

**TOWN OF FARMINGTON
ZONING BOARD OF APPEALS MEETING MINUTES**

APPROVED MINUTES

The following minutes are a written summary of the main points that were made and the actions taken at the Town of Farmington Zoning Board of Appeals meeting held on March 23, 2009.

Zoning Board of Appeals Members

Edward Hemminger--Chairman
Leslie O'Malley
Raymond Ward --Excused
Chris Dunfey
Gary Scribner

Also Present

Floyd Kofahl --Code Enforcement Officer
Ron Brand --Director of Development
Dale Hunt --471 Hook Road, Farmington, N.Y. 14425
Glenn Thornton --Thornton Engineering, Mendon, N.Y.
Diane Moore --DiPacific's, CR 41, Farmington, N.Y. 14425
Jim Hanford --179 Yellow Mills Road, Farmington, N.Y. 14425
Brian Gilbert --6060 Allen Padgham Road, Farmington, N.Y. 14425
Brent Woodhouse --223 Heather Lane, Farmington, N.Y. 14425
Carl Essler --295 Woodcliff Drive, Fairport, N.Y. 14456
Jess Sudol --Passero Associates
Kevin Morgan --Morgan Management

Open Meeting

Edward Hemminger called the meeting to order at 7:00 pm. He explained the emergency evacuation procedures and rules of procedures of the meeting and stated that copies of the evening's agenda and legal notices were available on the table by the door. He then asked those present to sign in if they had not already done so.

Approval of Minutes

Gary Scribner made a motion to accept the February 23, 2009 meeting minutes and the motion was seconded by Leslie O'Malley. A voice vote was taken and the motion was passed with four (4) Ayes. Raymond Ward was excused.

BOARD BUSINESS:

#ZB 0302-09

Dale Hunt

Area Variance

Edward Hemminger read the legal notice for #ZB 0302-09 that was published in the Daily Messenger on Monday, March 16, 2009 requesting an area variance.

Dale Hunt, Applicant, addressed the board stating that another variance would be required for an accessory structure that will be placed in front of his home. This will be discussed now but another meeting will be required for that variance. For the current requested variance Dale stated that from a setback stand point this is the best location for the indoor arena and that there are wetland issues on the north side of the property. Dale also stated that there is at least 350' between the proposed building and all neighboring homes and a 500' setback from Hook Road.

Floyd Kofahl stated that the terminology of a riding arena is that it doesn't house livestock but does shelter them and because of the terminology is why this came before the zoning board. Floyd also stated that in a RR80 district it is a 200' setback that is required but if you actually see the land you realize it is almost impossible to put it behind the residential structure. Floyd also stated that if the riding arena was found to be used by others other than the family it would turn it into a commercial operation and would also violate the variance. It was also stated that any building that has an agricultural status is on a 3 year term to be reviewed and inspected to see that it is conforming to the agricultural status.

Gary Scribner asked if the riding arena was going to be used privately for his immediate family and not for commercial purposes or public use such as clubs or events. Dale Hunt replied yes. Gary said he would ask for this restriction in the variance. Dale also stated that he had talked to the neighbors and received their approval. Gary also asked that Dale submit the actual height of the nearby structure to compare it to the height of the proposed building.

Edward Hemminger asked what would be the purpose of the building once it is no longer a riding arena. Dale Hunt stated they have a substantial monetary investment in the property and plan to live there for a very long time and also stated the building is best suited for a riding arena. Ed asked Dale to bring in letters of support from the neighbors for the next meeting.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Leslie O'Malley and seconded by Gary Scribner at 7:18 p.m. to keep the Public Hearing open until the April 27, 2009 meeting. There were four (4) Ayes. Raymond Ward was excused.

#ZB 0303-09

Helen DiPacific

Area Variance

Edward Hemminger read the legal notice for #ZB 0303-09 that was published in the Daily Messenger on Monday, March 16, 2009 requesting an area variance.

Glenn Thornton, representing Helen DiPacific, noted Diane Moore was also present to represent Helen. Glenn stated that the site plan has been in front of the Planning Board and that the owner agrees to close both driveways entering onto CR 41 because of the proximity to Route 332 and the Planning Board agreed this would be a safer condition. Glenn also mentioned that the owner is pressuring for an access easement from RG&E in order to bring a driveway for the home onto Hathaway Drive. The variance is needed because of the proximity of the driveway to CR 41 intersection. The property is used for apartments in the rear and an art academy in the front. Helen is preserving as much of the historic nature of the property as she can.

