

**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 April 27, 2009.

Zoning Board of Appeals Members

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

Also Present

Floyd Kofahl	-Excused	-Code Enforcement Officer
Ron Brand		-Director of Development
Jeffrey Graff		-Farmington Town Attorney
Mr. & Mrs. Robert Morgan		-Morgan Management
Mary Jaehn Dushenko		-106 Hook Rd., Farmington, N.Y. 14425
Dale Hunt		-471 Hook Rd., Farmington, N.Y. 14425
Audrey Everdyke		-282 Hook Rd., Farmington, N.Y. 14425
Karl Essler		-295 Woodcliff Drive, Fairport, N.Y. 14450
Jess Sudol		-Passero Associates

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 March 23, 2009 meeting minutes and the motion was seconded by Chris Dunfey. A voice vote was taken and the motion was passed with five (5) Ayes.

BOARD BUSINESS:

#ZB 0402-09	Dale Hunt	Area Variance
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Edward Hemminger read the legal notice for #ZB 0402-09 that was published in the Daily Messenger on April 20, 2009 requesting an area variance.

Dale Hunt stated that his arguments for the setback variance #ZB 0302-09 would apply here also and that if you look at the topography this is the logical place to put the accessory structure.

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 Raymond Ward and seconded by Leslie O'Malley to close the Public Hearing at the April 27, 2009 meeting. There were five (5) Ayes. The Public Hearing was closed at 7:07 pm.

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

Leslie O'Malley made a motion to accept the SEQR Resolution and Edward Hemminger seconded the motion. All present voted Aye.

AREA VARIANCE FINDINGS & DECISION

After discussion of the factors to be considered the Board felt there would not be an undesirable change of 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, and that the alleged difficulty was self-created.

After discussing the variance, the Board approved the Area Variance Findings and Decision. Edward Hemminger made a motion to approve the application and Raymond Ward seconded the motion. All present voted Aye.

Public Comments:

There were no Public Comments.

#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 March 16, 2009 requesting an area variance.

Dale Hunt stated that 22 feet is the height of his existing structure and the proposed structure would be a 6 foot increase resulting in a 28 foot high structure. Dale also submitted a signed statement by 11 surrounding neighbors that they had no objections to the construction of the indoor riding arena.

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 to close the Public Hearing at the April 27, 2009 meeting. There were five (5) Ayes. The Public Hearing was closed at 7:05 pm.

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

Leslie O'Malley made a motion to accept the SEQR Resolution and Edward Hemminger seconded the motion. All present voted Aye.

AREA VARIANCE FINDINGS & DECISION

After discussion of the factors to be considered the Board felt there would not be an undesirable change of 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, and that the alleged difficulty was self-created.

After discussing the variance, the Board approved the Area Variance Findings and Decision. Chris Dunfey made a motion to approve the application and Gary Scribner seconded the motion. All present voted Aye.

Public Comments:

There were no Public Comments.

#ZB 0401-09

John Holton

Area Variance

Edward Hemminger read the legal notice for #ZB 0401-09 that was published in the Daily Messenger on April 20, 2009 requesting an area variance.

John Holton sent a letter to the Zoning Board asking to table his request for an area variance until the May 18, 2009 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 Gary Scribner and seconded by Leslie O'Malley at 7:09 pm. to keep the Public Hearing open until the May 18, 2009 meeting. There were five (5) Ayes.

#ZB 0403-09

Mary Jaehn Dushenko

Use Variance

Edward Hemminger read the legal notice for #ZB 0403-09 that was published in the Daily Messenger on April 20, 2009 requesting a use variance.

Mary stated that she is asking for the use variance because she is selling her home and one of the prospective buyers wants to be able to keep animals, particularly Alpacas, on the property. Because the area grew up with the farm right there, Mary feels it won't take away from the neighborhood but actually add to it. Mary stated there are 10 acres there to house animals and pasture them. The barn is set up for animals already and the neighbors do not object. It would preserve the rural atmosphere in Farmington.

Ron Brand asked Mary what portion of the property she would look to have the animals confined to and Mary responded that the barn is set up for housing animals. Ron asked Mary what portion outside would you have the animals confined to and Mary responded the 8 acres in the back.

Ron then asked Mary if she would be taking a portion that is now being leased for agriculture operations out of production and Mary replied yes, but being changed over to another agricultural operation.

Ron addressing the Board stated that this Board, in the past, has lifted limits on other sites in the RS-25 District that were being used for horses. Pete Maslin, Chairman of the Agricultural Advisory Committee, has asked that the Board consider similar standards for the Alpacas as you did for the horses. Also, consider the buildings do not appear to be in the 100 foot set back from adjacent properties. If you agree to grant the use variance it may be subject to a setback area variance for the barn to be used. You may need to know how many Alpacas they propose to have on the 8 acres. You can put a restriction on the type of animal and placement of animals per acre. This area was zoned RS-25 because it would create a density. It has good prime agricultural soil that is being actively farmed and continually used in production purposes.

