

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

December 14, 2021

Minutes of the Zoning Board of Appeals meeting held on December 14, 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, Chip Ellms, Jim Craig, Esq., Town Attorney and Kim Caron, Recording Secretary.

Chairman Leupold led the Pledge of Allegiance.

Chairman Leupold introduced the Board.

Business Meeting

Minutes

Chairman Leupold stated that the meeting minutes from the November 9, 2021 meeting need to be approved. Board member Taplin made the motion to approve the November 9, 2021 minutes. Board member Potts seconded the motion. All were in favor. Board member Ellms abstained from the vote.

PUBLIC HEARING

Fitzgerald Application

Mrs. Caron read the public hearing notice that was published in the Daily Gazette on December 2, 2021. Notices were mailed to the adjoining property owners on December 2, 2021.

Ryan Fitzgerald appeared before the Board.

Ryan Fitzgerald: We have two miniature horses that we rescued. I have an autistic brother in law and we got the horses to work with him. He has come quite a long way because of that. We have almost 100 signatures on a petition from people in Charlton that support this. We recognize that we don't have enough land to meet the area rules and regulations. One thing

that has changed from the last time I was here. I am in the process of trying to grow the size of that lot. I was hoping I would be a bit further along by this meeting but that is not how it has gone so far. What I do have is a letter from the gentleman across the street who has 8 acres and he said in a letter that I can share with you guys. So as far as expanding obviously my lot that's not something I could have done in 4 weeks although we are working on it. My neighbor has no animals and he said we could use his property and use his 8 acres with no animals to support our half an acre with two animals. What I am hoping for is something temporary that would hold us over while I purchase more property. Hopefully that goes through. I have asked them to revisit something that didn't work out. I just wanted to share that.

Nate Keenan: Where are you looking to buy more property?

Ryan Fitzgerald: Next door.

Nate Keenan: Ok.

Jim Leupold: The neighbor that did the letter is across the street?

Ryan Fitzgerald: Yes and we would bring the horses over there to eat his grass and stuff. Right now we don't have any grass. He loves animals. His kids love animals. They would be there a lot of the time and train for sure at my property because that is where we have the stuff for my brother in law to work with the horses. They would be there a good percentage of the time.

Jim Leupold: So you would just want to use his property for grazing purposes only but not to create a structure where they would be able to be kept on that side.

Ryan Fitzgerald: He said whatever would make it so that the horses could stay. So if we needed to put a structure there he said that would be fine. Obviously that would be a separate meeting we would have to deal with. He volunteered with his property whatever he could and then wrote the letter stating that.

Nate Keenan: How large is that piece?

Ryan Fitzgerald: It is 8 acres. His property is the one that faces mine. You can see my entire property from his front porch. The other neighbor on the east side is probably 300 yards away from the woods and then the other neighbor is probably 400 yards away through his fields.

Rick Potts: The land that you are looking to purchase is on which side?

Ryan Fitzgerald: On the east side.

Rick Potts: How many acres are you looking to buy?

Ryan Fitzgerald: I am hoping to get 3 or 4. I am trying to have conversations but we keep missing each other. I was hoping I would have something that said we are approaching a deal from the lawyer but I just don't have it today. I am hoping. I don't know how it would work to get some kind of delay and be able to keep the horses temporarily while we figure that part out.

Dave Taplin: Ryan, what is the speed limit on Charlton Road where you live?

Ryan Fitzgerald: It just turns to 55 right by my house.

Dave Taplin: Ok.

Ryan Fitzgerald: So I am right here and you look at my house, they are going slow here and at my property they are hammering it. It's right there where it happens.

Dave Taplin: You are comfortable walking the horses across the road there?

Ryan Fitzgerald: It's busy there at busy time and its actually not terrible the rest of the time. I'd say yes we are.

Dave Taplin: I missed what you said with regard to when you were saying that you were purchasing some land.

Ryan Fitzgerald: That is a separate neighbor. That is to the east side.

Dave Taplin: Ok so it is on the north side of Charlton Road which would be your side of Charlton Road.

Ryan Fitzgerald: Yes, on my side of Charlton Road. If you look at my house from the road on the right.

Jim Leupold: Based on this map here that you have, so this is the property you are looking at?

Ryan Fitzgerald: Yes. Turnbull.

Rick Potts: So the neighbor across the road says you can keep your horses there?

Ryan Fitzgerald: He said either 100% of the time they would be there whatever amount of time is necessary to satisfy the board.

Jim Leupold: Does he have it fenced in at all or is it just an open field?

Ryan Fitzgerald: As of right now, he has a couple little areas but if this got approved we would make another separate area for them to be in.

Jim Leupold: If he did that you would be able to create a structure where the horses could live.

Ryan Fitzgerald: He already has a barn. He has an existing barn but no corral and no fenced in area.

Jim Leupold: So is that your intent that if something like that played out that you would be able to keep the two miniature horses in the barn and then secure the area so they would be able to roam around and eat until you had a chance to purchase more property?

