

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, October 11, 2018

Board Members Present:

Butch Barron, Chairman
John Aylard, Vice Chairman
Bill Fisher
Warren Morgan
Elise Haig

Board Members Absent:

Joe Pitre
John Scruton

Others Present:

Dan DeSantis, Town Planner
Thomas Cox

PUBLIC HEARING – 7 P.M.

Call to Order:

Chairman Barron called the meeting to order at 7:05 p.m.
Mr. Fisher asked if the abutters were notified of this hearing.
Mr. DeSantis said the abutters were notified.
Chairman Barron seated Ms. Haig in Mr. Pitre's absence.

CONTINUED CASES:

Application for Variance by Thomas Cox: To vary from Section 2.01c of the Zoning Ordinance to allow dual use of the property: a residential use in the Commercial Business Zone in addition to a business use. Parcel is located at Map R36, Lot 003-001; IP Revocable Trust of 2015, owner. Commercial Business (CB)/Agricultural Residential (AR) District.

In a memo to the board from Mr. DeSantis regarding his conversation with Town Attorney Keriann Roman regarding the dual use question before the board he stated that Att. Roman has concluded the following:

- 1). Only one principal use is allowed per lot and that it doesn't matter that the lot is in two zones.
- 2). Regardless of what the principal use is- residential or excavation neither allows the other as an accessory use.
- 3). Mr. Cox will need a Variance for an accessory use or to allow 2 principal uses on the lot. He wrote that in the Table of Permitted Uses Section VI an excavation contractor business requires a Variance from the ZBA and site plan review from the Planning Board. Prior to the change to a Commercial Business District on Route 11 the area was zoned Residential so the applicant can build a residence there due to it being a grandfathered use and a Variance would

be required for the excavating business. If he chooses to make the excavating business the primary use he will need a Variance for the residential use she said.

His memo also states that Section 1.05 of the Zoning Ordinance states the provision that imposes the greater restriction or higher standard shall be the controlling provision and in this case the CB District imposes the greater restriction due to the building requirements.

Mr. DeSantis then said a Variance is applicable here and that Mr. Cox has the right to build a house because the use is grandfathered. However, to put an excavation business on that site he will be required to have a Variance. He asked if Mr. Cox wanted to make a statement.

Mr. Cox gave a copy of the site plan and a drawing to Chairman Barron.

Mr. DeSantis said the site plan will need to be approved by the Planning Board. He said that the Variance request will be on the CB zone and according to that provision in the ordinance the applicant needs to submit engineered plans and to talk to the Code Enforcement Officer (CEO).

Mr. Aylard arrived at the meeting.

Chairman Barron said the issue of the plans is not under the purview of the ZBA and will be required by the CEO and/or the Planning Board. He agreed that the proposed residential use should be the primary use and the Variance is required for the commercial use that will be attached to it. He said he was still not sure which section of the ordinance to use for the Variance. He can have "either or" there right now but the Variance apparently precludes 2 uses and there can only be one primary use on a piece of property according to our attorney he said.

Mr. Morgan asked if Mr. Cox was living on the property now.

Mr. Cox said he is not currently living there as it is an empty lot.

Mr. DeSantis suggested Section 1.05 (A) "Compliance with Conflicting Codes" could be used for the Variance.

Chairman Barron disagreed and said they would not grant a Variance from (A) as he will have to comply with the "provision that imposes the greater restriction or higher standard shall be the controlling provision". He added that both A and B of that section state that the higher standard will be met.

Mr. DeSantis then suggested they use Section 2.01 for the Variance.

The board then spent several minutes reviewing and discussing the Zoning Ordinance for the proper section of the ordinance to use in granting a Variance for Mr. Cox's proposal.

Mr. Barron asked about the current zoning for the lot.

Mr. Cox said it is zoned AR with the Commercial/Industrial/Business (CIB) overlay.

Mr. Barron said in that case Mr. Cox has no choice but to make the residence the principal use because the residence isn't allowed in the CIB zone and if he uses that zone they can't grant a Variance for the residence.

The board then discussed the permitted uses for the AR and CB zones.

Mr. Fisher suggested the applicant choose the residence as the primary use and then the board could grant a Variance for the excavating business use.

Mr. DeSantis agreed.

Chairman Barron said the Attorney's conclusion was not the answer they needed from her.

Mr. DeSantis suggested that he contact the attorney again and ask her to provide a legal memo.

Chairman Barron said a Variance can't be granted out of thin air and that it would be worth nothing if it is not attached to a specific article in the ordinance and they would have no grounds for the Variance if they don't.

Mr. DeSantis then said they could grant a Variance on the Table of Permitted Uses.

After a review of the Table of Permitted Uses Mr. DeSantis said he was unable to find something to grant a Variance from and then told Mr. Cox they couldn't find a way to do this.

