

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

November 9, 2021

Minutes of the Zoning Board of Appeals meeting held on November 9, 2021.

Chairman Jim Leupold 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: Jim Leupold, Chairman, Rick Potts, Nate Keenan, Dave Taplin, Jim Craig, Esq., Town Attorney and Kim Caron, Recording Secretary.

Chairman Leupold led the Pledge of Allegiance.

Business Meeting

Minutes

Chairman Leupold stated that the meeting minutes from the August 10, 2021 meeting need to be approved. Board member Potts made the motion to approve the August 10, 2021 minutes. Board member Keenan seconded the motion. All were in favor. Board member Taplin abstained from the vote.

Chairman Leupold stated that the meeting minutes from the September 14, 2021 meeting needed to be approved. Board member Keenan made the motion to approve the September 14, 2021 minutes. Board member Taplin seconded the motion. All were in favor. Board member Potts abstained from the vote.

Chairman Leupold stated that the meeting minutes from the October 12, 2021 meeting need to be approved. Board member Potts made the motion to approve the October 12, 2021 minutes. Board member Taplin seconded the motion. All were in favor. Board member Keenan abstained from the vote.

PUBLIC HEARING

Davidson Application

Mrs. Caron read the public hearing notice that was published in the Daily Gazette on October 31, 2021. Notices were mailed to adjoining property owners on October 30, 2021.

Chairman Leupold read the letter from the Planning Board dated November 1, 2021.

George Davidson appeared before the board.

George Davidson: I don't understand this letter. Again I am a little surprised since the Planning Board was at the ZBA meeting a couple months back and suggested that I go to the left side of the driveway, which we did. I have already spent slightly over \$6,000.00 to do the survey and \$500.00 for the perk tests. We explained at that time that the seller of the property, my son, wanted to retain the pond. That's the reason for the configuration. Changing the line accomplishes nothing because the space is useless. (inaudible) I can address each one of these points. This is the first time I am seeing this letter. I think I have explained the odd configuration, which would retain the pond with my sons parcel.

Carrie Ann Davidson: Inaudible.

Jim Craig: Just to clarify, the biggest concern from the Planning Board's perspective and from this Board's perspective is that you provided an updated map which in the course of that map, delineated the wetlands on it and the wetlands, when you take into consideration DEC 100 buffer, it looks like you can't put a house there. The concern is are we giving a variance for frontage to subdivide a lot that is not buildable. That is what we would like to address.

George Davidson: Inaudible. It is a planning department ideal that they would like to see on it but it's not required.

Jim Craig: If you look on the DEC website they will tell you that a 100 foot buffer is required.

George Davidson: The gentleman that did the survey said that the lot meets all of the building requirements and the wetland requirements. The building envelope meets all the side, front and rear setbacks and it meets all the setbacks for wetlands. Again, the Planning Board's 100 foot buffer is not a legal requirement. If it is then why do I have a survey and spent \$6,000.00 on a survey that doesn't meet the requirements. It's crazy. (Inaudible) I give up. You guys tell me why a licensed professional engineer that did the survey that doesn't meet the legal requirements.

Jim Craig: If you look at the wetland note it is clear that you did not delineate the wetlands because it says that you still have to abide by the regulations. Also I look at the survey, I see the wetlands on there but I don't see any distances whatsoever. That also tells me that they were not delineated.

George Davidson: Inaudible

Jim Craig: It is guess work at this point whether the wetlands have the 100 foot buffer.

George Davidson: The buffer isn't required.

Jim Craig: Are those ACOE wetlands or DEC wetlands.

George Davidson: I do not know. I believe the gentlemen that did the survey. He did mention to me that the town Planning Board has a different idea on the setbacks. It is not what is legally required. I am just telling you what the surveyor told me who I paid \$6,000.00 for a plan at the Planning Board's request on the left side of the driveway. Sorry I am just....

Dave Taplin: You have valid concerns. I think that where they put the wetland note there is not a specific delineation of the distances. I guess that is really where....

