

**Town of Charlton
Zoning Board of Appeals
Business Meeting Minutes**

June 12, 2012

Minutes of the Zoning Board of Appeals – June 12, 2012

Chairman Don Schermerhorn called the meeting to order at 7:05p.m. at the Charlton Town Hall, 758 Charlton Road, Charlton, New York 12019.

Present: Don Schermerhorn, Chairman, Ed Malis, Kurt Vanderhorst, Bob Van Vranken, Town Attorney, Jay Wilkinson, Planning Board Chairman and Kim 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 March 21, 2012 minutes needed to be approved. Mr. Schermerhorn inquired if there were any comments from the Board. There were no comments.

Mr. Vanderhorst made the motion to approve the March 21, 2012 meeting minutes. Mr. Schermerhorn seconded the motion. All were in favor. Mr. Malis abstained.

USE VARIANCE

Kohler (247.17-1-18)

Mr. Schermerhorn stated that this is an application for a use variance. Mr. Schermerhorn stated that the application was submitted on 5/9/12 but was returned to the applicants because it was incomplete. Mr. Schermerhorn stated that the applicants have now furnished a complete application.

Mr. Schermerhorn stated that the applicants reside in a residential area and are requesting a use variance to house chickens. Mr. Schermerhorn stated that the project description requests to house chickens on the property for tick control and other insect control. Mr. Schermerhorn stated that the applicants completed the Short Environmental Assessment Form. Mr. Schermerhorn read the form into the record.

Mr. Schermerhorn read a letter submitted by the applicants together with the application.

Mr. Schermerhorn inquired if the applicants had anything to add to the Board.

Mr. Kohler stated that he felt all of the information was contained in the application package.

Mr. Schermerhorn stated that page 28 of the Zoning Ordinance lists that the housing of fowl in a Residential District is prohibited.

Mr. Vanderhorst called attention to page 48 of the Zoning Ordinance as pertains to Use Variance. Mr. Vanderhorst read page 48, section 3 of the Zoning Ordinance.

- a.) The Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

The Board agreed that this does not apply as the applicants are not looking for financial return.

- b.) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

The Board agreed that this is not unique as other neighbors have the same problem.

- c.) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

The Board agreed that if this was granted then the Board would be setting a precedence that would be onerous to deal with in the future if this should come up again.

- d.) That the alleged hardship has not been self-created.

The Board agreed that the tick population has not been created by the applicant.

Mrs. Kohler stated that the problem is unique as far as how to manage the ticks. Mrs. Kohler stated that putting chemicals on the lawn is not acceptable to them having young children. Mrs. Kohler inquired if anyone else has come forward with a tick problem.

Mr. Schermerhorn stated that the ZBA has not had anyone come forward on that issue.

Mr. Van Vranken stated that the Board is not in a position to vote at this time since there has been no Public Hearing. Mr. Van Vranken stated that the Board has provided comments indicating what the Board's conclusion are. Mr. Van Vranken stated that the applicants have the right to request a Public Hearing and come back and have one. Mr. Van Vranken stated that use variances in case law, and in the tradition of the law are very difficult to obtain. Mr. Van Vranken stated that there has to be unique and special set of circumstances because when a ZBA approves a use variance, it is re-zoning a particular property in contradiction to what the ordinance is stating. Mr. Van Vranken stated that as the chairman read previously, the ordinance very specifically prohibits several kinds of animal ownership and presence within a residential district. Mr. Van Vranken stated that if the facts are established at a Public Hearing, that this is a residential district, then the conclusion that would be required of this Board would be to deny the use variance.

Mr. Schermerhorn stated that the applicants have the right to request a Public Hearing. Mr. Schermerhorn inquired if the applicants, considering the comments of the Board, are requesting moving forward with a Public Hearing.

Mr. Kohler stated that he would like to petition to change the zoning ordinance.

Mr. Schermerhorn stated that at this time, the applicants have two options. Mr. Schermerhorn stated that the Board could schedule a Public Hearing or the applicants could go to the Town Board.

Mr. Malis stated that from what has seen he would have difficulty in approving such a variance.

Mr. Vanderhorst inquired if the applicants had looked into other natural methods of control.

Mr. Kohler stated yes. Mr. Kohler stated that they would go to the Town Board.

Mr. Schermerhorn stated that the Board would hold the application pending the Town Board decision. Mr. Schermerhorn stated that the applicants could always resubmit their application.

