



www.shandaken.us

Supervisor: (845) 688-7165
Police: (845) 688-9902
Town Clerk: (845) 688-5004
Justice Court: (845) 688-5005
Assessor: (845) 688-5003
ZBA/ZEO/Planning: (845) 688-5008
Highway: (845) 688-9901
Fax: (845) 688-9863

P.O. Box 134, 7209 Rte. 28, Shandaken, NY 12480

Town of Shandaken Zoning Board of Appeals

MINUTES FOR REGULAR MEETING & PUBLIC HEARING

AUGUST 26, 2015

The regular monthly meeting was opened by Chairman Keith Johnson at 7:31 PM with the pledge of allegiance.

Roll Call by Planning Board secretary Anne Ricciardella, attendance was recorded as follows:

Keith Johnson, Chair	Present
Rolf Reiss	Present
Joseph Michaels	Absent
Gary Gugliemetti	Present
Mark Loete	Present

Roll call summary: 4 present/ 2 absent

Others present: Warren Tutt
Don Brewer
Mike Ricciardella
Steven London
Bob Kalb
Alfred Higley Sr. & grandson
Eric Hansen

Board Member Reiss invited Don Brewer and Mike Ricciardella to address the Board and Public Hearing attendees regarding a request for an area variance for the dwelling situate at 95 Stony Clove Lane, Chichester, SBL # 14.6-2-20, and to provide an overview of proposed project and variances being requested.

Mr. Ricciardella is seeking area variance approvals for a proposed building site. The lot is .51 acre in an R3 zoning district. He would like to remove the existing house and expand the footprint to allow for a new modular to be set. Due to the R3 requirements he is seeking the following variances:

- 1) Front setback from 60 feet required to 55 feet
- 2) Side setback from 50 feet required to 34 feet
- 3) Rear setback from 60 feet required to 34 feet

Public Hearing was opened at 7:31 PM by ZBA Chair, Keith Johnson.

Rolf Reiss invites questions/comments from meeting attendees in the gallery.

Mr. Ricciardella & Don Brewer are asked to address the board w details pertaining to the proposed area variance. Mr. Ricciardella begins by addressing a correspondence letter written by attendee Steven London. He advises the board of the questions raised by Mr. London, the first being about the drainage. They're going to be putting catch basins in to catch the water from the roof. There'll also be drainage put around the foundation when it goes in. Don asks what currently happens with the rain on the house now, Mr. Ricciardella says there's nothing on the house right now.

Attendee Steven London- Mr. London introduces himself as the property owner of 90 Stony Clove Lane, which is across the street and downhill from Mr. Ricciardella. In the letter composed by Mr. London, he asks who will be living in the new proposed house. Mr. Ricciardella informs him that his son and his family will be living in the house on holidays/weekends and at their own leisure. Don Brewer provides the Board with the parcel map for the proposed variance. While reviewing the maps, Mr. London questions the placement of the driveway. Would like to know how it's going to be developed and where it's going to be placed, how wide it is, and if it's going to be blacktop. Mr. Ricciardella states that they do not intend to use blacktop. It'll most likely be shale, item 4 or item 5. The driveway is currently circular and they plan on keeping it that way. Mr. London then questions the septic system. Says he was informed that there is a septic system there but it doesn't show where it is on the plans. He's not convinced that there won't need to be another one eventually put in somewhere on the property. He then continues on, stating there's currently a stand of trees that provide good screening of the house from the road, and if the proposed house is to be larger, he's concerned the trees won't remain adequate enough to keep it screened from the road. The current house is 28' x 28' and the proposed is 55' x 32' two-story house with a pitched roof. Mr. London feels it'll cast an imposing presence over the street and significantly add to water run-off. Mr. London assures the board that he's not trying to stop the variance from being passed; he'd just

like reasonable assurances of his issues. Board member Reiss asks Mr. Ricciardella how many bedrooms there are in the existing house vs. the proposed. He states there are four (4) in there right now and there will be four (4) in the proposed as well. Don Brewer invites Mr. London up to view the maps and asks him to show where his property lies. Board member Gugliemetti asks if Mr. London's house is on the same side of the street as the proposed house, or if he's on the opposite side. Mr. London states he's across the street. Board member Gugliemetti then says that any run-off is not going to reach his side of the street because it's going to go down the driveway and be circumvented by Stony Clove. The water will then run into the culverts that are located on either side of the lane, that's why the ditches are there. Don Brewer assures Mr. London that the driveway is not going to be changed. Also, the septic is underground that's why he can't show it on the map. The maps only show the existing structure which currently has a shed. The two- car garage, stated by Mr. Ricciardella, will be put in the same spot as the shed. This would mean that the driveway is to remain the same. Mr. London shows on the map the stand of trees that screens the house. Mr. Ricciardella tells him that he'd like to keep them where they are because they also want as much privacy as possible for the house. Board member Loete asks his fellow members of the board if screening falls under the purview of the zoning laws. Chairman Johnson informs everyone that there's no law that states it has to be screened in or hidden from view. It's at the discretion of the landowner. Board member Loete then tells Mr. London that they can't force Mr. Ricciardella to screen the house or even keep the trees, and that they have his word on good faith that they'll be maintained. Board member Reiss then tells Mr. London that he's currently viewing a shell of a house and that the proposed house would certainly be a lot nice to look at. Mr. Ricciardella intends on totally tearing the existing house down and replacing it with the proposed. Mr. London then tells the board that in his opinion the new house is much out of character from the rest of the bungalows on the street but he doesn't intend on making that an issue at this time. He tells the board that the house now is non-conforming. The board informs him it's a pre-existing non-conforming. Which means it predates the Shandaken codes and it's a half an acre in a 1.5 zone. Mr. London asks the board if they were to approve the variance at this time, that it would be the orientation shown on the map. Board member Reiss states that unless someone makes a motion to pass with the stipulation it's moved twelve degrees one way or another for example, then yes it will be what's currently shown on the map.