George Davidson: Inaudible. The Planning Board wants the 100 foot buffer. The surveyor says that it is not legally required. Inaudible.

Dave Taplin: He has valid points but our interest is to just make sure that we understand what those wetlands are.

George Davidson: Even if you approve the variance, this is what I was concerned about, is the Planning Board. You can approve it and then I'm going to do a dance with them. They can tell me to change lines. The last time I was here several years ago, I was told by the attorney at that point in time to "make this one tiny change to the line" and it still didn't go through. Well several thousand dollars later it didn't go through. We went through all kinds of nonsense and aggravation and it was not approved. I was told by high ranking town official who is no longer with the town that we submitted the same proposal, which was a proposal on the right hand side and was told that the town would work with me. The town was happy that I didn't convert the land. inaudible.

Dave Taplin: So for the road frontage variance of 200 feet we agree and can approve the 25 foot variance. So at this point where do we go?

Jim Craig: We have to finish the public hearing.

George Davidson: Let me address the rest of the comments. The 396 feet. Inaudible. I have had three surveyors say it is 401 feet. The tax map has 396. Somewhere at the County of Saratoga somebody in the real property tax agency is going to have to correct it. Inaudible.

George Davidson: Inaudible. I can't get the 100 foot buffer to the wetlands. The Planning Board came to the last meeting and asked me to move the line to the left. It is a better lot now but there are buffer issues. I don't want to spend any more money if the Planning Board is not going to approve the subdivision.

Jim Leupold: Would anyone else like to make any comments?

Dave Taplin: Carrie-Anne do you have any comments?

Carrie Ann Davidson: Inaudible.

Jim Leupold: Does anyone on the Board have any comments or thoughts?

Jim Craig: The Board can leave the Public Hearing open if there is not going to be a vote on approval or disapproval tonight or the Board can close the Public Hearing and vote on what is before the Board.

Jim Leupold: My feeling is that they came for a variance for the road frontage, which was tasked for our particular Board. After we went and did the site visit and they described what they were doing, along with Jay, you ended up deciding to move it over to the left to make it better in terms of not putting a property in front of another property. I am in agreement with that. I personally feel that based on what we were tasked to do in terms of the actual initial variance was for the road frontage that you have met what it is that you actually applied for. I know that there is other concerns and issues and I feel bad that we didn't really bring those early on to your attention in terms of the last updated map that you gave us that created extra questions for us but I think in terms of this Board, and correct me if I am wrong, I think you met all the things that you said that you did for us in terms of the road frontage. I would say that based on what we are tasked to do that we should actually go through with voting on the actual variance that was initially presented to us.

Rick Potts: One question I have for you Mr. Davidson is this; does it make sense for you to move forward with this variance request with the understanding that the Planning Board has these issues? Would it make more sense to revise this for the setbacks or do you want to work through those concerns with the Planning Board?

George Davidson: I would like to have you gentlemen approve the variance. That would be out of the way. I will have to deal with the Planning Board. If the Planning Board is sticking to the 100 foot buffer then I am done. I can't get the 100 foot buffer. Inaudible.

Rick Potts: The points that the Planning Board had brought up without going through them point by point they do seem like there is some validity there. I just want to make sure that you understand that even if this does get approved there is a whole process that you are going to have to go through with the Planning Board.

George Davidson: There is no sense. Inaudible.

Jay Wilkinson: Can I speak now? Mr. Wilkinson approached the drawings with Mr. Davidson. The tape did not capture their discussion.

Jim Craig: This is a Public Hearing. Jay, if you have comments, please make them.

George Davidson: The surveyor said this is a buildable lot.

Jay Wilkinson: It is the policy of the Planning Board that there be a 100 foot buffer to the wetlands regardless of who owns the wetland. Duane has worked on multiple properties and knows that.

George Davidson: If he knew that than why did he give me the survey and tell me that I meet all the required setbacks.

Rick Potts: That is a fair question that we should be asking him.

