

**TOWN OF GOSHEN, ORANGE COUNTY, NEW YORK
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING**

March 26, 2002

Present Members:

Donna Roe, Chair
Malcolm Booth
Robert Farfalla
Priscilla Gersbeck
Michael Wilson

Also Present:

Brian Morgan, Esq.

I. Call to Order

Chair Roe called to order the meeting of the Town of Goshen Zoning Board of Appeals at 7:30 p.m.

Chair Roe announced that the next Zoning Board of Appeals work session will be at 7:30 p.m. on April 17, 2002, its regular meeting on April 23, 2002 at 7:30 p.m., and the filing deadline for applications would be Friday, April 12, 2002.

Chair announced that the first item that the Board will look at tonight will be application for John McLoughlin for an area variance, which is out of the order as stated on the agenda.

II. Topics

A. John McLoughlin - Area variance: "No pool shall be constructed and/or erected closer than 25 feet to the side lot line;" located on Reservoir Road in an SR-2.5 Zoning District: Tax Lot No. 18-1-43.12

Chair Roe asked if there was someone here representing the applicant. Donna McLoughlin stated she was and the certified mailings for the Notices were presented to the Board. Chair Roe asked if she would please tell the Board what the variance was for. Mrs. McLoughlin stated that they wanted to construct the pool closer to the lot line.

Chair Roe asked how far from the property line will the edge of the pool be. Mrs. McLoughlin stated approximately 10 ft. Chair Roe asked who is the contractor. Mrs. McLoughlin stated it was Harold Chaffee. Mrs. McLoughlin presented a plan to the Board, and upon review Chair Roe stated that the pool would be 15 ft. from the property line.

Mr. Wilson asked if she had any children and McLoughlin replied she has two children.

Chair Roe asked if there was anyone present in the audience from the neighborhood. There was no reply.

Mr. Booth stated that from reviewing the plan he did not see a fence. Mrs. McLoughlin stated that entire area would be fenced.

Mr. Farfalla asked on what part of Reservoir Road did she reside. Mrs. McLoughlin replied across from Nop Farm, across from the cornfield.

Chair Roe asked if counsel had any questions, Mr. Morgan replied that he did not.

Mr. Farfalla stated that as it appears on the drawing, the pool is 19 ft. from the house. Mrs. McLoughlin replied if that is what the plan states, that is what it is. Mr. Farfalla asked if there was a reason why they could not come any closer to the house. Mrs. McLoughlin replied that she did not know, but it may be because of the shed and the steep backyard.

Chair Roe asked that she point out on the sketch where the shed is on the property. The shed is behind the house and Mrs. McLoughlin stated that there is a big hill back there and her husband is wheelchair bound and it would be difficult for him to get back there.

Chair Roe asked what the access from the house to the pool, suggesting perhaps a patio? Mrs. McLoughlin replied that there will be a patio.

Mr. Wilson asked the question, again, what is keeping the applicant from coming closer to the house.

Mr. Farfalla stated that if you go 9 ft. between the house and the pool, a variance would not be necessary. She stated that it might have something to do with the drainage. Mr. Farfalla said that it was just penciled in and the pool should be moved and no variance would be needed.

Chair Roe suggested that Mrs. McLoughlin find out why the pool can not be moved closer to the house. Chair Roe asked counsel if it would be acceptable if the information was received in letterform from the contractor. Mr. Morgan stated it definitely was.

Mr. Booth stated that he would like see a fence shown on the sketch. Mr. Booth also stated that there is no code requirement for distance between the house and pool.

Mrs. McLoughlin stated that something comes to mind, like a 3 ft. "ribbon" is needed around the pool. Chair Roe stated that there are drains, pipes from the filter, electric wiring, etc., which are needed for the pool and at this point we will wait until we hear from Mr. Chaffee to enlighten us.

Chair Roe stated the Board will keep the Public Hearing open until the next meeting and that the letter from Mr. Chaffee clarifying why the pool has to be 19 ft. from the house can be brought in then.

Chair Roe announced that the next applicant on the agenda was Weslowski.

B. Weslowski - An interpretation of existing truck repair facility located on Arcadia Road and NYS Route 94 in an AR-1 Zoning District: Tax Lot No. 18-1-127.2

Mr. Tom Pahucki stated he was representing Mr. Weslowski on this application. Chair Roe stated that first thing that needs to be clarified is that the Notice was for an amended application for an interpretation. It is the Board's understanding from the last meeting that it is for an amended variance, therefore, the Notice needs to be modified.

