

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

**April 10, 2018**

Minutes of the Zoning Board of Appeals meeting held on April 10, 2018.

Chairman Albert Smith called the agenda meeting to order at 6:30 p.m. at the Charlton Town Hall, 758 Charlton Road, Charlton, New York 12019.

Roll Call attendance was taken.

Present: Albert Smith, Chairman, Mark Chotkowski, Rick Potts, Joseph Marchesiello, Jim Leupold, Robert Van Vranken, Town Attorney and Kimberly Caron, Recording Secretary.

**Agenda**

**Richard Snyder Case No.: 2018-01**

Chairman Smith acknowledged that all Board members have a copy of the application provided by APEX Solar Power. Board member Chotkowski stated that he feels that the application is incomplete because the size of the solar panels is not on the provided plot plan. Board member Chotkowski also stated that the dimensions on the plot plan are unclear and it cannot be determined where the measurements were to. Board member Potts stated that he would like to know which direction the panels will be facing. Chairman Smith stated that the Board can ask questions of the applicant and their representative during the business meeting.

**Ruth A. Rossdeutscher Case No. 2017-03**

Chairman Smith stated that the Board originally heard this application for an area variance on December 12, 2017. Chairman Smith asked the Board if they had reviewed all of the material submitted. The Board replied in the affirmative. Mr. Chotkowski asked if the Town file contained an affidavit from Ms. Rossdeutscher allowing Duane Rabideau to speak on her behalf. Board secretary, Kim Caron, responded that the ZBA file does not but the Planning Board file has an affidavit. Duane Rabideau, Van Guilder & Associates, stated that the applicant will be present for the meeting. Attorney Van Vranken stated that Ms. Rossdeutscher can acknowledge on record that she has consented to Duane's representation.

Chairman Smith made a motion to close the agenda meeting at 6:38 p.m. Mr. Marchesiello seconded the motion. All were in favor

Agenda meeting closed at 6:38 p.m.

### **Business Meeting**

Chairman Smith called the meeting to order at 7:00 p.m. on April 10, 2018 and asked everyone to stand for the Pledge of Allegiance.

Chairman Smith introduced the Board members and staff.

### **Public Hearing (7:00 p.m.)**

#### **Ruth A. Rossdeutscher Case No. 2017-03**

Mrs. Caron read the public hearing notice that was published in the Daily Gazette on March 31, 2018. Mrs. Caron advised that notice of the hearing was also send to the adjoining property owners on March 31, 2018. Mrs. Caron read the letter from the Saratoga County Planning Board dated February 20, 2018. A copy is annexed hereto as Attachment 1. Mrs. Caron read the letter from the Town of Charlton Planning Board dated April 2, 2018. A copy is annexed hereto as Attachment 2. Mrs. Caron read the email from the Environmental Conservation Committee dated April 3, 2018. A copy of the email is annexed hereto as Attachment 3.

Attorney Van Vranken read his opinion letter into the record. A copy is annexed hereto as Attachment 4.

Mrs. Caron reviewed the contents of the file:

- application of Ruth A. Rossdeutscher dated November 21, 2017;
- a colored aerial photograph of the parcel;
- tax map with subject parcel highlighted;
- survey map prepared by Gilbert Van Guilder Land Surveyor, PLLC dated November 20, 2017;
- list of adjoining property owners; and
- tax map printout with parcels with less than 200 feet of frontage highlighted;

Ms. Rossdeutscher consented, on record, to allow Duane Rabideau of Van Guilder & Associates to represent her in this application before the Zoning Board of Appeals.

Chairman Smith reviewed the public hearing process with those in attendance.

Chairman Smith asked Mr. Rabideau to present their plan.

