

TOWN OF MILAN ZONING BOARD OF APPEALS MEETING MINUTES – FINAL
WEDNESDAY, JANUARY 23, 2013

MEMBERS PRESENT:

Rocco Mancini, Chairman
Stephanie Fitzpatrick
Martin Otter
John Schneider
Phillip Zemke

MEMBERS ABSENT:

None

Chairman Mancini called the meeting to order at 7:00 p.m.

Public Hearings:

- **Schmidt Area Variances:** Marie Welch, L.S. and Paul Fredricks, Realtor, were present on behalf of Elizabeth Young, Administrator for the estate of Jeffrey Schmidt, for the continuation of the public hearing for property located at 1261 Turkey Hill Road, grid number 6573-00-659546 in the A3A zoning district. Ms. Welch said the owner, Jeffrey Schmidt who is deceased, had built several structures without building permits which are located within the setback in violation of the zoning code. At the last meeting, we discussed that the way the Town of Milan law is written, accessory structures can't be placed within the side yard setback area without a variance. Ms. Welch said she did the survey for the estate administrator and determined all the buildings were in the side yard. There are four buildings: two sheds, an accessory building that houses a wood furnace, and a garage. At least one of the buildings, and possibly others, are inadequate in construction. They are seeking variances so that Ms. Young can sell the property. At the last meeting, the Board asked us to obtain a letter from the town's zoning enforcement officer, Steve Cole, regarding the structural integrity of the garage. Mr. Cole said since he had no plans and there was no building permit filed for this building, Ms. Welch would have to hire an architect. A letter has been submitted from MGM Architectural Services, Martin G. McDermott, AIA, which describes the garage, the materials that were used to construct it, his concerns, and his recommendations/options. Mr. McDermott offered three recommendations: (1) Repair/complete the garage/workshop building, (2) demolish the garage/workshop in its entirety, and (3) remove the second story, perform repairs, and convert to one story building. Ms. Welch said in their opinion, fixing up the building would be cost prohibitive and not worth it, tearing it down would negate the need for the variance but there has been a lot of work put into the building and it seems to be a functional building with a vehicle maintenance pit in the western bay and an in-slab piping system for the purpose of a future radiant heat floor system. Mr. McDermott did not know the integrity of the piping system. Ms. Welch said their opinion was it would be a waste to tear it completely down. The third option seems to be the most viable, which is removing the second story, do the repairs, and convert to a one story building with a functional attractive roof which would bring it down to below fence level and make the building smaller and thereby less visible as there are trees in that area. Mrs. Evans, the neighbor, said the garage was built with skid walls which are caving down. She said Mr. Schmidt's grandfather started building it and Mr. Schmidt was finishing it in phases. Ms. Welch said the architect did have concerns about the second floor and the beams so making it one story would alleviate the concerns stated