George Davidson: I can bring him with me but it costs money to have the surveyor at the meeting.

Jim Leupold: Based on what you were discussing with Jay, as far as bringing that line more to the left, that is not going to be anything buildable, does it make a difference whether or not there are existing wetlands or just to expand the actual property line to that. Is there something else that would happen that if he ended up doing that, ask the surveyor to bring that out, then something else could be discovered that would not make it approvable by the Planning Board? You said there is a way around this and it doesn't take a lot.

Jay Wilkinson: You just keep a 20 foot buffer from the edge of the pond and come right around ...

Jim Leupold: So with that, does that require a change in the survey?

Jay Wilkinson: It's not going to change to survey; the wetlands are where they are. You may want to go back farther with the house....

Jim Leupold: Then it goes back to where the pond is. The whole idea of where he wanted the spot is that it is not going to encroach on where his son wanted to keep the pond on his property.

Jay Wilkinson: Right then you put a 20 foot buffer there. Inaudible.

George Davidson: There are wetlands on the property on this side too. If we move the envelope we will be closer to those wetlands. Can't win.

Dave Taplin: You can still move the property line over into wetlands it's just a matter of where you would build the house.

George Davidson: Inaudible.

Jim Leupold: Is the issue the property width or is the issue the envelope of where the house is actually going to be.

Jay Wilkinson: Where the house is. It is not a buildable lot. It's just that there is a difference of opinion. The Planning Board requires a 100 foot buffer to the wetlands. If that can be done and can fit a house, septic and well, then it's good to go.

George Davidson and Jay Wilkinson began another discussion that the tape was not able to pick up.

George Davidson: I am coming to the conclusion that this is probably not going to work and has probably been a waste of another \$6,500.00. Inaudible.

Dave Taplin: Is there any way you could build the house behind the pond?

George Davidson: Inaudible. There is another pond behind there and then there is a drainage ditch that runs the whole length of the farm so again it is where do you build. Inaudible.

Dave Taplin: It may be worth revisiting the surveyor and just trying to look at the 100 foot buffer.

Jay Wilkinson: Inaudible. Just pointing out things that when it comes to the Planning Board it would be nice that if you approve the variance it is a buildable lot. It appears that it is not a buildable lot.

Dave Taplin: Is there a variance of this 100 foot wetland buffer? Is there an ability to have a variance to that?

Jay Wilkinson: DEC requires 100 foot buffer.

George Davidson: I am going to call Duane Rabideau about the buffer. I am going to ask him why the discrepancy between what the Planning Board sets for their guidelines and what's the legally required. I will ask if he can provide me with why he says this is a legally buildable lot. It meets all the definitions and the setbacks.

Jim Leupold: Please ask for it in narrative form so that the Board can discuss it.

Rick Potts: The wetlands really weren't something that we were aware of or the Planning Board was aware of until we got the survey. We weren't trying to misled you to say we would approve this is this were. The wetlands are the wetlands and we have to deal with it one way or the other. In my opinion, if you can deal with it now as opposed to later on it is just why waste the time later on if it is not going to happen. I think talk to your surveyor is the right approach.

George Davidson: That is what I will do. Again, people say they didn't realize there was wetlands but I had the ZBA members walk the property. And several years ago when we came with a proposal one of the big issues was wetlands. Inaudible.

Jim Craig: Have Duane give me a call. You might just want to leave the Public Hearing open until the next meeting.

Jim Leupold: That will give him time to get the information.

Jim Craig: If you close the Public Hearing tonight, it starts the 62 day clock in which the Board has to act and if the Board does not act then it is a default approval.

George Davidson: If you approve the variance tonight it doesn't really change the outcome it just eliminates one step.

Rick Potts: We want to have more information from the surveyor to make an informed decision. To me, the dilemma is do we approve a lot that is not buildable. That gets the heart of it. The Planning Board ultimately determines if it is buildable but what we are hearing makes me concerned that it is not buildable.

George Davidson: Inaudible.

