

TOWN OF MILAN ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, APRIL 27, 2011

MEMBERS PRESENT:

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

MEMBERS ABSENT:

None

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

Public Hearings:

- **James Benincasa Area Variance:** Mr. Benincasa was present for the public hearing for his area variance request to allow an existing 12' x 20' shed to remain in its current location 12 feet from the side property line and to allow an existing garage to remain in its current location 16 feet from the side property line on his property located at 157 Odak Farm Road, tax grid number 6473-00-367824-00 in the A3A zoning district which requires a 35 foot side yard setback. Chairman Grumet read the legal notice that was posted in the newspaper and sent to neighboring landowners. Mr. Benincasa said he did call a surveyor to come out and measure the distance from the shed to the property line exactly and the surveyor came up with 16.4 feet, not the 12 feet he had originally thought. Also, the shed is actually 20 x 20 square feet, not the 12 x 20 which is what the application stated. Chairman Grumet asked Mr. Benincasa if the shed was there when he purchased the property, and Mr. Benincasa said the materials were there but not actually assembled; he built the shed in the summer of 2004 and then did some additions to it in 2009 to expand the storage space. The shed is there for storage and to house animals. Mr. Benincasa's children are involved in 4H and they keep chickens, turkeys and pigs. They have the pigs in the spring and they are gone by September. Chairman Grumet asked if there was any other location on the property that would be suitable to have the shed. Mr. Benincasa said not really because there is a hill in the back and on the side where the fruit trees are gets very wet. Chairman Grumet said so the only feasible location is where it is now. Mr. Benincasa said he also brings the trailer in to pick up animals and needs space to turn around. The shed also has a concrete floor which would be difficult to move. Chairman Grumet said there is one other part to this variance which is for an existing garage which is too close to the side property line. Mr. Benincasa said the garage was there when he bought the property in 2003; he added a second story to the garage in 2006 which has a Certificate of Compliance; he did not change the footprint of the existing garage. Mr. Zemke asked what happens to the waste produced by the animals. Mr. Benincasa said we have a mulch pile in the garden and we compost with weeds and work it back into the garden.

Public Comment: Steve Odak, who owns two properties north of this property, one immediately adjacent, grid number 6473-00-371846, said the lot next door to the Benincasa lot is a 1.9 Board of Health approved lot but it is very narrow. He said the shed being so close to the property line is a problem. He has an existing house on the lot that he built three years ago and he rents. The tenants are leaving now and the house is on the market for sale so Mr. Odak has been working there. He said you can't open the windows due to the odor from the pigs and it is compounded with the rain and humidity. The smell was so bad the tenant thought she had septic problems. Mr. Odak said the odor from the pigs is a detriment to his use of the property. Mr. Odak said in 2008 Mr. Benincasa went for a building permit for solar panels, in May of 2006 he went for a building permit for the addition to the garage, and in July of 2007 he went for a building permit for a pool so Mr. Benincasa knows the permitting process. Mr. Odak asked why should he lose property value because Mr. Benincasa did something wrong and caused his own hardship. Also, this is 1.9 acre parcel and Mr. Odak thinks there is too much on it. How was he able to get a permit to go higher even if the garage is pre-existing? He should have been required to get a variance at the time of the addition. There are pigs, chickens, bees, fruit trees, and two cattle trailers on this property. Mr. Benincasa appears to be running a farm there and there is a restriction on farming in the Zoning Code. Under Section 200-5, a "Farm is any parcel of land containing three or more acres...." Under Section 200-3, under Purpose, it states "Such regulations are made in accordance with the Town Master Plan and are designed to.....protect streams and ponds from pollution, avoid hazardous conditions and excessive damage from stormwater runoff and flooding, safeguard the groundwater and encourage the wise use and sound management of the natural resources throughout the Town". This property is sloped inward and because of that, everything is going towards the pond. Mr. Odak read the definition of Nuisance from the Zoning Code, which is "An interference with the enjoyment and use of a property." Mr. Odak said this situation interferes with his enjoyment of his property. He can't stand it outside. Pigs bring smell, rats, and mice. As far as zoning and stormwater drainage and erosion control, Mr. Benincasa did not get a building permit for this shed so there are no footing drains and no run off plans and there is a problem there. Mr. Odak read from the Zoning Code, Section 200-59, Powers and duties of the ZBA, "The granting of the variance will be in harmony with the general purpose of this chapter, will not be injurious to the neighborhood and will not alter the essential character of the locality". Mr. Odak thinks this situation is injurious to the neighborhood and he would like the ZBA to do a second site visit to his property and bring someone from the assessor's office for his property value, the Board of Health for health issues, the DEC for environmental issues regarding the pond, and Town Board members. Chairman Grumet said there are factors that cannot be mitigated such as the odor from the pigs and drainage. He asked if these were major concerns of Mr. Odak. Mr. Odak said the shed did not have a building permit so there were no inspections done. He asked who would buy this property looking at this barn. He will have a problem right now with this situation, with the shed and pigs. Chairman Grumet recapped Mr. Odak's concerns: the pigs are a major concern due to the run off and odor and the visual impact of the shed. Chairman Grumet asked him if he had concerns with the chickens, and Mr. Odak said if the chickens are limited to 10 or less, they don't cause a problem and they are not a problem now. The problem is with the pigs, they are already rutting and boring under the

