot during summer and puts fans on, circulating air from the outside to the inside, and she said very rarely do we ever smell the pigs. Our house is not that far from the pig pen. She said she can remember one summer when it was extremely hot that we smelled them but that's it. Judith Donovan said asked if there was an understanding of the possibility that if the house wasn't being sold on the lot next door, this would not be an issue? The Benincasas have had the pigs for seven years and no one has brought this up. She said she has been out there for years and never sees anyone and does not understand why all of this is happening. Perhaps someone thinks the pigs are going to deter a potential buyer? Mike, Albany Post Road, said with regard to the contamination of the soil and water, would a decision be made based on hearsay? He suggested getting the water tested before a decision is made to find out if the water and/or soil are contaminated. Tom Odak who owns property next door said this is a sad day. His family owned the farm since 1919, he was born in 1920. He worked with his father since he was 16 years old and never had trouble with neighbors over all those years. The first time we had trouble there was with the former owner. They were trouble all the time with animals on the road and in our pond. There were complaints constantly; they were very disruptive. They finally moved. Over the years, Mr. Odak said he had three boys in 4h and helped many children in 4H,

he kept a lot of animals, and ran the farm for 20 years. He said he had no trouble with anyone. He hates to see that there is a problem that's trying to be justified with children. That's sad and he said he would never do such a thing. He despises what is being done here in this manner. What will you say against a child when there is a zoning problem in question here? I've done a lot for people over the years and never charged, I love kids, I have a neighbor who rents a house from me who has an 11 year old daughter who has a pig but she keeps it in Columbia County. They can say what they want about pigs but it is a total mis-truth. He said he never agreed to pigs there; that was misinformation. The lay of the land on that property, three-quarters of the property is solid rock, is tipped two ways, from east to west, like a funnel and the pigs are in back and everything slopes towards the pond. I've been there when it rains hard. All that water runs down into the pond. He said he never said anything because he doesn't want to see anyone pay heavy fines. This pond drains into another stream and then goes into the Roe Jan, which is a trout stream. Mr. Odak said he would like to have someone sit there when it is raining and the wind is blowing and smell the odor from the pigs, then would they want to live there. He said he is not against pigs, he had animals all his life and knows animals. His father used to raise pigs and never had trouble but he had a lot of acreage. There is an odor, no question about it. He said to use the children who were brought in here tonight is a sad state of affairs because I would not want to hurt a child in 4H at all. The owner of this property is 100% wrong. He should be civil and iron out the difficulties and not use the children here in 4H. I feel sad about that and he should feel sad. How can he stand back here and be honest and have all these children come up here and defend policies. No one dislikes children or 4H. Mr. Odak said he was with the Dutchess County fair for 20 years and handled a lot of people and never had trouble with ag. This could be settled if we could just sit down. Mr. Odak said his big problem is with the pond and he said he told Mr. Benincasa that one Sunday. There is no bass in that pond unless he put them in there yesterday. There used to be but not now except maybe for some bullheads. Mr. Odak said if he drains the pond, the part on Mr. Benincasa's property would be a mud hole. He keeps the pond up so that they can use that part of the pond. He said it is not right the way those pigs are held. The property is a funnel. Where will the water go? He said he helped initiate zoning in this town for protection for everyone. This lot is not 3 or 5 acres and it is not a level piece of ground. It is a bad piece of property to be used like this. He said there is no reason why a couple of people can't come and iron things out. This place is not for pigs. Mr. Odak said that he said I never said anything about the pigs, that's not so. I have watched heavy rains so I know what I am talking about. Mr. Replansky said they did not ask the 4H club to speak and we need to focus on the issues raised, not to pull heart strings on this. Steve Odak said if he had applied for a building permit, it would not have been granted. Mr. Replansky asked how come a building permit was granted for the garage for the extension and now we are told the garage was in violation? If it was in violation, it should not have been granted the permit. You can't rely on zoning being equally enforced. We were suggesting to you ways to mitigate these issues and did not come in an adversarial manner. There are ways to mitigate these issues and provide controls over this with sound agricultural practices. We think the pond is self-contained and is not an outlet to any other tributary to a stream and would like to see proof if it is, not just speculations. There should also be proof if there is contamination. We are willing to look at and deal

