

ZONING BOARD OF APPEALS MEETING MINUTES – FINAL
WEDNESDAY, AUGUST 31, 2022

MEMBERS PRESENT:

Phillip Zemke, Chairman
Rocco Mancini
Jake Stortini

MEMBERS ABSENT:

Ingrid Kulick
Travis McHale

ALSO PRESENT:

Debra Blalock

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

Public Hearings:

1. **McDermott Special Use Permit** - Edward and Ferijet McDermott were present for the public hearing for their special use permit application for an existing accessory apartment at property located at 21 Contentment Lane, tax grid number 6573-00-128374. Chair Zemke read the legal notice that was published in the paper and sent to neighboring landowners. Mr. McDermott said they built the house in 2017. The basement was made into livable space for his parents who lived there for three years. Mr. McDermott's mother-in-law then stayed down there but now she is staying on the main floor. They started renting out the downstairs as an Airbnb then the short term rental law came up. They found out that the apartment is too big as far as the accessory apartment regulations and that they needed a special use permit for the apartment. Mr. McDermott said there are three bedrooms total in the house – one on each floor. He said the occupancy downstairs varies from 2 to 4 people. Chair Zemke said under the short-term rental regulations, the occupancy for a one bedroom is limited to two people for a short term rental. Mr. Mancini said he visited the site and was very impressed. There is Department of Health approval for three bedrooms for the dwelling and there are two bedrooms in the main house and one in the apartment.

Public comments: Ed and Molly Davenport, 75 Milan Hill Road, thanked the board for the work they are doing on behalf of the town and said they have lived in their home for 17 years. They submitted a letter with questions and said they did not expect answers tonight but hoped the board would gather the information and then make a decision.

Chair Zemke read the letter and answered the questions as follows:

What is the stated purpose of the accessory unit or units? (To us, it appears they are short term rentals.) Is this consistent with the Town of Milan's Code? Yes it is. Milan's Master Plan recommends alternate housing and the town has short term rental regulations that allows rentals in town.

As short-term rentals, has a short term rental certificate been obtained, per the Town Code? A short-term rental certificate will be issued once a CO is issued for the apartment and a short term rental application is made.

As short-term rentals, are they advertised per the Town Code and registered with Dutchess County? They are registered with the county. The town has a means to check that short term rentals are being rented according to the short-term rental requirements.

Is the water and sewage system capable of handling the demand of the unit or units? What is the septic tank capacity as approved by the Dutchess County Health Department, i.e, a 1,000 gallon tank supports 3 bedrooms. How many bedrooms are within the main house & on the 3 acre lot? There are 2 kitchens, 3 1/2 baths, 2 washing machines within the 3 story "single family home" as stated on the property card and as advertised on Airbnb. How many bedrooms are on the other 2 floors? There are two bedrooms in the main house and one in the apartment. The SAN34 was approved by the Board of Health for three bedrooms.

Has the up-to-date floor plan with septic and well placement been provided by the applicant? We have a floor plan. Septic and well placement not required due to no new construction.

Per The Town Code Article V Chapter 200-17 section M.2:

Will the use be in harmony with and promote the general purpose of the provision of this chapter? Yes. The town encourages accessory apartments, and the applicant has met the requirements.

Will the use have a detrimental effect on the surrounding neighborhood and its property values? It has for us: noise, water, smoke from 2 burn pits, outside music system, occasional fireworks. That is a value judgement. There is no change in use. There is no allowance for large numbers of people. There is a noise ordinance. Based on these facts, there does not appear to be a detrimental effect with the apartment in this location.

Will the use foster the most appropriate use of the land? A3A: single family residence and agriculture. Yes. It is a residential use.

Is the lot area sufficient, appropriate, and adequate for the use, particularly with regard to septic system and water requirements, but also in regard to how many buildings have been approved on the 3 acre lot? The property card on the Dutchess County parcel map for 21 Contentment Lane states it is a 210 single family residence in an A3A. Yes.

Is the application consistent with the Town Master Plan? Yes. The town's Master Plan encourages affordable and alternative housing.

