

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

June 9, 2015

Minutes of the Zoning Board of Appeals – June 9, 2015

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

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

Business Meeting

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

Roll Call attendance was taken.

Minutes

Mr. Schermerhorn stated that the draft of the May 12, 2015 minutes needed to be approved. Mr. Schermerhorn inquired if there were any comments from the Board. There were no comments.

Mr. Smith made the motion to approve the draft of the May 12, 2015 meeting minutes. Mr. Chotkowski seconded the motion. All were in favor. Mr. Marchesiello and Mr. Malis abstained from the vote.

Area Variance

Wood/Palmer (247-1-78)

Mr. Schermerhorn stated that the applicant is Dave Wood and the owner of the property is Shirley Palmer. Mr. Schermerhorn acknowledged that both parties were present.

Mr. Schermerhorn reviewed the documents on file:

- Application received 5/8/15;
- SEQRA Short Environmental Assessment Form dated 5/21/15;
- Saratoga County tax map;
- Bounding owners list;
- Applicant's narrative (read into record);

-Proposed Subdivision of Lands of Palmer map No. 15-11-32 by Gilbert VanGuilder Land Surveyor, PLLC, dated May 15, 2015;

Mr. Schermerhorn read from the Zoning Ordinance the pertinent information relating to this application. (p.16a, Schedule Table IV-2, reference Residential/Agricultural Zone, Column 2., #9 "Ponds", column #8 "One Side Yard" Setback requirement of 40 feet).

Mr. Schermerhorn read the Public Hearing notice which was published in the Daily Gazette on December 3, 2016.

Mr. Rabideau was present to give the Board a presentation of what the applicant is proposing.

Mr. Rabideau stated that he was representing Dave Wood in his application for an area variance for the pond setback as listed on Table 4-2 of the Zoning Schedule. Mr. Rabideau stated that they are proposing to subdivide a 9 acre parcel from the existing 71 acre parcel. Mr. Rabideau stated that agricultural production will continue on the remaining 61 acres. Mr. Rabideau stated that their proposed property line will bisect the 9 acre parcel and the 61 acre parcel through the easterly portion of the existing pond.

Mr. Schermerhorn opened the Public Hearing at 7:05.

Mr. Schermerhorn reviewed the Public Hearing process.

Ed Malis: What is the purpose of this request?

Duane Rabideau: An easement to create a 9 acre parcel where the property line will intersect the easterly edge of the existing pond. A maintenance agreement will be created. Mr. Wood will own the land but there will be a 40 foot strip that will have an easement allowing Ms. Palmer and any future owner the right to go on that 40 foot strip and maintain the pond. Dave Wood would control the land but Shirley Palmer will have the right to maintain the pond.

Don Schermerhorn: I am confused. Why not put the line around the pond? Why isn't the easement line the property line?

Duane Rabideau: It would be out of character. They are trying to keep the lines straight. For the land use, they feel that a 40 foot easement around the easterly portion of the pond accomplishes their goal. Dave Wood will still control the AG fields.

Don Schermerhorn: Is there another pond?

Duane Rabideau: Yes.

Don Schermerhorn: That line also looks like it is adjacent to the corner of the pond.

Mark Chotkowski: The green and red line is the Town line.

Duane Rabideau: Their proposal is not out of character for the Town. There are other existing conditions out there similar to this proposal. On the lands of Smith, there are three close lines and on the lands of Katz, the east line either touches the pond or is very close to the property line. Their proposal is not out of character for the pre-existing conditions out there. They prefer to have the easement which will keep suburban use from encroaching into the AG use.

Dave Wood: I would like to keep the land in AG and farm use. The easement guarantees the maintenance of the pond and surrounding area. It would not interfere with the farming operations. It is the best of both worlds.

Don Schermerhorn: How is the area maintained now?

Shirley Palmer: There is a fountain that aerates the water and the pond is stocked with grass eating carp.

Don Schermerhorn: And there is a natural flow in and out?

Shirley Palmer: Right.

Mark Chotkowski: Is this application also in front of the Planning Board?

Don Schermerhorn: No, I spoke to the chairman Jay Wilkinson and it could have gone there first but would still have to come to ZBA for a variance.

Mark Chotkowski: When was the prior subdivision of this property?

Penny Heritage: 1998.

Mark Chotkowski: There are no lot line dimensions on the drawing representing the Heritage western boundary line. The drawing does not match the tax maps. The western line is not a boundary line, as the owner has admitted. If they are trying to keep straight lines, that line does not match that. The lines are not straight.

Duane Rabideau: There is no boundary there.

Mark Chotkowski: Is this a legal document we are referencing? Where is the stamp?

Don Schermerhorn: The presentation is to support the argument of establishing a lot line through a pond. All concern is for the lot line through the pond, the dimensions are not of prime importance.

Mark Chotkowski: How is the road frontage scaled?

Duane Rabideau: That needs to be determined.

Mark Chotkowski: If this is approved, it goes to the County. Are they supposed to create the new lines off of this?

Duane Rabideau: A survey.

Mark Chotkowski: Where is the survey now?

Duane Rabideau: It is a question of economics. The tax map and the aerial photos are presented to show the applicants intent.

Mark Chotkowski: If this is approved, then it goes to Planning Board?

Don Schermerhorn: Correct.

Robert Van Vranken: The reason for the method is that, if denying the variance, then in order to proceed with the subdivision they have to place the line within the 40 foot setback. The applicant is trying to find out if the ZBA will accept the property line in the pond. If the vote is to deny, then the applicant goes before the Planning Board with a survey containing all the information required with a new property line.

Mr. Schermerhorn made a motion to close the Public Hearing at 7:20 p.m. Mr. Chotkowski seconded the motion. All were in favor.

Mr. Schermerhorn stated that the Board needs to review the 5 criteria for a variance request.

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.

The Board agreed no.

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

Mr. Schermerhorn, Mr. Marchesiello, Mr. Malis and Mr. Chotkowski answered yes. Mr. Smith stated, no, not feasible for the applicant.

3. Whether the requested variance is substantial.

Mr. Marchesiello, Mr. Malis and Mr. Smith agreed no, the variance request is not substantial. Mr. Chotkowski and Mr. Schermerhorn agreed yes the variance request was substantial.

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

The Board agreed no.

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

The Board agreed yes.

Mr. Schermerhorn made the motion to deny the Wood/Palmer request for an area variance since there are alternatives available to remediate as this is self-imposed. Mr. Malis seconded the motion.

Roll Call vote:

Mr. Chotkowski – aye

Mr. Smith – no

Mr. Malis – aye

Mr. Marchesiello – no

Mr. Schermerhorn – yes

Majority Denial.

Mr. Schermerhorn made the motion to adjourn the meeting at 7:33 p.m. Mr. Malis seconded the motion. All were in favor.

Meeting adjourned at 7:33 p.m.

Respectfully Submitted,

Kimberly A. Caron
Recording Secretary