

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, MARCH 26, 2014

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Stephanie Fitzpatrick

ALSO PRESENT:

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

Public Hearings:

1. **Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless** – Chairman Mancini motioned that, as requested by the applicant, the Zoning Board of Appeals adjourn the public hearing for Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless until the April 23rd ZBA meeting as per an email from Scott Olson, Esq., Young/Sommer LLC. Mr. Otter seconded. All aye. Motion carried 4-0.

2. **Smith Area Variance** – Warren Replansky, Attorney, was present representing Robin Smith who is seeking an area variance to construct a shed in front of the front building line of the dwelling but outside the required front setback in variance with Section 200-18A(2) of the Town of Milan Zoning Code on property located at 60 Hammock Hill, tax grid no. 6471-00-639331 in in the A3A zoning district. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners. Mr. Replansky said he believes this is a routine variance. He is presenting before the Board for the homeowner because it is their second home. This is a 15.9 acre parcel, a flag lot. The house is situated to the rear of the lot. They would be in violation of the zoning code because they are proposing to put the shed in the front yard, not the rear yard but they would meet the required front setback. The shed would just be in front of the dwelling. The rear of the property is heavily wooded and rocky. The only viable place to put the shed is in the front. There are other locations in the front but this is the best and any location in the front would require a variance anyway. They are proposing to install a 24 x 30 foot Bay Horse shed. Mr. Replansky submitted photos of the shed. It will be used for storage for the lawn mower, etc. Mr. Replansky also submitted photos of the proposed location and said the neighboring properties are not visible from this location. The site has many trees and is sloped in the back so to put the shed in the back, they would have to excavate. The shed will not be visible from the road. Mr. Replansky said he believes that this variances meets all the criteria for an area variance except that it

is a self-created hardship which alone is not a reason to deny a variance. No one was present for the public hearing.

Mr. Otter motioned that the Zoning Board of Appeals close the public hearing. Mr. Zemke seconded. Motion carried 4-0.

The Board completed the Findings and Decision as follows: This is a Type II action. There was no public comment. Dutchess County Department of Planning responded that this is a “Matter of Local Concern”. An undesirable change will not be produced in the character of the neighborhood as this is a flag lot and the shed will not be visible from the road. The benefit sought by the applicant cannot be achieved by a feasible alternative to the variance because this is a flag lot with a large front yard and a small, heavily wooded, rocky back yard. The requested variance is not substantial given this is a 15.99 acre lot. The variance will not have an adverse impact on the physical or environmental conditions in the neighborhood because this is a wooded lot and the shed will not be visible from the road or from surrounding neighbors. The alleged difficulty was self-created. The Board agreed that the benefit to the applicant does outweigh the detriment to the neighborhood or community. There were no conditions set for this variance.

Mr. Schneider motioned that the Zoning Board of Appeals accept the Findings and Decision to grant the area variance to allow a 20 x 30 foot storage shed to be located in front of the front building line of the dwelling on property located at 60 Hammock Hill, tax grid number 6471-00-639331. Mr. Otter seconded. All Aye. Motion carried 4-0.

Applications:

- 1. Leavitt Area Variance** – Jacob Bump of Bump Construction was present as the authorized representative of the property owner, Craig Leavitt, for the continuation of Mr. Leavitt’s area variance application for a front yard setback variance from 85 feet to 35 feet to erect a deer fence and driveway gate on property located at 250 Sawmill Road, tax grid number 6472-00-174298 in the A3A zoning district. Mr. Bump is the authorized representative for Mr. Leavitt. Mr. Bump said at the northern border of the property where a zero foot variance was being requested, there has been a lot line adjustment with the neighbor which has been approved by the Planning Board which will place the fence within the required setback area so will no longer require a variance. At the eastern and southern borders which require 35 foot setbacks, the fence is going to be installed within the 35 foot setback so no variance is required. Along the western border which is along Sawmill Road, a front yard variance was originally requested to 35 feet where 85 feet are required. There were objections raised by neighbors at the public hearing about that and Mr. Leavitt has agreed to push the fence back into the uphill slope to where they are now requesting a variance to 50 feet. That will bring the fence closer to the top of the hill and in reality, the fence will probably get set even further uphill due to the amount of rock in that area. It can’t be kept

