

TOWN OF MILAN ZONING BOARD OF APPEALS MEETING MINUTES - FINAL  
WEDNESDAY, JULY 27, 2011

MEMBERS PRESENT:

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

MEMBERS ABSENT:

None

Chairman Grumet opened the meeting at 7:02 p.m.

**Public Hearings:**

- **Diana Bergherr Area Variance** - Paul Hughes and Diana Bergherr appeared for the continuation of the public hearing for Ms. Bergherr's area variance application to operate a private stable on 4.8 acres where 10 acres are required on property located at 371 North Road, tax grid number 6572-00-773337. The public hearing was opened at the June 22<sup>nd</sup> meeting and held open until this meeting.

Chairman Grumet read the legal notice, opened the public hearing, and explained that the ZBA will address questions from the last public hearing, the applicant will present an overview of her project, and then the Board will take public comment.

Chairman Grumet said it is important to understand that this property is currently a horse property and is allowed to have a private stable. He read from a letter that was sent to Dionne Graff who sold the property to Ms. Bergherr dated July 28, 2008 from Donald Smith, the building inspector at the time, which states that this is a legal horse property under the Milan zoning code because at the time of purchase, a private stable was a permitted use in the A3A district with no acreage requirements. In 2001, Local Law #3 was enacted which requires 10 contiguous acres for a private stable although it continued to be a permitted use in the A3A district. That local law made this property pre-existing, non-conforming in that it was a private stable prior to the enactment of the law. Given that, currently there is no limit to the number of horses that can be on this property. The current or future owner of this property can have as many horses as they want. Since Ms. Bergherr is requesting a variance to allow horses on this 4.8 acre parcel so that she may be able to expand the existing barn, if it were approved, this Board can attach certain conditions to the variance if, in the opinion of the ZBA, those conditions would mitigate some possible negative affects to the neighborhood or community. One such condition could be limiting the property to four horses and that condition would apply to any owner of this property as a variance is tied to the land, not the person. If this variance were approved, the number of horses would be limited to four instead of an unlimited number that is allowed now. Other conditions that the ZBA is considering is requiring a buffer to screen the barn from neighboring properties. At the last public hearing, we heard from residents that the recent land clearing, while legal, has been detrimental to their property

with respect to erosion. This condition would require three to four foot high Norway Spruce trees be planted six feet apart along the northern line. Another condition would be to require the front of the property be graded and seeded to help control erosion and for aesthetics. As part of this variance application, the ZBA has considered and taken a close look at the fence and barn placements and other factors that could have an impact on the environment and community and this review would not have taken place if Ms. Bergherr had not applied for the variance. At the present time, Ms. Bergherr is allowed to have horses on the property and she is allowed to cut down trees. It is all perfectly legal and Ms. Bergherr could sell the property to someone who could do the same thing. The conditions the ZBA proposes to impose if this variance is passed will mitigate possible negative affects to adjoining properties. We were approached by Ms. Bergherr's attorney over a year ago, who at that time proposed plans for a large eight stall barn, almost as big as the house, with intentions of also keeping the existing barn. That would have had a huge impact on the community and the ZBA said that was inappropriate. They came back and said they would remove the existing barn but still want the eight stall barn and the ZBA said it was still inappropriate. After going back and forth, we have finally reached a comprise which is to renovate and add to the existing barn, limit the property to four horses, and provide screening. This plan is the result of a lot of hard work and compromise from everyone. However, if this variance is not passed, if Ms. Bergherr decided with withdraw her request for this variance, then she can have as many horses as she wants and the Town or community would have no input. Another concern that was raised at the last public hearing was the possible discontinuance of use of this property being a private stable. A couple of residents spoke out, stating they believed this use was discontinued by Ms. Graff and that Ms. Bergherr has not had her horses there. Chairman Grumet said he has spoken to the town attorney about this. That is not an issue that is part of this variance application. It is an issue that would need to be taken up with the building inspector. The town attorney said there would have to be very clear, substantial evidence to show a discontinuance of use, it can't just be one neighbor's word against another's. That would be to ambiguous to meet the threshold for a judge to change the use of the property.