Mr. Pahucki stated that in 1954 a repair shop variance was allowed for this property on Clark Road, Arcadia Road and Route 94. The original parcel contained approximately 70 acres, subsequent to this

there was a minor subdivision done on Clark Road and currently in December (2001), Mr. Weslowski made an application to the Planning Board to create five lots off of Arcadia Road and Route 94. However, the Planning Board wanted an interpretation of the 1954 variance to clarify how much of that parcel could actually be used for truck repair. The concern brought up by the Planning Board by that question was the compatibility of new homes being created in the area. So what Mr. Weslowski is asking this Board is two things. The first being to reduce the size of where that variance was issued, instead of the whole 70 acres it would just be approximately 3.5 acres from where that entity is now operating. The second request is to include in that variance the self-imposed restrictions by Mr. Weslowski that no additional buildings permits can be issued for that lot; so basically that truck repair shop can not be expanded. The variance was quite loose back in 1954, there was only one parcel and what Mr. Weslowski is asking is that the Zoning Board of Appeals is to allow self-impose restrictions and reduce lot size.

Aileen Ferris, who resides on Clark Road, stated that she was one of the first houses built on that road. Mr. Pahucki showed the map to Mrs. Ferris and reiterated to her that the truck repair area would be only 3.5 acres and would be limited to just that area. Mrs. Ferris stated that she has serious concerns because on any given day there are numerous trucks parked along the truck repair road. Mr. Pahucki stated that there would be no trucks allowed to park anywhere but the 3.5 acres and there would be no further building allowed on that parcel. Mrs. Ferris asked if the Board could make Mr. Weslowski to mark this off, like with a fence. Mr. Pahucki stated that it would be staked out, just like a building lot would be.

Chair Roe asked Mrs. Ferris to point on the plan where her house was located. Mrs. Ferris pointed and replied that she looks out over the back end of the operation and Chair Roe asked if this operation was in existence when Mrs. Ferris moved in. Mrs. Ferris stated yes, but when she moved in there was one storage trailer parked there and maybe one or two trucks, mostly farm equipment. However, over the course of twelve years there are trucks moving in there at 3 o'clock in the morning, being revved-up and there are times when there are many trucks there. For instance, like today, there were five tractor-trailers there. Mrs. Ferris stated that her fear was that this was for an expansion. Mr. Pahucki stated that this was for a restriction.

Mr. Farfalla asked Mrs. Ferris how many trucks has she seen there at one time, fifteen, twenty? Mrs. Ferris stated it was hard to tell because they move in and out a lot. Chair Roe asked what, in her opinion, was the maximum number of trucks there at one time. Mrs. Ferris replied six or seven. A member of the audience stated that they idle, sometimes for hours on end, especially if it is cold outside. Mrs. Ferris stated that she often wondered if it was a truck repair shop or a truck stop. The farm equipment never bothered Mrs. Ferris, she was aware that there was a truck repair shop there. However, there are times when it is unsightly, there are times when there are several tractor trailers parked there and it looks awful.

Mr. Pahucki also wanted to add that they offered to the Planning Board that any future subdivided adjoining lands would have a full disclosure on the deed.

Chair Roe asked if anyone had any additional questions or comments. A member of the audience asked why Mr. Weslowski was limiting the use of the truck repair parcel, was it because he wants to develop the rest of the property. Mr. Pahucki said that yes, more than likely. In fact, there is an application before the Planning Board to develop five lots. Mr. Pahucki also stated that if the Planning Board desires he would also limit the hours of operation and how many trucks that can be there at any one time.

Mr. Andrews asked if this was indeed a truck stop and Mr. Pahucki stated that it was not a good thing, that Mr. Weslowski would not make any money, if the trucks sat there. They have to repaired and be moved out. Mr. Pahucki stated that no one wants trucks idling more than they have to because at a \$1.39 per gallon it becomes a waste of money.

Mrs. Ferris stated that when the new building was recently built, why wasn't the adjoining property

owner notified. Mr. Pahucki stated because it did not require any special permits.

Mrs. Ferris was asked actually how far her residence is from the trucking operation. Mr. Pahucki replied approximately 500 or 600 feet away, by measuring the road frontage. Chair Roe asked Mrs. Ferris from that distance that you can hear the truck engines? Mrs. Ferris replied that between her house and the truck operation business there is a valley, cow pasture with very few trees. Chair Roe asked Mr. Pahucki how far is the proposed (new) house going to be from truck repair shop. Mr. Pahucki stated approximately 100 ft., but there was going to be full disclosure on the deed and if the Planning Board wishes some kind of screening.

Chair Roe asked if the two Notices that came back were re-mailed and Mr. Pahucki did re-mail them. Chair Roe asked Mr. Morgan if this needs to be re-noticed. Mr. Morgan stated that it would have to be corrected to state that the application is for an amendment of the use variance.

Mr. Pahucki asked who would be responsible for correct wording of the Public Notice, because with all due respect it was hoped that the secretary who writes the notice would give the correct guidance. Chair Roe stated that her notes were pretty clear from the workshop that it was an amended variance. Mr. Pahucki stated that he probably misinterpreted the direction. Mr. Morgan was asked if it needed to be both mailed and published, Mr. Morgan replied yes, both needed to be done.