Board member Gugliemetti makes a motion to accept the application. Board member Reiss discusses with the other members whether or not to make a SEQR determination. Board member Gugliemetti agrees. A motion was made to accept the application as submitted, and make a determination that it's a type two (2) action under the SEQR review. Seconded by board member Reiss. Mr. London asks from the gallery what a type two action is. Reiss responds saying it'd an action that requires no additional environmental impact review.

Roll call vote:

Board member Johnson – Yes

Board member Reiss – Yes

Board member Loete – Yes

Board member Gugliemetti- Yes

Roll call summary: 4 Yes

Board member Johnson made a motion to close the Public Hearing.

Old Business:

Alfie Higley farm stand- Mr. Higley's attorney approaches the board and opens by stating that the manner in which the last ZBA meeting was conducted and ended was in violation of his client's rights. When the building inspector came up to discuss the matter and then an outside discussion taking place wasn't acceptable meeting formality. He then starts with the farm stand application, providing the members of the board with an e-mail received from the Department of Transportation correspondent Dave Corrigan to Don Brewer from that morning. They both met at the proposed site earlier that day and Mr. Corrigan wanted to make sure he understood the drainage. He'd like to make the space in between the two driveways 16 ft. wide. There's currently a buried culvert pipe, but it's not deep enough for the thickness of the pavement that's going to have to go in there. He'd like a swale to be between the two driveways, and 15' culverts under the entry and exit. There'll be little openings in them to allow the water to go through. It's brought to the attention of the board that the DOT has final approval of the driveway and parking. Mr. Higley's lawyer inquires if they receive all the necessary documentation with enough time to send out notices, they could possibly have a Public Hearing for the farm stand at the next meeting. He simply wants to make a determination of the status of the application. Board member Loete states that the structure as it sits now, was built illegally and this process is in order to bring the structure to conformity. Just to clarify, he states that they're asking for a variance that would allow the structure to exist adjacent to the property lines.

The Shandaken town lawyer, Mr. Wolinsky states that clarification of the variances is needed in order to decide which variances from the first application are still being considered for this new application. Higley's lawyer mentions that some of the storage racks that weren't up to code in the first application have since been or are going to be removed so they no longer need that variance. The board agrees to go over the variances one by one together. The first variance is from §116-40 T, roadside stands, as accessory use, area limitations. The farm stand exceeds the requirements in the amount of 3,014 ft. Don addresses the board stating that he's measure 2,886. The accessory use variance would be for the extra 2,886 ft. Everyone agreed that they weren't sure if that measurement included the house on the property in the first application or not. Agreed upon the variance for 2,886 ft. Both lawyers stated while they wait for the DOT approval, they'll revisit the old calculations and have it figured out by the next meeting for the Public Hearing.

The second variance requested was §116:40 T (2), which states that the stand shall not be located less than 20 feet from the street line, and the structure abuts highway right of way, seeking variance of 20 feet. Asking for forgiveness of entire 20 feet. The third variance as stated again by board member Reiss, is §116:16 B (2) which states that the structure cannot be setback less than 10 feet from any lot line nor less than 10 feet from the principal building. The farm stand is on the front lot line, full variance is required. Don Brewer asks the board if the previous variance discussed covered this issue as well. Board member Reiss defers to Mr. Wolinsky who states that it doesn't work like that because there'd separate regulations for each one. One deals with the farm stand and the other is the accessory structure which

aren't necessarily the same thing, also one deals with the road and the other is the lot line. He also tells the board that in their deliberations they can certainly consider that factor that they're overlapping but should handle them individually. Board member Loete asks if they continue to allow Mr. Higley to operate contiguous to the lot line and any other applicants that come before the board would they have to allow consideration by law to them as well. Mr. Wolinsky states that every application is based on its own facts and circumstances. If a similar application comes in with the same facts or circumstances then that precedent would be something for the board to consider. If they grant the farm stand to exist adjacent to the property line, it's a one-time thing as of now and no precedents will be set unless an application arises with the same circumstances.

