

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, OCTOBER 26, 2011

MEMBERS PRESENT:

Jack Grumet, Chairman
Guy Russell
John Schneider
Phillip Zemke

MEMBERS ABSENT:

Rocky Mancini

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

Public Hearings:

1. **James Benincasa** - Mr. Benincasa was present, along with his attorney, Warren Replansky, for the public hearing for his area variance request to allow an existing shed to remain in its current location 16 feet from the side property line on property located at 157 Odak Farm Road, tax grid number 6473-00-367824. Chairman Grumet read the legal notice that was posted in the paper and sent to neighboring landowners. Mr. Replansky said there has been a history with this application. Mr. Benincasa previously applied for an area variance for this existing shed which had been used for the housing of his children's' pigs for 4H club purposes. The shed was constructed in 2004 without a building permit. Subsequent to the construction of the shed, a building permit was issued for the addition to an existing garage and no violations were found on the property at that time. The issue of the existing shed being in violation was brought to the attention of the ZEO by Mr. Steven Odak, a neighbor, who subdivided his property and concerned that pigs in close proximity would have an undesirable impact on the sale of the property. A notice of violation was issued for the shed. Mr. Benincasa appeared in front of the ZBA who granted a variance for the existing garage being too close to the property line but denied the variance for the shed. Mr. Replansky then filed an Article 78 on behalf of his client which is still pending but held in abeyance pending the outcome of this variance application. Mr. Benincasa has consulted with the ZEO and has agreed to not use the existing shed for raising the pigs; he has applied for and received a building permit to construct a new shed for the pigs in another area on the property that was recommended by Mr. Odak at the previous public hearing. The new shed will be in the center of the property in the back. Mr. Replansky said they raise the pigs as a hobby with 4H for the children for a few months out of the year then the pigs are removed from the property. The raising of those pigs would be shifted to the new shed which is in conformity with zoning because animal husbandry is an allowed use in this zone. The new shed will have concrete inside and outside and will provide a much better environment for dealing with the odor and run off issues. However, the issue of the new shed is not before this board because the ZEO has determined that it is an allowed use. This new application was filed based on the changed circumstances to allow the existing shed to remain in its current location. The existing shed will not be used for the raising of pigs; it will be used strictly

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for storage. Mr. Benincasa submitted pictures of the existing shed to show that it is well screened with existing foliage. Mr. Replansky said no one raised the issue of a negative visual impact of the shed, it was just the odor from the pigs that was problematic at the previous public hearing. The existing shed is quite screened from the neighboring property. There should be no visual impact on the Odak property and the property to the rear is the gravel mine. The property on the other side is a 179 acre horse farm owned by Tom Odak which has numerous buildings and animals. The property across the street is an 11 acre parcel with a single family residence which has three horses on it. Mr. Replansky distributed a memo to the board explaining the history of the case and then reviewed the standards for an area variance. He said that no undesirable change will be produced by the granting of this variance, and there are no visual impact problems. Even if the shed was the required 35 feet away from the property line, there would be no difference since it is adequately screened. Many properties in that area or elsewhere in the Town of Milan have similar sheds; many were built closer to the property line than what is allowed in the zoning law. There is nothing Mr. Benincasa can do to correct the need for a variance other than tear down the shed and rebuild it 16 feet over which does not make any sense. This could be considered somewhat of a substantial area variance as it is a 47% deviation from the setback requirements but Mr. Replansky cited case law which says that even if a variance is mathematically substantial, the real issue is whether the variance will have a negative impact on the surrounding properties. Mr. Replansky said it is fairly clear that this variance will not. There are no environmental conditions associated with a 16 foot shed now that the pigs are being shifted to a new location. He said the variance is a self-created hardship; we acknowledge it was built without a building permit at a time the zoning law was in effect. Mr. Replansky said he researched the history of applications that have been before the ZBA and culled out 49 applications for area variances that were granted by this board, 3 to sitting board members, that were much more intense than what his client is seeking. These types of variances should be granted to bring the property into conformity. You have been reasonable and fair in the past in granting this type of variance to citizens of the town. The real issue was the pigs and that has been removed. This is now really a routine area variance. Mr. Benincasa said that Steve Odak will be building his house far away from the shed area and with the existing screening, he won't even see the shed.

Hearing no further public comment, Mr. Russell motioned to close the public hearing. Mr. Zemke seconded. All aye. Motion carried 4-0.

Chairman Grumet said our main concern initially was the pigs being housed in the shed which was problematic for odors, etc. Our major concerns are addressed with the pigs removed from the existing shed and housed in a proper barn more suitable for the raising of pigs located in the middle of the property not requiring a variance. When a shed requires this type of area variance, unless there are overriding circumstances, the variance is typically granted. Judging from the previous site visits and the fact that the shed won't

be used for animal husbandry any longer, Chairman Grumet said he has no problem with the shed remaining in its current location. Mr. Schneider, Mr. Russell and Mr. Zemke agreed. Mr. Zemke said the garage on the other side of the property is 16 feet away from the side property line and that variance was granted at the last public hearing. He said he has no issue with this and he sees no compelling reason to screen this shed from anything or anybody due to the existing vegetation. A future house is a potential use that may or may not occur and we don't know the design and layout of the neighboring property. They could berm if and when they excavate if a potential neighbor had a problem. Mr. Zemke said Mr. Benincasa has submitted photos that show existing vegetation which is seasonal but there is enough there that if someone was concerned, they could also add additional plantings. Chairman Grumet said if there was a house closer to the shed, we may have asked for screening such as what we have done in the past, but in this situation without a neighbor present and with the large amount of natural screening, there does not appear to be a need for fence screening. Chairman Grumet said since the biggest concern of the neighbors at the last hearing was the pigs being housed in the shed, he will propose that a condition of the variance be that the shed is to be used for storage only, not to house any animals.

