

**Town of Charlton
Zoning Board of Appeals
Public Hearing Minutes and
Business Meeting Minutes**

February 15, 2011

Minutes of the Zoning Board of Appeals – February 15, 2011

Chairman Don Schermerhorn called the meeting to order at 7:00 p.m. at the Charlton Town Hall, 758 Charlton Road, Charlton, New York 12019.

Present: Don Schermerhorn, Chairman, Mark Chotkowski, Chip Ellms, Audrey Ketchum, Robert E. Van Vranken, Town Attorney, and Kimberly Caron, Recording Secretary.

Mr. Schermerhorn asked everyone to stand for the Pledge of Allegiance.

Roll call attendance was taken.

Public Hearing 7:08 p.m.

Salisbury (256.11-1-11)

Mr. Schermerhorn made a motion to open the Public Hearing at 7:08 p.m. Mr. Chotkowski seconded the motion. All were in favor.

Mr. Schermerhorn reviewed the Public Hearing process with those in attendance.

Mr. Schermerhorn stated that he would like to review the contents of the file. Mr. Schermerhorn stated that the file contains:

- complete application requesting an area variance dated October 18, 2010;
- completed short form EAF;
- neighboring properties list;
- map showing the location of the property; and
- architects rendering of the proposed changes.

Mr. Schermerhorn read the Public Notice which was published on January 31, 2011 in the Daily Gazette.

Mr. Schermerhorn read a letter of recommendations from the Environmental Conservation Commission dated February 14, 2011. A copy of the letter is annexed hereto as **Attachment 1.**

Mr. Schermerhorn read a letter of recommendations from the Planning Board dated February 3, 2011. A copy of the letter is annexed hereto as **Attachment 2**.

Mr. Schermerhorn inquired if the applicant wanted to make a presentation.

Mr. Salisbury stated that he has provided the Board with the requested information and had no further comment.

Mr. Schermerhorn opened the Public Hearing for comment.

No comments were provided.

Mr. Schermerhorn made a motion to close the Public Hearing. Mr. Chotkowski seconded the motion. All were in favor.

The Public Hearing closed at 7:12 p.m.

312 Stage Road, LLC/Ogle (247.-2-49) 7:15 p.m.

Mr. Schermerhorn opened the Public Hearing at 7:15 p.m.

Mr. Schermerhorn stated that he would like to review the contents of the file. Mr. Schermerhorn stated that the file contains:

- complete application dated December 15, 2011 for an amendment to the special use variance;
- a rendering of the property of sightings the existing structure together with the proposed improvements;
- tax map;
- neighboring properties list; and
- letter from Fred Ogle giving authorization for Jeffrey Ogle to speak on his behalf.

Mr. Schermerhorn read the Public Notice which was published on January 31, 2011 in the Daily Gazette.

Mr. Schermerhorn read a letter of recommendations from the Planning Board dated February 3, 2011. A copy of the letter is annexed hereto as **Attachment 3**.

Mr. Schermerhorn read a letter of recommendations from the Environmental Conservation Commission dated February 10, 2011. A copy of the letter is annexed hereto as **Attachment 4**.

Mr. Schermerhorn opened the Public Hearing for comment.

Andy LaPatra, 330 Stage Road: I came last year and I was opposed to this because it didn't meet what the original previous owner said they would do. They didn't have the landscaping done. (inaudible) Now this new person came in the building and I was opposed to that cause again because at the time we didn't know if trucks were going to be in there. We were told it was just going to be cars. I see that less than a year they have come back and want to build a structure there and I guess I'm a little confused as to why this business person would make a huge commitment to purchase property for the location of his business and it not being adequate within a few months of the purchase. It is confusing to me why you would do that. Why do they even need a garage there. (inaudible) It is a residential area. (inaudible) The fence is confusing to me also. (inaudible) Again, its additional structures to a residential area that I feel takes away from the residential atmosphere and the character and appearance. I have lived here 28 years and I can tell you about fighting National Grid (inaudible) years ago. I just think that it takes away from the whole area of strictly residential when you start adding additional structures. (inaudible) This makes me real nervous because it is demeaning the property values.

Ralph Rusilas, 281 Stage Road: The documents that you read from previous meetings pretty much led us to believe that there wasn't going to be any trucks there. I am personally opposed to a fence that is to make something not visible. I am also opposed to the additional structure.