with ground water issues. If water is being contaminated as a result of this, we are willing to deal with it. This has not been brought to the board previously, this is the first complaint that has been lodged in seven years. It is not inconsistent that the property next door is being marketed for residential use. Chairman Grumet said one of the issues is when Mr. Benincasa did the addition he went for a building permit but he did not for the shed. Mr. Replansky said the use is permitted; if the structure is taken down, the use can continue on that property. Mrs. Benincasa referred to Mr. Tom Odak's comment about using children and said on the second Wednesday of every month, we hold our 4H meeting here at the Town Hall so we would normally be in a meeting at this time. We did ask one gentleman to speak and our children. Some children volunteered and some were turned away. That is not unfair, it is not using them, and she apologizes if that is the way it turned out. Our children have every right to speak their mind as to whether or not they can keep the pigs. Mr. Benincasa said the pigs belong to the kids and I am raising my children to advocate for themselves so it is 100% right for them to speak and it is a good experience for them. They are their pigs, not mine. Chairman Grumet said we have a lot of different opinions and different perspectives to consider.

Hearing no further comments, Mr. Russell motioned to close the public hearing, Mr. Schneider seconded. All aye. Motion carried. Chairman Grumet said the Board will take about 10 minutes to reflect on all the comments that have been presented tonight and the site visits.

Chairman Grumet called for Board discussion. He said this is one of the more difficult decisions with the ZBA. Every member of the Board feels empathetic to both sides. There are legitimate concerns. It is a noble goal to raise pigs and chickens for your children and they should be commended. The children did a wonderful job coming up here and telling us how important the animals are in their lives. They should be applauded for that. On the other hand, Mr. Odak has legitimate concerns. The odor of the pigs is hampering his enjoyment of his property. The shed was constructed too close to the property line without a building permit, negatively impacting his property. There are two neighbors, both landowners, and both have good reasons from a different perspective. To start our discussion, I want to make sure the board stays focused. The factors we have to consider per state and town guidelines whether (1) An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) The requested area variance is substantial; (4) The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance. The Board needs to focus on these five issues and process all the information from the public hearings and from the site visits and make a thoughtful decision. Mr. Mancini said he understands both concerns, they are both valid, and he was hoping there would be an alternative solution, that both parties could try to work this out, possibly by moving the building, creating a berm, put up a hedge fence, limit the number of animals or types of animals. He is

concerned that no matter how this goes, yes or no, it opens doors for problems down the road. A lot of people in town have horses and cows; this won't end tonight. Chairman Grumet asked the applicant and neighbors if they have spoken to each other to try to come to some sort of a compromise. Mr. Benincasa said he spoke to Tom Odak, he sat with him for an hour, an hour and a half, we chatted and I extended an invitation to Steve to talk but that never happened. The door was open for that. Mr. Replansky said he would be happy to extend an invitation to the Odaks to come to my office, discuss the matter, see what mitigation we can come to, and maybe we can come up with a solution or compromise. He said he would be happy to do that. Mr. Replansky said another thing the Board has to be mindful of is to be consistent in the way you apply the variance laws. If you have granted variances in some cases, you have to be mindful of what you have done in the past. He handed Chairman Grumet the minutes of the ZBA meeting of September 30, 2009 in which three area variances were granted, one to a Board member, which were much more substantial. Tom Odak said Mr. Benincasa was at my house talking to me. His main concern is the drainage to the pond; the other part is Steve and his house and the other land and said the best thing to do is to talk to Steve. Chairman Grumet asked Steve Odak if there was room for compromise, if he was open to further discussion with Mr. Benincasa, Chairman Grumet said the ZBA's perspective is if neighbors can work it out, it is beneficial to both of you. Mr. Odak said the only thing would be if the building could be moved to the western property line up on the hill. It would then be out of view of the next house to be built, allow the pigs for the rest of the season, and then no more pigs. The smell won't go away, the property is only 1.9 acres. There is no more room for negotiation. Also, that location is up above, sloping the other way, and doesn't interfere as far as drainage or site views. That would settle the issue and from then on, eliminate the pigs on the property because it is too small. Tom Odak agreed that the property is too small for pigs. He owns property next door, he is 90 years old, someday the property will be sold, it is ideal for a house and is a nice piece of property but when you have something like this, it is not right. He should bite the bullet; there are other places you can take and raise pigs like other people. We would settle for this year, but put boards around it, keep the manure picked up every day, put a tent over the top so there is no water running over the top of it. Keep the surface clean. Chairman Grumet said we are dealing with the shed too close to the property line. Mr. Russell said this is a tough decision but we have to think of the next person buying that piece of property. We need to think of everything when we make these decisions. Chairman Grumet said if the variance is granted to the shed, the shed will be on the property line long after Mr. Benincasa owns the property as a variance goes with the land, not with the property owner. Mr. Zemke said it is unfortunate this is a nonconforming lot and the adjacent lot is nonconforming and both are constricted. There is nothing in the Milan zoning ordinance that regulates the type or size of the property that you need to raise certain kinds of livestock. Pigs can be detrimental and there could be an issue with the water. Mr. Zemke said he has been to the site three times, once in the pen, and twice to the adjacent lot. He said he could not detect an odor, but when he was there, it was not hot and humid. Mr. Benincasa has said he is taking extra measures to keep the area clean. He has a lot in the A3A zoning district in an ag zone. The use is allowed; this is not a use variance. There is nothing in the law that says we regulate livestock. We do regulate public nuisance; however, he said he has not seen evidence that shows a public