Ryan Fitzgerald: Yes. We would still train the horses at our property in the back where I have a corral.

Chip Ellms: What is involved in the training?

Ryan Fitzgerald: I don't know as much as my wife Florie.

Florie Fitzgerald: It's more training for Ethan than for the horses. They are just to take out, do his hay routine.

Chip Ellms: So they need exercise and that's why they would be across the street?

Ryan Fitzgerald: Yes, there are studies in my folder, I could find it, that benefit autistic children that work with animals, specifically horses. They make a bond and it he has really come out of his shell completely. In the past 8 or 9 months that we have had them he will talk to anybody. He is going right out of his shell and it's pretty amazing to see what it has done for him.

Jim Leupold: Does he do that every day?

Ryan Fitzgerald: Everyday. Very rarely does he miss a day. If he does then we go. We consider them his horses.

Chip Ellms: If the horses are going across the street then we don't have to act.

Jim Leupold: We have to act if they are still going to live on the Fitzgerald property. It's one thing if they were trying to create a situation where the horses would be able to stay across the street in the barn until you complete the purchase of the land and even then you were saying you were going to buy three acres?

Ryan Fitzgerald: I'll take as much as I can get. I was going to make an offer and take what I could get.

Jim Leupold: Right now the way that the laws are written you have to have 5 acres for horses. So the additional three would be a lot better than the half an acre that you have now but it would still need a variance.

Jim Leupold: What happens in a case like this where you want to work with the applicant and allow time for the applicant?

Chip Ellms: If you intent is to really move them across the street.

Jim Craig: We do not have anything in our ordinance to allow for temporary variances. The answer, unfortunately you shot yourself in the foot with this, he does have the option and the option is the neighbor across the street who doesn't need a variance. So the horses could be kept there while he is purchasing this other land and then come back for the variance if he does not have the 5 acres. It would be a more palatable variance.

Nate Keenan: If you could keep the horses across the street.

Ryan Fitzgerald: That would take a little bit for me to get a corral up but yes, we could do that.

Nate Keenan: Then when you purchase however much land you can purchase then you could come back with another variance request.

Jim Leupold: Do you know how much time you would need?

Ryan Fitzgerald: For the property purchase? About 3 months.

Jim Craig: We can't give them extensions on current code. The answer would be that we make a decision either way on this, however you decide to vote, I would assume based on criteria would be a denial but I don't know that. Then he has the ability right now to put them across the street. That property has more than 5 acres so there is no violation there. We as a board, have to make a decision. It is either going to be an approval or a denial.

Chip Ellms: Can he withdraw this for now if he wanted?

Jim Craig: Sure.

Jim Leupold: Would he have to pay another fee to come back?

Jim Craig: Yes, it would be a different application, different circumstances.

Jim Leupold: Until you complete the transaction with the neighbor with the land it would fall under a whole different scenario as far as the application.

Ryan Fitzgerald: So I could just withdraw it?

Jim Craig: We have a public hearing so we have to allow the public to speak as part of the record but you can withdraw at any point in time before we make a decision.

Ryan Fitzgerald: Ok.

Jim Sevinsky, 838 Charlton Road: We are the neighbors on the west side of this property. We have been there about 11 years. Some of you who are old timers may know it as the former Heckenburg place. It has 56 acres in the back. It has been hay fields and wood lands and stuff like that. It's a 1791 house and a historic property. We had a very hard time figuring out what all the area variances are we are looking at. So we have the 5 for area and use variances and I have been trying to be very, very patient with my neighbor and I will tell you he is now asking me for patience. I just want to give you a little bit of background here. I don't know if he gave you a sketch or survey. Do you have a survey?

Jim Leupold: We just got one today.

Jim Sevinsky: I haven't had a chance to look at it. This whole thing here appears to be the opening where people access our property especially when they bring in some bigger haying machines that do the round bales. This is really the access point. (Inaudible). I had to find these two by moving the brush on top of them. (Inaudible). I have been asking Mr. Relyea for many years why don't you come over (Inaudible) I think your fence is over and you are doing some stuff here on my property. There is a fence, a chain link fence, several feet onto my land. In addition it does not show all the structures here. This is where the new house is going up. Right against the fence we have a very nice raised bed, chicken coop, the horse thing is over here just off the edge and I have asked them several times to remove it. I did speak, the last time I was here. So I go over and say hey builders if you see Ryan let me know. I have left many messages for Bob Relyea. (Inaudible) I just want the stuff off my land. (Inaudible) It's just a never ending story. (Inaudible) I have a copy of the tax map. There is a parcel here; there is a parcel in between the Turnbull's and his brother's ad to the south. (Inaudible) Across the street, that's great. If he could use that and keep the horses there that's fine. I am not opposing the horses. I was wondering if we are talking about a use area/variance then the use in the future (Inaudible). They are using the property for a business. The lumber company comes in and drops materials for fences and decks and then they come back in the am and take the material. It seems like they need a special use permit. I want them off my land. (Inaudible)

Terry Anthony, Zoning Enforcement Officer: Just one thing I would like you guys to consider as far as even if this is withdrawn. There is a violation. There has been a violation. They were informed that if they went this route then that was fine. We gave them the time to do that. These animals would need to be removed from the property within 30 days. There is an open permit on this property too. If it doesn't meet that 30 days we are in the position now that we would actually put a stop work order on that project. It has to happen. It is

understandable with the neighbors and everything else. It is a violation. We have allowed them to go this far and that is where we stand.

