

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

**August 16, 2011**

Minutes of the Zoning Board of Appeals – August 16, 2011

Chairman Don Schermerhorn called the meeting to order at 7:08p.m. at the Charlton Town Hall, 758 Charlton Road, Charlton, New York 12019.

Present: Don Schermerhorn, Chairman, Mark Chotkowski, Ed Malis, Robert E. Van Vranken, Town Attorney and Kimberly Caron, Recording Secretary.

**Business Meeting**

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

Roll call attendance was taken.

Mr. Schermerhorn stated that the April 20, 2011 minutes needed to be approved. Mr. Schermerhorn inquired if there were any comments from the Board. There were no additional comments.

Mr. Schermerhorn stated that the April 26, 2011 minutes needed to be approved. Mr. Schermerhorn inquired if there were any comments from the Board. There were no additional comments.

Mr. Chotkowski made the motion to approve the April 20, 2011 meeting minutes and to approve the April 26, 2011 meeting minutes. Mr. Malis seconded the motion. All were in favor.

Mr. Schermerhorn stated that he passed out some information on the NYS Planning Conference in case anyone was interested in attending.

Mr. Schermerhorn stated that an application has been submitted by Fred Ogle.

The Board reviewed the application.

Mr. Schermerhorn read the letter from Mr. Ogle dated July 26, 2011.

Mr. Van Vranken stated that for clarification purposes, a use variance was not granted to the applicant. Mr. Van Vranken stated that the approvals on that site were both special exception permits. Mr. Van Vranken stated that the application would need to be amended.

Mr. Schermerhorn continued reading the letter from Mr. Ogle.

Mr. Van Vranken stated that to the best of his knowledge, this is a first experience in the Town with this type of application. Mr. Van Vranken stated that what you have is a unique parcel of land that is unique in the sense that it is divided by a fairly large tract that separates the two parcels. Mr. Van Vranken stated that what the Town Government has done in the past with similar parcels is allowed any applicant to treat those two parcels as a continuous parcel because the intervening parcel is a utility easement. Mr. Van Vranken stated that there has been essentially three special exception approvals going back to the initial one with the physician's office and then most recently with Froland Transportation Business Office and then an amendment to that special exception permit for Froland for the construction of a separate building that was downsized from the original application. Mr. Van Vranken stated that there were two meetings with respect to that. Mr. Van Vranken stated that what you now have is an initial exceptional use permit amended for the addition of a building now asking for another amendment to the exceptional use permit. Mr. Van Vranken stated that the site is governed by the exceptional use permit regulations. There is no provision in the exceptional use permit regulations to attach a residence to an approved use under article 7, page 55. Mr. Van Vranken stated that there are several different possible uses, banks, barber shops, cemeteries, professional buildings, instructional studios, kennels, mobile home parks, multiple dwellings and there are some regulations regarding multiple dwellings. Mr. Van Vranken stated that he sees no legislation that would authorize the attachment or the redevelopment of a single family residence request attached to an exceptional use permit for professional office and extended structure outside it. Mr. Van Vranken stated that he is not sure that the Board could do what the applicant is asking. Mr. Van Vranken stated that it is clearly not a use variance because even though it is located in the RA district, it has nothing to do with a use variance and the applicant would be better served if it was not a use variance because those variances are basically denied. Mr. Van Vranken stated that use variances have a very high standard to overcome and the application information provided is not enough to overcome. Mr. Van Vranken stated that the Board is not authorized as the Zoning Board of Appeals to create legislation. Mr. Van Vranken stated that since the application has been received by the Board it can be moved forward however, the Board may not be able to grant the relief being requested. Mr. Van Vranken stated that the Board has the ability to approve with certain variances, the use of the site as a single-family residence but then there is a catch in the ordinance that says with attached home occupations and what they are doing there is not a home occupation. Mr. Van Vranken stated that the Board would have to revoke the special exception permit, grant the application, which would be area variances, and then have the applicant move the business somewhere else.

Mr. Chotkowski stated that section 11, page 68 of the Zoning Ordinance, addresses that you can have a residence under special exceptions and one other use.

Mr. Chotkowski read the section to the Board.