John Farry, 40 Old Stage Road: I am curious as to what the garage is for and where the privacy fence is going.

Mr. Schermerhorn showed those in attendance the applicants rendering of what they are proposing to do.

John Farry: What is the garage for?

Mr. Schermerhorn stated that the Board is not aware of what the garage is for.

John Farry: What is there now?

Mr. Schermerhorn stated that a brokerage firm that matches truck hauling customers with truckers is his understanding of the stated nature of the business currently located there.

John Farry: Was the previous location on Lake Hill Road?

Jeffrey Ogle: Yes

Ralph Rusilas: Do they own property on both sides of the fence?

Mr. Schermerhorn stated that the fence is being shown to be within their property boundaries.

Ralph Rusilas: How close to the existing boundary?

Mr. Schermerhorn stated that the proposed plans indicate about 50 feet from the tree sided property line, the right hand side as you are driving into the property.

Ralph Rusilas: I'm just curious, why the fence?

Mr. Van Vranken stated that the applicant's representative is here and it may be helpful for him to explain their proposal.

Jeffrey Ogle: I completely understand why people are feeling what they are feeling. You are right, it looks a little bit strange. (inaudible) I can assure you that there is nothing surreptitious going on. We are just looking to build a garage for extra storage, for boxes and things, a car, lawn equipment, what anybody would put in a garage. We are just looking to build a garage. The fence really is, we park our cars along that one side (inaudible) In keeping with the residential area, and we are trying to keep the cars out of view during the day. We are looking to put a fence up just so our neighbor doesn't have to look at it all the time. We are not now and never will be looking to purchase any trucks to put in the garage. That is not the purpose of it. But like I said I understand why people may think that.

Mr. Ellms stated that only one entrance is shown. Mr. Ellms inquired if that was going to remain the same.

Mr. Ogle: Is there a picture in the file?

Mr. Schermerhorn stated no.

Jeffrey Ogle: I have a picture of what I think my father may be aiming towards. Unfortunately I can't really speak to exactly what the garage is going to look like and how high it is and I can't speak otherwise.

Mr. Ellms stated that the picture shows a 30 x 40 x 10 foot garage.

John Farry: Is the fence going to be facing the Serafini property?

Mr. Schermerhorn asked if Mr. Ogle has anything further to add.

Jeffrey Ogle: I think we have done nothing but spruce up the property and make it a little better than before like my father said he would do. The lawn is always kept immaculate. We are just looking to be good neighbors and the garage is only for storage, lawn equipment, and things of that nature.

Mr. Chotkowski made a motion to close the Public Hearing. Mr. Ellms seconded the motion. All were in favor.

Public Hearing ended at 7:30 p.m.

Business Meeting

Roll call attendance was taken.

Mr. Schermerhorn read the minutes from the January 31, 2011 meeting. Mr. Schermerhorn asked for any additional comments from the Board. There were no additional comments.

Mr. Chotkowski made a motion to approve the draft of the January 31, 2011 minutes. Mrs. Ketchum seconded the motion. All were in favor.

Salisbury (256.11-1-11) Deliberations

Mr. Van Vranken stated that the application references an enclosed room on the existing deck that is not subject to ZBA consideration because it is a non-conforming pre-existing use. Mr. Van Vranken stated that the Board is considering the carport being constructed on the west side of the existing residence and to construct a front porch on the front of the house. Mr. Van Vranken stated that the Board needs to decide on the setback requirement. Mr. Van Vranken stated that the Board is familiar with the degree of the area variance request.

Mr. Chotkowski to read the five criteria.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance.

No. The lots in that area do not conform to the existing zoning as there are other houses with the same structures added on so it would not be undesirable to the neighborhood.

2. Whether the benefit sought by the applicant can be achieved by some other feasible method other than the variance.

No. It is a small lot.

3. Whether the requested variance is substantial.

No.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

No. There is no physical or environmental impact.

5. Whether the alleged difficult was self created, (that it was will not necessarily preclude the granting of the area variance).

It is sub-created however, the house was purchased with that lot before the zoning was enacted and there is no recourse for that.

Mrs. Ketchum stated that she agrees with Mr. Chotkowski answers.