Mr. Booth asked if he was aware if Mr. Weslowski was asked to agree to surrender his present variance to the Board. Mr. Pahucki stated that he would be very honest in that the Planning Board has given very vague direction in which to proceed. Mr. Pahucki asked if this Board was in possession of a letter from the Planning Board asking for the reason why this application was sent to this Board? Chair Roe stated that there was no correspondence, although Mr. Huddleston was in attendance at the last Zoning Board of Appeals meeting.

Mr. Booth asked counsel if he stated it correctly. Mr. Morgan replied that the use variance that now occupies the entire property would now be reduced to a small area of the property and the use would be defined in a way that it could not be expanded beyond a certain point to address exactly the complaints that occur. So we would not be perpetuating the existing variance, we would be substituting or amending it to be a smaller scale.

Mr. Booth stated that we can give the applicant a new variance, but the Board can not do anything about the old variance.

Mr. Morgan stated that he would draft the Notice. Mr. Pahucki thanked counsel.

Chair Roe asked if there was a motion to continue the Public Hearing.

Mrs. Gersbeck made the motion to continue the Public Hearing.

Mr. Booth seconded the motion.

All in favor. Aye. Motion carried.

Chair Roe announce that the next item on the agenda was the application for Miller.

C. Lands of George Miller and Sons, Inc. - Area variance - lot width to be 200 feet at setback (Section 97-64) located on Coleman Trail in an AR-.5 Zoning District: Tax Lot No. 14-27-12.2

Chair Roe asked if there was a representative present. Mr. Dan Yanosh, who is a surveyor for Mr. Miller. Mr. Miller owns a 13.31 acre parcel at the end of Coleman Trail, where it turns into Murabito Place. Mr. Miller is proposing a five-lot subdivision, single-family homes, ranging in the area of 2.5 acres each. The reason why they are here tonight is because of Lot No. 1, where there is 50 ft. road frontage and the zoning required 200 ft.

Members of the audience were shown the map. Mr. Matt Bernard asked to be shown where the wetlands are and Mr. Yanosh pointed them out on the map. Mr. Yanosh stated that he would obtain permits to cross the wetlands for the driveways. Mr. Yanosh stated that this would be addressed in front of the Planning Board and the reason they are in here tonight is to address the issue of Lot 1 because the zoning states the applicant needs 200 ft of road frontage and there is only 50 ft.

Multiple conversations ensued among the audience members and Mr. Farfalla stated that Mr. Yanosh is here to address Lot No. 1 and this meeting must be maintained, so please let us address the problem that Mr. Yanosh is here for, which is a flag lot, which is a violation of our Code as he wants a 50 ft. front.

Mr. Flynn stated that he did not have any problem with the flag lot, because he is sure that someone will build something nice there. Mr. Flynn wanted to know if that is all that was going to be addressed here tonight? Chair Roe stated that was correct.

A member of the audience asked if the lots were sold yet, have they been staked out? Mr. Yanosh said that they have not been staked out.

Chair Roe asked Mr. Flynn, who is the adjoining property owner and the first lot there next to this, if it was correct he is voicing his opinion that he had no objection to this flag lot. Mr. Flynn stated that this was correct.

Chair Roe asked Mr. Yanosh to continue. Mr. Yanosh stated that what was needed was a variance to allow a 50 ft. width. Chair Roe asked how far back from the proposed road will the dwelling be. Mr. Yanosh stated that it would be 450 - 475 ft. back. Chair Roe asked how far would it be from Mr. Flynn's home. Mr. Yanosh stated the house itself sits approximately 250 ft. behind Mr. Flynn's property, which is probably 300 ft. from the house. The percolation tests that were performed on top of hill, where the soils are better, that is why the houses sit further back. The septic systems are 200 ft. away from the stream. The other issue would be the building of the road to meet the Town specification, which Mr. Miller is not opposed to do. The lots are big and meet the zoning regulations by far, and the road would definitely be an asset to the Town. The road would have a cul-de-sac, which would allow vehicles to safely turn around, as Murabito Road is a dead-end.

Mr. Miller is a builder, he has built a lot of homes in Middletown, and now wants to retire. Therefore, he is selling off his holdings. Mr. Farfalla asked if the Board turns down this application, would he have one very large lot or would he break this down to only four lots. Mr. Yanosh stated that he would probably only go for four. However, he would probably shorten the cul-de-sac up and give us a little better ratio between the cost of the road and the lots. In other words, by his calculations, he needs the five lots to build a road to Town specifications.