Chairman Grumet read the proposed findings. This is a Type II action. There was no public comment. Factors considered: An undesirable change will not be produced in the character of the neighborhood because this lot is located in an agricultural zone where this type of building is common and the building will be used for storage only, not animal husbandry. The benefit sought by the applicant cannot be achieved by a feasible alternative. The variance is substantial. The variance will not have an adverse impact on the neighborhood because there are other farm structures in the surrounding area which are similar and this lot is located in an agricultural district. The alleged difficulty was self-created as the shed was built without a building permit. The Board agreed on the condition that the shed is to be used for storage only, not to house any animals. Mr. Zemke motioned that the Zoning Board of Appeals approve the Findings & Decision to permit the existing 20 x 20 square foot shed be allowed to remain in its current location 16.4 feet from the side property line where 35 feet are required on property located at 157 Odak Farm Road, tax grid number 6473-00-367824. Mr. Schneider seconded. All aye. Motion carried.

2. **Christopher Del Giudice:** Mr. Del Giudice appeared for his area variance application to construct a 28 x 28 foot two car garage with a second floor for storage 18 feet from the front setback line where 85 feet are required on property located at 197 Milan Hill Road, tax grid number 6472-00-760130. The second floor will not be used for living space. The garage is 26 feet to the peak and 28 feet wide. Amanda Bodian, a neighbor, was present for the public hearing and viewed the map. Mr. Del Giudice said the tree will remain where it is. He said this is the best place to put the garage due to driveway access. Parts of the property are too wet and if we went to the other side of the property, he

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would require a variance there as well and he would have to excavate and redirect the existing driveway. The garage will match the architecture of the house and he thinks the color will be the same as well. Mr. Del Giudice said he needs the garage, especially for storage as he does not have a basement or attic. The garage will have electrical service but the only outdoor lighting will be facing the driveway. Mrs. Bodian said it looked fine to her but did want to make sure that any outdoor lighting would not be facing her property and Mr. Del Giudice said they would not, the lighting will face the driveway. Mr. Zemke said this seems to be the best place to put the garage. The only thing he could do to reduce the variance would be to move the garage closer to house but that would not really gain anything and would still require a variance. Chairman Grumet agreed and said typically, a garage is close to the house and driveway. Chairman Grumet read the legal notice that was posted in the paper and sent to neighboring landowners.

Hearing no further public comment, Mr. Zemke motioned to close the public hearing. Mr. Russell seconded. All aye. Motion carried 4-0. Chairman Grumet said this is a straight forward variance; the constraints of the lot don't allow any other logical locations since the garage should be close to the house. Mr. Zemke said the location of the house set up where the garage would go; there is no better place to put it.

Chairman Grumet read the proposed findings. This is a Type II action. Dutchess County Planning responded that this is a "Matter of Local Concern". An undesirable change will not be produced in the character of the neighborhood because the proposed garage will blend in with the existing structure and it is reasonable to place a garage near the house and driveway. The benefit sought by the applicant cannot be achieved by a feasible alternative to the variance because property constraints don't allow placement of the garage anywhere else on the property. The variance is substantial. The variance will not have an adverse impact on the physical or environmental conditions in the neighborhood because the architecture of the garage will match the house and the driveway is existing. The difficult was not self-created because the placement of the house and driveway and physical characteristics of the lot dictates the location of the garage. The Board agreed that the benefit to the applicant outweighs the detriment to the neighborhood and that there were no conditions.

Mr. Schneider motioned that the ZBA accept the Findings and Decision. Mr. Zemke seconded. All aye. Motion carried. While this is not a condition, the Board reminded Mr. Del Giudice that it is important to preserve darkness and he may want to consider not keeping lights on all night.

Administrative Items:

- Approval of the Minutes: Mr. Zemke motioned to accept the minutes of the September 28, 2011 meeting as presented. Mr. Schneider seconded. Motion carried 4-0.

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Discussion Items:

- Chairman Grumet said he has spoken with Stephen Cole, the Zoning Enforcement Officer, regarding the unregistered cars on the Milan Market site and Mr. Cole will be following up on that.

Mr. Russell motioned to close the meeting at 7:45 p.m. Mr. Zemke seconded. All aye. Motion carried.

The next Zoning Board of Appeals meeting is scheduled for Wednesday, December 21, 2011 at 7:00 p.m. at the Town Hall. (This meeting is scheduled on the third Wednesday of the month due to the Holiday.)

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board