

ZONING BOARD OF APPEALS MEETING MINUTES – FINAL
WEDNESDAY, APRIL 25, 2012

MEMBERS PRESENT:

Rocco Mancini, Chairman
Stephanie Fitzpatrick
Martin Otter
John Schneider

MEMBERS ABSENT:

Phillip Zemke

ALSO PRESENT:

Jack Grumet, Town Board

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

Public Hearings:

- **Zatwarnicki Area Variance/Special Use Permit:** Madeline and Stanley Zatwarnicki were present for the public hearing for their area variance and special use permit applications to construct an accessory apartment on the second floor of an existing garage on property located at 257 Milan Hollow Road, tax grid number 6470-00-576241.

Mr. Schneider motioned to open the public hearing. Mr. Otter seconded. All aye. Motion carried 4-0. Chairman Mancini read the legal notice. Mrs. Zatwarnicki explained the project. The area variance is required because the lot is 2.38 acres in the A5A zoning district which requires a minimum of 5 acres. They would like to build an accessory apartment in their garage for people to stay in when they visit or come to help out. They have no plans to rent the apartment out. Ingrid and Alan Kulick, next door neighbors, were present and said they have no problems at all with this variance or special use permit. Mr. Otter motioned to close the public hearing. Ms. Fitzpatrick seconded. All aye. Motion carried 4-0.

Chairman Mancini read the proposed Findings and Decision for the area variance. Mr. Schneider motioned that the Zoning Board of Appeals accept the Findings and Decision to allow the granting of a special use permit for an accessory apartment on a 2.38 acre parcel where 5.00 acres are required. Mr. Otter seconded. All aye. Motion carried 4-0.

Chairman Mancini read the proposed Findings for the Special Use Permit for an Accessory Apartment. Mr. Schneider motioned that the Zoning Board of Appeals accept the Findings for a Special Use Permit for an Accessory Apartment. Mr. Otter seconded. All aye. Motion carried 4-0.

Applications:

1. **Samuel Lore Request for Interpretation:** Mr. Lore was present to present his application to the Zoning Board of Appeals for an interpretation of the use on his property located on Round Lake Road, grid numbers 6470-00-411639/437672/443637-00. Mr. Lore submits that his use falls under “Commercial greenhouse and nursery, including office and sales yard” in Table A, Schedule of Use Regulations of the zoning code. Mr. Lore said raw materials are imported and made into landscaping materials such as topsoil, wall stone, and decorative boulders which he sells. Board members agreed that a site visit is required before the next meeting and that this application is complete so the public hearing can be scheduled. The site visit will be held on Saturday, May 12th at 8:30 a.m., meeting at the site. In attendance will be the ZBA members, Steve Cole, Building Inspector, and the applicant or a representative for the applicant.

Ms. Fitzpatrick motioned to set the date for the public hearing for this Request for Interpretation for the next ZBA meeting on Wednesday, May 23, 2012. Mr. Schneider seconded. All aye. Motion carried 4-0.

2. Edward Eiffert and Karen Hagstrom, Attorney, appeared regarding Mr. Eiffert’s application for a use variance on property located on Route 199, tax grid number 6671-00-073607. Ms. Hagstrom said this application was last before the Board in February of 2011. This property is 109 acres in the A5A zoning district adjacent to the Hamlet district. It is a residential neighborhood. The property is unusual in that it is very large in comparison to the surrounding properties. It is very hilly and rocky. Ms. Hagstrom said she would strongly encourage the ZBA to do a site visit as the topography of the property is so unusual, it is hard to describe. She said Mr. Eiffert obtained a building permit from the building inspector at the time, Don Smith, to build a 30 x 120 square foot shed on the property. He has spent a considerable amount of money and, based on a request for information that was prepared back in February of 2011 by the former ZBA Chairman which they received last week, they are submitting receipts for the rock hammering and the shed which total around \$90,000. She said when Mr. Eiffert wanted to make sure the foundation was going to be up to code so asked the current building inspector, Steve Cole, to come and take a look at it, Mr. Cole realized that the proposed building is not allowed under current zoning and issued a Stop Work Order. Ms. Hagstrom said the proposed building is designed to hold Mr. Eiffert’s equipment for his insulation business including barrels of insulation material and his trucks. There have been complaints over the years from neighbors that the next door property, 118 North Road, which is Mr. Eiffert’s residence, is very messy. Ms. Hagstrom said putting up this building will allow a win-win situation. The building will be aesthetically pleasing and hidden from view and it will allow Mr. Eiffert to clean up his property and house his equipment so this proposed building will take care of those complaints. She said the irony of this situation is that agriculture is permitted in this district. If Mr. Eiffert was planning on storing hay