Mr. Farfalla stated that so here we have a self-created hardship. Mr. Farfalla went on to say that we try to avoid flag lots in our Town as much as possible. Mr. Farfalla also stated that it was a great plan, but it has a flag lot. Mr. Yanosh stated that the thing with this flag lot was that there is just not enough road frontage and no matter how this is built, three lots, two lots, five lots or six there is still going to be long driveways.

Chair Roe stated that if the flag lot was not approved, the owner would still be able to develop the balance

of the property. Mr. Yanosh stated that was correct, but it would affect the building of the road and the improvements to be made there. The reason for the five lots is to be compensated for the construction of the road and everyone on that road would benefit from the improvements, for example the movement of traffic including emergency vehicles.

Chair Roe wanted to state for the record that the Board received a letter from Phil Johnson who owns property (farm) in that area. Mr. Booth wanted to know if it was an active farm, if there were cows on the lands, and members of the audience agreed that indeed it was a working farm.

Mr. Josh Bush, who resides on Fort Hill Road and is a land surveyor and whose land is adjoining to Lot 5 of the proposed subdivision wanted further information regarding the letter from Mr. Johnson. Chair Roe responded that it was a lengthy letter but basically he is not happy with the suggestion of a flag lot and goes into a number of details, and would like the subdivision to conform with the code. Mr. Bush went on to say that he is not anti-development but he does not want to see a flag lot approved; development should conform with the rules and regulations of the Town. Since this is a self-imposed hardship. The other issue is that his house was one of several built in the 1970's and it appears from viewing the map that one of the proposed wells is within 200 ft. of Mr. Bush's expansion area for his absorption field. Another concern of Mr. Bush was the amount of disturbance to the U.S. Army Corps of Engineer wetlands for the driveways.

Mr. Wilson stated that he agreed with Mr. Farfalla that what we have here is a self-imposed hardship by creating the flag lot and he has not heard anything here to lead him to believe anything to the contrary. Mr. Yanosh stated that he could not re-configure this any differently without swinging the road across the wetlands.

Mr. Miller wants to put his money into taking care of this road, which would take care of some of the problems in this area. This, in the long run, would be a benefit to all living in this area.

Chair Roe asked what the estimated cost of building this road would be. Mr. Yanosh did not know. Chair Road asked how long the road would be, and Mr. Yanosh replied over 600 ft., together with the cul-de-sac closer to 800 ft.

Mr. Farfalla stated that he has been back to this area several times over the years, and quite frankly it is a mess, the lots, the streets are out of control. What the Board is trying to do here is get some control, but his feeling is that by adding another flag lot we (the Town) is going backwards.

Mr. William Brennan stated that he agreed with Mr. Farfalla because he lives in the Cape style house where you come around the corner and there is a house in the middle of the road and you have swing pass that. Mr. Farfalla asked for clarification that he understood correctly, that there is a house in the middle of the road. Mr. Brennan asked the members of the audience and they all agreed that what was stated was correct; there is a house right in the middle of the road.

Chair Roe asked Mr. Yanosh if the proposed road would be a dedicated road, and Mr. Yanosh stated that it would be. But to keep in mind that the smaller, narrow roads would come into this new wider road.

Mr. Brennan voiced a concern that his kids romp around in this road, and it not that wide, how are they going to make the road wider without taking property. Mr. Yanosh stated that the only road would be the one with the subdivision. Mr. Brennan stated that he did not care about the flag because how he sees it is that his property will go up in value with this development.

Mr. Mattalucci stated that his problem was with people turning around on this property, once they realize it is a dead end. Mr. Farfalla stated that nothing can be done with the roads going into this property.

Mr. Farfalla stating he would like to table this issue for another month and discuss this further.

Mrs. Gersbeck stated that she would like to go out and look at the property. At this point, the Board agreed that they would all go and look at this property together. Chair Roe asked counsel if the applicant should be present when the Board walks the site and Mr. Morgan replied that you should not be on anyone's property unless they are there. Mr. Yanosh stated that he would make himself available.

A date of April 12, 2002 was then decided upon.

Mr. Wilson wanted to add that he would like to know what the cost of the road would be so that the hardship can be figured.

Mrs. Gersbeck made the motion to continue the Public Hearing.

Mr. Farfalla seconded the motion.

All in favor. Aye. Motion carried.

IV. Approval of Minutes

Chair Roe asked if anyone reviewed the minutes, besides Mr. Booth. There was no reply. Chair Roe asked if the July 2000 minutes have been approved. The secretary replied that they had not. Chair Roe stated that she would make copies for everyone and hopefully January and February 2002 would be approved at the next meeting.

V. Adjournment

Mrs. Gersbeck made a motion to adjourn.

Mr. Wilson seconded the motion.

All in favor. Aye. Motion carried.

Respectfully submitted,

Gloria J. Lloyd
Secretary

Date Approved: _____