Board member Potts made the motion to leave the Davidson Public Hearing open until December 14, 2021. Board member Taplin seconded the motion. All were in favor.

Fitzgerald Application

Mr. Leupold stated that this is an application for area variances to allow for the keeping of two miniature horses on property that does not meet the zoning requirements for the keeping of horses.

Ryan and Florie Fitzgerald appeared before the Board. Mrs. Fitzgerald stated that her brother, Ethan, is autistic and the horses are therapy horses for him. Mrs. Fitzgerald stated that he takes care of them daily and has made huge strides since they got them. Mrs. Fitzgerald stated that they are miniature horses that do not require the kind of care that full size horses do. Mrs. Fitzgerald stated that they do have a place for manure and most of it will be used in their garden. Mrs. Fitzgerald stated that any overflow will be trucked to her father's land. Mrs. Fitzgerald stated that the lot is currently under construction and they are not living there. Mrs. Fitzgerald reviewed the pictures in the application package with the board. Mrs. Fitzgerald stated that the shed is where the horses are kept now.

Mr. Fitzgerald stated that the shed has always been on the property.

Board member Taplin asked if there was a building permit for the fence.

Mt. Fitzgerald stated no.

Chairman Leupold asked how long they have owned the horses.

Mr. Fitzgerald stated that they got the horses in May.

Board member Potts asked how long they have been at the property.

Mr. Fitzgerald stated that his step-father is the legal owner as of right now. Mr. Fitzgerald stated that they have been there for 5 years.

Board member Taplin asked if they looked at the zoning requirements before they acquired the horses.

Mr. Fitzgerald stated that he did not realize that miniature horses would have the same requirements as full size horses.

Chairman Leupold stated that the variances requested in terms of what the zoning requires is quite substantial. Chairman Leupold stated that the zoning requirements do not delineate between what size horse it is. Chairman Leupold stated that the problem is that the amount of the variance that is being requested is substantial. Chairman Leupold stated that the applicant did not do their homework before acquiring the horses. Chairman Leupold stated that if the problem with granting approval in this type of situation is that everyone will do that and ask for forgiveness later.

Mr. Fitzgerald stated that they are requesting a variance specific to these type of horses.

Mrs. Fitzgerald stated that there is a huge difference between miniature horses and full size horses.

Chairman Leupold stated that he appreciates that but the Board has to abide by the rules of the zoning.

Board attorney Craig stated that the distinction is regular size horse versus miniature horse versus ponies, etc. Board attorney Craig stated that there would need to be a change in the zoning requirements.

Mr. Fitzgerald stated that he has a petition of 100 signatures in support of them keeping the horses.

Board member Taplin stated that the Town Board would be the place to go to get the zoning regulations changed.

Board member Potts stated that the Board has to weigh and consider the lot size. Board member Potts stated that it would be a lot easier if the property was 3 or 4 acres versus a half acre when the requirement is 5 acres.

Board member Keenan stated that if the board approves this variance then someone with 2 full size horses could petition the board based on this application.

Board member Taplin stated that he commends the scenario unfortunately there are limitations due to the zoning requirements. Board member Taplin stated that the ZBA has the capacity to approve variances but the requirement of 5 acres and only having .55 acres is a challenge.

Board attorney Craig stated that if the applicants want to proceed with the ZBA then a Public Hearing could be scheduled for next month. Board attorney Craig stated that if the applicant wants to go to the Town Board for a change in zoning then there is a different process for that. Board attorney Craig stated that the request is a 90% variance, which is almost never granted; usually 15%-20% is the maximum.

Mrs. Fitzgerald stated that they would like to proceed with the ZBA.

Board member Taplin made a motion to schedule the Public Hearing for December 14, 2021 at 7:00 p.m. Board member Potts seconded the motion. All were in favor.

New Business

There was no new business.

Board member Taplin made the motion to adjourn, seconded by Board member Keenan. All were in favor.

Meeting adjourned at 8:15 p.m.

Respectfully Submitted,

Kimberly A. Caron
Recording Secretary