Ms. Bergherr gave an overview of her proposal. Ms. Bergherr said her goal originally when she started looking for property was to have a place to bring her horses home. She looked for three years before she found this property. She did have concerns so wanted proof that this was a horse property because she did not want a home she could not bring her horses to. She said she is a rider, not a breeder and not a trainer. She said this property suited her because it's near Saugerties where she takes her horses to show. After the show season, she will bring her horses to this property to chill out. Currently, they are stabled on Long Island. She said one of the reasons she thought this property was beautiful is because it sits high. Her reason for putting the application in for the barn was not to have more than four horses but to be able to have a wash stall and a feed and tack room inside the barn. Currently she said she has three horses and a pony and the pony probably will not come up here with her. She said she never intended to have more than four horses. She said she put up the new fencing because wants her horses protected from escaping onto the Taconic State Parkway or her neighbor's property; they are show horses and they can't be left outside. She said other than her home, her horses are the

most valuable things in her life. The first year she came up with one show horse and he stayed at the house with her for about four days after the show in October. Last year, she finished in August and brought him back to the property. She comes from a fenced in atmosphere and won't unload the horses unless it is behind a fence; she pulls the trailer right into the paddock. She said the place was a mess when she bought and she had the area cleared of a lot of shrubs, poison ivy and garbage which was very costly. She used a local person to take care of that and left the clearing up to him. She said she did tell him she wanted a screen left up but did leave the clearing to his judgment and she thought that's what he did. Basically, she just wants a place to bring the horses. She is not looking to do anything else but have them there. She said she can't do it yet because one horse is ill but she brings them up when she can. Mr. Zemke asked what is the percentage of time the horses will be here, and Ms. Bergherr said out of the year, eight weeks at the most and she never leaves them alone. When the horses are here, she will not leave them alone. Mr. Zemke asked about manure control and Ms. Bergherr said the town requires a dumpster so that's what I will do. She said she is very active with the Cornell Extension in Long Island and did think she would compost but she won't. The dumpster is the right thing to do and that is what she does in Long Island. She said she will switch to pellet bedding as it is cheaper to dump than shavings. Mr. Hughes added that the horses will be inside more than outside so there will not be a lot of manure outside. Ms. Bergherr said they will be outside also but, as she does on Long Island, they pick up the manure in the paddocks and indoors. Her horses are clipped because they are outside during the day but at night, they are in and the window is open. She said she has not brought the thoroughbred yet because there is only one paddock. Mr. Hughes said contrary to some opinions, horse farms are very clean. Peter Ackerman, a neighbor, went up and looked at the plan. Chairman Grumet showed him the existing house, existing barn, the northern boundary where the screening will be planted, starting in the far northwest corner, three to four feet high, six feet apart, the whole length stopping at the twin pines down by the road. The second condition would be the grading of the front lawn and the seeding to prevent further erosion. The new fence is set back from the trees 35 feet for maintenance and to leave room for the new trees and to keep the horses away from the property lines. The manure is kept by the barn on a concrete pad in a dumpster so it will not be leeching. As far as the barn renovation, the height won't change. Four stalls will be added for a total of six but one is for a wash room and one for storage. The renovated barn will be 21 sq. ft. by 42 sq. ft. and the siding will be in keeping with the existing barn and it will blend in with what is there architecturally.

**Public Comment:** Rae D'Achille, 357 North Road, said the letter from Mr. Smith to Ms. Graff states quite succinctly that once the property was no longer used to house horses, it would revert to the 10 acre requirement. Why would you consider a variance to allow four horses? Why was the fence put up before the variance was granted? Chairman Grumet said the variance is required because a non-conforming use cannot be expanded. That barn could remain there forever but can't be expanded. Ms. Bergherr wants to expand the barn so she needs an area variance to allow horses on 4.8 acres. The ZBA won't grant the variance unless there are conditions to mitigate any possible negative effects of the new barn. Legally, even if the variance was not granted, she is still allowed fencing. Frank Plant, 526 Academy Hill Road, said at the ZBA meeting

