

TOWN OF MILAN ZONING BOARD OF APPEALS MEETING MINUTES – FINAL  
WEDNESDAY, JULY 25, 2012

MEMBERS PRESENT:

Rocco Mancini, Chairman  
Stephanie Fitzpatrick  
John Schneider  
Phillip Zemke

MEMBERS ABSENT:

Martin Otter

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

**Public Hearings:**

- 1. Young for Schmidt Area Variances:** Marie Welch, L.S. and Paul Fredericks, Realtor, were present on behalf of Elizabeth Young, Administrator for the Estate of Jeffrey Schmidt, for the public hearing for this area variance application. The property is located at 1261 Turkey Hill Road in the A3A zoning district, tax grid number 6573-00-659546. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners and opened the public hearing. Ms. Welch said they are seeking area variances for three of these structures for being in the side yard setback area but it might wind up only being two if they take one down. The structure that is closest to the road is a shed and Ms. Welch said she understands from Ms. Young that her grandfather built that shed and then added on to it. The shed in the back is a metal shed; the roof is caved in and that shed would probably be easy enough to take down. The other buildings certainly need to be cleaned up and addressed as to the way they are constructed. Ms. Welch said we are looking for variances for these structures as they were constructed too close to the line. Ms. Young is selling the property but needs to clear up these violations first. A neighbor, Mrs. Evans, whose property line is closest to these buildings, was present. She said one of these buildings is constructed on skids and the walls are made out of skids. She does not know if there is even any foundation. The roof is falling down and it is covered in particleboard and is rotted out and falling down. The garage does have a foundation. Paul Fredericks said as soon as he realized there were no building permits for these structures, he realized there was a problem and contacted Marie Welch and Steve Cole, the building inspector. Mr. Cole did go out and look at the garage. Mr. Fredericks said the garage does need additional work since it is not finished and he thinks skids were used to construct that building as well. Mr. Fredericks said it does seem to be 2 x 4 construction on the inside. He doesn't think the building inspector was able to get inside the garage when he visited the site though. Mr. Zemke asked Ms. Welch if the intent of the variance application is to get a variance for a side yard that would allow the buildings to remain and be used. Ms. Welch said yes, to remain where they are, to bring them into compliance with the zoning code by way of a variance. Mr. Zemke asked if the buildings were in compliance with the building code. Ms. Welch said the

building inspector would then have to come out and make sure they adhere to the building code. Mr. Zemke said the two sheds are in bad shape and he wondered if it would even be possible to restore them. Ms. Welch said the intent is to sell the property with the buildings as is. Mr. Fredericks said Ms. Young does not want to spend any more money on it to improve it. He asked if it would be possible to place a condition on the variance that before she sells it, she fixes it up. Ms. Welch said it is our intent to bring the lot into compliance so it isn't sold with violations. Mr. Fredericks said the property has to be cleaned up. A tree has fallen down and blocked the door to the furnace. The metal shed is in bad shape. Mr. Zemke asked if it is the intent to sell the property with the intent to use the wood furnace. Mr. Fredericks said they want to keep the garage and the building with the wood stove. Ms. Welch said another question raised by a neighbor is, is there a height restriction on an accessory structure.

Public comment: Ms. Evans, 1249 Turkey Hill Road, said the question is what would a purchaser do with the property. She wants to make it clear that these structures are only a few feet away from her property line and that she is not in favor of any of these buildings remaining where they are. What if someone turns the garage into a dwelling? What will happen down the line? What happens when I want to sell my house? Ms. Welch said she does not think it would be possible to get Board of Health approval to put an apartment in the garage. Ms. Evans asked what if I can't sell my house due to these structures being so close to the property line? You can fix the garage and the furnace room to look nice but they are still right there. What if no one wants to buy my house due to the garage? Ms. Evans said also, the fence is facing the wrong way. She is uphill from the property quite a bit so she has a clear view of what is there. Mr. Schneider said the ZBA members visited the property so know about what Mrs. Evans can see from her property. Ms. Evans said it used to be more wooded but with the storms, we have lost a lot of our screening and we still have more damaged trees to come down. The more we clean our property up, the more we get to see and the more we don't like it. Ms. Welch said there is not much room to put landscaping since everything is so close to the line. Mr. Zemke said it does not seem like good policy to bless something that is so challenged. Why would the ZBA want to make legal two sheds that are falling apart? We do not know if the garage was built according to the zoning code. We don't know if the person receiving the variance will be improving the property. And based on information received from Dutchess County Planning, outdoor wood furnaces are contrary to state law. There is nothing acceptable about these buildings. This Board has granted variances for buildings next to property lines in the past, but the owner is living on the property and using it and taking care of it. But that is not the case here. Mr. Zemke asked what could be said that would give him confidence that these buildings will be viable. Ms. Evans said the garage has radiant heating but the top is all open. Mr. Fredericks said he can see getting rid of the white shed. He asked the Board their thoughts on holding the public hearing over until the next meeting and having the building inspector do a site visit and report to the Board on the condition of the garage – is it structurally sound and what needs to