Mr. Van Vranken stated that the second use is not a permitted use and the Board has granted a special exception permit to that. Mr. Van Vranken stated that he does not feel that section of the ordinance is helpful to the Board. Mr. Van Vranken stated that the areas do not work as you have to have double the area. Mr. Van Vranken stated that the Board would have to grant a 70% area variance because you need a full area for the house and a full area for the business when the Board has already gone ahead and carefully considered the exceptional use permit of that site.

Mr. Schermerhorn stated that it would be worthy to contact the applicant and advise him of the circumstances.

Mr. Chotkowski made a motion to close the business meeting. Mr. Malis seconded the motion. All were in favor.

**Public Hearing 7:30 p.m.**

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

**Button (246.-3-106)**

Mr. Schermerhorn stated that the applicant is looking for an area variance to put a living room addition on the front of his house which is located at 795 Swaggertown Road.

Mr. Schermerhorn read the application and supporting documents into the record. Mr. Schermerhorn stated that the file contains:

- complete application requesting an area variance dated July 20, 2011;
- completed short form EAF;
- neighboring properties list;
- map showing the location of the property; and
- stamped survey for the proposed addition.

Mrs. Caron read the Public Notice which was published on August 5, 2011 in the Daily Gazette.

Mr. Schermerhorn read the letter from the Planning Board dated August 15, 2011.

The applicant did not have any comments.

There were no public comments.

Mr. Schermerhorn made the motion to close the Public Hearing at 7:33 p.m. Mr. Chotkowski seconded the motion. All were in favor.

**Discussions**

Mr. Van Vranken questioned the correct acreage of the parcel.

Mr. Button stated that the total acreage is 4.05 acres as they purchased additional acreage in the back of their property.

Mrs. Caron provided proof of the total acreage from the Assessor's Office.

The Board reviewed the five criteria.

Mr. Schermerhorn 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.

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

No.

*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.

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

Yes, however, this is the appropriate approach.

Mr. Schermerhorn made the motion to approve the application and grant the area variance as requested. Mr. Malis seconded the motion. All were in favor.

Mr. Van Vranken will draft the resolution.

**Pickett (236.-1-28)**

Mr. Schermerhorn stated that in July, 2011, the Town Board made a Resolution referring this application to the Zoning Board of Appeals.

Tom Peterson appeared as the applicants counsel. Mr. Pickett also appeared.

Mr. Van Vranken stated that he has had conversations with Mr. Peterson regarding the application. Mr. Van Vranken stated that the purpose of tonight's discussions is for the applicant to advise the Board of their intentions as well as direction for the next step.

Mr. Peterson stated that the applicant would like to apply for a special exception permit to open a small retail firearms store and repair shop behind the applicant's home. Mr. Peterson stated that they have made supplemental submissions and would like the Board's feedback before they make a formal submission.

Mr. Peterson stated that they have attached photos for the Board's review. Mr. Peterson stated that the first page shows the approach to the driveway. Mr. Peterson stated that the second page shows the red building, which is the building that will be coming down and replaced with a new building for the proposed shop. Mr. Peterson stated that there are two photos showing the front of the house. Mr. Peterson stated that you will not be able to see the shop from the road. Mr. Peterson stated that there will be a low traffic impact. Mr. Peterson stated that the applicant will see customers on an appointment basis and the hours of operation will be from 9:00-5:00 daily.

Mr. Malis inquired about a sign.

Mr. Pickett stated that there is currently a sign for the apple orchard entitled Hummingbird Farm. Mr. Pickett stated that the building will blend in well with the farm. Mr. Pickett stated that if he is working in the orchard he can walk over and take care of an appointment.

Mr. Peterson stated that there will not be a rifle range attached to the building. Mr. Peterson stated that usually a gunsmith has a personal range to test the weapon. Mr. Peterson stated that they are not proposing a public use firing range.

Mr. Malis inquired who was going to be the gunsmith.

Mr. Pickett stated that it would be himself and possible another person who will work in the shop.

Mr. Schermerhorn inquired as to the licensing and application process.

Mr. Peterson stated that they have to file a permit with Alcohol, Tobacco and Firearms. Mr. Peterson stated that they submitted an application, however, since they were not able to get approval from the Town within the applications deadline, they have withdrawn their

application with the understanding that they will be able to resubmit if Town approval is granted.

Mr. Schermerhorn inquired if there were conditions of the application.