held on July 23, 2008, Ms. Graff brought up some questions. She checked to see how many horses could be kept on the property and was informed of the zoning law change to the 10 acre requirement to keep horses and was informed that if a new buyer purchases the house, the use does not transfer so they could not keep horses. Chairman Grumet said that is not correct. Mr. Plant read from Mr. Smith's letter, "In 2001, Local Law #3 was enacted which requires 10 contiguous acres for a private stable although it continued to be a permitted use in the A3A district. That Local Law made your property pre-existing, non-conforming in that it was a private stable prior to the enactment of the law. This property can continue to be used as a private stable since it is pre-existing, non-conforming until such time as the use is discontinued for a period of a year or more." Chairman Grumet said right now, under the law, this is a pre-existing non-conforming lot. If you want to challenge that, you would challenge the decision of the building inspector. We are dealing with what is currently law now which is that this property is a pre-existing, non-conforming lot. Mr. Plant said there have been no horses on that property for at least three or four years. Chairman Grumet said he did discuss this with the town attorney who said to challenge that would be a separate action the residents would have to take and it would be very difficult to prove. Mr. Plant said Ms. Graff was not living there for at least two years before she put the house on the market. Chairman Grumet said that concern would have to go to the building inspector. Ms. D'achille asked when Ms. Bergherr purchased the property from Ms. Graff, did Ms. Graff misrepresent it as a horse farm. Chairman Grumet said he believes Ms. Graff represented it as a horse property. Mr. Ackerman said everyone is concerned about their property and we all want our property to have value for resale and enjoyment. He said he was initially concerned with the clear cutting which had a dramatic effect on his property aesthetically and he was concerned about erosion and drainage. It can be beautiful to have a horse farm there. He said he did not know about the manure storage. If there was a strong smell, it would have a profound effect on his property. He initially shared the alarm that someone cut down the woods and the privacy between the houses. That said, Mr. Ackerman said seeing the plan does really address a lot of his concerns and he feels that it will benefit all properties if Ms. Bergherr turns this property into what is shown on the paper, as a beautiful place horses come for a couple months a year. It is much nicer than having the property tied up in a legal dispute and remain a tree cemetery which would be very unsightly. The long and the short of it is, he started out sharing his neighbor's concerns but now feels the plan addresses his concerns and this plan is the best plan to move forward and he endorses this plan. Mr. Hughes said as far as the fencing, he did get a building permit and the fencing was installed properly under Town guidelines. If this variance doesn't go through, horses could still be on this property or the owner could change it to raise pigs. Mr. Ackermann asked if there will be something in place to make sure the plantings are kept up or if a tree dies and needs replacing, it will be replaced? He said his property is the neighboring property to that line and he wants the trees to absorb water and for the visual effect. He does not want to have to have confrontation between neighbors to keep the trees up. Mr. Plant said a law was passed and he asked how do you break the law like you are doing here? Mrs. Plant asked Chairman Grumet if he was threatening us, telling us with the variance she will only have four horses but without it she could have 100 horses. She said she does not like the idea he is doing that to them. She asked what guarantee do we have that what she said will be followed through and

that the conditions will be followed? Chairman Grumet said we will make sure our conditions stick and there will be consequences if they don't. Mrs. Plant said you are changing it from not a horse farm to a horse farm. Are there going to be four horses? Will she be boarding horses?. Chairman Grumet said the maximum amount of horses will be four. If you see more, the building inspector would be your recourse. Hearing no further public comment, Mr. Russell motioned to close the public hearing. Mr. Mancini seconded. All aye 5-0.

Chairman Grumet read the proposed Findings and Decision. This is a Type II action. Under factors considered, will an undesirable change be produced in the character of the neighborhood or be a detriment to nearby properties? Mr. Mancini said it was a horse farm years ago so he does not think so. Chairman Grumet agreed and said if it hadn't been a horse property previously, this may have had a different outcome. However, this is a horse property already. This variance is making the requirements more restrictive and less non-conforming. Mr. Zemke said horses are a fairly low impact agricultural use and we are one of the few towns with a 10 acre restriction; every other town seems to have similar requirements of two acres for the first animal and one acre for each additional animal. It is possible to sustain them in a healthy way with this amount of land and they are in the stable most of the time. They will not be outside all the time. He said he does not see it as a huge impact. Chairman Grumet said the problem with the current Town law is that there is no limit to the number of horses on a property of 10 acres; one is given carte blanche. That is significant with a 10 acre parcel but more significant with a 4.83 acre parcel. Mr. Zemke said there is a limit to what a property can sustain before the animal warden shows up. Chairman Grumet said a healthy limit is different to different people and opens up the whole property for abuse. If the number of horses is limited, it is beneficial. The Board agreed that an undesirable change would not be produced in the character of the neighborhood because this property is currently classified as a pre-existing, non-conforming horse property, i.e. private stable. As such, there is no limit to the amount of horses allowed on this property. A condition of this variance will limit the number of horses to four (4) in perpetuity. Other conditions will include substantial screening on the northern property line and a grading and seeding for erosion control to ensure the character of the neighborhood is preserved. The overall effect of this variance will be to decrease the non-conformity of the property.