at the last meeting about the ability to put in an accessory apartment but the building could still be used as a functional garage with the lift. Mr. Zemke asked Ms. Welch and Mr. Fredricks what it is that they would like to do with the garage. Ms. Welch said we are seeking a variance to allow the building to stay. Mr. Zemke asked about the other three buildings, the wood burning furnace and the two sheds. Ms. Welch said everyone seems to be in agreement that the two sheds need to be removed as they are in a state of disrepair. They are still seeking variances for the garage and the wood furnace building. Mr. Zemke asked what is the ultimate disposition of these buildings. Are you asking for a variance to allow them to remain as is? Ms. Welch said correct, but if the ZBA determines that the only way to grant a variance for the garage is to have the second story removed and a lower profile roof put on, then that would be a compromise for consideration. We would request that this Board grant a variance to leave the garage as long as these conditions are met and the variance does not become effective until the conditions are satisfied. The reason for the variance is to sell the property and the property can't be sold with encumbrances so Ms. Young desires to bring the property into conformance. Mr. Zemke said the garage is a non-conforming structure right now and is not occupied in its current condition. It does not meet the existing code. It cannot get a Certificate of Occupancy without extensive renovation. The issue is, what is the owner proposing to do about the garage and the wood furnace building? Mr. Zemke asked if the wood furnace building was operable to heat the garage. Ms. Welch said it is. However, Mr. Schmidt did most of work himself and there is no trail of what he did. Mr. Fredricks said the furnace building seems to be sound. The big concern is with the garage, especially the second story. Mrs. Evans asked, what if, down the road, someone buys the property and opens a car repair business? Mr. Zemke said we have no assurance that the new owner is going to be doing anything. He said in his opinion, he would need the property owner, or future property owner, to come in with a proposal as to what they will do with this building and that they will apply for a building permit to do the work, then we could consider a variance. It is difficult at this point to consider a variance to accept this building without any assurances. Ms. Welch said this Board can grant a conditional variance; that is within your right. Mr. Zemke said the building is in violation, it is an accessory structure which is too close to the property line and it was built without permits. This property is mostly rock. If someone comes to this Board who wants to put up a building and has nowhere else on their site to put the building except in the setback area then this Board does consider variances in that instance. Ms. Welch said it would be more expensive to try to move this building than to just tear it down. Mr. Fredricks said Mr. Cole's concern was the second floor which is why he wanted it reviewed by an architect. Mr. Fredricks' said his suggestion would be to reduce it to a one story, two car garage and the architect seemed to think that would be a good solution. He said the cost to fix the building as a two story building would be prohibitive. Mr. Zemke said to move forward, we should have an applicant come before us with a plan to fix up the building, a time frame to accomplish that, and requesting a variance based on this plan. As it stands now, we don't know when the building might get sold, who will buy it, and what their plans may be and you are asking the Board to tell you the plan. Ms. Fitzpatrick suggested possibly attaching a condition to the variance with a time frame for when the work needs to get done, such as within 10 months. Ms. Welch said the applicant did not know what she needed to ask for but without variances, what would be the point of fixing up the building? What if she spends all the money fixing it up and then doesn't get a

variance for it? Then, a lot of money has been spent for nothing. Mr. Zemke has if they can make the commitment to fix up building? Mr. Fredricks said Ms. Young was hoping to do this as a commission of the sale. The proceeds of this sale will be donated to a Long Island fire company so that is why she does not want to put any money into it; whatever money she puts into it, she will lose. Mr. Fredricks suggesting adding a condition to the variance that states what work needs to be done or there would be no Certificate of Occupancy issued. Chairman Mancini said then once the land is sold, the new owners would have to make sure the work was done. Mr. Zemke said the building could be purchased with that provision and then the new owners may never do the work. He said the building is non-conforming and he is not amenable to granting or voting for a variance that approves a non-conforming building that has no concrete plan to become conforming. Mr. Fredricks asked even if plans were drawn up showing the design of what the garage would look like? Mrs. Evans said she would not be in agreement with that either. Ms. Anderson said she thinks it would be silly to put in a one floor building. When asked where they lived, Mrs. Evans said she borders this property and Ms. Anderson is across the street. Ms. Anderson said in her opinion, they would be spending a lot of money to make the garage into a smaller building and it's still not doing the right thing. Mrs. Evans said there are no guarantees that whoever buys the property will do what is required to be done. Mr. Schmidt built the building without going through proper channels so who is to say someone else will come in and do the right thing. Chairman Mancini said if the new owners went ahead without a building permit, the neighbors would have to complain and make the ZEO aware of it. Mrs. Evans said she did not even know when the original building was built because when they first moved in in 1989, there were woods all around. They have since thinned the woods. Mrs. Evans said the problem is, we don't know who will move in, when they will move in, or what they will do. This Board may not be here at that time. Ms. Welch said the other scenario is you could have nice neighbors who want to clean this up. Mr. Zemke said to move forward, he would like to hear from the applicant that she is going to pursue option 3 and reformat this into a one story building. This Board would need to see a plan or concept to accomplish that so that we and the public can review it during the public hearing process and vet it out. He thinks that is the best option. Mrs. Evans said she just wants the building to go away. Ms. Welch said it has been the policy of this Board to grant a variance for accessory structures within the side yard setback area. Mr. Zemke said this structure is labeled a garage on the survey but it is not a conforming building. Therefore, it is an unusable structure. We don't know what the building is going to be. If we review a variance for a structure next to the property line, we need to see what the building would look like. That way, it is a clean application for a variance which states what the proposal is, that this is an inherited situation, but here is what I, the property owner, am going to do to improve it. What you have presented here is what you want the next person to do and we don't know who that would be. Mr. Schneider said he agrees with Mr. Zemke. He said he does not know the value of the structure, but is the house worth more with the garage there? If the money is not for personal gain, should they just sell it as it. The garage does have some value with the lift in it, but would it make a big difference in the total price of the whole property if they just removed the garage. Mr. Fredericks said the expense would be removing the building which would probably cost more than putting a roof on. Chairman Mancini asked if they knew when they would be removing the sheds and Ms. Welch said we have no firm plans to do anything yet. She