How is use of the lower level apartment consistent with the Town Code? This is an allowable use with a special use permit.

In regard to the applicant's application checklist:

Questions #5: Is there a copy of the decision or order upon which the application is based? Yes.

Question #8: Have photographs of the site been made available? No

Demonstrate (show on site plan) an adequate parking area, ingress and egress, access for emergency personnel, adequacy of existing services (water and sewer), appropriate screening, and that the project will be in harmony with the neighborhood: This is part of the application checklist.

Short Environmental Assessment Form:

Part 1 Project Information

#4: Is a property which offers nightly rentals commercial or residential? Our understanding of the A3A zoning in the Milan Code is that it was created to allow a single family residence and agricultural use. The Milan Short Term Rental regulations allow double the # of " guests" (paying clients) during the day. The 2 bdr lower level apt is currently advertised as allowing 6 persons, not 4, and double that number during the day. This has impacted traffic and noise. Two people can rent for overnight; four people are allowed during the day.

#9: Not answered. Will it be answered?

#10: Is a well considered a private water supply? Yes

#17A: Significant storm water discharge has been created and flows to our property. Was the steep grade of the property in question and the steep slope to our property considered when the building applications of 2016 and 2020 were approved by the Town? Is the water discharge from 21 Contentment Lane brought to the culvert on Milan Hill Road as required by the New York State Uniform Code? This is out of the ZBA's purview. These questions should be directed to the ZEO or building inspector.

The Milan Town Code states that a private pool should be used by the owner, family, & guests and is not to be used as a commercial amenity. It is being used to draw guests for a short-term rental(s) complex that offers the use of the pool, the "Pool House Deluxe", two burn pits, and an outdoor sound system. The people renting would be the homeowner's guests so can use the pool. The town has a short-term rental law that addresses a use on a residential property and do not redefine the property to allow a short term rental. A commercial use does not make a property a commercial property.

Hearing no further public comment, Mr. Mancini motioned to close the public hearing. Mr. Storini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

This is a special use permit application. Chair Zemke read the preliminary findings and said the board has received comments from the public and read the letter into the record. The board agreed that allowing the square footage increase to 1,600 square feet for the apartment fits with the characteristics of the building and increasing the square footage will not change the allowed occupancy of the apartment. The applicant may want to consider locking the office but since the office has no windows, it cannot be considered a bedroom. The clerk described how occupancy is configured for a short term rental which is the maximum number of overnight occupants is not to exceed two persons per bedroom and the total daytime occupancy shall not exceed twice the maximum number of overnight occupants allowed.

The board answered the other considerations in granting a special use permit as follows:

- 1 Is the use in harmony with the purposes of this provision? Yes. The town encourages accessory apartments and the applicant has met the requirements.
- 2 Will this have a detrimental effect on the surrounding neighborhood and property values? That is a value judgement. There is no change in use and no allowance for large numbers of people. The town has a noise ordinance in place. Based on these facts, there does not appear to be a detrimental effect with the apartment in this location.
- 3 Will the use foster the most appropriate use of the land? Yes. It is residential.
- 4 Is the lot area adequate, especially with regard to septic and water requirements? Yes
- 5 Is the application consistent with the town Master Plan? Yes

Chair Zemke read the condition regarding the transfer of title should the current homeowners sell the property.

Mr. Stortoni motioned that the ZBA approve the special use permit for an accessory apartment based on the findings and pursuant to the stated condition. Seconded by Mr. Mancini.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

Chair Zemke said the special use permit is granted. Now the applicant as a number of permits and procedures to go through in order to legalize the apartment.

Applications:

1. **Dier Area Variance Application** – Kevin and Hildy Dier were present for their area variance application to bring into compliance an existing shed that was placed in this location by the previous owner on property located at 21 Jameson

Lane, tax grid number 6472-00-028518 in the A3A zoning district where 35 feet are required. Mr. Dier said they closed on the purchase of the house on August 11th. Five days before the closing they found out the shed on the property that was installed eight years ago never got a building permit. The shed should be 35 feet from the side property line and it is approximately 12 feet. It is tucked into the corner of the property and there is blacktop leading up to it. It is well screened with the trees. The house that is closest to that side yard is up over a ridge so the shed is not visible to them. Chair Zemke said he believes the application is complete and the public hearing can be scheduled and the board members agreed.

