

TOWN OF MILAN ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, NOVEMBER 17, 2010

MEMBERS PRESENT:

Jack Grumet, Chairman
Rocky Mancini
Guy Russell
John Schneider
Phillip Zemke

MEMBERS ABSENT:

None

ALSO PRESENT:

Chairman Grumet opened the meeting at 7:00 p.m.

Public Hearings:

- **Russo Area Variance:** Dolores Russo was present for the public hearing regarding her area variance application to bring existing structures into compliance to allow the Planning Board to move forward with a lot line adjustment on her property located off of Mountain Road, tax grid numbers 6571-02-675671 and 6571-02-722677. She is seeking the following variances to Table B, Schedule of Area and Bulk Regulations:

Lot 1	Existing garage	Front Setback	From 85 feet to 19.6 feet
		Side Setback	From 50 feet to 22 feet
	Existing house	Front Setback	From 85 feet to 11.4 feet
		Rear Setback	From 50 feet to 47 feet
	Existing shed	Rear Setback	From 50 feet to 7 feet
	Lot Area		From 5 acres to 1.448 acres
Lot 2	Existing Shed	Front setback	From 85 feet to 47 feet
	Lot Area		From 5 acres to 2.264 acres

Ms. Russo showed the Board a site plan and said she has been in the process of obtaining ownership of the paper roads that separate the two properties to make them contiguous to do the lot line adjustment as well as the strip that runs up to Mountain Road and that runs alongside Lot 2 because the garage was placed about five feet over the property line into the paper road area. She now owns those 25 foot strips so can proceed with her applications. She said she needs the variances in order to move forward with her lot line adjustment application with the Planning Board. She is planning on selling lot 2. Chairman Grumet said due to Ms. Russo obtaining the 25 foot strips, there will be no significant acreage difference due to the lot line adjustment so they will not be increasing the area of non-conformity. The variances will also clean up the area by bringing into conformance several pre-existing, non-conforming structures and lots. When asked, Ms. Russo said the cottage on lot 2 is not occupied at the moment. Mr. Zemke said the lot line adjustment is a Planning Board action which requires these variances. The Planning Board has recommended we grant the approvals on these requested variances.

Chairman Grumet read the legal notice. Hearing no public comment, Mr. Russell motioned to close the public hearing. Mr. Mancini seconded. All aye. Motion carried 5-0.

Mr. Mancini said he visited the property and thinks these variances make sense; all of the buildings pre-date zoning. Chairman Grumet said the property is located in five acre zoning which is unusual given the density of the lots. Mr. Zemke said the applicant has gone through extensive negotiations to obtain the quit claims for the 25 foot strips and has done extensive work with the Planning Board to get this far. He agreed the variances make sense.

Chairman Grumet read the Findings and Decision which state that an undesirable change would not be produced in the character of the neighborhood as there will be no change to the physical layout of the property, the benefit sought by the applicant cannot be achieved by a feasible alternative since other avenues were considered but the variances are the only way to allow a lot line adjustment to allow the applicant to retain the use of her garage, the requested variances are substantial given the quantity being requested, the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood because nothing is changing, and the alleged difficulty was self-created because the applicant wants to separate the lots but is not self-created given the physical structures are pre-existing. The ZBA determined that the benefit to the applicant does outweigh the detriment to the neighborhood as the whole area will be brought into compliance with variances due to pre-existing conditions. There were no conditions to the variance.

Mr. Russell motioned that the Zoning Board of Appeals accept the Area Variance Findings and Decision for the Russo application. Mr. Mancini seconded. All aye. Motion carried 5-0.

- **Deng Area Variance:** Michael Conway appeared on behalf of Mario Deng for a public hearing regarding Mr. Deng's variance application to install a stand-by generator in front of the principal dwelling and 50 feet from the front property line where 85 feet are required on property located at 42 Shields Road, tax grid number 6573-00-705665. Chairman Grumet read the legal notice and opened the public hearing. At the last meeting, Mr. Zemke requested the applicant provide more detail as to why they consider this the best location for the generator. Mr. Conway submitted the additional detail which included a statement regarding the applicant's future plans, numerous color photos showing different angles of the generator and propane tank lid, flood insurance, and a home inspection statement which stated the garage is unstable. They believe this is the best place for the generator because at some future date, Mr. Deng will be moving the garage out of the flood zone since the existing garage is unstable and then they may have to change the location of the driveway. They don't want to use salt on the driveway as it is so close to the stream so having the propane tank close to the road makes it easier to fill and they did not want to place the generator or propane tank in the flood zone. Mr. Conway explained that there is quite a drop off from the road to where the generator sits. The house is located on a bank and when they bought the house, they were told not to use

the garage. Chairman Grumet said he drove by the property and it appears the road must be lightly traveled as there are only three or four houses on it. He felt the generator was barely noticeable in that location. Mr. Zemke said the location of the floodplain justifies the placement of the generator.

Hearing no public comment, Mr. Mancini motioned to close the public hearing. Mr. Russell seconded. All aye. Motion carried 5-0.