fence although they have only been on his property once since the Benincasa's have been keeping pigs and Mr. Odak said he helped corral them back in. Thomas Odak was also present. His property is adjacent to the south of the Benincasa property and he has a large lake on his lot with a small section of the lake on the property in question. Tom Odak said there is run off from the pigs and the barn and due to the slope of the property, all that drainage goes into the pond. Tom Odak said he had wanted to put fish in the pond but he is afraid to wake the situation up. He said if he gets fish, the DEC comes in and checks the lake and surrounding area and Tom Odak said he knows what they will find due to the drainage. If the DEC is aware we all knew this situation existed and didn't do anything about it, they could assess a penalty that could go into thousands of dollars. Tom Odak said he never made an issue of it because he does not want to get involved with the DEC but it is not right that all that surface water comes down the hills into that pond which is a nice body of water. The run off situation hurts my property and most of the pollution and run off is due to the pigs. Steve Odak said when the board did their site visit, the land was frozen; it is a different picture now especially with all the rain and the humidity and the pigs in place. Mr. Zemke asked how big is the pond and Steve Odak said it is about an acre, a sizable pond. Tom Odak said he was going to stock the pond with fish as years ago he had bass fishing and bullheads and wants to re-establish that but he doesn't want to stir the pot. He said the overflow goes down towards the road then runs along the road and goes into a stream that goes into the Roeliff Jansen which is a trout stream. If people notice this, we will have a problem on our hands. Steve Odak said this is just us trying to protect our property rights and is nothing personal at all against Mr. Benincasa. Mr. Benincasa said Mr. Odak made a point of saying this is a commercial farm; it is definitely not a commercial farm. We raise a couple of pigs a year and chickens for the eggs. It is not money making. Chairman Grumet said both Odaks raised good points. There seems to be an adverse impact on the neighbors and on the community and the environment due to the hogs. We did not get the full picture from the last site visit. Chairman Grumet said he would like to hold open the public hearing and schedule another site visit and re-assess the situation. The public hearing would be continued at the May meeting. The ZBA would be in a position to make a more informed decision at the May meeting. Chairman Grumet suggested the Board plan to re-visit the Benincasa property and visit the Odaks' properties. Mr. Mancini said he agreed with the comments made about the DEC – if they knew that everyone was aware of this problem, including the Town, they would come after everyone, including the Town. Chairman Grumet said the Board needs to look at the affects of the hogs and chickens and get a better picture. We will schedule a site visit at which time Board members will observe the situation, but will not discuss it or form opinions. Tom Odak said this situation is tough to deal with because it is between neighbors and there is nothing personal about it but we do have zoning and we do have a problem which has to be corrected. Steve Odak said he does not want this to go on month after month and hopes it will be resolved by the May meeting.

Mr. Zemke motioned to keep the Benincasa public hearing open until the May ZBA meeting to allow the ZBA to make a site visit to the Benincasa and Odak properties. Mr. Russell seconded. All aye. Motion carried 5-0.

Applications:

1. **Diana Bergherr Area Variance** - Paul Hughes appeared on behalf of Diana Bergherr's area variance application to reduce the minimum acreage to keep horses from the required 10 acres to 4.83 acres on property located at 37 North Road, tax grid number 6572-00-773337 in the A3A zoning district. There is a letter of authorization on file. This application had been before the Board previously and at the request of the applicant, the application was withdrawn on February 23, 2011. Ms. Bergherr then decided she wanted to re-open the application. Mr. Hughes said everything is the same as the last time this application was in front of the board. Ms. Bergherr wants to renovate and enlarge the existing shed, adding four stalls to the back and a tack room to the right. Chairman Grumet said at the last meeting, the Board asked for an exterior elevation of what the barn will look like after the renovation and a screening plan. The Millbrook Farm and Home Center made some recommendations for the screening which was given to the applicant's representative. Chairman Grumet said this Board will need a detailed landscaping plan to mitigate the impacts of the barn alternation. The plan should show the type of trees, the height of the root ball, and the height and circumference of the trees. Mr. Hughes questioned the need for additional screening since the barn is existing and this is just an addition. Chairman Grumet said the barn is currently a pre-existing, non-conforming use and cannot be changed at all per the zoning law. The Board is considering Ms. Bergherr's area variance application to lower the required acreage to have horses which would then allow the addition to the barn. There have been concerns by the neighbors of the visual impact of the proposed barn and the run off so the screening would be a condition of the variance to mitigate the impact on the neighbors. Mr. Hughes showed the Board some pictures he took with no foliage on the trees and said the barn is not visible to the neighbors. Chairman Grumet said these pictures were taken looking down. The barn and horses will be visible from the neighbors' property looking up. Erosion control was a concern expressed by the neighbors and many trees and brush were cut down by the applicant which provided erosion control so the Board will require a landscaping plan to mitigate the impact of the new structure. Mr. Hughes said there were no trees cut down, just brush. He said there are existing brush and trees where you want the screening. The applicant is putting in a new fence 35 feet in from the property line and there is 15 to 20 feet of screening existing there. Chairman Grumet said when you are looking up from neighboring properties, those neighbors expressed concern visually and for erosion control. Mr. Hughes said he would understand the need for some screening but not where there is natural screening already in place. The fence is 35 feet off of the property line, from the fence there is about 10 to 12 feet to mow, then the stone wall, then there is 15 to 20 feet of brush and cedars going back to the woods. Chairman Grumet said the concern was expressed from neighboring properties looking up. He said the trees should start at the northwest corner where it thins out heading east along the northern property line, allowing enough room for growth. Mr. Hughes said there are already shrubs and trees in there so we will have to do more clearing to plant trees for screening. Chairman Grumet said the applicant is seeking a substantial variance which the Town will entertain but the impacts on the neighborhood and community must be considered and screening is necessary to mitigate the impacts. Mr. Mancini added that a hedge filters out sound and looks better than a stockade fence. Chairman Grumet said

if you or the applicant have a better suggestion, the Board will entertain it. The list from the Farm and Home Center was provided for guidance. Mr. Hughes said all the other brush and trees are still growing.

Mr. Zemke said the matter before us tonight is to determine if this application is complete enough to schedule the public hearing. He said the Board had asked for an updated site plan showing elevations and the addition to the barn and we have not gotten that yet. Mr. Hughes said he understood that this was set for a public hearing when it was before the Board previously. Chairman Grumet said the public hearing had been scheduled but the applicant withdrew the application the day of the hearing. Mr. Zemke said the Board could set the date for the public hearing conditioned upon receiving the requested information. Chairman Grumet said we previously asked for a more detailed plan and never received it prior to the public hearing. He said it doesn't have to be an engineered drawing; the information can be hand drawn on the existing map. The Board agreed to wait until the requested information is submitted to set the date for the public hearing. Mr. Hughes said regarding erosion control, we are going to wait for the land to dry out, then reseed it. There is a swale there that the contractor will clean out. The whole property heads down towards the corner of North Road and Academy Hill and we will grade it and open up the swale so it will drain out in one place.

2. **Donald Johnson Request for Interpretation:** Mr. Johnson was present for his request for interpretation to use an existing 36 x 36 structure on its own lot to hold biweekly country auctions. The property is located at 26 North Road, tax grid number 6571-00-957459, in the Hamlet zoning district. Mr. Johnson said he is planning on auctioning off household items two Saturday evenings a month between 7 p.m. and 10 p.m. through the summer months to start. If everything goes well, he may go back before the Planning Board to hold the auctions more frequently. Mr. Johnson said he would want to see everyone out by 10 so there are no noise issues. He said he anticipates 25 to 30 people at the most. Mr. Zemke asked him what he would be selling and Mr. Johnson said we go to other auctions and pick up items and we try to buy storage units that are delinquent. An auctioneer would sell everything off. The items are basically household items, furniture, nick nacks, nothing big, no cars, no trucks, no animals. He said we go to an auction similar to this in Catskill and they have about 20 people on a good night. It will not be a big, high class auction like Coles. This would be geared more for people that go to flea markets, more dollar type items. Chairman Grumet said the Planning Board asked the ZBA to look at this use to see if it fits anywhere under the zoning code. If we determine it does, the Planning Board will look at the site plan, traffic patterns, and other related issues. If the ZBA rules that this use fits under the Table of Uses, it would allow Mr. Johnson to move forward. Chairman Grumet said upon his review of the zoning code, this is not a perfect fit anywhere but it is not an imperfect fit either. The best definition seems to be Miscellaneous Retail Store. The difference between an auction and another retail business would be just in the duration of the sale. You would be selling the same items, just selling them faster at an auction. The biggest hurdle with this definition would be "traditional" small scale. This is a small scale use and it has been brought to my attention that an auction was held on North Road years ago a couple of lots away from this lot, back in the 60's and 70's. That would make auctions traditional on North Road.