be done to finish it. Mr. Zemke said he would like some representation from the applicant as to the intended use of the building that houses the wood furnace. How will it be posted for sale? Is this represented as a house with a garage and this outbuilding as a furnace? Mr. Fredericks said he is calling this a hunter's cottage, a get away. Someone could put in a full home but it would be tough. Mr. Fredericks said he now has a key so the building inspector could do a complete inspection. Mr. Schneider said he agrees that the Board should have an inspection report by the building inspector and that the white shed with no foundation should go but the other one would need to be at least cleaned up. A selling point for this is going to be that it is a garage with a lift. To tear that down would be a huge loss to the property. Someone buying that is not going to leave that alone. You could leave the house the way it is but the big question is the wood furnace. It's a nice building. Could it be used for something other than a wood furnace? Mr. Zemke said his problem with that is it is so close to the property line. Mr. Schneider added that changing the garage to have an apartment upstairs would be almost impossible as you would require Board of Health approval for that. Mr. Fredericks suggested the Board add a condition to the variance that the garage cannot be used as an apartment. Ms. Evans reiterated that he did all this without permits. Had he applied for permits, none of this would be so close to the line. Mr. Schneider said the best situation to hope for is that the buyer would fix up the garage. Mr. Fredericks said a buyer would probably have to fix up the place before they could get a mortgage for it. At the very least, they would have to winterize it. Mr. Zemke said there is no way to ensure the work will get done. He added that wood furnaces are allowed in the Town, but there are state restrictions on them that exceed what this has. Possibly the wood stove would have to be brought up to state code. Mr. Fredericks said it's possible the buyer won't want to heat the garage.

Mr. Zemke motioned that, as per the applicant's request, the Board will hold the public hearing open until the August 28<sup>th</sup> meeting pending a structural report from the building inspector stating that either the garage meets the code or can meet the code and that there are no structural deficiencies that will prevent it from meeting the building code. Mr. Schneider seconded. All aye. Motion carried 4-0.

### **Applications:**

1. **Klawson Area Variance** – Mr. and Mrs. Klawson were present on behalf of their area variance application to install a handicap ramp on their property located at 1645 Route 199, tax grid number 6671-00-005450 in the Hamlet zoning district. Mrs. Klawson said they need to install a ramp so that they can bring a family member home from a nursing home. He is 36 years old and lost both of his legs 10 years ago in an accident. He is too young to be accepted into an assisted living facility. He's been in the nursing home for the past 10 years. They would like to have him live with them as their granddaughter, his daughter, lives with them. Their property is located right next to Jenny's BBQ. They need to put in a 50 to 55 foot ramp. A straight ramp would require retaining walls so they need to loop

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it around which puts them too close to the road and within the front setback. Looping the ramp around will also keep the basement entrance open. Mr. Zemke asked if they knew where their property line actually was. Since this is on a state road, there is a state right of way between the road and the property so we need to know exactly where the property line is to make sure the ramp will be totally on your property. The Board agreed the application is complete except for determining the property line.

Ms. Fitzpatrick motioned to set the date for the public hearing for the Klawson area variance application for the August 28<sup>th</sup> ZBA meeting pending locating the property line. Mr. Zemke seconded. All aye. Motion carried 4-0.

**Administrative Items:**

- Approval of Minutes: Mr. Zemke motioned that the ZBA accept the minutes of June 27, 2012 as presented. Mr. Schneider seconded. All aye. Motion carried 4-0.

**Discussion Items:**

- Mr. and Mrs. Klawson came back with a survey from their immediate neighbor, Jenny's BBQ. The survey shows the property line and what looks like a 12 foot easement between Route 199 and Jenny's property line. The Board agreed the Klawsons could extend the line to their property, confirm with a scale that it is 12 feet, and then adjust the ramp to make sure it is completely on their property. The Klawsons will resubmit their drawings tomorrow.
- The Board agreed to move the meeting scheduled for Wednesday, August 22<sup>nd</sup> to Tuesday, August 28<sup>th</sup> due to the fact that the Clerk will be on vacation the week of August 20<sup>th</sup> and that week is also Fair week.

Mr. Schneider motioned to adjourn the meeting at 8:40. Ms. Fitzpatrick seconded. All aye. Motion carried.

The next meeting will be held on **Tuesday, August 28<sup>th</sup>**, at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk  
Planning and Zoning

cc: Catherine Gill, Town Clerk  
Town Board