Duane Rabideau: This is a continuation of our request before the ZBA for a front area variance for property located at 47 Vines Road. The applicant's attorney, Dave Pentkowski,

is also present. The applicant would like to subdivide her parcel located at 47 Vines Road into three residential lots. In 2011 the applicant subdivided one lot out of her parcel creating Lot 1 and Lot 2. The new proposal subdivides Lot 1 into 3 lots. The newly created Lot 3 will consist of 2± acres and the newly created Lot 4 will consist of 5± acres. Lot 1 will be the remaining acreage with the existing house and outbuildings on a 10± acre parcel. The total frontage for Lot 1 is 588.53 feet and the frontage requirement within the RA district is 200 feet per lot. As the plan stands now, the proposed 2 acre lot and the proposed 5 acre lot each have 200 feet of frontage. The remaining frontage for Lot 1 would only be 188.53 feet. The parcels meet all of the zoning requirements for Lots 3 and 4 but are short 11.47 feet for Lot 1. We are requesting a 6% variance. Lot 1 does exceed the other specific requirements of the RA zone and meets the existing build out in the immediate neighborhood. The lots pictured in red are less than 200 feet of frontage.

Ms. Rossdeutscher consented, on record, to allow Dave Pentkowski, Esq. to represent her in this application before the Zoning Board of Appeals.

Dave Pentkowski: I represent Ruth Rossdeutscher. As I listened to the letters, it seems that there is some objection to the subdivision in general. The Planning Board, with all due respect, may have misunderstood their assignment. Their task is to evaluate the difference between a lot that has met the requirement of 200 feet from the lot that is proposed. Reviewing the proposed plan versus the Town's requirements was the assignment. If the variance were to create environmental problems then there would be basis to deny or problems within the community. The Planning Board provided generalized objections to the subdivision that are not relevant to the area variance request. The task is to balance what damage is done to the community, if any, in granting a variance. It is silly to suggest that having 200 feet of frontage is fine but subtract 11 feet and environmental problems/issues and community problems arise. I understand that the Planning Board has issues with the subdivision but those issues will be addressed by them if this application gets to that point.

Scott Weaver, 52 Vines Road: I have been a resident of the area for the last 20 plus years. My concerns is about this field. There is a relevant aesthetic of the field. I have lived in my current residence 20 plus years and have been a Charlton resident for over 43 years. My concerns are with the neighborhood. Keeping the pristine look. Will something like this change the zoning from Residential/Agricultural to Residential? There are already three homes there not counting the Miner Farm and now you are adding two more homes which increases population. Will the traffic increase? I walk regularly. I have seen an increase in traffic with the addition of the Deer Run subdivision. There is city water here. Will this be a strain on the water system? There will be a larger septic load in an area with peaks and valleys. Will those be filled in to level and graded? Will there be any adverse effect? There is a creek within 1000 feet. How does that drain? Will this affect the creek? There will be an increase in noise with lawnmowers, weed whackers and cars. Will the design of the new homes clash with the existing developments. Most of those houses were built between the 1950's and 1970's. I have been a 42 year resident. Every owner has made that field conservation permanent. The original deed had a restriction from further development. I spoke to Fran Miner. He thought that the field would be forever wild. I read the minutes

from July 18, 2011 and on page 5 it states that “Ms. Rossdeutscher is trying to keep as much agricultural land as possible”. Also in the October 17, 2011 minutes, Duane Rabideau stated that regarding the long driveway and the restrictions placed on them their “intent is to minimize the impact to the field, which is an active agricultural field”. I currently have a forever wild lot next to my house. It is 1.5 acres and will stay as a vacant lot. Our neighbors also had hoped that this field would be forever wild. I commend those acknowledged in the newsletter for placing their land in a conservation easement.

Jim Grabo, 117 Newman Road: I have been a resident of the Town since 1941. I have hayed that field for 30 years. I have heard some inaccuracies. The soil in that field is the best soil in Charlton. It actually perks too fast. I am in favor of this plan. It does not affect the hay cutting at all. There are 153 houses within ¼ mile. Arguing about property lines is ridiculous.

Jim Glavin, 35 Vines Road: This is my property here. I am adjacent to the existing house and barn. I support Ruth’s right to subdivide her land. I also support the variance.

Jim Leupold made a motion to close the Public Hearing. Joe Marchesiello seconded the motion. All were in favor.

