

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, JUNE 25, 2014

MEMBERS PRESENT:

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

MEMBERS ABSENT:

None

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 July 23rd ZBA meeting as per an email from Scott Olson, Esq., Young/Sommer LLC. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

2. **Van Der Geest Special Use Permit** - Selina Van Der Geest was present for her special use permit application to add a one bedroom accessory apartment in an existing garage. The 18.72 acre property is located at 90 Merrow Down Lane in the A5A zoning district, tax grid number 6671-00-322036. Ms. Van Der Geest said they are currently adding a home office above an existing garage and decided they would like to add a one bedroom apartment for when both sets of parents visit from England. There is a letter from the Dutchess County Department of Health in the file dated June 25, 2014 stating that the existing sewage disposal system serving the garage/barn is suitable for a one-bedroom accessory apartment.

Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners and opened the public hearing. There was no public comment and the Board agreed that this application meets the requirements set forth in the zoning ordinance for an accessory apartment and had no questions. Mr. Zemke motioned to close the public hearing.

Ms. Fitzpatrick motioned that the Zoning Board of Appeals approve the Findings for a Special Use Permit for an Accessory Apartment on property located at 90 Merrow Down Lane, tax grid number 6671-00-322036. Mr. Otter seconded. All aye. Motion carried 5-0.

3. **Hunt Area Variance/Special Use Permit** – Mr. Schneider motioned that, as requested by the applicant, the Zoning Board of Appeals adjourn the public hearing for the Hunt Area Variance/Special Use Permit application until the July 23rd meeting. Mr. Otter seconded. All aye. Motion carried 5-0

- 4. Reynolds Area Variance** - William Reynolds and Laurel Morris were present regarding their area variance application to install a deer fence 10 feet from the front yard property line and side yard property line. The 13.06 acre property is located at 235 Knob Hill Road in the A5A zoning district, tax grid number 6671-00-659523. The property is located at the end of Knob Hill Road. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners. Mr. Reynolds said since the last meeting, he had a certified survey done, supplied a site drawing showing the proposed fence and supplied an image of the driveway gate which will be a manual gate. Mr. Reynolds said he had to adjust the requested variance because the survey shows the road has a 50 foot right of way, it is a dead end local road, which puts the fence closer to the property line. The fence will also run adjacent to an existing stone wall that has been there for 80 years. He said he will have to do some restoration work on the stone wall which is about 18 to 24 inches high. Mr. Zemke said so even though the applicant is proposing to place the fence one foot from the property line in a couple of places, he will be maintaining 15 to 18 feet from the edge of the pavement. Mr. Schneider said this is the last house on the hill of Knob Hill Road so there won't be much traffic. Mr. Reynolds said the only traffic is people who need to turn around and rarely, some people will use the back access to Wilcox Park. There was no public comment. Mr. Zemke motioned to close the public hearing. Mr. Otter seconded. All aye. Motion carried 5-0.

The Board had no other questions or comments. Chairman Mancini read the proposed findings which state that an undesirable change will not be produced in the character of the neighborhood, the benefit sought by the applicant cannot be achieved by a feasible alternative to the variance as there is no other feasible way to keep deer off of the property, the requested variance is substantial because the current zoning code classifies a fence as a structure so it must meet the minimum setbacks, the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood, and the alleged difficulty is not self-created. Ms. Fitzpatrick motioned that the ZBA approve the Findings and Decision for the Reynolds area variance. Mr. Otter seconded. All aye. Motion carried 5-0.

Applications:

- 1. Throckmorton Area Variance** – Elizabeth Throckmorton appeared regarding her area variance application to reduce the required acreage for a horse to three acres from the required ten acres. The property is located at 522 Fitzsimmons Road, tax grid number 6573-00-163930 in the A3A zoning district. Ms. Throckmorton said the property has been used for horses for at least 75 years and when they bought it, it was listed as a horse property. She said she would like to house two horses and is planning on adopting one and rescuing one. She said her son has cerebral palsy. He used to do therapy with Stephanie Fitzpatrick and they had a pony for awhile but he outgrew it. She said her son needs a job and this will help and she wants to reintroduce horses to the property. She said there is one barn on the property that they converted to a garage which has electric. They would get a movable stable for the horses from Brad's Barns in Kingston which

would be placed on the flat field area. The 10' x 24' building would have two 10' x 10' stables with Dutch doors and a 4' tack room. The fencing would be built on the highlighted area shown on the map. The property is divided by Fitzsimmons Road and the pasture would be the largest part of the property, across the street from the house and garage. There would be no well or septic on the pasture side. They will provide fresh water. Mr. Zemke asked her to provide a picture of the proposed stable prior to the public hearing.

Mr. Zemke motioned that the ZBA schedule the public hearing to be held at the July 23rd ZBA meeting. Mr. Fitzpatrick seconded. All aye. Motion carried 5-0.