Ron Brand stated that if granted this would be the first variance granted under the Major Thoroughfare Overlay District (MTOD) regulations.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Leslie O'Malley and seconded by Edward Hemminger to close the Public Hearing at the 03/23/2009 meeting. There were four (4) Ayes. Raymond Ward was excused. The Public Hearing was closed at 7:27 p.m.

Gary Scribner made a motion to waive the reading of the SEQR Resolution and Leslie O'Malley seconded the motion. All present voted Aye. Raymond Ward was excused.

Chris Dunfey made a motion to accept the SEQR Resolution and Gary Scribner seconded the motion. All present voted Aye. Raymond Ward was excused.

AREA VARIANCE FINDINGS & DECISION

After discussion of the factors to be considered the Board felt there would not be an undesirable change to the neighborhood or detriment to nearby properties, that the relief sought could not be achieved by a feasible alternative, the requested variance would not have an adverse impact in the neighborhood, that the alleged difficulty was not self-created.

After discussing the variance, the Board approved the Area Variance Findings and Decision. Leslie O'Malley made a motion to approve the application and Chris Dunfey seconded the motion. All present voted Aye. Raymond Ward was excused.

Public Comments:

There were no Public Comments.

#ZB 0304-09

John Williams

Area Variance

Edward Hemminger read the legal notice for #ZB 0304-09 that was published in the Daily Messenger on Monday, March 16, 2009 requesting an area variance.

Jim Hanford, representing John Williams, stated that the residential structure was 700-800 feet from the road and there is a tin building 150 feet in front of the residential structure. The new structure would be behind the existing tin building and virtually invisible from the road and would also be a tin building with the same pitch to the roof but smaller than the existing building. Jim also stated that this is the most convenient location for the structure.

Leslie O'Malley asked if there would be outside lighting and stated that there is a dark sky compliant rule in Farmington. Jim replied that there were no plans for outside lighting.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Gary Scribner and seconded by Leslie O'Malley to close the Public Hearing at the 03/23/2009 meeting. There were four (4) Ayes. Raymond Ward was excused. The Public Hearing was closed at 7:36 p.m.

Edward Hemminger made a motion to waive the reading of the SEQR Resolution and Gary Scribner seconded the motion. All present voted Aye. Raymond Ward was excused.

Gary Scribner made a motion to accept the SEQR Resolution and Chris Dunfey seconded the motion. All present voted Aye. Raymond Ward was excused.

AREA VARIANCE FINDINGS & DECISION

After discussion of the factors to be considered the Board felt there would not be an undesirable change to the neighborhood or detriment to nearby properties, that the relief sought could not be achieved by a feasible alternative, the requested variance would not have an adverse impact in the neighborhood, but that the alleged difficulty was self-created.

After discussing the variance, the Board approved the Area Variance Findings and Decision. Gary Scribner made a motion to approve the application and Leslie O'Malley seconded the motion. All present voted Aye. Raymond Ward was excused.

Public Comments:

There were no Public Comments.

#ZB 0305-09

Brian Gilbert

Area Variance

Edward Hemminger read the legal notice for #ZB 0305-09 that was published in the Daily Messenger on Monday, March 16, 2009 requesting an area variance.

Brian Gilbert addressed the board stating that the building would be only for personal storage and not for commercial or business usage.

Floyd Kofahl stated that setbacks are not an issue but because the structure will be forward of the house. Floyd also stated that there is a fair amount of falloff in the back hindering the location there.

Edward Hemminger asked if it was moved back as far as it could be and Brian stated it was because of the trees present and that is also where it starts to drop off.

Gary Scribner asked what doors would be in the structure and Brian said there would be one main door on the south side and possibly one on the other side.

Ron Brand asked how he would access the building. Brian stated that the town has a turnaround for dump trucks and he would use that but mainly he would be accessing the building by the main door of the house.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Leslie O'Malley and seconded by Chris Dunfey to close the Public Hearing at the 03/23/2009 meeting. There were four (4) Ayes. Raymond Ward was excused. The Public Hearing was closed at 7:44 p.m.

Leslie O'Malley made a motion to waive the reading of the SEQR Resolution and Gary Scribner seconded the motion. All present voted Aye. Raymond Ward was excused.

Gary Scribner made a motion to accept the SEQR Resolution and Chris Dunfey seconded the motion. All present voted Aye. Raymond Ward was excused.

AREA VARIANCE FINDINGS & DECISION

After discussion of the factors to be considered the Board felt there would not be an undesirable change to the neighborhood or detriment to nearby properties, that the relief sought could not be achieved by a feasible alternative, the requested variance would not have an adverse impact in the neighborhood, but that the alleged difficulty was self-created.