Public Hearing closed at 7:30 p.m.

### **Deliberations**

Board member Chotkowski asked if Mr. Rabideau had seen the letter from the Planning Board before the hearing. Mr. Rabideau responded yes. Mr. Chotkowski asked if there was any response. Mr. Rabideau stated that those were Planning Board concerns. Some of the information was incorrect. The issues raised were Planning Board issues and their interpretations. Mr. Rabideau stated that he interprets this matter differently.

Board member Chotkowski asked for the square footage of the proposed Lot 3. Mr. Rabideau stated that the parcel was 2 acres. Mr. Chotkowski stated that when you do the calculations, the depth has to be 400 feet. Mr. Chotkowski again asked for the size of the lot. Mr. Rabideau stated 2 acres. Mr. Chotkowski stated that he did not have the calculations in front of him but if you do the math the depth has to be 400 feet. Mr. Chotkowski asked what the depth of the proposed lot was. Mr. Rabideau stated that the proposed lot was 2 acres. Mr. Chotkowski stated that the Planning Board reviewed the dimensions as plotted and they do not connect. Mr. Rabideau stated that he would need to see their calculations as the map denotes 2 acres. Mr. Chotkowski asked about the large lot requiring the variance having lot lines not being perpendicular to the road. Mr. Rabideau stated that was up for interpretation. Mr. Chotkowski stated that the subdivision guidelines state that they have to be perpendicular with the road unless a variance is given. Mr. Rabideau stated that the subdivision regulations are more intended to granting subdivisions where you are creating a road and creating a lot. What we are doing here is fitting it to the existing conditions. Mr. Rabideau stated that he can get the line to come off 90 degrees to

the road but they did it the way it is drawn to protect the agricultural field. Mr. Chotkowski stated that they would not need a variance if they moved the line. Mr. Rabideau stated that they are not requesting that variance. Mr. Chotkowski stated that if the ZBA approves one variance there is a possibility that more are needed which require more time and money. Mr. Rabideau stated that they will not have to come back for any more variances. Mr. Rabideau stated that this is the only variance they have requested.

Board member Marchesiello asked with the map indicated the lot as  $2 \pm$  acres, if it meets why the minus. Mr. Rabideau stated that is the way it is indicated on all maps. Mr. Marchesiello stated that is it is less than 2 acres that wouldn't that affect the frontage. Mr. Rabideau stated no.

Board member Potts asked where the application was in the process with the Planning Board. Mr. Rabideau stated that they did have an application in with the Planning Board but it was pulled to go before the ZBA for the variance first. Mr. Rabideau stated that he is not sure if a re-submittal will be required or if what has been submitted is acceptable. Mr. Potts asked if the proposed plan was presented to the Planning Board. Mr. Rabideau stated that they were on the January agenda but requested the application be pulled. Mr. Potts asked why the application was pulled from the agenda. Mr. Rabideau stated that the requirements state that a variance is required to subdivide and the Planning Board cannot act on the subdivision unless it is zoning compliant.

Attorney Van Vranken stated that what should have happened is that the application should have gone to the Zoning Enforcement Officer who would have looked at it and determined that because of the need for a single lot variance, that has been described this evening, it needed to go to the ZBA in order to determine whether or not the Zoning Board of Appeals could grant or deny the variance. The ZBA is hearing this application to determine if the ZBA is going to grant or deny the application. This is a little confusing because for this application, the key request is for an area variance, not what the comments have alluded to. While the comments are valid and useful, they will be vetted appropriately by the Planning Board if the variance is granted. The Planning Board is a very thorough board and will look at all aspects. If this application is denied, then the process is over unless there is a redesign of the plan. The issue before this board is a limited issue which requires either granting of the variance or denial of the variance. If the ZBA grants the variance, the project continues. If the ZBA denies the variance, then it is over and the applicant will have to make a decision on what their next step is.

Mr. Chotkowski made a motion to deny the variance request based on the response from the Planning Board on their interpretation on the Charlton Zoning Ordinance and deficiencies of the plan and on the basis that this will start to erode the RA classification of that area.