The fourth variance under consideration was §116:16 B (2) D, which states that no such structure shall project closer to the fronting street than the principal building on the lot or a distance of 50 feet , whichever shall be less. Farm stand projects closer than the principal house building. Don responds asking if all farm stands are closer to the road than the principal building. Mr. Wolinsky says the reason for this variance is because when the legislation for farm stands was done there should've been a caveat because they're generally all up against a highway but it wasn't done. Mr. Higley's lawyer states that this particular property is less common because not every farm stand is going to have a residence attached to it. Agree a variance is need because it's two separate structures. Board member Loete questions if the house is being considered the principal structure or not. A variance is needed even though to some extent the regulations conflict with some of the other regulations about the location of the farm stand to begin with. Mr. Higley states it's an odd situation because it's two separate structures, a farm stand and a residence.

The fifth variance falls under the bulk area regulations for a R 1.5 zone, variance for a 25 foot side yard requirement. This variance is the one being discarded due to the removal of the storage rack. The rack on the South that was right up against the property line is now gone. Mr. Higley's lawyer confers with him and then states that they're no longer asking for a variance because they'll all be moved or taken out so they're not encroaching on that 25 feet. In conclusion, there will be four (4) variances considered in this new application. Board member Reiss states that the new application will have to be amended so they have a complete record and the lawyers will have to sort out the square footage of the property for the next meeting. Mr. Wolinsky advises the board that if inclined, they can move to schedule a Public Hearing for the next meeting conditioned upon them receiving the acknowledgement and approval from the DOT, and that all of the DOT's concerns have been addressed. Also, the DOT is concerned that the highway permit is approvable but won't be issued until after the variances are approved. Board member Reiss asks Mr. Wolinsky how long they would need to get the necessary documentation out after they have word from the DOT. Mr. Wolinsky says he'd need to double check but most likely 10 days. He also reminds the board that any new information, including the new maps and any communications with the DOT need to be referred to the County Planning Board for general municipal law, especially since they were the ones relied upon for the last application. The application needs to be reviewed by them so they can give their general municipal law determination.

Board member Loete asks Mr. Wolinsky if we were to grant these variances, what kind of enforcement mechanisms does the town have at its disposal to make sure all the codes are enforced. Mr. Wolinsky tells him that it has the same thing it's had all along, which is the building dept., the zoning laws, building codes and the building inspector, CEO, & ZEO by the issuance of stop work orders,

violations and appearance tickets. The enforcement is solely up to the town, which brings us to our current situation. They've been given an opportunity by the board to rectify the situation by obtaining the appropriate variances. This new application is to be viewed and reviewed as if it were seen for the first time. Board member Loete commends Mr. Higley on providing fresh vegetables and produce at an affordable price at a convenient location. He then proceeds to call him a known scofflaw in this town in regards to his violations to known zoning laws. Board member Johnson then asks if it's even possible to schedule a Public Hearing before an application is complete. Mr. Wolinsky responds saying it's possible with conditions. Board member Reiss then makes a motion to make a determination that presented with the new DOT information, and it's sufficient as long as its submitted in a timely fashion with a revised application, schedule a Public Hearing for these variances at the next ZBA meeting. Board member Johnson seconded.

Roll call vote:

Board member Johnson – Yes

Board member Reiss – Yes

Board member Loete – Yes

Board member Gugliemetti – Yes

Roll call summary: 4 Yes

New Business:

Lance Hoffman- application for variance for a fence. His lawyer Pat Ellison standing in for him on this matter. She introduces herself to the board and states that her client was told by the ZEO he needs a variance for his fence but they're not sure exactly which one was needed. Board member Reiss begins by telling her that he himself has some questions about this particular case. He mentions that there's currently an ongoing lawsuit against the Town of Shandaken as well as against Eric Hofmeister personally. Board member Reiss spoke to with the attorney and he highly suggested that the board refrain from moving forward at this time and table the application until the litigation is settled. Board member Reiss makes a motion to do so, seconded by board member Gugliemetti. Pat Ellison states that this is the first she's hearing of tabling the application but has no objection to it. Her only concern is that her client not be penalized in the mean-time. ZEO Warren Tutt mentions from the gallery that once you apply for a variance, the clock stops until outstanding issues are resolved. Pat Ellison agrees that that's fair.

Roll call vote:

Board Member Johnson – Yes

Board Member Reiss – Yes

Board Member Loete – Yes

Board Member Gugliemetti – Yes

Roll call summary: 4 Yes

Other Business:

The Emerson had been next on the agenda, per ZEO Warren Tutt the board was told to disregard. Mr. Tutt tells the board that the Emerson would like to move their sign to in front of the Inn and remove the cats but they haven't filed an application yet. Need to provide the adequate information and application for the board to review.

Adjournment:

There being no further business before the board, a motion was made for adjournment by board member Reiss, seconded by board member Gugliemetti.

The August 26, 2015 ZBA meeting adjourned at 8:35 PM.