nuisance. He said he did not smell anything. Basically, as is in a number of cases that come before us, they are non-conforming lots and are constrained in some way, and the structures are already there. Whether they had gotten a permit or not, we always try to accommodate. I would not approach this any differently. In the absence of evidence, I don't see the problem. The big issue is, is there a detriment to nearby properties? Mr. Zemke said he does not see where there is a detriment that can't be worked out by Mr. Benincasa's good practices which he has presented as evidence and that I have witnessed on the site. Chairman Grumet said from the Odak's perspective, they are dealing with the odors. I would hate to live in a situation where you can't enjoy your front yard due to odors; it would be a detriment if you can't enjoy your front yard. He said he has raised pigs himself and they are strong; there is an odor that is hard to take and a lot of factors that cannot be mitigated. The visual impact can be mitigated by fences or barriers but you can't control odor. The Odaks are claiming that the odor does not allow them to fully use their property and that is tough to mitigate. Mr. Zemke said I have not witnessed that. Mr. Zemke said it would be exceeding the authority of the Board to regulate the animals because there is nothing in the zoning law to guide us. The applicant has presented evidence to show us he can raise pigs if it is done correctly. Chairman Grumet said it is a detriment to Mr. Odak's property. Mr. Zemke said he has not seen evidence that it is. Chairman Grumet said there are two things that are detrimental – the odor and the visual impact. The shed was built too close to the property line, and it is a big looming shed overlooking the neighboring property. Mr. Zemke said yes, you will see the building. Chairman Grumet said the shed was built within sidelines; it should have been built 35 feet from the property line. Mr. Zemke said if that shed is moved 35 feet away and Mr. Benincasa chooses to withdraw his application for an area variance for that shed and puts the same animals there, where are we? We cannot regulate that. Mr. Schneider said we definitely have to follow the rule in the book if it's a nuisance or offending to the neighbors; are there pollutants running into the pond. He visited the property and said due to the configuration of the property, there is a good chance there are pollutants going into the pond. Chairman Grumet said we can't base our decision on conjecture; we would need a study of the pond; that should not enter into our decision making process. We need to concern ourselves with what we know, not what might be. Chairman Grumet said the decision hinges on whether the shed being too close to the property line is a detriment to Mr. Odak's property.

Chairman Grumet said the Board would consider two separate findings, one for the garage and one for the shed.

Chairman Grumet read the proposed Findings and Decision to allow an existing garage to remain in its current location 16 feet from the side property line which stated there would not be an undesirable change in the character of the neighborhood or detriment to nearby properties because the garage has been in this location since at least 1980, the benefit sought by the applicant cannot be achieved by a feasible alternative because the garage was in existence when the applicant purchased the house, the variance is not substantial because the garage is existing, the variance would not have an adverse impact on the physical or environmental conditions in the neighborhood because the garage has been in this location since at least 1980 and the alleged difficulty was not self-created because the

garage was there when the applicant bought the house. The Findings conclude that the benefit to the applicant does outweigh the detriment to the neighborhood or community and there were no conditions.

Mr. Russell motioned that the ZBA accept the Findings and Decision for the Area Variance for the Benincasa garage. Mr. Mancini seconded. All aye. Motion carried 5-0.