Edward Hemminger replied that the Board would need more information on the types of animals Mary would like to include in the use variance in order for the Board to do the 4 proofs, especially the monetary one.

Ron stated that the Board should require the applicant to consult with the best management practices for the disposal of animal waste as recommended by the Ontario County Soil and Water Environmental Conservation District.

Gary Scribner told Mary the Board would also want to know how far the barns are from the property lines and from the neighbor homes.

Ron also stated that if animals were going to be housed in the barn during the winter months she would have to apply for another variance.

Ron addressed the Board saying that when you grant a use variance you are basically saying that the zoning for this property is such that the owner cannot yield a reasonable return for any permitted usage allowed for that zoning district and considering if it is in the best overall interest for the town.

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 7:43 pm. to keep the Public Hearing open until the May 18, 2009 meeting. There were five (5) Ayes.

#ZB 0306-09 to 0334-09

Morgan Plaster Mill, LLC

Area Variance

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

Karl Essler, representing the Morgans, addressed the Board answering questions from the March 23, 2009 meeting:

1. If the lot lines are shifted can some of the variances be eliminated? We are eliminating 4 variances completely by shifting lot lines as much as we could. We are now requesting 24 setback variances and 8 variances were decreased in the amount of variance requested and 7 of these reduced the amount of variance requested to less than 50% of the requirement while 10 variances have increased slightly but are still within the non-substantial and 5 variances remain unchanged. The density variance requested also went down slightly.
2. Financial data for alternatives and the costs? Financial analysis-If we take out 25 units in Phase 1 the infrastructure will stay the same so we would be losing money. This suggestion is not feasible.
3. If we lop off the ends of some units can we eliminate a number of the variances? Jess Sudol submitted his analysis on the Project Redesign Proforma sheet and the result is that we would lose 7 units from Phase 1 and 14 units from Phase 2 and 9 units from Phase 3 and that would not eliminate all the variances. We would still have 7 variances and would still lose money.
4. If lots are sold separately, what control is there to guarantee the project will be developed as approved? Control if lots are sold (reciprocal agreement)- Karl stated he had talked with Ron Brand and Jeffrey Graff, the town attorney, and have come up with additional language to protect the town's rights, to require easements they may need to enable them to cross lot lines without restriction. We also put in provisions to require that all 3 Phases would have to be developed as approved on preliminary sight plan which includes the layout of the buildings and the architectural standards so that it guarantees there will be a unified looking appearing development. The document will be filed.
5. In case of bankruptcy will the project be developed as approved? The court can't undo deed restrictions on documents. Courts do enforce deed restrictions in bankruptcy proceedings. Karl cited a particular case.

Karl also stated that all the variances are interior to the property, there are no feasible alternatives, there are few substantial variances, there is no adverse environmental impact, and the hardship was not self created because the economic financial situation caused the hardship. The bank will not finance all 3 Phases so it has to be subdivided and have the variances in order to build the project.

Ron Brand stated the Planning Board had recommended that the original phasing or subdivision lines for the project were consistent with the overall preliminary plan for the project and if we go back and move the phasing lines then we have to go back to the Planning Board and ask them to give us another recommendation before granting the variances.

Jeffrey Graff, the town attorney, suggested that the Board can put in a condition that if the Planning Board approves a change in the site plan they would have to come before the Zoning Board for another review to reapprove the variances if that happens.

Edward Hemminger addressed the Board and stated that the Board has to decide if the Board will go with the original lot lines or with the change in the lot lines. The Board agreed to go with the original lot lines since the change in the lines had no change in the property. The Board is comfortable with the original lot lines and the 29 variances.

Leslie O'Malley stated that the Board should put a provision in the approval that the applicant tried everything possible to reduce the number of variances and also to show that the Board did look at all the options available and the Board was comfortable with the first option.

Ron read comments from Floyd Kofahl that Floyd had emailed to the Board members. Floyd stated that he still held firm on his belief that there are alternatives that can reasonably be accomplished that would eliminate some of the variances. Floyd also stated that he did not see where other alternatives were reviewed and how they were determined to not be acceptable. Some cost data was submitted but this seems to address the subdivision as a whole and did not address the cost on a per unit type basis.

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. Dale Hunt stated that Bob Morgan is a good neighbor and I believe he has a good product and this project will be an asset to the neighborhood and will enhance area property value. A motion was made by Leslie O'Malley and seconded by Raymond Ward to close the Public Hearing at the April 27, 2009 meeting and to table the Board's decision until the May 18, 2009 meeting. There were five (5) Ayes. The Public Hearing was closed at 8:28 pm.

Other Board Matters:

None

Director of Development Update:

None

Code Enforcement Officer Update:

None

Next Meeting:

The next Zoning Board of Appeals meeting will be held on May 18, 2009.

Leslie O'Malley made a motion to adjourn the meeting at 8:55 pm. Chris Dunfey seconded the motion. The motion was passed with a voice vote of five (5) ayes.

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