

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

**February 19, 2013**

Minutes of the Zoning Board of Appeals – February 19, 2013

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

Present: Don Schermerhorn, Chairman, Mark Chotkowski, Al Smith, Chip Ellms, Joe Marchesiello, Bob Van Vranken, Town Attorney and Kim Caron, Recording Secretary.

**Business Meeting**

Mr. Schermerhorn introduced new Zoning Board alternate member Joe Marchesiello.

Roll Call attendance was taken.

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

Mr. Schermerhorn stated that the draft of the October 16, 2012 minutes needed to be approved. Mr. Schermerhorn inquired if there were any comments from the Board. There were no comments.

Mr. Schermerhorn made the motion to approve the draft of the October 16, 2012 meeting minutes. Mr. Smith seconded the motion. All were in favor. Mr. Marchesiello abstained from the vote.

**USE VARIANCE**

**Sevinsky 2013-01**

Mr. Schermerhorn stated that there was a Public Hearing scheduled for this application. Mr. Schermerhorn stated that the applicants have withdrawn their application for solar panels.

Mr. Schermerhorn stated that after talks between the Building Inspector, the Town Attorney and the Town Board, it was determined that the ZBA had no bearing on this application. Mr. Schermerhorn read the letter from Mr. Van Vranken.

## **SITE PLAN**

### **Route 67 Café/Wasserman 2012-**

Mr. Schermerhorn stated that at the Planning Board meeting last evening, their determination on this application was to deny the application. Mr. Schermerhorn read the letter from Jay Wilkinson into the record.

Mr. Schermerhorn stated that ZBA determination could be discussed at the next ZBA meeting. Mr. Schermerhorn stated that he would like Mr. Van Vranken's input.

### **Business**

Mr. Schermerhorn stated that he has asked the Town Board to consider different ways to look at the solar panel concept for better definition in the Zoning Ordinance.

Mr. Chotkowski made a motion to adjourn the business meeting seconded by Mr. Smith. All were in favor.

Meeting was adjourned at 7:15 p.m.

Chairman Don Schermerhorn called the meeting back to order at 7:30 p.m.

## **PUBLIC HEARING**

### **Zak 2013-02**

Mr. Schermerhorn read the legal notice published February 8, 2013 into the record.

Mr. Schermerhorn stated that the applicant is Diane Zak and the application is dated January 30, 2013. Mr. Schermerhorn stated that the applicant is looking for an area variance for a two lot subdivision resulting in the creation of one lot that does not have confirming road frontage.

Mr. Schermerhorn read the contents of the file into the record:

- narrative from the applicant;
- property tax map;
- copy of the subdivision application with the Planning Board;
- short EAF;
- AG Data Statement;
- list of adjacent property owners;
- County Planning Board approval received today; and
- letter from the Planning Board with their recommendations.

Mr. Schermerhorn stated that the applicant, Diane Zak is present, together with Kenneth Lawrence and John Gay, the applicant's representative.

Mr. Gay: John Gay, Northeast Consultants. The property is question, the house on it, dates back to somewhere between 1790 and 1810. There are a couple of different ideas of the age. It is on the west side of the property and is served by public water and septic system. The Zak's would like to be able to sell the lot on the east side of the property. It is land that they presently do not use for their own purposes. They have a barn here and virtually no current activity has occurred from behind the barn and onto the back of the property. The property does abut against the Town park. It is a nice piece of property. The very back of it has a little drainage to it as part of DEC wetlands, not affecting the buildable portion of the lot. In looking at the variance, I went through the tax maps on both sides of the road and on the south side, there are 18 properties. Of those properties, 4 have frontages of 200 feet or more. On the Town Hall side there are 17 properties and there are 4 that have 200 feet or more in frontage. Of those, being the church, the Town Hall and the Crawford Farm. All in all, 200 foot is something that is not standard for this area. Most of the houses, if not all of the houses on both sides of the street, were built prior to the existence of zoning in Charlton. We have got kind of an as built and we feel that this would fit right in. The property on the other side of this is 67 foot wide and everybody seems to live quite nicely on different size parcels through here. It is our hope that the ZBA would give us a variance of the 6 feet and allow us to get back to the Planning Board to get a subdivision approved. It is worthwhile mentioning that we are in the Historic District and when it gets down to what kind of a house is going to go on the new lot, when we get to that point, they are going to be much involved in that so that it is compatible with the Historic District. I think one thing the Zak's have done is an outstanding job on maintaining a 220 year old house and it is in very good shape. There have been additions to it over the years but all in all it has remained the same character. We would hope that the discussions with Diane, when something is done on the new lot, it would be in character with the neighborhood.