said we are here to rectify this problem. She said we could have ignored it and had it become someone else's problem but Ms. Young is trying to do the right thing. Ms. Welch said she does understand that the Board should have a plan in place as to how to move forward with this building and what it will look like once it is renovated. She said that is doable. However, Ms. Young could spend the money on renderings and this Board may not grant the variance. Mr. Otter said his opinion is the easiest and cheapest solution is to tear it down. This Board can't grant a variance to the structure in the condition it's in. Mr. Zemke asked if they could sell the property as is and Mr. Fredricks said no because there are violations associated with the property. Mr. Zemke said he just see a series of nuisance structures that have no value at this point in time. They are in violation of the Zoning Code and are a cause of concern for the neighbors. Mr. Zemke asked if there is anything in the transfer of the property to this person that allows the use of the sale proceeds to do some of that work? Mr. Fredricks said no. Mr. Zemke said his personal opinion is he cannot support accepting the building as it is. Ms. Fitzpatrick asked if they come back with a plan to convert this building into a one story, two car garage, would Mr. Zemke consider a variance at that point? Ms. Evans said she does not want the building there at all. There are no guarantees who will buy it and what it would become. Ms. Fitzpatrick said someone could buy the property and put up a building in a conforming location and so the same thing. She said in reading the letter from the architect, it appears that the third choice is the best choice financially – make the structure a one floor, two car garage with a nice roof. She said in her experience, removing buildings is very costly. It is cheaper to fix it up than tear it down. Ms. Welch said so this Board is saying we would have to come back with a building elevation, a rendering of a proposed building going from two stories to one story, a roof, height, landscaping, and fencing along the side line to buffer from the neighbor as a proposal, and we should provide prices on the cost of demolishing versus the cost of fixing the building up to standards. At that point, the owner would have to decide whether she wants to spend the money on fixing it up. Mr. Zemke said one way to move forward for the applicant is to sell the property with the encumbrances and have a plan detailing what the next owner has to do. Mr. Schneider said the current owner does not want to invest any more money into this when she is not getting any money out of the property. Another suggestion was for the applicant to look into the legal issue of whether or not, as administrator of the estate, she could be reimbursed for any money spent in fixing up the estate. Oftentimes, trusts include a means for reimbursement for the administrator.

Mr. Zemke said he thinks the way to proceed is to pursue the legal question of whether or not Ms. Young as the administrator can be reimbursed for money spent out of her pocket on the estate, then decide what is more appropriate to do, fix up the garage or demolish it. If she decides to move ahead with the improvements, this Board will need a solid plan to review. Mr. Zemke asked Ms. Welch and Mr. Fredricks if they wanted the Board to keep the public hearing open and give them an opportunity to answer the open questions or would they like the Board to close the public hearing tonight and take a vote on the application? Mr. Fredricks said keep the public hearing open and we will take this matter up with Ms. Young. Ms. Welch agreed.

Ms. Fitzpatrick motioned that the Zoning Board of Appeals hold the Young/Schmidt public hearing open until the February 27, 2013 ZBA meeting to give the applicant's

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representatives time to present these options to the property owner to determine how to move forward. Mr. Zemke seconded. All aye. Motion carried 5-0. This application will be placed on the February 27th ZBA meeting for continuation of the public hearing.

Administrative Items:

- Approval of Minutes: Mr. Schneider motioned that the Zoning Board of Appeals accept the minutes of October 24, 2012 as amended. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

Mr. Zemke motioned to adjourn the meeting at 8:05 p.m. Mr. Otter seconded. All aye. Motion carried 5-0.

The next meeting will be held on Wednesday, February 27, 2013 at 7:00 p.m. at the Town Hall.

Respectfully submitted,



Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board