

Town of Farmington
Zoning Board of Adjustment Meeting Minutes
Thursday, October 7, 2021

Board Members Present:

Butch Barron, Chairman
Bob Morgan
Joe Pitre
Bill Fisher
John Scruton, Alternate

Others Present:

Chad Hill, applicant

Board Members Absent:

John Aylard, Vice Chairman

BUSINESS BEFORE THE BOARD:

Call to Order:

Chairman Barron called the meeting to order at 7:07 p.m.

Pledge of Allegiance:

All present stood for Pledge of Allegiance.

Chairman Barron seated Mr. Scruton in Mr. Aylard's absence.

Review of Minutes:

September 2, 2021 – Public Meeting Minutes- No errors or omissions

Motion: (Scruton, second Morgan) to approve the minutes as written passed 4-0-1 (Pitre abstained).

Any Other Business to come before the Board: None

NEW CASES:

Application for a Variance by Chad Hill, Tax Map R-59, Lot 10: A request has been made for a Variance under Section 2.00 Base Zoning Districts; Letter (E) Principal Uses. The applicant, Chad Hill of 54 Dick Dame Lane, Farmington, NH 03835, is requesting a variance to allow for two principal uses on a single lot. There is an existing recreational use on the property and the applicant proposes to add a single family residence. The property is located on Hornetown Road in the Agricultural Residential District.

Applicant Chad Hill came forward to discuss his request with the board.

Chairman Barron said Mr. Fisher wished to address the board as he may have an issue with being seated for this case.

Mr. Fisher said as the Chairman of the **Conservation Commission** he is an abutter to this

property and he wanted to bring that to everyone's attention. He said if anyone is uncomfortable with him sitting on the board tonight to hear this case being an abutter for the property he would be glad to recuse himself but he didn't think there was any conflict of interest in him doing so.

He said this doesn't affect the conservation land there in the least and it is just that land borders this property.

Mr. Barron asked if any of the board members had any issue with Mr. Fisher remaining seated for this case.

Mr. Scruton clarified that it is the Con Com that is the abutter not Mr. Fisher as an individual.

Mr. Fisher said that is correct and he is the Chairman of the Con Com

Motion: (Scruton, second Pitre) to leave Bill Fisher seated and not see that as a conflict;

Discussion: Mr. Barron asked Mr. Hill if he had an issue with Mr. Fisher remaining seated for his case.

Mr. Hill said he did not have any issue with it and Mr. Fisher had already brought that up and he was fine with that.

Mr. Barron said everyone was good with it and if anyone had objected he would abstain no matter who it was- a member of the public or the board.

Mr. Scruton said Mr. Fisher has no greater interest in that property then any member of the public because he does not have ownership interest in the conservation property and does not have a fiduciary interest in it therefore he sees no problem. If the Con Com had taken a position on this then that might be an issue he said.

Mr. Barron added Mr. Fisher can't take a position on it on his own on behalf of the commission without a vote of the commission.

Vote: The motion passed 4-0-1 (Fisher abstained).

Chairman Barron then read aloud the public hearing notice as shown above. He said the applicant is requesting a variance from Section 2.00 (E) to allow 2 principal uses on one lot. He said the building dept. feels that the (existing) horseshoe pits is a principal use and that a residence would also be a principal use. As we all know, our ordinance allows 1 principal use on a property he said.

He then asked the board to review the Facts Supporting this Request as stated on Mr. Hill's Variance application and read aloud the following:

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

Applicant's response: A single family residence is permitted in this area and is the use of most of the surrounding properties. The continued use of the horseshoe pits will allow local organizations to continue their recreational and charitable use. There will be no harm to the public because the recreational use is existing and will be maintained in the same capacity and single family residence is an allowed use.

Board Comments: Mr. Barron asked if anyone took issue with this. Hearing no response he said

nobody feels it is contrary to the public interest.

2). The spirit of the ordinance is observed:

Applicant's response: The ordinance does not speak directly to this type of situation. The owner allows the league to use the horseshoe pits at no cost; it is not a proper business. The pits are existing and will continue to be used in the same manner and at the same intensity and a single family residence is allowed, therefore the character of the neighborhood will not be altered and the public health, safety and welfare will not be threatened.

Board Comments: The Board members said they had no issues with the applicant's response.

3). Substantial justice is done:

Applicant's response: If the request is denied, either the league will be forced to find an alternate location for their tournaments or the owner will be forced to purchase another property on which to build his home. A denial would result in an injustice to the owner and users of the property with no gain to the public.

Board Comments: There were no comments from the members on this response.

4). The value of surrounding properties are not diminished:

Applicant's response: The horseshoe pits are existing and will continue to be used in the same manner as they are currently. A single family home is an allowed and accepted use in this area.

Board Comments: Mr. Barron said he could not see where this would diminish the value of the properties in the neighborhood.

Mr. Hill said he hoped not that's the whole plan of building it.

Mr. Barron asked if the members were in agreement on this.

There were no comments from the board.

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

Applicant's response: Literal enforcement will cause either the league to be forced to find an alternate location for their tournaments or the owner to be forced to purchase another property on which to build his home. Denial of the request would be a hardship to the owner and/or current users of the property without a gain to the public. The lot is unique in that the horseshoe pits have existed for many years and are used by permission and at no cost by local horseshoe leagues.

Board Comments: Mr. Scruton said at some point they should discuss the recommendations from Planning Director Kyle Pimental under section c on page 2 of his (09/29/2021) memo.