Don Schermerhorn: I noticed on the subdivision plan here it is showing the actual existence of a proposed two story residence. Would that be the intended layout for a proposed house?

John Gay: Not necessarily but there are some constraints that would add to that being the selected area. The lot slopes off the road to the south and in doing so, that means the front yard would have to be brought up to road elevation. Probably the back of the house will be the exposed basement, walkout basement. There is a substantial 50 foot side yard setback so it eats of 100 foot of the 200 foot lot. I might be a one story building or it might be a two story. At this point we really do not know.

Don Schermerhorn: The other thing I had a question on is it shows a proposed septic system. Just out of curiosity, have any perk tests been done.

John Gay: Perk tests have been done and the soils are acceptable underneath. We are probably going to have to bring the front yard up by 4 or 5 feet which means that Bob Gizzi starts looking at this for septic system inspection. We will have to redo the borings and the

perk tests to demonstrate what is there and the fill material will have to sit over a freeze thaw cycle which is a State Department of Health regulation.

Mark Chotkowski: So you are going to bring the front of the lot up in grade, you are going to put the septic system, just by a quick glance, less than 25 feet away from the lot line and at that point there is an existing well? I know that you are going to have Town water but what stops the affluent from making it to that well? Is that a hand dug well?

John Gay: It is a hand dug well and it will be decommissioned as soon as approval is received. We are going to fill it in; there is really no need for it at this point. There is public water at the street. In this day in age, dug wells are not acceptable to the State Health Department as a water supply.

Mark Chotkowski: Does DEC or the State Health Department has the verbiage on how that is filled in?

John Gay: They really don't. They say "to generally accepted standards". Essentially, in filling something like this in, you would drop the sides, the build up sides, into the well and then fill over it with dirt and in this area mostly clay loam. It is not going to be useful after it is decommissioned.

Mark Chotkowski: I was just concerned about the water.

Diane Zak: I have lived in Charlton since 1988. I raised my 3 kids here and if anybody whose lived here any period of time knows, our house was uninhabitable when we came in 1988. So for all of these years, I have put my heart and soul into this Charlton house. I wanted to assure, to any of my neighbors, that I would be personally involved in who I sold that land to because Charlton means that much to me. I want it to be in the keeping with the Historic District. I don't know if this makes a difference to you folks but it makes a difference to me and my neighbors that I felt like I needed to say this. I wouldn't just sell that to anybody because this is where I raised my kids. All these years I have put my heart and soul into this house so whoever would come after and buy the land, I would make sure that it is in keeping with the character of the district.

Marv Schorr, ECC Chairman: We have not had a meeting this month, so the full committee has not reviewed this application. However, when I looked at it, there were two concerns that I had. One was the wetland in the back of the lot and it obviously appears far enough away from where the house would be sited that it should not be an issue. The buffer that DEC likes to see but doesn't require in an application like this is still met. I believe that looking with my eye, it looks about 400 feet. The second concern I had was one that existed and that was raised when the Town Hall was built and that was periodic flooding of this property from runoff from the side of the road where the Town Hall now exists. I believe Steve Caine raised that as an issue during the review of the Town Hall when it was under review. That was supposed to have been alleviated by the drainage ditch on the side of the road where the Town Hall is and the drainage ditch on the side where this house is and I

believe they talked about putting a pipe under the road to direct the flow of runoff from the drainage ditch on the Town Hall side to the other side so that it did not flood this property. Whether that has happened or not I don't know. I thought it should be mentioned as a potential concern. The issue seemed to be that, before the Town Hall was built, when there was runoff from that property into the drainage ditch, the drainage ditch couldn't handle all the heavy rains and it went across the road and flooded this property. Since the septic tank is going to be in the front of the house toward the front of the property where flooding periodically has occurred, I think that whether or not that has been fixed by what happened when they built the Town Hall and the two drainage ditches and the pipe under the road, whether that happened or not I think should be checked out.

John Gay: There is an 18 inch reinforced concrete pipe that was installed right on the property line between lands formerly of the Caine's and the Zak property. So our grading plan shows that, that drainage will be isolated to the ditch and the ditch line going south towards the wetlands would be improved as necessary to make sure that the flow runs properly. Where the septic system is going to be is approximately 4 foot higher than the ditch.

Don Schermerhorn: I see you have a head wall indicated on the south side of Charlton Road for that 18 inch concrete pipe, correct? Then you have that 2 foot ditch line running straight to the south?

John Gay: That is correct.

Don Schermerhorn: Is that headwall in existence?

John Gay: Yes it is.