Traditional is not a static term, it evolves. Mr. Zemke asked what is traditional; this is in a zone that allows commercial use. Chairman Grumet said this is in a zone that is meant for mixed residential and commercial. Mr. Zemke said it is a permitted use. Mr. Zemke suggested that Mr. Johnson also check with the Building Inspector since he is changing the use of an existing building. The Board agreed that this use is a fit for Miscellaneous Retail Store and that they had enough information to schedule the public hearing.

Mr. Zemke motioned to set the date for the public hearing for Donald Johnson's requested interpretation for the June 1, 2011 ZBA meeting. Mr. Russell seconded. All aye. Motion carried 5-0.

3. **Robert Bard Area Variance** - Doug Vissieri from Hudson Valley Wind Energy was present representing Mr. Bard. They are proposing to erect a 140 foot wind turbine on Mr. Bard's property located at 530 Field Road, tax grid number 6571-00-136075, located in zoning district A5A and consisting of 28.06 acres. There is a letter in the file authorizing Mr. Vissieri to represent Mr. Bard for this application. The location of the turbine is towards the back of the property, approximately 400 feet from the side lot line, 260 feet from the rear lot line, 500 feet from the front lot line, and approximately 400 feet from the house. Mr. Vissieri said he chose this location because it provides the best wind. The elevation is 552 feet with the turbine. The turbine has three anchor points and the soil in this spot is good for anchoring. Mr. Vissieri said they consider the following when picking a site for a wind turbine: specific soil to sink the anchor points (guide wires), and height to provide the most kilowatts per year. They did a wind pattern study for a year according to state and manufacturer specifications. The goal is to offset electric use which is at about 5000 kilowatts a year now. This turbine would provide about 7000 kilowatts per year but could go as high as 9000. If we had to keep the turbine at 80 feet, it would only generate 4000 kilowatts per year. Manufacturers don't want towers erected where there is inadequate wind and the turbines don't turn. Mr. Vissieri said most towns are moving in the direction of renewable energy sources, being solar or wind. For wind, 100 to 140 feet height allowance is required. For solar, you need the sun. To restrict a wind turbine to 80 feet would be the equivalent to putting solar panels in the shade. There is a turbine in Ancram which is at 140 feet and is this exact tower. There are two on Winchel Mountain. Mr. Vissieri said 140 feet is the industry standard, the height at which you get the best prevailing winds. Chairman Grumet asked what concerns Hudson Valley Wind Energy has heard from other towns regarding visual impact. Mr. Vissieri said that has never been a major concern and they have never had complaints from neighbors. They have not encountered any major adversaries regarding visual impact. Chairman Grumet asked, if someone did object to the visual impact, how would it be countered? Mr. Vissieri said it is what it is. There are telephone poles and flag poles and they are not obstacles. Mr. Vissieri said he believes we will be seeing more and more wind turbines. This windmill will be generating electricity which will be back fed into the grid. Chairman Grumet asked about noise impacts. Mr. Vissieri said these are not commercial turbines. They generate 53 decibals which means you have to be right up at it to hear it. 53 decibals sounds like a refrigerator humming. You will not hear it as you move away from it, and that 53 decibals is at high wind speed. There is no noise when it is going slow. The wind does not make the

supports hum or vibrate. The inverter makes a slight hum but that is mounted inside. When asked how storm proof the turbines are, Mr. Vissieri said we have never had one come down in a storm and the company that makes them has never had one come down in a storm. They are tornado proof and the life expectancy is 50 years. Mr. Vissieri said Mr. Bard has 20 plus acres and it is all open field surround this proposed turbine; it is the perfect spot. Mr. Zemke asked if the Board should extend the public hearing circle of notification since this is not a typical area variance application? Mr. Vissieri said the surrounding vegetation is very thick around the turbine area and we have provided enough fall down distance.

Chairman Grumet said he would like to have the Town Attorney review this application prior to the public hearing. In order for that to happen, an escrow account needs to be established to cover the attorney fee. We would need to receive a check in the amount of \$300 to set up the escrow account and then we can forward the application information to the attorney. The Board can set the date for the public hearing for the next meeting with the assumption that we will receive feedback from Mr. Greco prior to.

Mr. Zemke motioned that the ZBA set the date for the public hearing for the Bard Area Variance Application to erect a wind turbine to be held at the June 1, 2011 ZBA meeting based on the comments received from the Town Attorney. Mr. Russell seconded. All aye. Motion carried 5-0. Mr. Vissieri said they will send a check in the amount of \$300 for the escrow account.

Administrative/Discussion Items:

- Approval of Minutes: Mr. Zemke motioned that the Zoning Board of Appeals approve the minutes of the March 23, 2011 meeting as presented. Mr. Russell seconded. All aye. Motion carried 5-0.

Mr. Russell motioned to adjourn the meeting at 8:20 p.m. Mr. Schneider seconded. All aye. Motion carried 5-0.

The next meeting will be held on Wednesday, June 1, 2011 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board Members