

**TOWN OF DEERFIELD
ZONING BOARD OF APPEALS
January 5, 2012
MINUTES**

Meeting convened at 7:00 p.m. in the Main Meeting Room, Municipal Offices, 8 Conway Street, South Deerfield, MA

Present: Ron Bohonowicz, Chair, Bob Decker, Jamie Hartwright, Chris Pichette, Ed Wise
Also present: Richard Calisewski, Building Commissioner

7:00 Hearing: **Magic Wings, Inc.** for a **variance from sections 2310 / 2320 of the Zoning By-Law's frontage setback**. The affected property is located at **Clark Cross Road, Deerfield, MA.** (Assessors Map 113, Lot 5)

Mr. Calisewski began by stating that previous building inspectors seem to have issued permits based on lesser setbacks but in CII, there is a 50' frontage setback, 25' rear and side setback. The previous permits were issued based on the Greenfield Road address. This hoop house is actually located on Clark Cross Road. It appears to Mr. Calisewski that it does not meet the 25' side setback and he has no idea as to how far off it is. We have no survey, as-built plan or documentation stating where the structure is located. Mr. Calisewski is, however, certain that it is in violation of the 25' setback. Regardless of whether he uses the Clark Cross Road address or the Greenfield Road address, it is still in violation.

Mr. George Miller, the petitioner, approached the table and introduced himself to the Board members that he didn't already know. According to the plan that he showed the Board members, the structure appears to be roughly 60' from the boundary.

Mr. Miller mentioned the Town's new status as a "Green Community". He stated that Magic Wings used to burn an average of 30,000 gallons of oil. Following the installation of the first unit, Magic Wings was able to save roughly 9,000 gallons of fuel (winter of 08-09). Last year, Magic Wings was able to save roughly 14,000 gallons of fuel. This year's projection is to save 20,000 gallons of fuel. He considers his family-run business to be "Green". He also stated that his numbers are down by 6% due to the state of the current economy and since he can't make *more* money, he must save more money.

Mr. Miller said that the translation of a gallon of fuel oil to a ton of wood chips is 80 gallons of #2 fuel oil. He is paying \$30 per tons for wood chips as opposed to the \$3+ for a gallon of oil. Next month, marks Mr. Miller's 13th year in this town. He feels that he has done all the right things.

Mr. Miller stated that he is asking for a variance for the setback on a road that sits back 3 or 400 feet from a dead-end road. He can't build to the north, the west, to the east and really can't build to the south. So he has a hoop-house building that has 50 ton of wood chips in it. It was temporarily located on the south side of the property before being moved to the north side of the property. It sits on a cement pad.

Peter LaBarbera along with Gary and Bryan Kolokoski joined the Board members at the table. The Kolokoski's use Clark Cross Road almost daily in the growing season to move equipment and to gain access to that parcel. Mr. LaBarbera stated that there have already been a number instances where the Kolakoski's equipment driving completely within the bounds of Clark Cross Road have almost gotten into a collision with vehicles backing out of Mr. Miller's facility on Clark Cross Road. He feels it is largely because even the parking spaces do not comply with the Zoning bylaw requirement that says that you need a 24 foot back-out/turning radius between your spaces and a public way.

Mr. LaBarbera stated that it is not sufficient to simply meet one of the three criteria. A variance may only be granted if all three criteria are met. The third criterion is "desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent

or purpose of such ordinance or by-law.” Mr. LaBarbera feels that this is a ‘serious public safety consideration’. Mr. LaBarbera also feels that the affective setback is 50 feet. He feels that it is a 25 foot setback. He feels that the Board is not being asked for a variance down from 25 feet but down from 50 feet.

Mr. LaBarbera went on to cite legal treatises of Mark Bobrowski and a MCLE Manual article written by Martin Healy.

After everyone had been heard, Mr. Bohonowicz asked Mr. Miller to provide the Board with a plan stamped by a professional surveyor or professional engineer showing exactly where the building is in relation to the boundaries. Mr. Decker suggested that Mr. Miller go before the Planning Board for a Site Plan Review as well as providing an As-Built Plan. Mr. Calisewski agreed with Mr. Decker that an As-Built Plan should be provided in order to clearly show where the building sits in relation to the road. Mr. Calisewski stated that when the building was on the south side of his property, it was a “temporary” structure serving as storage for his wood chips and then when Mr. Miller moved the structure to the north side of the property, Mr. Calisewski was unaware that with the new location, the storage structure became a permanent structure.

Mr. Miller feels that based on the stretch code, the variance should be granted because Mr. Miller’s purpose of this storage building is to save energy.

Mr. Bohonowicz said that he is unable to make any decision on this without seeing a stamped surveyor or engineering plan. Mr. Decker made a motion to continue this hearing until February 9, 2012 @ 7:00 PM to allow Mr. Miller time to submit substantial information as to locality of his structure. Ms. Hartwright seconded the motion. Vote passed unanimously (5-0-0).

Ms. Hartwright made a motion to make Ed Wise the Clerk of the Zoning Board of Appeals. Mr. Pichette seconded the motion. Vote passed unanimously (5-0-0).

Motion was made to adjourn and seconded. Vote passed unanimously.

Respectfully submitted,

Patricia Kroll
Administrative Assistant