

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, MARCH 28, 2018

MEMBERS PRESENT:

Rocco Mancini, Chairman
John Schneider
Phillip Zemke

MEMBERS ABSENT:

Stephanie Fitzpatrick
Ingrid Kulick

ALSO PRESENT:

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

Public Hearings:

- 1. Bailes Area Variance** – Mark Graminski, P.E./L.S. appeared as the authorized representative for Ryan Bailes for the public hearing for his area variance application to construct a barn in front of the front building line of the proposed dwelling 15 feet from the side property line where 35 feet are required in the A3A zoning district on property located on Battenfeld Road, tax grid number 6472-00-261181. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners within 200 feet. Mr. Graminski said the lot was recently created by subdivision. Mr. Bailes originally owned the house but it was sold in January. This application is for two area variances: To reduce the side yard setback from 35 feet to 15 feet and to allow an accessory structure to be placed in front of the front building line of the dwelling. They may reduce the size of the barn in length but will still need the 15 foot setback off the property line. Due to the topography of the site and the woods, this is the best place to situate the barn. The barn is being constructed prior to the dwelling because there are shipping containers located on the site for storage until the house is built and Mr. Bailes has been informed by the Building Department that the shipping containers are not allowed on the property so the barn will provide the storage so he can remove the containers. There are no water or sewer facilities planned for the barn but it will have electricity. The house is placed in this location to be respectful to the neighbors. The plan shows the location of the SDS for the main residence which has been approved by the Department of Health. This location is the only place on the property where it can go. The requested variances are based on site constraints and topography. There are two neighbors in this area who have utility buildings in front of the house. The existing trees provide buffers. Mr. and Mrs. Larry Berman, 153 Battenfeld Road, were present. They came up to look at the map. They expressed concerns about the visibility of the house and barn from their deck and asked about the height of the barn. Mr. Graminski said the barn will be at or less than the allowed height which is 35 feet. Mr. Berman pointed out that 35 feet is higher than the existing trees. Mr. Graminski said the initial sketches of the barn were at 22 or 24 feet and the proposed size was 30 x 60 but the length will be reduced. Mr. Berman asked if the Board could require the applicant to plant more trees to provide more screening. Mr. Berman said he understands an applicant has to show a hardship to get a variance. Mr. Bailes just subdivided this land and now he is requesting a variance. He knew the property he was subdividing. Mr. Berman asked if that could be taken into consideration

as he requests additional screening. Mr. Berman thinks the barn will de-value his property as it will diminish the view shed. Mrs. Berman expressed concerns about the trees that will be removed to build the driveway as that will diminish their shield of privacy from the road. Mr. Zemke said if the barn was to be constructed where it did not require a variance, the Bermans would still see it. Driveway line of sight is mandated by the Town as Battenfeld Road is a Town road and it is a safety issue. Mr. Graminski said he can shift the barn five feet back if that will help but he will still require the side yard variance of 15 feet. As far as additional plantings, Mr. Graminski said he would need to talk to Mr. Bailes to see if he had any objections.

Hearing no further public comment, Mr. Zemke motioned to close the public hearing. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Ingrid Kulick	Absent		

Motion carried 3-0.

The Board completed the Findings as follows: 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 because this is the best place to put the barn due to the steepness and topography of the property; the requested variance is not substantial as the side setback was proposed to be 15 feet but the engineer has agreed to move it back to 20 feet; the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood; and the alleged difficulty is self-created. The benefit to the applicant does outweigh the detriment to the neighborhood or community. A condition to this variance is that the applicant put additional plantings at the lower end of the barn on the north side between the building and the property line for screening. They should be fast growing bushes, such as white pine, and do not need to completely conceal the barn but should break up the line of sight. The adverse impact to be minimized is to reduce the visibility of the barn from the adjacent neighbor.

Mr. Zemke motioned that the Zoning Board of Appeals accept the Findings and Decision for the Bailes area variance to allow a barn to be located in front of the front building line of the dwelling approximately 200 feet from the front property line and 20 feet from the side property line where 35 feet are required on property located on Battenfeld Road, tax grid number 6472-00-261181 with the condition for screening as stated. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Ingrid Kulick	Absent		

Motion carried 3-0.

2. Nejame Pools for Wike Area Variance - Steve O’Brien appeared as the authorized representative for Mark Wike for the public hearing for the Wike area variance application to place a 20 x 45 pool in front of the front building line of the dwelling on property located at 160 Milan Hill Road, tax grid number 6472-00-875130. The pool more than meets the required front setback of 85 feet for this zoning district. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners within 200 feet and opened the public hearing. Mr. O’Brien said in back of the house there is an uphill grade and a pond which would make it impossible to put a pool there. Around the house in the front there are four or five existing structures that form a courtyard area where they are proposing to put the pool. They are demolishing a couple of buildings and keeping a couple. They will use one barn for mechanicals and one for a pool house. The silo that used to be there has been demolished and they are using the circular concrete slab that is left for a seating area. They are not changing the grade. The whole area will be landscaped so you won’t see the pool itself from the road. You can see the grouping of buildings from the road. Mr. Zemke asked if the property owner had any other plans for this property that will require additional variances. Mr. O’Brien said there are no new structures proposed to his knowledge – just the pool is new. Everything else is being refurbished or demolished. The fence will be horse style fencing to match what is there now. The pool is a salt water pool with a heat pump, not a propane heater. There was no public comment.