SITE PLAN REVIEW

Route 67 Café/Wasserman (226.-1-9)

Mr. Schermerhorn stated that the application is for a special exception use variance and previous granted variance amendments. Mr. Schermerhorn stated that the property is located in an Agricultural Zone.

Mr. Schermerhorn read contents of the Route 67 Café file into the record. Mr. Schermerhorn stated that the file contains:

- Application for a special use exception variance request dated 5/8/12;
- Short EAF form dated 5/8/12;
- Tax Map; and
- neighboring property owner list.

Mr. Schermerhorn stated that he has had subsequent conversations with Mr. Gizzi, Mr. Van Vranken and the applicant. Mr. Schermerhorn stated that the applicant is here tonight to provide information to the Board.

Mr. Schermerhorn stated that Mr. Van Vranken sent a letter to the applicant dated 5/30/12. Mr. Schermerhorn stated that the Progress Print dated 5/30/12 has been updated and provided on 6/5/12. Mr. Schermerhorn stated that the Town Board did vote to refer this application to the Zoning Board of Appeals.

Mr. Schermerhorn asked Mr. Van Vranken to review his letter of 5/30/12.

Mr. Van Vranken stated that the letter was to advise the applicant of the type of information the Board would be looking for. Mr. Van Vranken stated that he tried to provide an outline of the way exceptional use permits have been handled by the Boards once the Town Board makes the referral to the ZBA. Mr. Van Vranken stated that what has happened in the past is that the ZBA is the deciding Board and ultimately makes the final decision. Mr. Van Vranken stated that there is generally a referral to the Planning Board requesting that they conduct a site plan review of the site. Mr. Van Vranken stated that in the past the Planning Board has invited the ZBA to join in a joint Public Hearing. Mr. Van Vranken stated that following that, the Planning Board has the jurisdiction to complete the approval process of the site plan, make its recommendations back to the ZBA and then the ZBA will make a final determination issuing an exceptional use permit with whatever conditions the ZBA determines is essential. Mr. Van Vranken stated that in the letter he also laid out the kinds of information that the site plan should contain and then some other types of questions that the ZBA would be interested in as this moves forward.

Mr. Wasserman, the applicant, Les Ackerman, Architect and Chris Moore, Landscape Architect appeared before the Board

Mr. Ackerman stated that their ultimate goal is a two phase project. Mr. Ackerman stated that the more immediate need is opening up the patio for the summer because that is when the most income can be generated which will help fund Phase 2 of this project. Mr. Ackerman stated that they have not decided if they are withdrawing Phase 2 at this time. They will be moving in that direction, however, there are a number of design issues that still need to be addressed in order to accommodate Phase 2 work. Phase 2 will either be a roof over the patio and expansion of the kitchen or an enclosure of the patio. Mr. Ackerman stated that they are still exploring their options. Mr. Ackerman stated that they want to be upfront with the Board and request that any actions they do take will not negate them from being able to move forward with Phase 2 at a later time.

Mr. Ackerman provided the Board with a handout with amended and updated information. Mr. Ackerman also provided a summary of the project goals.

Mr. Ackerman stated that their goal is the deck. Mr. Ackerman stated that there would be an economic benefit of having the deck. There would also be better visibility and opportunity to grow. It would also get accessibility into the building which is what the ramps are for. Mr. Ackerman stated that they have provided for a ramp in the front and in the back in order to connect to the back picnic areas which are on the property. Mr. Ackerman stated that they are trying to bring the building much more in compliance with the Americans with Disabilities Act. Mr. Ackerman stated that they have arranged the parking to provide for some handicapped accessible spaces in the front to provide access and designated parking. Mr. Ackerman stated that they are trying to provide lighting around there to make it safer. Mr. Ackerman stated that they are providing parking according to the Town's Zoning. Mr. Ackerman stated that they have provided for expansion areas. Mr. Ackerman stated that they do not foresee using those other than for special occasions. Mr. Ackerman stated that the existing parking areas with delineation will be sufficient for the facility.

Mr. Schermerhorn asked Mr. Ackerman to show the parking area on the drawing.

Mr. Ackerman explained all the parking areas.

Mr. Malis asked Mr. Ackerman to show the proposed patio on the drawing.

Mr. Ackerman explained the drawings, the pictures of the proposed interior design and the overall site.

Mr. Wasserman stated that the seating in the building would be for 8-10 people.

Mr. Malis inquired if there was a license to serve beer and wine.

Mr. Ackerman stated that currently there is a license to distribute/sell beer for off premises consumption.

Mr. Malis inquired if the applicant was looking to provide on premises consumption.

Mr. Ackerman stated that was correct.