Attorney Van Vranken advised that the Board needed to review the 5 criteria and to determine SEQRA.

Mr. Marchesiello made a motion to classify the action as a Type II action with a negative impact declaration relative to SEQRA. Mr. Leupold seconded the motion.

Roll Call Vote was taken:

Chairman Smith – aye

Mark Chotkowski – aye

Joe Marchesiello – aye

Richard Potts – aye

Jim Leupold – aye.

Motion so moved.

Attorney Van Vranken 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.*

Board members Smith, Leupold, Potts and Marchesiello responded in the negative.

Mr. Chotkowski responded in the affirmative, that this would create an undesirable change because the area is zoned as RA and across the street is different.

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

The Board responded in the affirmative, by having only 2 lots.

*3. Whether the requested variance is substantial.*

The Board responded in the negative.

*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 responded in the negative.

Mr. Chotkowski stated that there are two different zoning districts there.

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

The Board responded in the affirmative.

Mr. Chotkowski made a motion to deny the variance per the Planning Board's response of deficiencies with the rest of the subdivision.

The motion was not seconded.

Mr. Marchesiello made the motion to grant the area variance on the condition that if the Planning Board brings up other variances the ZBA can review the proposal again and make additional conditions.

Attorney Van Vranken advised against making conditional approvals.

Mr. Potts made the motion to grant the area variance on the Rossdeutscher application. Chairman Smith seconded the motion.

Discussion:

Board member Potts stated that the issues raised are related to Planning Board issues. He appreciates their efforts, but this is a request for a 12 foot variance. Board member Chotkowski stated that if this is granted then there is no going back. If this is denied then the applicant can come back. I suggest denying now and letting the Planning Board do their job and come up with all of the variances that this will require. Board member Leupold stated that similar variances have been granted before. This will be a small impact.

Supervisor Grattidge advised the Board that similar variances have been granted before. There was a lot in the RA district that only had 140 feet of frontage and was granted a variance. There was also a case where the frontage was 180 feet road to road and the proposal was to divide the parcel into two lots, one on each road. The application was denied and it went to court and the Town lost.

Roll Call Vote was taken:

Chairman Smith – aye  
Mark Chotkowski – nay  
Joe Marchesiello – aye  
Richard Potts – aye  
Jim Leupold – aye.

Motion so moved.

**New Business**

**Richard Snyder Case No.: 2018-01**

Rick Snyder and Olivia of Apex Solar appeared before the Board.

Mr. Snyder stated that the proposal is to place a ground mounted solar panel array on the property where its location does not meet the 200 foot setback requirement. All other requirements have been met. The location they chose is shaded with natural shading and the

neighbors will not be able to see the array clearly. The array will be 43 feet wide and 15 feet high. The panels will be black metallic. It will not be visible from the street.

Chairman Smith asked if the area has been look at in the winter months when there is no foliage. Olivia provided photos for the Board. Olivia also showed an aerial photo showing the proposed location. Olivia confirmed that the panels would be facing south.

Chairman Smith asked if the Board would be able to conduct a site visit to review the proposed location of the solar panels. Mr. Snyder stated yes.

Board member Chotkowski asked that the footprint size be labeled on the plot plan, as well as the setback to the adjacent properties. Olivia stated that she would add that to the drawing.

Mr. Snyder stated that he has been a lifelong resident of Charlton. He and his wife are avid nature lovers and nature watchers. They are pleased with the placement of the panels and the screening. They plan to screen more. A neighbor, Joseph Tulio, has signed a letter in support of this project. A copy of the letter was provided to the Board.

Mr. Chotkowski made a motion to schedule the Public Hearing for May 8, 2018 at 7:00 p.m. Mr. Leupold seconded the motion. All were in favor.

Mr. Chotkowski made the motion to close the meeting. Chairman Smith seconded the motion. All were in favor.

Meeting adjourned at 8:30 p.m.

Respectfully Submitted,

Kimberly A. Caron  
Recording Secretary