Mr. Ellms stated that the Board has given variances before for carports. Mr. Ellms stated that he does not see any issues with it and agrees with Mr. Chotkowski answers.

Mr. Schermerhorn stated that he would like to acknowledge that Mr. Salisbury is a Town Board member and the Town Board appoints the ZBA and it is our opinion as members of the ZBA that since Mr. Salisbury is only one member of the Town Board he does not adversely affect our opinions by his position.

Mr. Van Vranken stated that, nor under the general municipal law constitute a conflict of interest.

Mr. Ellms made a motion to approve the Salisbury area variance as presented. Mrs. Ketchum seconded the motion. Roll call vote was taken:

Mr. Chotkowski – aye
Mr. Schermerhorn – aye
Mr. Ellms - aye
Mrs. Ketchum - aye

All were in favor. Area variance granted.

Mr. Schermerhorn stated that the applicant would receive a letter of approval.

312 Stage Road, LLC/Ogle (247.-2-49)

Mr. Chotkowski inquired if Mr. Ogle had looked at the zoning ordinance as to the definition of garage before the application was filed.

Mr. Ogle stated yes.

Mr. Chotkowski stated that the ordinance is what the Board and the Zoning Administrator goes by. Mr. Chotkowski stated that in the ordinance there is a definition of buildings. Mr.

Chotkowski read from the ordinance. Mr. Chotkowski inquired if that was a description of their intentions.

Mr. Ogle stated yes.

Mrs. Ketchum inquired as to the purpose of the fence.

Mr. Ogle stated that it would be to shield the cars from the neighbors. Mr. Ogle stated that was the only purpose. Mr. Ogle stated that it is not intended to block out any activity they are not supposed to be doing. Mr. Ogle stated that they are trying to be good neighbors.

Andy LaPatra stated that it appeared that the fence was going to be located behind the building and if the parking is on the side of the building, which neighbor are they shielding. Mr. LaPatra stated that he is located on the west side. Mr. LaPatra inquired which side of the fence they were going to park on.

Mr. Schermerhorn stated that he has a fairly substantial garage and that what they are proposing, 30 x 40 feet, is substantial in size. Mr. Schermerhorn inquired what was going to be stored in it.

Mr. Ogle stated that they may put a car or two in it as his father travels in the winter. Mr. Ogle stated that they do not own any trucks and never will. Mr. Ogle stated that lawn equipment would be stored together with any normal things you would store in a garage.

Mr. Chotkowski stated that he had a question for the zoning administrator pertaining to the stipulation of square footage of the buildings per acreage.

Mr. Van Vranken stated that it does not apply here.

Mr. Schermerhorn stated that he does not recall seeing anything in the ordinance.

Mr. Van Vranken stated that when the original application was filed in the spring of last year, the analysis of the Town Board at that time, with respect to requiring this to get a special exception permit, was that this wasn't within the broad definition of what is called "professional building". Mr. Van Vranken stated that the Town Board had Mr. Ogle provide his license to operate his business and the Board, at that time, determined that it would allow the professional building. Mr. Van Vranken read from the zoning ordinance. Mr. Van Vranken stated that this is a "licensed service business" which falls under the scope of a special exception permit and that was the basis for the resolution that was presented. Mr. Van Vranken asked the applicant how the garage is going to be consistent with the use of a professional office building. Mr. Van Vranken stated that it seems that the applicant is proposing to build a building that is not connected to the professional activities. Mr. Van Vranken stated that the storage of boxes associated with the business is more in line with the zoning as opposed to the storage of one or two cars and lawn equipment. Mr. Van Vranken

inquired if a majority of the 30 x 40 building is going to be connected to the professional business that is going on.

Mr. Ogle stated that with the exception of the storage of boxes it would not be attached to the professional business. Mr. Ogle stated that it would be for storage of personal items, a vehicle for winter when Fred Ogle visits Florida, lawn tractor, tools, ect.

Mr. Van Vranken stated that the intent of his question is that if the storage building was being used for business related storage then the application would be moving in the direction of what was approved in April. Mr. Van Vranken stated that if the purpose is just personal storage it becomes an accessory building unrelated to the special exception permit that was granted in April. Mr. Van Vranken stated that is not to say the Board could not amend the special exception permit from last year but then the Board would need to define the use of that building because it does not appear to be connected with the granted special exception permit.