in this building, it would be allowed. It is not the size of the building; it's what he is putting into it. She said no one intentionally did anything wrong here. She said she is aware that a use variance must meet rigorous standards. However, she has done research and is willing to speak with the town attorney. In their initial application, she cited cases where the Court of Appeals has ruled that you don't necessarily have to apply that set of rigorous standards given the set of circumstances. One of the standards is that there is no reasonable financial return for this property other than what is being proposed, i.e. putting up this shed and storing insulation. The Court of Appeals in this instance has said where there has been a good faith reliance on something (the building permit), can the applicant get back what he has spent? Here the answer is no, Mr. Eiffert would not be able to recoup that investment. Ms. Hagstrom said we have also submitted a document from a licensed engineer indicating that there is so much rock on this property and due to the terrain, it can't be used for anything else anyway, even using the rigorous analysis of a use variance. She said the Court says you can apply a good faith test, that use variances exist for a reason such as when an individual reaches out to remedy a wrong that has occurred through no fault of the property owner. Under that examination, can you recoup money spent? Is the proposed use inconsistent with the existing uses and the character of the neighborhood? Ms. Hagstrom said again, she strongly encourages a site visit so that the board can see that the proposed building is located high up and will be hidden from view. This is the type of case where we are hoping the board realizes this all came about through no fault of the property owner, he has spent a considerable amount of money, and if it was a different use, the building would be permitted anyway. What is proposed to be stored in this building is not harmful in any way. Mr. Eiffert displayed some photographs of the site. He described the drainage problem from his residence lot to North Road. He said he did some hammering to put in a sediment pond at the bottom of the property to alleviate the run off problems. The photos show the amount of hammering done of shale and rock where he wants to put the buildings. Mr. Eiffert said the building inspectors for years have received complaints about the trucks parked on his residence property which this building will alleviate. Mr. Eiffert said none of the neighbors have a problem with this building. Mr. Otter said his understanding is that this building will be used for more than just the storage of trucks but for mixing chemicals as well. Mr. Eiffert said he is in the foam insulation business. The foam comes in drums. The material is mixed when we go on a site, it will not be mixed in this building. The reason why this building needs to be the size we are proposing is because the trucks need to be parked in a warm place. They are diesel trucks and the insulation material cannot freeze; it is a liquid material. It does not have formaldehyde and does not break down. It has a shelf life of about six months. Mr. Eiffert said he was just trying to do the right thing when he got Mr. Cole involved. Mr. Otter then asked who owned the property. Mr. Eiffert said the property is owned by James Murphy; the deed is in his name. Mr. Eiffert said Mr. Murphy's property goes out to North Road. Mr. Butler, Highway Superintendent, won't allow us to have a driveway permit on North Road so we access the property through 118 North Road. There is frontage for this property, but no

access. Mr. Schneider asked Mr. Eiffert what was done with the material that was hammered out. Mr. Eiffert said much of it is on this site and the rest was used for the roadway leading to this property. The cost of trucking this material would be too expensive. Mr. Otter asked how he was planning on heating the building – the minutes refer to generators. Mr. Eiffert said he would love a radiant heating system but it will probably be a waste oil system. He has six trucks that he has to keep warm. Right now, there are generators in the trucks to keep them running on site so they do not have to plug into a customer's house. This building will have Central Hudson service. Mr. Otter said he read that Mr. Eiffert would like to increase the size of the building. Mr. Eiffert said that is his intention. He made a mistake on calculating the room for the trucks and the space in the building got tight quickly. Mr. Eiffert said he figured if he was going to go for it, he may as well do it right and be done with it so he submitted plans for both buildings. The plans are in the file. However, the size of the building can be addressed at a later date. When asked, Ms. Hagstrom said the purchase cost of the property was \$250,000 and the taxes are \$6,477. She obtained this information from public records. Mr. Otter asked what was James Murphy's intent when he bought the property. Mr. Eiffert said he and Mr. Murphy have had business transactions in the past. His relationship with Mr. Murphy as far as this property goes is for financial reasons. When this property went up for sale, it was always Mr. Eiffert's intent to put up a building but it is difficult to get a loan on a vacant piece of property with no access. This property is not valuable to Mr. Murphy but it is valuable to Mr. Eiffert for the proposed building and the fact that his residence property is right next door. Mr. Eiffert said before he purchased the building and started hammering rock, he got the building permit. Once he had the permit, he proceeded with the site work which included hammering the rock and building the sediment pond for the drainage issue. Right now, Mr. Eiffert said he is paying property taxes for a property we can't use and have no access to.

The applicant asked what the next step would be. Chairman Mancini said the Board will review the documents submitted today and will get back to the applicant as far as the amount due for the escrow account. Once the escrow account replenishment is received, the information will be forwarded to the town attorney for her review.

Administrative Items:

- Approval of Minutes: Mr. Schneider motioned to accept the minutes of the March 28, 2012 meeting as submitted. Ms. Fitzpatrick seconded. All aye. Motion carried 4-0.

Ms. Fitzpatrick motioned to adjourn the meeting at 8:00 p.m. Mr. Otter seconded. All aye. Motion carried 4-0.

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The next meeting will be held on Wednesday, May 23, 2012 at 7:00 p.m.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board