Chairman Grumet read the proposed Findings and Decision to allow an existing 20'x20' shed to remain in its current location 16.4 feet from the side property line. Chairman Grumet said based on the site visits and the public input, an undesirable change would be produced in the character of the neighborhood and there would be a detriment to nearby properties due to the odor and visual impact of the shed. Mr. Zemke said he does not think there would be a change in the character of the neighborhood, this is something that has been going on for a long time plus it is allowed by zoning, and the detriment to nearby properties is unsubstantiated. With careful animal husbandry which is evidence, there is not a detriment. There is a visual impact but it is screened by vegetation. It is possible someone could excavate and build a berm. The Board could put a condition on the variance for it to remain non-detrimental. Mr. Zemke does not share the belief that animals in an ag zone are a detriment to nearby properties. He did not smell anything when he visited the site and in the pen that would meet the threshold of nuisance to him. Mr. Zemke said he is not there every day and is not living there with his windows open, but when he was there, he did not see it. Mr. Schneider said he did feel that the undesirable change would be produced in the character of the neighborhood. The answer to (1) is that an undesirable change would be produced in the character of the neighborhood and it would be a detriment to nearby properties because the proximity of the shed to the property line, 16.4 feet where 35 feet are required, and the current use of the shed for housing pigs and chickens creates a detriment to the character of the neighborhood and nearby properties due to the odor from the pigs and the visual impact to the neighbors. (2) The benefit sought by the applicant can be achieved by a feasible alternative to the variance because the applicant could move the shed to another location on the property. (3) The requested variance is substantial. (4) The variance will have an adverse impact on the physical or environmental conditions in the neighborhood because the proximity of the shed to the property line, 16.4 feet where 35 feet are required, and the current use of the shed for housing pigs and chickens creates a detriment to the character of the neighborhood and nearby properties due to the odor from the pigs and the visual impact to the neighbors. Mr. Zemke said the adverse effects have not been substantiated. (5) The alleged difficulty was self-created because the applicant did not go through the building permit process; if he had, he would not have been allowed to build the shed in its current location, 16.4 feet from the property line where 35 feet are required. The proposed Findings and Decision conclude that the benefit to the applicant does not outweigh the detriment to the neighborhood or community and therefore the variance request is denied because the odor and the visual impact create a detriment to nearby properties that cannot be mitigated.

Mr. Russell motioned that the Zoning Board of Appeals accept the Findings and Decision for the area variance for the Benincasa shed. Mr. Mancini seconded. The Board did a roll call vote:

Mr. Mancini – abstain

Mr. Russell – Nay

Chairman Grumet – Aye

Mr. Zemke – Nay

Mr. Schneider – Aye

Chairman Grumet asked Mr. Russell if he understood that the Findings and Decision were to deny the variance. Mr. Russell did not and subsequently changed his vote to Aye. Motion carried 3-1-1.

2. **Robert Bard** – Doug Vissieri from Hudson Valley Wind Energy was present for the public hearing for the area variance request for Robert Bard to erect a 140 foot tower with a 10kW wind turbine on the top. The zoning ordinance restricts windmills to 75 feet. Chairman Grumet read the public notice. Mr. Vissieri said the windmill will generate about 7000 kilowatts a year and anything lower than 140 feet would not work. Mr. Mancini said he did drive by the windmill located on Route 7 and it did not appear to be that high. Mr. Zemke asked if there would be any reflective coatings, lights, or advertisements, flags or banners on the tower and Mr. Vissieri said no. They are not planning on leasing or selling power. Callum Benepe, Mr. Bard's son in law, said ever since they traveled to Hawaii and saw how the windmills operated and provided all the power for the area on wind alone, they wanted a windmill. The location on this property is perfect, as far out as possible and is not in anyone's view shed. They have talked to the neighbors who did not have any problems with it. Misti Nolan and Bill Stutz, who live next door, were present and thought it was a great idea and it may help out the grid a bit. Mr. Zemke asked how much of their power requirements this will cover. Mr. Vissieri said the wind turbine will offset their electrical use by about 80%; right now, they use about 9,000 kilowatts, the turbine will generate about 7,000. If the wind turbine makes excess energy, the power company will buy it back. A windmill will service one house. When asked about incentives, Mr. Vissieri said there are incentives from the government, he is not aware of any from the power companies. He said the windmill will withstand hurricane force winds. Chairman Grumet read the proposed findings which stated there would be no undesirable change in the character of the neighborhood because the property is large enough to encompass the wind turbine, the benefit sought by the applicant cannot be achieved by a feasible alternative because at a lower height, the wind turbine will not operate properly, the requested variance is not substantial, the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood because there were no neighboring property owners present to voice any objections and the property is large enough to encompass the wind turbine, and the alleged difficulty was and was not self created based on it is the applicant's desire to place a wind turbine on the property but he cannot do so within the height constraints of the zoning ordinance. The Board agreed the benefit to the applicant does outweigh the detriment to the neighborhood or community.