Chairman Barron said according to the Attorney a Variance is required for Mr. Cox's proposed uses but that she did not advise the board as to which section of the ordinance to apply.

Mr. DeSantis asked if it would be simpler if he built a separate structure (for the business).

Mr. Barron said it would still be 2 uses on the same lot.

Mr. Aylard said it may be easier to split the uses and do one use in each zone.

Mr. Barron said he could also subdivide the lot but that would not be a simpler process.

Mr. Aylard said it seems they did not find the provision in the ordinance that prohibits 2 uses.

Mr. Barron said they did not and then explained that the Attorney concluded that 2 uses on the same lot is not allowed and that Mr. Cox will need a Variance to allow an accessory use or a Variance to allow 2 principal uses. He then said to simply grant a Variance to allow 2 principal uses on the property may be the board's "out" for this situation.

Mr. DeSantis cautioned that this decision may open the door to other such requests.

Mr. Barron said this is a unique situation where the lot is zoned for both uses so they are not going to find a use that allowed on one for the other zone so it's not going to be in the Table. He asked how many lots there are that have 2 zones on them.

Chairman Barron said that the motion will need to be phrased so that it is based on the uniqueness of the lot and the fact that it is in 2 zones if they decide to do this. He said he was "relatively comfortable" with proceeding on that basis.

Mr. Cox said on one side of the property there is an industrial use and on the other side is the AR zone on a Class VI road so it can't be further subdivided. This use is a good transition from the industrial to residential side he said.

Chairman Barron said that the board is considering a Variance to allow 2 principal uses where this is a unique lot in 2 zones and either zone allows either use. He asked the board to begin the review of the Variance criteria.

1. The Variance will not be contrary to the public interest:

Applicant's Response- The application meets the spirit of the ordinance and is within the table of Special Exceptions. Site plan will include screening and buffers from the road.

Planner's Response- The issue is the dual use of the property in question. Although the property is in a split zone, the zoning ordinance does not encourage dual uses of property. The

question is that can the applicant's objective be met by other means. However, depending on the site plan the granting of the Variance would not alter the essential character of the neighborhood.

Board's Response- Consensus of the board was the Variance would not be contrary to the public interest.

2. The spirit of the Ordinance is observed:

Applicant's Response – Meets the Table of Uses responded to in Special Exception. Proposed use will not impede converting the property to an agricultural use.

Planner's Response – Because the property is in a split zone, both uses (with Special Exception) meet the spirit of the ordinance. The issue before the ZBA is the dual use of the property. The property is unique and would not alter the essential character of the neighborhood.

Board's Response- Consensus of the board was that the spirit of the ordinance is observed.

3. Substantial Justice is done:

Applicant's Response – The large parcel allows for setbacks that significantly exceeds requirements and provides for screening from the road and adjacent properties causing no harm to abutters.

Planner's Response – The proposed uses are consistent with the area's present uses if granted a Special Exception. The only guiding rule on this is that "any loss to the individual that is not outweighed by a gain to the general public is an injustice".

Board's Response – Consensus of the board was that substantial justice is done.

4. The value of the properties is not diminished:

Applicant's Response – Building and site will be consistent with a residential and agricultural property: design elements will be typical of a quality single family home. All activities will occur inside.

Planner's Response - The response is confusing since the applicant desires to excavate parts of the property. It should be noted that the parcel is large and with proper screening it seems unlikely that surrounding property values will be diminished.

Board's Response – Consensus of the board was that the value of the properties are not diminished.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Applicant's Response – 2.00 (E) (C) (D) (F). This request is in general harmony with the ordinance.

Planner's Response – The dual use of the property does meet this provision. The standard is "owing to special conditions of the property that distinguish it from other properties in the area" the property cannot be used in strict conformance of the zoning ordinance. However, it is the opinion of the Planner that other means can be used to overcome this challenge such as subdivision. A road frontage Variance would be required.

Board's Response – Consensus of the board was literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Motion: (Fisher, second Morgan) to grant the Variance to allow dual principal uses on Tax Map R36, Lot 003-001 due to the unique circumstances caused by dual zoning in the AR/CBO Districts in which the intended use meets the requirements of both districts;

Discussion: Chairman Barron suggested the motion be amended to include the more stringent provision would apply.

Amendment: (by Mr. Fisher) and the provision that imposes the greater restriction or higher standard will be the controlling provision.

Mr. Morgan accepted the amendment.

Vote: The motion passed unanimously.

Adjournment:

Motion: (Aylard, second Fisher) to adjourn the meeting passed unanimously at 7:40 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

A handwritten signature in black ink, appearing to read 'Elmer Barron', written over a horizontal line.

Elmer Barron, Chairman