Chair Zemke motioned to declare the Dier area variance a Type II action under SEQRA requiring no further review. Mr. Stortini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

Mr. Stortini motioned to set the date for the Dier public hearing for the September 28th ZBA meeting. Mr. Mancini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

- 2. Verven Area Variance Application** – Stephen Verven was present for his area variance application to construct a garage with a side setback of 22 feet on his property located at 105 Lamoree Road, tax grid number 6470-00-216150 in the A5A zoning district where 50 feet are required. Mr. Verven said they built the house in 2015, the family has expanded, they have a lot of stuff and need a garage. We want to do an attached garage but found out we need a variance because it is encroaching the 50 foot setback down to 28 feet. It’s deeper because we can’t do a three car so would like room in the back for bikes, toys, etc. for the four kids. We will use the front of the garage for cars and the back for the toys, etc. Chair Zemke said the site plan is missing some information. We need a plan showing the driveway, the location of the septic and tank and the fields and how you will access the garage, where is the parking and what will be over the septic. Mr. Verven said the septic will not be driven over but he may have to put a footing around one of the pipes. The second floor is just storage. The existing garage will be recreational space. Mr. Verven said they will amend the site plan to show the driveway, a better description of the septic system to scale, and the relationship of these items to the addition. Chair Zemke pointed out for informational purposes that one of the walls needs to be fire rated and you need to step down to a garage in case there is a spill.

Mr. Stortini motioned to declare the Verven area variance a Type II action under SEQRA requiring no further review. Mr. Mancini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

Chair Zemke motioned to set the date for the Verven public hearing for the September 28th ZBA meeting pursuant to the Board receiving an updated drawing. Mr. Stortini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

3. **Ginsberg Area Variance Application** – Gina Ginsberg and Alex Mallory were present for her area variance application to construct a fence which will have sections 12 feet in height on property located at 149 Round Lake Road, tax grid number 6370-00-840741 in the A5A zoning district. Section 200-10P, Fences, side and back yard, states fences shall not exceed 8 feet in height. Mr. Mallory said this is a forested area. The fence is staked out and the 12 foot section is located. The property was surveyed in 2019 so the property line was easy to find. Mr. Mallory said we had intended to build a fence for privacy and then recently, their neighbor added to a carport and built a whole garage and now we sit lower than they do and the windows face directly to us. There is no way to plant trees that will grow in that area – it's very shaded – and as soon as the leaves would come off the trees, there is the window. Mr. Mallory has spoken to the neighbor, Slade Mead, and they agreed to where to put the fence together and Mr. Mead said build it as high as you want. The 12 feet is just one section near the garage. Chair Zemke said he believe the application is complete. The 12 foot section is located on the drawing.

Chair Zemke motioned to declare the Ginsberg area variance a Type II action under SEQRA requiring no further review. Mr. Stortini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

Chair Zemke motioned to set the date for the Ginsberg public hearing for the September 28th ZBA meeting. Mr. Stortini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

Board members should call Gina any day after this weekend if they would like to schedule a site visit.

Administrative Items:

Chair Zemke motioned that the Zoning Board of Appeals accept the minutes of the July 27, 2022 meeting as presented. Mr. Mancini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

Discussion Items/Correspondence: None

Chair Zemke motioned to adjourn the meeting at 8:20 p.m. Mr. Mancini seconded.

Chair Zemke	Aye	Travis McHale	Absent
Ingrid Kulick	Absent	Jake Stortini	Aye
Rocco Mancini	Aye		

Motion carried 3-0.

The next meeting will be held at the Milan Town Hall on Wednesday, September 28, 2022 at 7:30 p.m.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board