Mr. Zemke motioned that the Zoning Board of Appeals approve the Findings and Decision to grant the requested area variance to erect a 140 foot tower with a 10kW Wind Turbine on top. Mr. Mancini seconded. All aye. Motion carried 5-0.

Applications:

1. **Diana Bergherr** – Paul Hughes was present representing Diana Bergherr who has applied for an area variance to allow a private stable on her property located at 371 North Road, tax grid number 6572-00-773337. The property is 4.83 acres and the Town of Milan zoning required 10 contiguous acres to keep horses. The property is grandfathered for the use of a private stable but Ms. Bergherr wants to enlarge the barn. A pre-existing, non-conforming use cannot be expanded so she has applied for the variance for lot area which, if granted, will make the use conforming and allow her to expand on the size of the barn. Mr. Hughes said the applicant is planning on enlarging the barn from two stalls to four and will put an addition on the back towards the west side. There is a lean to on the west side now which will move to the north. The southern exposure will change from two doors to four doors. Mr. Hughes showed the location of the old fence and the proposed new fence. With regards to the screening the Board has requested, Mr. Hughes said on the north side of the property, they are moving the fence in about 40 feet off the property line which will allow us to plant some Colorado Spruce trees between the old and new fence. The trees would be 3 to 4 feet high, about 6 feet apart and go down to where the property falls down to North Road to screen the barn from the neighboring properties. The new fencing is not horse fencing; they will use one board with wire. Chairman Grumet said this screening plan looks good but they may have to take the tree line down a bit farther. The point is that we want the barn to be screened from the neighbors. Mr. Hughes said this plan is not to scale and where he shows the trees ending, the property drops off steeply. When asked if Ms. Bergherr was planning on keeping the horses on the property full time, Mr. Hughes said at this time, the horses will be here when Ms. Bergherr is here. She will bring them up for the summer and on long weekends. The Board agreed the application was complete and the public hearing could be scheduled.

Mr. Zemke motioned to schedule the public hearing for the June 22, 2011 ZBA meeting. Chairman Grumet seconded. All aye. Motion carried.

2. **Misti Nolan** – Misti Nolan and William Stutz were present regarding Ms. Nolan's area variance application to construct a fence 23 feet from her front property line on property located at 924 Salisbury Turnpike, tax grid number 6571-00-117158, in the A3A zoning district where a front setback of 85 feet is required. Mr. Stutz said part of the fence will be 39 feet from the property line and part will be 23 feet from the property line. The fence will run along the road that leads to the Salisbury Turnpike Bridge that is being renovated. When the Town cleared the area to do the bridge work, they cleared a lot of brush in this area and now people driving buy throw litter out the car windows, they have caught teenagers parking in that area, servicemen park to eat lunch and toss their litter out the window. So, they want to put up a fence in the open area, about 90 feet long. The rest of the area is brush so does not require a fence. The fence will be four feet at each

corner and peak in the middle at five feet and will be double panels in cedar. Glenn Butler, Highway Superintendent, said the fence needed to be at least 12 feet off the property line so as not to interfere with sight distance so they are well outside of that. Mr. Zemke said the Board will need a site plan showing dimensions, such as where you are putting the fence, the property line, the dimensions off the property line, and the length of the fence. The Board agreed the application is complete and the public hearing can be scheduled as long as the applicant brings the drawing to the public hearing.

Mr. Russell motioned to set the public hearing for the Nolan area variance application for the June 22, 2011 ZBA meeting. Mr. Mancini seconded. All aye. Motion carried 5-0.

Administrative Items:

- Approval of Minutes: Mr. Zemke motioned to approve the minutes of the April 27, 2011 meeting as presented. Mr. Russell seconded. All aye. Motion carried 5-0.

The next Zoning Board of Appeals meeting will be held on Wednesday, June 22, 2011 at 7:00 p.m.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board