Mr. Pickett stated that is was the standard 60 days waiting period.

Mr. Pickett stated that he has applied for a NYS Gunsmith and a Gun Dealers License.

Mr. Van Vranken inquired if the license was a prerequisite to running the shop.

Mr. Pickett stated yes that he needs the license. Mr. Pickett stated that in conjunction with the Federal ATF regulations he has to take the firearm to the police to fire it before he can sell it.

Mr. Van Vranken inquired which application the applicant has withdrawn.

Mr. Peterson stated that the license application with the ATF only has been withdrawn.

Mr. Van Vranken inquired if there were other license applications.

Mr. Peterson stated yes.

Mr. Van Vranken stated that the Board would need copies.

Mr. Peterson stated that they would provide copies of all documentation and a copy of the letter of withdrawal to the ATF.

Mr. Malis inquired as to the range of firearms to be sold.

Mr. Pickett stated that he would like to sell sporting firearms, handguns and used small firearms and possibly 22's.

Mr. Malis inquired if once the license was granted, the shop could sell any kind of firearm.

Mr. Pickett stated that in NYS, you are not allowed to sell any automatic firearms.

Mr. Peterson stated that NYS has very strict laws in place.

Mr. Chotkowski inquired that since the firing range has been taken off the table, and instead has a small firing range, would it be a manufactured firing range with a certification? Mr. Chotkowski inquired what would happen to the lead dust since it is a hazardous material.

Mr. Pickett stated that it is going to be a burhm just like in Galway.

Mr. Chotkowski inquired if it was going to be an outside range.

Mr. Pickett stated yes.

Mr. Chotkowski stated that NYS Law states that you cannot discharge a firearm within 500 feet of a residence. Mr. Chotkowski inquired how close the surrounding houses to the property are.

Mr. Pickett stated that NYS Law says that you cannot discharge a firearm within 500 feet of an inhabited dwelling without neighbor permission.

Mr. Chotkowski inquired how close the neighbors are.

Mr. Pickett stated over 500 feet away.

Mr. Chotkowski inquired if the applicant was going to place all of the details on a map that has been surveyed out. Mr. Chotkowski inquired who determines the requirements for the mound.

Mr. Pickett stated that he does not know. Mr. Pickett stated that you always test fire after a repair. Mr. Pickett stated that he hunts all the time on his property.

Mr. Chotkowski stated that the Board is concerned with the neighbors.

Mr. Schermerhorn stated that the application submitted needs revisions. Mr. Schermerhorn asked the applicant to resubmit the application with the correct descriptions.

Mr. Peterson stated that they would make the requested corrections.

Mr. Van Vranken stated that the Board needs to consider referring the application to the Planning Board for Site Plan Review and SEQRA Review. Mr. Van Vranken stated that a lot of the questions raised this evening are part of site plan review.

Mr. Schermerhorn requested more detail pertaining to the items to be retailed in the business.

Mr. Van Vranken stated that the more information provided the better the process will be.

Mr. Schermerhorn proposed having a joint meeting with the Planning Board.

Mr. Van Vranken stated that if the requested information is submitted in time, the Boards could hold a joint Public Hearing.

Mr. Peterson inquired what the Board wanted to see on the drawings.

Mr. Schermerhorn stated that setbacks, elevations, well and septic locations, wetlands, proposed location of firing range, etc.

Mr. Chotkowski showed the applicants a copy of the Button drawing for use as an example.

Mr. Malis inquired if the shop would be subject to any review by the authorities.

Mr. Pickett stated that there would be unannounced inspections from the ATF.

Mr. Van Vranken called attention to page 66 of the Zoning Ordinance for the criteria for a retail store.

Mr. Chotkowski stated that he would like to see hours of operation for the shop and the firing range listed.

Mr. Schermerhorn made a motion to refer the revised proposed application and supporting information to the Planning Board for Site Plan Review and SEQRA Review and that the Planning Board and Zoning Board would hold a joint Public Hearing subject to the Planning Board's scheduling. Mr. Malis seconded the motion. All were in favor.

Mr. Chotkowski made a motion to closed the meeting seconded my Mr. Malis. All were in favor.

Meeting was adjourned at 8:20 p.m.

Respectfully Submitted,

Kimberly A. Caron  
Recording Secretary