

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

September 11, 2018

Minutes of the Zoning Board of Appeals meeting held on September 11, 2018.

Acting Chairman Robert Van Vranken, Esq. called the meeting to order at 7:00 p.m. at the Charlton Town Hall, 758 Charlton Road, Charlton, New York 12019.

Roll Call attendance was taken.

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

Public Hearing (7:00 p.m.)

Michael and Natalie Mooney Case No. 2018-02

Attorney Van Vranken opened the Public Hearing.

Mrs. Caron read the public hearing notice that was published in the Daily Gazette on September 1, 2018. Mrs. Caron advised that notice of the hearing was also sent to the adjoining property owners.

Attorney Van Vranken stated that the application was referred to the town Planning Board and the Environmental Conservation Committee. No comments have been received. The Board has not received any input from any of the neighboring property owners.

Attorney Van Vranken stated that this is an application for multiple part area variance. The application was originally heard at the June 12, 2018 ZBA meeting. Additional information was requested by the Board from the applicant. At this time the Board should have an updated survey with certifications. Substantial additional dimensions were requested by board member Chotkowski to get a detailed presentation of the buildings existing on the site and their distances including the proposed addition of a garage. There has been a lot of communications between Attorney Van Vranken, board secretary Kim Caron and the applicant. All of which has been shared with the Board and applicant.

Michael Mooney appeared before the Board to present his proposal. Mr. Mooney stated that he would like to obtain a variance to construct a garage addition where the side setback is

not within the code. Mr. Mooney stated that he hired a septic service who dug up his yard to see what was there. The leach fields were not located where they were originally placed on the handwritten drawing submitted at the June meeting. Instead of leach fields there is a dry well. Upon request of Attorney Van Vranken a surveyor was hired to survey the property. All of the requested dimensions are now on the survey. Mr. Mooney stated that he is asking for approval so that he can add on to his dwelling and make his family happy. Mr. Mooney apologized to the Board for his disgust at the last meeting.

Attorney Van Vranken called attention to the rectangle shown on the drawing containing language "proposed 14 x 24 addition" on the north end of the home. Attorney Van Vranken questioned the use of the proposed addition.

Mr. Mooney stated that it will have a full foundation and be a carport for now. Down the road it will be closed in as a garage with a peak roof and another garage door with a dormer off the rear of the house. The house adjacent has a similar garage.

Attorney Van Vranken inquired if the section near the proposed addition labeled "driveway" was existing.

Mr. Mooney responded yes there is a black top driveway existing.

Attorney Van Vranken questioned the current use of the driveway.

Mr. Mooney stated that it is used for parking.

Attorney Van Vranken opened the hearing for public comment.

No comments were presented from the audience.

Attorney Van Vranken asked for questions from the Board.

No questions were presented.

Board member Chotkowski made a motion to close the Public Hearing. Board member Leupold seconded the motion. All were in favor. Public Hearing closed at 7:15 p.m.

Business Meeting

Minutes

Attorney Van Vranken stated that the meeting minutes from June 12, 2018 need to be approved.

Board Member Mark Chotkowski made a motion to approve the meeting minutes dated June 12, 2018, seconded by Joe Marchesiello. All were in favor. Board member Chip Ellms abstained from the vote.

June 12, 2018 Meeting Minutes approved.

Mooney Deliberations

Board member Chotkowski stated that the pool and gazebo appear to be existing zoning violations.

Board secretary Kim Caron reminded the Board that there are existing variances on the property for the pool and deck.

The Board reviewed the variance granted for the property in 2001.

Board member Chotkowski raised the issue of the occupied space on the parcel being over what is allowed in the zoning ordinance without the addition. Attorney Van Vranken stated that the zoning ordinance states that the "maximum percentage of lot occupancy total" is 17%. That is exceeded now and with the future build will become 22.02%.

Board member Chip Ellms inquired if the Board should be looking back at non-compliant issues or just looking at the issue before the Board. Attorney Van Vranken stated that the pool has a variance. The gazebo does not. That can be taken care of now as part of the consideration. Attorney Van Vranken inquired if there was a permit for the gazebo.

Mr. Mooney stated no, that he was told by former ZBA member Jim Ferrante that it would be ok. (Jim Ferrante was not a former ZBA member).