in one plane. The request was for a 50 foot setback but it will be less at some points. Mr. Leavitt also requested a front yard setback variance for the gate location. It was discussed at the last meeting whether the gate should go down at the entrance or back into the driveway. Mr. Leavitt does not want it right at the entrance but if it is pushed back 85 feet, the Board expressed concerns at the last meeting about the safety concerns of people driving up the driveway not realizing there is a gate and then having to back out. Once all the plantings are in, the gate will be screened. They are planning to tie the gate into the deer fence so are requesting the same front yard setback to 50 feet. If the gate is too close to the road, the town plows will come along and push snow into it which could be a problem. Mr. Zemke said so the application has been amended to request a 50 foot front yard setback for the deer fence and gate and eliminates the request for a zero setback on the east side. Mr. Zemke said the variances will be from the property line and the property line is setback about 10 feet from the edge of the road. The fence will follow the contours of the hill. Mr. Bump thought that was accurate. Mr. Zemke said the Town of Milan does not have a fence ordinance which is why fences have to comply with the same setback requirements as a structure. Most communities regulate fences with regard to height and character and allow fences to be close to the property line. Mr. Zemke said he believes there are three or four instances of wire fences right on the property lines existing on Sawmill Road, probably on former farms. There is also one house that has a garden in the front yard with a deer fence around it. Mr. Zemke said he does not think deer fencing is out of character with the neighborhood and following the contours of the hill makes sense. Mr. Zemke also agrees that the gate location should not be buried too far down the driveway for security reasons. He said he is comfortable with this request, acknowledging the applicant did come back after the public hearing with a request for a lesser variance, from 35 feet to 50 feet. Mr. Schneider agreed and said he believes this is a nice compromise, recalling several neighbors at the public hearing stating their opposition to the fence being directly against the road at the bottom of the ledge for safety reasons. Mr. Schneider also believes the gate should be closer to road than the required 85 feet to block people from going up the driveway. Mr. Zemke said 50 feet is about three car lengths so it's not a bad location for the gate and the gate should be visible from the road. Mr. Otter asked for some clarification about where the 10 feet is from the edge of the road. Mr. Bump said from the eastern side of the blacktop, there is a 10 foot setback from the edge of the road where there is a gully which puts you right at the beginning of the uphill slope if you are at the driveway. Mr. Leavitt is agreeable to the gate being either 35 feet back or 50 feet back from the property line.

The Board completed the Findings and Decision as follows: This is a Type II action. The public comment received at the October 23, 2013 meeting is detailed in the Findings and Decision. An undesirable change will not be produced in the character of the neighborhood as the applicant pushed the fence back to lessen the variance requested and the fence fabric and poles will have a degree of transparency. The benefit sought by the applicant can be achieved by a feasible

alternative to the variance because the fence could be moved back further on the property. The requested variance is not substantial because the fence is back far enough from the road given the additional 10 feet between the applicant’s property line and the edge of the road. The variance will not have an adverse impact on the physical or environmental conditions in the neighborhood because the fence may impact wildlife trails on the property but that is not a significant impact. The alleged difficulty was self-created. The Board agreed that the benefit to the applicant does outweigh the detriment to the neighborhood or community. The Board agreed to set the following condition to the variance: The setback must be kept to a minimum of 50 feet from the property line for the deer fence and driveway gate.

Mr. Zemke motioned that the Zoning Board of Appeals accept the Findings and Decision to grant the area variance to allow a deer fence and driveway gate 50 feet from the front property line where 85 feet are required on property located at 250 Sawmill Road, tax grid number 6472-00-174298. Mr. Schneider seconded. All Aye. Motion carried 4-0.

Administrative Items:

- **Approval of Minutes:** Mr. Otter motioned that the Zoning Board of Appeals accept the February 26, 2014 meeting minutes as presented. Mr. Schneider seconded. All aye.

Rocco Mancini, Chairman	Abstain	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Martin Otter	Aye	Motion carried	3-0-1

Mr. Otter motioned to adjourn the meeting at 8:35 p.m. Mr. Schneider seconded. All aye. Motion carried 4-0.

The next meeting will be held on Wednesday, April 23, 2014 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board