Mr. Wasserman stated that as this time he is actually refusing customers to have lunch with a bottle of beer on the deck. Mr. Wasserman stated that he does not want anyone drinking and driving.

Mr. Ackerman stated that he has spoken to Michelle Fisher, Assistant Director for Code Interpretation in NYS Department of State. Mr. Ackerman stated that Ms. Fisher has explained what they are trying to do from a code (NYS building code) standpoint. Mr. Ackerman stated that the reason they are putting a limitation of 50 people on this versus the

original layout which showed 90 people was so that they would maintain the existing mercantile occupancy classification from NYS building code. Mr. Ackerman stated that an assembly occupancy would allow change to the structure while permitting the existing conditions, such as the septic, well and existing bathrooms, to remain. Mr. Ackerman stated that as long as they keep an occupancy limit of 50 people then those items do not need to be addressed.

Mr. Ackerman provided a handout of the occupancy descriptions from the NYS building code. Mr. Ackerman read aloud the pertinent articles.

Mr. Van Vranken inquired if the expansion would require additional parking spaces.

Mr. Ackerman stated that they have shown the parking spaces based on the square footage which would be required under the Town code for that area. Mr. Ackerman stated that the 3:1 ratio is what is shown on the plan.

Mr. Van Vranken inquired if that was more than what is there now.

Mr. Ackerman stated yes because of the expansion.

Mr. Van Vranken inquired what the number is now.

Mr. Ackerman stated that the now is providing for 22 spaces including the handicapped spaces and the overflow parking areas of another 22.

Mr. Vanderhorst stated that the parking as it exists now has no delineation.

Mr. Ackerman stated that they are hoping that this approach simplifies things and as they move the project ahead into the next phase they will be back to the Board in order to work with the other issues as they have more information and more clarification on some of the items that the Board was looking at. Mr. Ackerman stated that they are looking at whether there is a need for a modification or a new area variance. Mr. Ackerman stated that the front setback is 60 feet and the building has an encroachment on that of approximately 10.8 feet. Mr. Ackerman stated that they are maintaining that current line and the floor line for the porch with the ground level of the structure. Mr. Ackerman stated that if that structure does get roofed, the roof would not extend past where the existing roof is.

Mr. Van Vranken stated that is taken into consideration and will be inclusive of that. Mr. Van Vranken stated that it is not a separate process.

Mr. Malis inquired if they could get a license to serve alcohol on the premises in the existing building.

Mr. Wasserman stated yes. Mr. Wasserman stated that there are different requirements as far as bonds but he could serve on the existing.

Mr. Van Vranken stated that for clarification purposes, the applicant is looking for an extension as shown on the rendering and the on premises license as Phase 1.

Mr. Wasserman stated that was correct.

Mr. Vanderhorst inquired if there would be landscaping included in Phase 1 and a new pathway.

Mr. Ackerman stated yes.

Mr. Vanderhorst inquired if the path would be gravel.

Mr. Wasserman stated that the path would be similar to what is existing.

Mr. Schermerhorn inquired if the existing septic behind the store has been surveyed and will be sufficient for the capacity.

Mr. Ackerman stated that the back page of the handout contains a revised hand drawn layout that will be surveyed and firmed up for exactly what is there. Mr. Ackerman stated that yesterday the septic company came to the site and confirmed where the various components were on site. Mr. Ackerman stated that the house system comes off the back of the house into the septic tank and then runs into a common distribution box. Mr. Ackerman stated that the store septic comes off the back, runs into the common distribution box and there are 8 fifty foot lines that are 6 foot on center.

Mr. Van Vranken introduced Mr. Wilkinson as Chairman of the Planning Board attending the meeting for informational purposes.

Mr. Schermerhorn suggested that the information be provided in more detail along with the Zoning Ordinance. Mr. Schermerhorn stated that in Charlton there are numerous water issues and the septic system can become an issue. Mr. Schermerhorn stated that distribution off of two facilities plus expanded service may not have capacity. Mr. Schermerhorn stated that perk tests may also have to be done.

Mr. Ackerman stated that he believes that they meet the setback requirements for the Town. Mr. Ackerman stated that they need to get that verified with a survey. Mr. Ackerman stated that he has reviewed the DEC requirements and the state building code and the state plumbing code. Mr. Ackerman stated that as long as they are maintaining the 50 person occupancy level there is no need to touch the existing septic system. Mr. Ackerman stated that there is no history of failure for the existing septic system. Mr. Ackerman stated that the septic was looked at recently and there was a baffle issue which has been repaired.