Jim Craig: What is the open permit?

Terry Anthony: The application is for a new house.

Jim Craig: Ok.

Terry Anthony: They took out the old structure and are building a new house there.

Jim Craig: Do you have any information on what this gentleman was just talking about.

Terry Anthony: At that point in time anything that is on their property that would be a civil matter. I can't identify where property lines are.

Jim Craig: I am talking about the illegal business use.

Terry Anthony: That is another subject that we have been addressing. We are aware that it is actually going on but as far as every time I do patrols unfortunately I do not see the infraction.

Jim Craig: Is that type of business use allowed on that property.

Terry Anthony: You would need to have a special exception use permit. The type of business that this gentleman conducts, it doesn't have to come to his house it can be dropped where the project is. So that is the part we are trying to decipher whether or not you need to have it come there or drop it at the job site. That's one of those ones where we are looking at commercial vehicles. Our town does allow to have one commercial vehicle on the property so it is a little hard to decide who is there and who is not there. By the time I usually get in, everything is gone. I come in at 9 am Thursdays and 6-8 on Tuesday evenings. It's hard for me to get to that point to identify yes there is other actions going on on the property.

Jim Craig: Did you see any violations with the use of the property across the street?

Terry Anthony: Not at all. If that's the route that they want to take that's perfectly fine. They would have to within 30 days make that transition.

Rick Potts: Have you noticed any issues with setback requirements from any outbuildings on their property?

Terry Anthony: ON the outbuildings, anything under 144 square feet can actually be right to the property line. Anything over that, which we usually say is 12 x 12 structures, would have to meet the required setbacks. Chicken coops, run-ins, things like that generally are under 144 square feet so they can actually go directly to that property line. We always suggest that

you don't do that in case you need to do maintenance on it but it happens. The structures that are there right now are actually under 144 square feet. I was not aware that the one structure is actually on somebody else's property. That was prior to anything we have actually looked at as far as issuance of the building permit.

Jim Craig: The garage looks like it is over 144 square feet.

Terry Anthony: The garage is over 144 square feet but it is actually a legally non-conforming structure.

Jim Leupold: Have you gotten any formal complaints about the chain link fence?

Terry Anthony: Nothing to me directly. I am not sure if it has come through anyone else.

Jim Craig: That would be a civil matter.

Terry Anthony: Yes that would be civil because it is a property line dispute.

Jim Leupold: How long has the chain link fence been up?

Ryan Fitzgerald: Four years.

Board member Ellms made the motion to close the public hearing. Board member Potts seconded the motion. All were in favor.

Public Hearing closed at 7:30 p.m.

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.

George Davidson appeared before the board.

George Davidson: My name is George Davidson and I live At 133 Crane Street and I am representing both my son Nicholas Davidson who is the owner of the property and my daughter Carrie Ann who would be the recipient if the approval goes through of the 2 acres lot. I would like to thank all of you for your time and effort that you put in and your professionalism and it has been a pleasure working with you on this project. Hopefully it will be a favorable outcome.

Board member Taplin made the motion to close the public hearing. Board member Keenan seconded the motion. All were in favor.

Davidson Application Deliberations

Board member Taplin stated that the challenge is the wetlands and the comfort level with approving this variance. Board member Taplin stated that the planning board would be dealing with the wetlands issue.

Board member Potts agreed and stated that the variance request is for 25 feet.

Mr. Davidson stated that he understands that this has to go through the planning board for subdivision approval but the request meets the criteria. Mr. Davidson stated that the town does not have wetland laws it is a planning board policy.

Board member Potts read the proposed Resolution into the record.

Board member Taplin made the motion to accept the resolution as written and grant the approval of the 25 foot variance. Board member Keenan seconded the motion. All were in favor.

Fitzgerald Application

Board member Potts stated that the horses can be moved to live across the street. Board member Potts stated that based on the application before the board it is to keep the horses at 832 Charlton Road. Board member Potts stated that there is just not enough land.

Board member Keenan agreed.

Board member Taplin also agreed.

Board member Ellms further agreed.

Chairman Leupold stated that this would be a substantial variance.

Board Attorney Craig stated that the applicants have a great story and the board feels for what they are trying to do. Board Attorney Craig stated that, based on the 5 criteria the board has to consider, the application fails on 4 of them and barely makes the last making it difficult for the board to approve.

Mr. Fitzgerald withdrew his application for various variances.

New Business

There was no new business.

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

Meeting adjourned at 7:45 p.m.

Respectfully Submitted,

Kimberly A. Caron
Recording Secretary