Mr. Barron said he would read them into the record as soon as they finish with these items.

Mr. Scruton said he did not have any issues with this request.

Mr. Barron said he did not have any issues with it. He said the Code Enforcement Office has interpreted this to be a primary use but he is not sure as it is not a full time use.

Mr. Scruton said he would have thought Mr. Hill would have had to come in for an administrative appeal of the Building Inspector's judgment on this in that he was wrong in

saying it's a primary use. It's here for a variance and I think it meets the test for a variance he said.

Mr. Barron said he fully agreed and was making the point that he doesn't really see an issue with this.

Mr. Scruton said an administrative appeal of the decision would have also been valid but this gives him more lasting comfort that everything is okay with both uses.

Mr. Fisher said as a member of the Planning Board they tried to and did get the rules changed about what is a primary use and what isn't a primary use on adjacent pieces of property or on the same property. He said they got several things changed as it used to be that a barn was considered a principal use and now it's an accessory use and allowed. This particular case we didn't succeed because there is only one horseshoe pit in Farmington that I know of he said. He said Mr. Hill has been a good neighbor to the conservation property and they have never had any problems. He said he has never tried to encroach on conservation property unlike some businesses have and that he didn't see any problem with this. It's just that by the rules in order to form an LLC and get insurance it could be considered a primary use and that's what got him and why he had to come for a variance he said.

Mr. Scruton said this is why the ZBA exists, to take care of these unique situations that the Planning Board could not foresee but that they meet those 5 tests and if it does they are given the authority to allow it to proceed.

Chairman Barron said the Planner made the following comments in his memo:

- 1). The horseshoe pits could not be considered an accessory use to the proposed residential home as it did not meet criteria of the regulations of being subordinate and customarily incidental to principal structure so a variance is needed for 2 separate principal uses on the same lot.
- 2). The horseshoe pits act as the primary recreational use on the property and are used for weekly games and occasional tournaments and is not a true profit making business. The league doesn't pay for the use of the pits and an LLC was formed for insurance purposes. The intent is for the pits to remain in use as they have for many years.
- 3). The applicant needs to ensure that emergency personnel have proper access to the home during times when the property is being used for recreational purposes. Several recommended conditions of approval are listed on the next page to address this issue.
- 4). A plot plan prepared by Changing Seasons Engineering was included in the board's packets and displays the existing and proposed site conditions of the property. Existing conditions include a dirt/gravel driveway, maintenance shed and 9 horseshoe pits. Proposed conditions include an extension to the existing driveway, a 3 bedroom single family home and related utilities such as a septic system, leach field and a well.
- 5). The property is subject to the Waterfront Protection Overlay because of its proximity to 2 tributaries that flow to the Mad River. The applicant has successfully located all structures and

utilities out of the 100' limited development zone as well as the 50' wetland buffer.

Chairman Barron said if the board chooses to approve the variance request the Planner recommended the following conditions of approval:

- 1). Amend the plot plan to include: add a parking plan that shows the location of designated spaces that shall be utilized during times when the property is being used for recreational purposes (i.e. league nights, tournaments, etc.);
- 2). Add a note on the plan stating that to ensure emergency access to the residence the driveway shall not be blocked during recreational use of the property.
- 3). Submit a copy of the amended plot plan to the Planning and Community Development Dept. and to the Fire Dept.
- 4). State in the Notice of Decision that any expansion of the recreational use for the horseshoe pits or any change in the recreation use to another use will require further Town approvals and/or permits. NOTE: This recommendation is not legally necessary as this would be required anyway however it is good practice to include this type of information when rendering a decision to ensure future compliance.

Motion: (Scruton, second Fisher) to grant the variance with the recommendations that are outlined on page 2 of the memo from Kyle Pimental on Sept. 29, 2021;

Discussion: Mr. Hill said the driveway is always going to be open and he is going to fence that in so he doesn't have to see them. He said it may have a gate in it and they are going to park to the left and to the right and they have that all figured out.

He said he took one pit out today just to have more room so if someone had to come in they wouldn't be sitting on the road or in the driveway. He said those are things he has to do anyway and he planned on doing it.

Mr. Barron said they just want an ambulance or a fire truck to be able to get in. He said the way this motion has been made and seconded Mr. Hill will have to submit an amended plan showing the parking.

Mr. Hill said they have that and asked if that was not given to the board.

Mr. Barron said they were given a plan and the Planner is recommending it be added to the plan.

Mr. Hill said it is on there now and is over to the left side out behind the shed.

Mr. Barron said it doesn't show any parking and if they have already done an amended plan they just have to submit it after tonight to the Planning Dept. and the Fire Dept.

Mr. Hill said they did do one and pointed out the proposed location reserved for parking with 25 spaces on his copy and then noted the board did not have copies of that plan.

Mr. Barron advised Mr. Hill to file that plan with the Planning Dept. and that he would not get a building permit until he does that. He then called for the vote on the motion.

Vote: The motion passed 5-0.

Mr. Barron said when the Notice of Decision is written it will have these recommendations on it

and Mr. Hill will have to abide by them.

Mr. Scruton asked if he was okay with all of this.

Mr. Hill said he was okay with all of that and it was easy enough to follow.

Adjournment:

Motion: (Fisher, second Morgan) to adjourn the meeting passed 5-0 at 7:30 p.m.

Respectively submitted

Kathleen Magoon

Recording Secretary

Elmer W. "Butch" Barron, III, Chairman