Can the benefit sought by the applicant be achieved by a feasible alternative to the variance? The Board agreed that there is no feasible alternative because this is a pre-existing, non-conforming lot so no changes to the existing structure can be made. In order for any renovation to or enlargement of the barn, an area variance is required. The barn is in complete compliance with the setbacks in the Schedule of Area and Bulk Regulations in the zoning code; if it was not, the variance would have been more difficult to get.

Is the requested variance substantial? Mr. Zemke thought it was. Chairman Grumet said the property is already classified as a horse property with no limit to the number of horses so the variance will decrease the non-conformity by limiting the number of horses. He did not think it was substantial. Mr. Zemke said he is unclear about this being a horse

property. We have a 10 acre limit, this property is 4.8, he thinks that is substantial. Mr. Schneider, Mr. Russell and Mr. Mancini agreed with Chairman Grumet that it is not substantial.

Will the variance have an adverse impact on the physical or environmental conditions in the neighborhood? Mr. Mancini said he does not think so since the horses will be inside a lot of the time and the manure will be stored in a bin. Mr. Zemke said no, not with the conditions that will be imposed. Mr. Mancini said the conditions will protect the neighbors. Mr. Mancini suggested the Board might want to include in the conditions to not only limit the property to four horses, but to also state no cows or pigs can be kept on the property. Mr. Schneider agreed and said the next resident could put goats on the property with the horses. The Board agreed it will not have an adverse impact because the variance does not change the nature of the property classification. Since this property could have an unlimited number of horses, by limiting it to four (4) horses, it prevents over-crowding now and with any future owner of the property. There are conditions in place to protect the environment as part of this variance.

Was the alleged difficulty self-created? The Board agreed that it is self-created as Ms. Bergherr has a need to renovate and enlarge the barn.

The Board agreed the benefit to the applicant does outweigh the detriment to the neighborhood or community and to attach the following conditions to the variance:

1. Implementation and maintenance of Norway Spruce trees from the north west corner of the property to the north east corner of the property 3 to 4 feet high, 6 feet apart, per the diagram submitted by Pal Hughes. This tree line must be maintained and any dead or decaying trees must be replaced. This tree line must be in place prior to the issuance of the Certificate of Occupancy.
2. Grading and seeding of the front (the north east quadrant of the property that was logged). This must be done prior to the issuance of the Certificate of Occupancy.
3. This property is limited to four (4) horses in perpetuity, and no further animal husbandry will be allowed on this lot, including the keeping of cows, sheep, goats, and pigs.
4. Property must be owner-occupied.
5. Manure storage must follow Cornell Cooperative guidelines.

Mr. Russell motioned that the ZBA approve the Area Variance Findings and Decision to allow a private stable on 4.83 acres where 10 contiguous acres are required. Seconded by Mr. Mancini. All aye. Motion carried 5-0.

**Discussion Items:**

- Carl Sardaro appeared to discuss an addition to the fire house on Jackson Corners Road. He showed the Board some preliminary sketches and said he believes they will need a variance. The reason for the addition is they have a problem with other fire companies when they are called in for mutual aid, they can't bring the trucks inside because the doors are too low. Part of the renovation will be to raise the doors. This is a corner lot in the A3A zoning district which requires an 85 foot front setback. A corner lot has two front yards. Mr. Sardaro said the building inspector's initial reaction was a variance was

not required because it is Town property but Mr. Sardaro said it is not, it is privately owned. He said they would like to get started on this renovation/addition soon so they can beat the bad weather. The Board agreed that if he can get his application and associated paperwork in by August 10<sup>th</sup>, they could schedule the public hearing for the August meeting.

Mr. Zemke motioned the ZBA schedule the public hearing for the August 24<sup>th</sup> meeting with the condition that the application is submitted by August 10<sup>th</sup>. Mr. Schneider seconded. All aye. Motion carried 5-0.

**Administrative Items:**

- Mr. Russell motioned to approve the minutes of June 22, 2011 as presented. Mr. Schneider seconded. All aye. Motion carried.

Mr. Russell motioned to adjourn the meeting at 8:45 p.m. Mr. Mancini seconded. All aye. Motion carried 5-0.

The next Zoning Board of Appeals meeting will be held on Wednesday, August 24, 2011 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk  
Planning and Zoning

cc: Catherine Gill, Town Clerk  
Town Board