Mr. Schermerhorn stated that he would like the applicant and the applicant's representative to review the Town of Charlton Zoning Ordinance which specifies the requirements for

sanitary facilities and water wells. Mr. Schermerhorn stated that pages 17-24 are detailed as to the required information. Mr. Schermerhorn stated that those requirements all need to be indicated on the plot plan.

Mr. Ackerman stated certainly.

Mr. Van Vranken stated that this property came in as a pre-existing non-conforming use. Mr. Van Vranken stated that when you come before the Board having an exceptional use permit authority and request to modify it you open up consideration of every issue. Mr. Van Vranken stated that the Planning Board will make a referral to the Town Engineer for inspection of things such as the well, design capacity, condition and septic. Mr. Van Vranken stated that the Planning Board will consider the recommendations of the Town Engineer and make that part of their report and recommendation back to the ZBA.

Mr. Van Vranken stated that it has been the requirement in the Town of Charlton that when a site plan is reviewed to completion, that the site plan is recorded in the County Clerk's Office. Mr. Van Vranken stated that the capacity for a site plan to be recorded cannot be a site plan that a licensed architect prepared. Mr. Van Vranken stated that it has to be a licensed engineer or a land surveyor to certify for recording purposes.

Mr. Schermerhorn stated that the site has 4 uses on 2+ acres which normally would require 8.4 acres. Mr. Schermerhorn stated that there are quite a few things to be considered in this process. Mr. Schermerhorn stated that the plans do locate the existing well. Mr. Schermerhorn suggested a survey of the water in terms of being able to handle the expansion.

Mr. Vanderhorst inquired if the well serviced the house and the business.

Mr. Ackerman stated yes.

Mr. Schermerhorn stated that he is concerned that the application states two Phases. Mr. Schermerhorn stated that they are so related that if the ZBA approved Phase 1 so much of Phase 2 is predicated upon Phase 1. Mr. Schermerhorn suggested including Phase 2.

Mr. Ackerman stated that Phase 2 may never happen and they would like to only proceed with Phase 1 at this time. Mr. Ackerman stated that upon receiving Mr. Van Vranken's letter they decided to only proceed with Phase 1 at this time.

Mr. Malis made a motion to accept the Route 67 Café application with the modification of removing Phase 2 and only proceeding with Phase 1 at this time. Mr. Vanderhorst seconded the motion. All were in favor.

Mr. Schermerhorn made the motion to refer the site plan review to the Planning Board and request their recommendations together with the completion of SEQRA and the suggestion of a joint public hearing. Mr. Malis seconded the motion. All were in favor.

Mr. Wilkinson stated that the application is on the Planning Board's agenda for June 18, 2012.

Mr. Van Vranken suggested referring the application to the ECC and the County Planning Board.

Mrs. Caron will forward the application.

Ogle/312 Stage Road, LLC.

Mr. Schermerhorn stated that Mr. Ogle had contacted Mr. Van Vranken about applying for an amendment to his special exception use permit to rent out space. Mr. Schermerhorn read the letter from Mr. Ogle dated May 10, 2012. Mr. Schermerhorn read Mr. Van Vranken's response letter dated May 25, 2012. Mr. Schermerhorn read Mr. Ogle's letter of May 31, 2012. Mr. Schermerhorn stated that Mr. Van Vranken contacted the applicant and suggested that he come to the ZBA for an interpretation. A copy of the letters are annexed hereto as Attachments A, B, and C.

The Board reviewed the Zoning Ordinance.

Mr. Van Vranken stated that Mr. Ogle is requesting two uses on one site which is not allowed under the Town's Zoning Ordinance.

Mr. Schermerhorn made a motion to have Mr. Van Vranken send a letter to Mr. Ogle stating that the Board's understanding of the Zoning Ordinance is that the request is not allowed under current Town regulations. Mr. Malis seconded the motion. All were in favor.

Pickett

Mr. Schermerhorn provided the final resolution for the Board.

Business

Mr. Schermerhorn stated that he would like to sit down with the Zoning Administrator's office to discuss the procedure for accepting applications.

Mr. Schermerhorn stated that the Board has a vacancy as Audrey Ketchum has resigned. Mr. Schermerhorn asked Mr. Gardner to request the Town Board expedite appointing a new member.

Mr. Malis made a motion to close the meeting seconded by Mr. Vanderhorst. All were in favor.

Meeting was adjourned at 8:45 p.m.

Respectfully Submitted,

Kimberly A. Caron
Recording Secretary