After discussing the variance, the Board approved the Area Variance Findings and Decision. Leslie O'Malley made a motion to approve the application and Chris Dunfey seconded the motion. All present voted Aye. Raymond Ward was excused.

Public Comments:

There were no Public Comments.

**#ZB 0306-09
Through #ZB 0334-09**

Morgan Plaster Mill, LLC

Area Variance

Edward Hemminger read the legal notice for #ZB 0306-09 through #ZB 0334-09 that was published in the Daily Messenger on Monday, March 16, 2009 requesting the area variances.

Karl Essler addressed the Board and explained that what has prompted all the setback variance requests and one density variance is the fact that after they had gone through the Planning Board process and got a site plan approval for the entire 296 unit rental development which included phasing and had final site plan approval on phase 1 and preliminary approval on phase 2 and phase 3, problems with the financial markets occurred. Banks would only finance the entire project and this would mean we would be putting a mortgage on the entire property to finance phase 1 with no guarantee or assurance from the lender that they would approve phase 2 or phase 3.

Edward Hemminger stated he had attended the Planning Board meeting last Wednesday when this was presented there and the Planning Board gave a recommended approval of the variances in general in resolution to us. Ed explained that in its original configuration the project did not require any variances. Subdividing it is what has required the variances.

Karl Essler replied that there are now lot lines where there were phase lines which now creates the variances. It is intended as a single development and there is no intention within the subdivision to sell off individual lots. Our intention is to develop this as a unified project. Karl suggested making a reciprocal agreement as a condition of the Board's approval that would ensure it is developed exactly as approved by the Planning Board as a whole development even if part of it is sold off.

Kevin Morgan, of Morgan Management, explained that they had a commitment on phase 1 but the lender won't do the entire project at once because the absorption would be too slow for them.

Jess Sudol, Civil Engineer, told how they had tried to limit the variances needed but that no matter where you draw the lot lines because of building separation you will never have the distance to satisfy the requirements. The project as a whole is within the density requirement.

Ron Brand suggested that the Board could group the decisions collectively for the rear and side setbacks and then a decision on the density variance but the Board would still be passing action variances on each separately so that there is a record of what each setback is to be. Ron expressed concern of the ability to

deal with granting these variances and assurances of having this project built in the manner that the Board understands it to be built.

Floyd Kofahl stated that we all understand the intent of this subdivision of the project but the Board needs to understand also that what was approved was rezoning for RMF and it can ultimately have anything built in it what is in the RMF zoning requirements such as condos, townhouses, and it could end up being owner occupied properties. Floyd also brought to the Board's attention that the law requires a direct access to lot 3 off a municipal road so another variance would be needed.

Karl Essler replied that there is a direct access by a recorded easement.

Edward Hemminger said we will need to refer to the town attorney to see if this meets the requirements for direct access. Ed stated that this situation is very rare and very excessive. We know why and why it was created but we need to document very clearly so as we go forward we know exactly what is going on.

Leslie O'Malley stated that she wanted to make it clear that the Zoning Board of Appeals is totally separate from the Planning Board. The Planning Board can make a recommendation but the Zoning Board is independent and may make its own decisions. The Zoning Board is not bound by what the Planning Board recommends. The Zoning Board operates totally separate from the Planning Board. We listen to what they say but there is not obligation on us to vote for this because there is a recommendation from the Planning Board. Leslie asked the staff if when the Planning Board looked at this and the design did the town engineer also look at it and agree with the validity of doing it this way?

Floyd Kofahl replied yes, the town engineer looked at it as proposed and does it fit within the RMF requirements and approved it as one parcel with no variances and supported the phasing of it.

Edward Hemminger stated that the Board would need financial data for alternatives and the costs and suggested Morgan Plaster Mill work with the town attorney and that the town attorney should be present at the next meeting.

Chairman Hemminger announced that this is a Public Hearing and asked if there is anyone present who wishes to speak for or against this application. No one responded. A motion was made by Edward Hemminger and seconded by Leslie O'Malley at 8:54 p.m. to keep the Public Hearing open until the April 27, 2009 meeting. There were four (4) Ayes. Raymond Ward was excused.

Other Board Matters:

None

Director of Development Update:

Ron Brand mentioned that there would be training classes in May.

Code Enforcement Officer Update:

Floyd Kofahl said Wendy's had withdrawn their variance request and would not be continuing with their project.

Next Meeting:

The next Zoning Board of Appeals meeting will be held on April 27, 2009.

Gary Scribner made a motion to adjourn the meeting at 9:25 pm. Leslie O'Malley seconded the motion. The motion was passed with a voice vote of four (4) ayes. Raymond Ward was excused.

Minutes were respectfully submitted by Patricia Eddy, Clerk of the Board.