Mr. Zemke motioned to close the public hearing for the Wike area variance. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Ingrid Kulick	Absent		

Motion carried 3-0.

Mr. Zemke motioned that the Zoning Board of Appeals declare the Wike area variance application a Type II action under SEQRA requiring no further action. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Ingrid Kulick	Absent	Motion carried 3-0	

The Board completed the Findings as follows: 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 because the topography of the property prevents the pool from being placed behind the front building line of the dwelling and the pool will be part of an area that is already developed; the requested variance is not substantial; the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood because while the pool is being placed in front of the front building line of the dwelling, it more than meets the required 85 foot front yard setback; and the alleged difficulty is self-created. The benefit to the applicant does outweigh the

detriment to the neighborhood or community. There were no conditions to the variance.

Mr. Zemke motioned that the Zoning Board of Appeals approve the Findings and Decision for the Wike area variance to allow a pool to be located in front of the front building line of the dwelling meeting the front setback requirements on property located at 160 Milan Hill Road, tax grid number 6472-00-875130. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Ingrid Kulick	Absent	Motion carried 3-0	

- 3. Robert Bard Request for Interpretation -** Robert Bard, Johanna Bard, and Jessica Bard were present for the public hearing for Robert Bard’s request for an interpretation to Section 200-23D(1) for a conversion on property located at 530 Field Road, tax grid number 6571-00-136075. Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners within 200 feet of the property and opened the public hearing. Johanna Bard said the property has 28.05 acres. We are requesting an interpretation for conversion of a barn that is on the property. Section 200-23D(1) of the zoning code requires a valid Certificate of Occupancy for a minimum of three years or that the structure has been occupied by the owner for a period of at least three years. The structure was issued a building permit but never got a CO for whatever reason so we are looking for an interpretation of the term “occupied”. Mr. Zemke said he did some research which he emailed to Board members prior to the meeting. The NYS Building Code does not provide a definition specifically for the word “Occupancy” but it does classify buildings by their occupancy such as residential, business, storage, assembly, etc. “Occupy” in terms of construction is what the building is intended to be used for, i.e. if someone builds a barn and gets a CO, they have the right to use the building as a barn. The structure in question was built as a utility building and has been used that way. Mr. Zemke said based on that, his opinion is that the building has been occupied by the applicant for more than three years and therefore meets the criteria of Section 200-23D(1). If you are living in a space, it is considered habitable. Other spaces are not considered habitable. The zoning code is missing that differential. Chairman Mancini said he agrees that the building is occupied by the owner and has been used continuously for the use it was built for. George Carrothers, an adjoining property owner, said he supports that interpretation. There was no other public comment.

Mr. Schneider motioned to close the public hearing for the Bard Request for Interpretation. Mr. Zemke seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Ingrid Kulick	Absent	Motion carried 3-0	

Mr. Zemke motioned that the Zoning Board of Appeals approve the following resolution:

BE IT RESOLVED, the ZBA received an application from Robert Bard dated February 28, 2018 for a request for an interpretation to Section 200-23.D(1), Conversion of existing buildings and structures, of the Town of Milan Zoning Code seeking an interpretation of the term “occupied”;

WHEREAS,

- The property is owned by Robert Bard and is located at 530 Field Road, tax grid number 6571-00-136075 in the A5A zoning district consisting of 28.05 acres; and
- The Zoning Enforcement Officer, Stephen Cole, in response to Mr. Bard’s request to convert an existing pole barn into an accessory dwelling unit, issued a determination dated February 28, 2018 that “This existing structure does not have a Certificate of Occupancy and has not been occupied by the owner for a period of at least three years”; and
- In their meeting on February 28, 2018, the ZBA motioned to declare this request for an interpretation of the term “occupied” to be considered a Type II action under SEQRA requiring no further action; and
- A public hearing was held on March 28, 2018 at which time one neighbor spoke out in support of the conversion.

NOW, THEREFORE, BE IT RESOLVED, after careful consideration of Section 200-23D(1) and the definition of occupancy in terms of the NYS building code, the Town of Milan zoning code, and the standard usage of the word “occupied” in relation to construction and occupancy, the Zoning Board of Appeals has determined that the word “occupied” when referring to a building means the occupancy of the building is the purpose for which the building is used or intended to be used. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
Ingrid Kulick	Absent	Motion carried 3-0	

Discussion Items/Correspondence:

- 3-for-2 Spring Series, Tuesday, April 24, 2018 from 4:00 to 8:30 at the Farm and Home Center.

Administrative Items:

- **Approval of Minutes:** Mr. Zemke motioned that the Zoning Board of Appeals accept the minutes of the February 28, 2018 meeting as written. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
- Ingrid Kulick	Absent	Motion carried 3-0	

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Mr. Zemke motioned to adjourn the meeting at 8:05 p.m. Mr. Schneider seconded.

Rocco Mancini, Chairman	Aye	John Schneider	Aye
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Stephanie Fitzpatrick	Absent	Phillip Zemke	Aye
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Ingrid Kulick	Absent		
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Motion carried 3-0.

The next regular meeting will be held on Wednesday, April 25, 2018 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board