Don Schermerhorn: So Marv, stormwater management is a potential issue from your perspective?

Marv Schorr: Depending on how it's operated since the Town Hall was built.

Don Schermerhorn: OK.

Marv Schorr: The highway superintendent would be aware of that.

Don Schermerhorn: OK.

Diane Zak: When Steve was the owner of the house, he and I and Alan Grattidge had a conversation about this. The plan was going to be that Mr. Grattidge was going to come with a backhoe and dig that ditch out. He even had me sign papers to give him authorization to do that. So Steve and I were ok with that. I don't think that was ever accomplished.

Chip Ellms: Was it ever a problem?

Diane Zak: No.

John Hussey, 763 Charlton: I'm just to the east of the property that is being discussed. Steve had mentioned that there had been some small scale excavating down there. I don't know how deep or how far it went. The concern was pooling and also, our leech field is on that side of our property. I think Steve Caine was concerned that the pooling could impact some leeching. I don't know if it ever gave him problems in the past. It has not given us problems in the 9 months we have been here. That is all I know about the history. I do believe someone came back with a small backhoe and scraped it. My concern with the proposed plan is that I do notice that it looks like there is 9 foot grade from the base of the house heading towards our property line and the ditch in discussion. There obviously would be runoff. That would be my concern. All other questions that others have asked have addressed my other questions. Can I assume that this engineering plot map here would meet any setbacks, you had addressed a DEC implications from the wetlands. It wouldn't of gotten this far, I'm assuming if those weren't all taken into account.

John Gay: There is a 100 foot buffer to the wetlands. Its about 400 feet where the proposed house will be located.

John Hussey: A little clarification possibly, the first notification that we got was for this proposed variance, which is a minimal variance, was by the appeals board. I don't know what the typical process is but maybe that was handled last night at that meeting. Is that the case?

Don Schermerhorn: The way the Zoning Ordinance works, for building a residence in the Town of Charlton, requires 200 feet road frontage and 2 acres for a single family residence. Our process and involvement here is to grant a variance to that requirement. We don't have purview over the subdivision process they would have to go through with the Planning Board and also the Planning process for the building of a residence, i.e. stormwater management, setback requirements. The Zak's will have to address that with the Planning Board when it comes time for that. Whoever files for the building permit has another process. Our role here this evening is to determine the feasibility of the variance that they are requesting of 5+ feet from the standard of 200 feet.

Mr. Chotkowski made the motion to close the Public Hearing seconded by Mr. Smith. All were in favor.

Public Hearing closed at 7:55 p.m.

### **Zak Discussions**

Mr. Schermerhorn thanked everyone for their input.

Mr. Schermerhorn stated that it is the Board's responsibility to answer certain questions in terms of granting an area variance. Mr. Schermerhorn stated that the Board can answer each question and then make a determination of whether to proceed with a vote or delay to next month.

Mr. Chotkowski stated that as the lot exists now it is located in the Residential/Agricultural District and subject to those rules and criteria. Mr. Chotkowski stated that as that lot sits now, it is allowed a horse and a barn. Mr. Chotkowski inquired what happens to that when the parcel is subdivided.

Mr. Schermerhorn stated that it would no longer be permitted.

Mr. Chotkowski stated that it has the minimum acreage but not the minimum width. Mr. Chotkowski stated that once the parcel is subdivided there will no longer be the ability to keep a horse on the lot.

Mr. Schermerhorn stated that not according to the ordinance.

Mr. Chotkowski inquired if that could be appealed at ZBA.

Mr. Schermerhorn stated that the new owners will have the privilege and the right to come before the ZBA to look for that variance if they choose.

Mr. Van Vranken inquired if the Planning Board took jurisdiction of SEQRA.

Mr. Gay stated that the Board did not discuss SEQRA last night.

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. Many lots in that area do not conform to the existing zoning 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.

*3. Whether the requested variance is substantial.*

No. The Board has granted frontage variances for more than 6 feet.

*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, does not preclude the granting of the area variance.

Mr. Schermerhorn made the motion to approve the area variance as requested. Mr. Chotkowski seconded the vote. Roll call vote was taken:

Mr. Chotkowski – aye

Mr. Ellms – aye

Mr. Smith – aye

Mr. Marchesiello – aye

Mr. Schermerhorn – aye

Area Variance Granted.

Mr. Schermerhorn stated that written notice of the Boards determinations will be available within the next 6 days.

Mr. Schermerhorn made the motion to adjourn the meeting seconded by Mr. Ellms. All were in favor.

Meeting adjourned at 8:05 p.m.

Respectfully Submitted,

Kimberly A. Caron  
Recording Secretary