Board member Chotkowski stated that the variance granted in 2001 has a side setback of 20 feet fronting Edwin Drive. The current survey shows 18 feet. The variance is not met for the pool. Attorney Van Vranken stated that the Board could clean that up now. Board member Chotkowski stated that he is not ok with the 18 feet but the real issue is the exceeded occupied square footage for the lot and the applicant wants to exceed more. Board member Marchesiello stated that the prior variance showed septic lines instead of the dry well that is actually there. What happens if there is a problem with the septic? Where would the lines go? Mr. Mooney stated that he would remove the pool if there was ever a problem with the septic system. Board member Chotkowski stated that if the pool were removed now, the lot would be under the limits of the percentage of square footage occupied.

Attorney Van Vranken stated that the board has jurisdiction to give a fair review and apply the current legislation in the Town of Charlton. There are five criteria that the Board has to follow. Attorney Van Vranken stated that he is hearing the Board say two things, that there

are concerns on more than just the garage (possible violations) and that this should be limited to just the garage.

Board member Chotkowski stated that getting rid of the pool now helps the square footage problem on the lot. Mr. Mooney inquired if Mr. Chotkowski was asking him to remove the pool now. Board member Chotkowski stated yes, it would help. Mr. Mooney stated that he got a variance for the pool and it has all been pre-approved. He is before the Board for a variance for a garage. Board member Chotkowski stated that the pool setback is off by 2 feet. Board member Ellms stated that without the pool the occupancy is less than the required 17%. Board member Elms stated that he was involved in the original variance process and visited the property.

Mr. Mooney provided a copy of a letter from Maggie Schmidt, former chairman of the ZBA, dated June 4, 2003 where the pool setback was changed to 16.6 feet. The Board reviewed the letter.

Board member Potts stated that there two variances before the Board, the side yard setback and the building coverage on the lot. Board member Ellms stated that in doing the calculations, the 22.02% occupancy represents a 30% variance request. The Board agreed that the request is substantial.

Attorney Van Vranken stated that if the Board grants the variance to create 30% excess over the ordinance then the Board has to be prepared that the next applicant looking to do something similar will use this case as precedent. If the facts are the same then the application is treated the same.

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.

No.

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

Yes.

3. Whether the requested variance is substantial.

Yes.

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

No.

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

Yes.

Board member Ellms stated that he did some rough calculations on the maximum occupancy. 17% represents 2480 square feet, 19.9% represents 2917 square feet and 22.02% represents 3210 square feet. The differential is 730 feet which represents a 29% variance. Board member Chotkowski stated that there are two variances to consider, occupied space at 30% and side line setback at 20%. The Board was in agreement.

Board member Ellms made a motion to declare the Zoning Board of Appeals as lead agency for the purposes of SEQRA. Board member Leupold seconded the motion.

Roll Call Vote was taken:

Mark Chotkowski – aye

Joe Marchesiello – aye

Richard Potts – aye

Jim Leupold – aye

Chip Ellms – aye.

Motion so moved.

Board member Ellms made the motion to classify the action as a Type II action with a negative impact declaration relative to SEQRA. Board member Potts seconded the motion.

Roll Call Vote was taken:

Mark Chotkowski – aye

Joe Marchesiello – aye

Richard Potts – aye

Jim Leupold – aye

Chip Ellms – aye.

Motion so moved.

Board member Ellms made the motion to grant the 8 foot sideline setback variance. Board member Potts seconded the motion. Roll call vote was taken:

Mark Chotkowski – aye

Joe Marchesiello – aye

Richard Potts – aye

Jim Leupold – aye

Chip Ellms – aye.

Board member Chotkowski made the motion to deny the maximum occupancy variance for the 14 x 24 garage. Board member Marchesiello seconded the motion. Roll call vote was taken:

Roll Call Vote was taken:

Mark Chotkowski – yes

Joe Marchesiello – yes

Richard Potts – no

Jim Leupold – no

Chip Ellms – no.

Motion denied.

Board member Ellms made a motion to approve the maximum occupancy variance for the 14 x 24 garage. Board member Potts seconded the motion. Roll call vote was taken:

Roll Call Vote was taken:

Mark Chotkowski – no

Joe Marchesiello – no

Richard Potts – aye

Jim Leupold – aye

Chip Ellms – aye.

Motion so moved.

New Business

Attorney Van Vranken advised that no new applications have been submitted.

Board member Chotkowski made the motion to close the meeting. Board member Leupold seconded the motion. All were in favor.

Meeting adjourned at 8:30 p.m.

Respectfully Submitted,

Kimberly A. Caron
Recording Secretary