Mr. Schermerhorn stated that he reviewed the minutes from the April, 2010 Public Hearing on this special exception application. Mr. Schermerhorn stated that he believes that the Board made their decision predicated partly on statements made by the representative at the time, Mr. Rabideau. Mr. Schermerhorn quoted Mr. Rabideau: "Mr. Rabideau stated that the company does not own any trucks for any truck drivers. He stated that they are not proposing any physical changes to the exterior of the building or to the grounds." Mr. Schermerhorn stated then there was a public question inquiring if there were any building expansion plans and Mr. Rabideau responded 'not really'. Mr. Schermerhorn stated that he feels that the Board was given information through the proper process of Public Hearing and statements from the representative that clearly stated that the intention was not to add any further expansion on that property. Mr. Schermerhorn stated that with that the Board conducted due diligence in deliberating in granting the use exception on the April 13th occasion. Mr. Schermerhorn stated that he is not comfortable nor in favor of granting a special use variance at this time.

Mr. Ellms stated that based on what was heard this evening it a 30 x 40 foot building does not really fit the neighborhood. Mr. Ellms inquired if a smaller building would be more acceptable.

Mr. Chotkowski stated that in terms of trying to keep with the neighborhood, if they are looking for a garage to store a car for the winter and things like office stuff, they may want to consider an attached garage instead of a detached garage. Mr. Chotkowski stated that would be more in line with the neighborhood and a car would still fit inside. Mr. Chotkowski stated that he would be more inclined to look at something like that. Mr. Chotkowski stated that as pertains to the fence, the applicant should consider some shrubbery instead of an actual fence. Mr. Chotkowski stated that a variance is not needed for that.

Mr. Ellms stated that sounded like a good idea.

Mr. Chotkowski suggested postponing a decision to allow the applicant to pursue other options.

Mr. Ogle inquired what a more appropriate size for the building would be. Mr. Ogle stated that shrubbery does make more sense.

Mr. Ellms stated 15 x 20.

Mr. Chotkowski stated that a standard two car garage is 24 x 24.

Mr. Van Vranken stated that the applicant has three options:

-withdraw the application

-have the Board vote on this application; or

-table the application allowing the applicant to reconsider their options and if they come back with a new proposal then the Board can conduct another Public Hearing to hear the revised plan and then the Board could consider the application.

Mr. Van Vranken stated that the ordinance stated that the Board has 62 days from tonight to make a decision on this application or amended application.

Mr. Ogle stated that he thinks that his father will choose option number 3.

Mr. Schermerhorn stated that the Board's suggestions do not indicate a leaning in any direction. Mr. Schermerhorn stated that the Board will consider the responses from the ECC and the Planning Board as the Board considers the next step. Mr. Schermerhorn stated that the Board will need the information by March 1st to be on the March agenda.

Cowley (246.-1-61.1)

Mr. Schermerhorn distributed a rendering he received from Mr. Rabideau.

Mr. Schorr stated that he received a letter from Cornell University that eliminated any remaining concerns of the ECC.

Mr. Schermerhorn stated that the only concern of the Board was setback requirement not complying with the zoning ordinance.

Mr. Van Vranken stated that he has spoken to Mr. Rabideau and the applicant has agreed to comply with the setback requirement of 100 feet. Mr. Van Vranken stated that the fire department has also expressed that the access road is completely adequate and they have no concerns and if there are any events held they will have no off street parking. Mr. Van Vranken stated that subject to zoning board affirmation, the Town Board will consider

approval of the special exception permit. Mr. Van Vranken stated that there will be a series of conditions to that there will be no interpretative problems 20 years from now.

Mr. Schermerhorn stated that for sanitation purposes, the porta johns would need to be handicapped accessible.

Mr. Van Vranken stated that they will put in the resolution that they must be compliant with New York State Law.

Mr. Chotkowski made a motion that the Zoning Board of Appeals favorably agrees with the Cowley application as presented with the revision map of February 15, 2011 and have no further comments. Mr. Ellms seconded the motion. All were in favor.

Mr. Van Vranken stated that he would draft the letter to the Town Board.

Mrs. Ketchum made a motion to adjourn. Mr. Ellms seconded the motion. All were in favor.

Meeting was adjourned at 8:15 p.m.

Respectfully Submitted,

Kimberly A. Caron
Recording Secretary