Chairman Grumet said this now seems to be a straight forward variance request. It did not seem so at the time of the application but he did not realize the road placement which makes the generator barely visible from the road. Mr. Zemke said the tank is buried, there is natural screening, and it is not very large and is off the road so is hardly noticeable. He said he does not believe it will be a detriment to the neighborhood and commented that the photos were a great help. Mr. Schneider said he visited the property and agreed the road is lightly traveled and is on a dead end. He does not feel the generator is visible and they had to keep the propane tank out of the flood zone. Mr. Mancini and Mr. Russell agreed this was the best place for the generator.

Chairman Grumet read the Findings and Decision which state an undesirable change in the character of the neighborhood will not be created as there will be no significant impact on the neighborhood or nearby properties, the benefit to the applicant cannot be achieved by an alternative since this is the best location for the generator given the constraints of the property, the floodplain, and the future placement of the garage, the requested variance is not substantial, there will not be an adverse impact on the physical or environmental conditions in the neighborhood because the generator is not large, it is screened from the road, and the propane tank is buried, and the difficulty was self-created in the sense that the applicant wanted a generator but is not self-created due to the geography and layout of the lot. The ZBA determined that the benefit to the applicant outweighs the detriment to the neighborhood. There were no conditions attached to this variance.

Mr. Russell motioned to approve the Findings and Decision for the Deng area variance application. Mr. Schneider seconded. All aye. Motion carried 5-0.

Applications:

1. **Bergherr Area Variance:** Adrienne Odierna from Hanig and Schutzman, Attorneys at Law, appeared as the authorized representative on behalf of Diana Bergherr who is requesting an area variance to Table A of the Zoning Ordinance to allow a private stable to keep no more than four horses on 4.83 acres of property where 10 feet are required on property located at 371 North Road, tax grid number 6572-00-773337. Ms. Odierna said this property is pre-existing, non-conforming. The applicant had applied for and received a building permit to build a six stall horse barn from the previous building inspector in the Town. She said she believes a complaint was received from a neighbor and when the new building inspector reviewed the file, it was determined that this would be considered a pre-existing, non-conforming use and under the zoning code, a pre-existing, non-

conforming use cannot be expanded, and a Stop Work Order was issued on the barn. Initially, they filed an application for an interpretation to appeal the Stop Work Order but after a discussion with the town attorney where he suggested they seek an area variance and then perhaps the building permit to expand, renovate, remodel, or tear down the existing barn and possibly build a new barn, we agreed to withdraw the appeal of the Stop Work Order without prejudice to pursue the matter this way. At the present time, she said her client is looking more towards expanding the existing horse barn rather than building a new one. Chairman Grumet said so Ms. Bergherr is more likely to renovate the existing barn to allow her to have stalls for four horses and in addition, she wants to do paddock work and a barn layout on the existing property. The Town of Milan requires 10 contiguous acres to keep horses and Ms. Bergherr has 4.838 acres so they are seeking a variance of 5 plus acres to have a horse facility.

Chairman Grumet said this Board would like to get a better understanding of what Ms. Bergherr's vision is for this property. We would like to see either a plan of the alterations of the existing barn or a detailed drawing of the proposed new barn and along with that, the layout of the whole property showing a proposal for stormwater run off, the location of the paddocks, location of manure storage, and if the barn will be renovated, the height and layout that is proposed. This is a high piece of property with neighbors below. Manure storage can't be any closer than 200 feet from any residence and a barn site can't be less than 100 feet from a property line. We need to make sure the applicant understands this will be for 4 horses only. We need to make sure the well and septic will not be impacted. This Board needs to see exactly what the applicant's intentions are for the property and what the impacts might be to the neighborhood. Mr. Zemke said the variance requested would be going from 10 acres to less than half which is substantial so the Board needs to see if dimensionally, can all these parts fit and work together, maintaining the health of the horses and not creating problems for the neighbors. Chairman Grumet said he thinks it can fit together but it just needs to be done correctly. Will she have an area for riding at night which would require outdoor lighting, will there be a turn around for horse trailers, how will the trailers get up there? These are the types of things we would need to see on the layout of the proposed facility and in a statement of intent. Once we have this information, we can move forward with the variance and discuss more in-depth. Mr. Mancini asked if the Board could do a site visit. Ms. Odierna said she does not know if the site is occupied currently but she will find out if someone is there. Chairman Grumet thinks it would be best to wait until we receive the proposed layout and statement of intent and then do a site visit as we will then be able to have the proposal in hand while at the site. Mr. Zemke asked if all the horses will be Ms. Bergherr's or will she be boarding other people's horses? Ms. Odierna said the horses are Ms. Bergherr's and they are on the property already since this is a pre-existing, non-conforming use. Mr. Russell asked if Ms. Bergherr had cut trees on the property and Ms. Odierna did not know. Mr. Schneider said she thinks she had and that is what generated the complaints of the neighbors. Mr. Russell said if there is no vegetation, there may be manure run off to neighboring property and Chairman Grumet said that is one of the reasons we want to see the site layout which will identify manure storage areas.

Administrative Items:

- Approval of Minutes: Mr. Zemke motioned to approve the minutes of October 27, 2010 as presented. Mr. Russell seconded. All aye. Motion carried 5-0.

Mr. Zemke motioned to adjourn the meeting at 8:55 p.m. Mr. Russell seconded. All aye. Motion carried 5-0.

The next meeting will be held on **December 15th** at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning
845-758-5133 x21