- 2. Fowler Area Variance** – Charles Shaffer of the Olde Country Craftsman, Inc. appeared as the applicant for an area variance for property owned by Byron and Sharon Fowler on Fowler Lane, tax grid number 6470-00-194898 in the A5A zoning district to construct a pole barn 25 feet from the front property line and 25 feet from the side property line on a vacant parcel. Mr. Shaffer said Mr. Fowler wants to build a storage shed to house equipment. Mr. Fowler's dwelling is located on the lot in front of this one but due to the wetlands on that property, he would like to put the barn on the vacant lot. Mr. Zemke asked what the distances are from the proposed pole barn to the house. Mr. Shaffer will provide that information. He said that Mr. Fowler eventually wants to do a lot line adjustment and bring the pole barn onto the same lot as his dwelling. Mr. Zemke asked why he can't shift the location of the pole barn to meet the setbacks and Mr. Shaffer said there is a swale there so they would have to jackhammer. Mr. Zemke said he would like one map showing both the house and the shed and the distance between them and to the property lines and, if the applicant is going to eventually do a lot line adjustment, show on the map where the proposed new line may be.

Mr. Zemke motioned that the ZBA set the date for the public hearing to be held at the July 23rd ZBA meeting. Mr. Schneider seconded. All aye. Motion carried 5-0.

Discussion Items:

1. Elias Rabadi appeared with Warren Replansky, Attorney, for a discussion with the Board regarding Mr. Rabadi's desire to obtain a vending license for his property located at 1615 Route 199, tax grid number 6571-04-935404 in the Hamlet zoning district. Mr. Replansky said Mr. Rabadi submitted an application to the ZEO for a license for a vending permit which does not require site plan or special use permit approval. His application was turned down because he cannot meet one of the operating requirements of the law which is the removal of the vending cart from the property site at the end of each day. He said this creates a real problem for the type of stand Mr. Rabadi purchased which is large and has cooking facilities. Mr. Replansky considered asking for a use variance but a use variance is historically requested when the use is not allowed in a particular zoning district. This use is allowed but Mr. Rabadi just can't meet one of the requirements of the law for that use. Mr. Replansky has come up with two alternatives to review with the ZBA. The first is to treat this as an area variance.

He said there is some precedent even though area variances are typically from the bulk requirements of the zoning law. This would not be an application from the bulk requirements but would be an application for a variance from one of the operating requirements of a permitted use. Courts have considered this before mostly in the context of parking requirements or loading requirements usually for restaurants and uses of that sort where the use is permitted but operational requirements cannot be met. Many courts have decided those types of applications fall into a hybrid area – not quite use, not quite area – and they have left it to the discretion of the ZBA as to how to treat it. Usually the decision that is made is upheld by the court. Mr. Replansky asked the Board how they thought that approach would work. He said he would present a credible argument for an area variance which would include some decisional law and proof that the application meets the balancing test for an area variance. He said this Board would have the right to subject this to conditions that you feel would mitigate the problem of leaving the truck there. Mr. Replansky said he believes there has been some precedent set for allowing a vending cart to remain on a property anyway. The property that is located at the fork in the road on 199, the BBQ site, there are benches there and there is a food truck that has been parked there for a long time. When it is not in use, it is not removed. That is similar to what would occur on Mr. Rabadi's property.

The second alternative Mr. Replansky is presenting is an eating and drinking business. It is an allowed use in the Hamlet district and is separate from a restaurant. An eating and drinking business is defined as retail establishments selling food and drink for consumption on the premises, including lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption. This is different from a restaurant and different from the refreshment stand provision that allows you to operate by license. An eating and drinking business would require site plan approval. Mr. Replansky thinks this application meets the criteria for an eating and drinking establishment. He said his client would need a ruling from the ZBA that his proposal fits under this classification then we would go on to the Planning Board for site plan approval. Ms. Fitzpatrick asked if the vending cart is designed so customers can go inside and Mr. Replansky said no. Mr. Zemke said a refreshment stand is listed under Table A, the schedule of use regulations. That table refers us to Section 249, operating requirements. He said he believes that this would fall under a use variance. He said he cannot make the connection to an area variance. It is nowhere in the code that operating requirements are bulk requirements. Mr. Replansky said he would have to convince the Board that this would fall in between a use and area variance. Ms. Fitzpatrick asked if Mr. Rabadi is planning on leaving the trailer on the property long term. Mr. Rabadi said he is planning on re-building at some future time. Mr. Replansky said this Board could put a time period condition on a variance. Mr. Zemke said Section 200-60 clearly explains the criteria for a use variance and an area variance. Mr. Replansky said he is more comfortable going with the eating and drinking establishment approach but it may take some time. The ZBA would have to make the decision as to whether it fits the criteria unless the ZEO agrees that it does then he could send the application to the Planning Board for site plan approval. Mr. Otter said this

property is owned by Mr. Rabadi – where is he required to move the vending cart to? What if he moves it but keeps it on the property and screens it somehow? Mr. Replansky said what if he just moves it back 20 feet and screens it with a fence? Mr. Rabadi said this is not movable because it has a full kitchen with a fryer, grill, coffee maker, slicer, refrigerator and freezer. The power will be hooked up from the old store. Mr. Zemke said in Red Hook, the taco place is a fairly permanent installation – they move it for the winter but other than that, it's there all the time. Mr. Replansky and Mr. Rabadi will come back before the Board when they decide on what direction to go with.

Administrative Items:

- **Approval of Minutes:** Mr. Zemke motioned that the Zoning Board of Appeals accept the May 28, 2014 as amended. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

Mr. Zemke motioned to adjourn the meeting at 8:00 p.m., Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

The next meeting will be held on Wednesday, July 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