

TOWN OF ELBRIDGE ZONING BOARD OF APPEALS
SUMMARY OF DECISION

August 12th, 2010

MEMBERS PRESENT: John Moorehead
Robert Decker
Bruce Foote
ZBA Attorney Scott Chatfield
Lorraine Morris
Dan Leary
ZBA Secretary/Alternate Paige Boratko

ALSO PRESENT: Steve Morgan and Attorney Patrick Britt

CORRESPONDENCE:

- ZBA Minutes of July 2010
- Codes Report from CEO R. Herrmann – 7/2010
- Application for a Use Variance from Mr. Steven Morgan - 5210 Campbell Rd, Elbridge (#043.-02-12.0) additional office and equipment/storage space

APPROVAL OF MINUTES:

Chairman John Moorehead called the meeting to order at 7:00 p.m. and reviewed the previous month's codes report and the ZBA draft minutes of July 8th 2010 minutes. A motion was made by Dan Leary and seconded by Chairman John Moorehead to approve the minutes. It passed with all in favor at 7:08 p.m.

Chairman John Moorehead continued the regular meeting. On a motion made by Robert Decker and seconded by Dan Leary the hearing was opened for Mr. Steve Morgan. It passed with all in favor at 7:11 p.m.

HEARING#1 - Mr. Steve Morgan

5210 Campbell Rd, Elbridge

REFERENCE: ZBA FILE TM (#043.-02-12.0)

Application from Mr. Steven Morgan for a Use Variance from the provisions of the Town of Elbridge Zoning Laws Chapter 30.31, Article III, Paragraph "B" for an addition to the existing structure to allow for office space and equipment / truck storage to be located at 5210 Campbell Rd, Elbridge. Patrick Britt; Attorney for Mr. Steve Morgan approached the board. No one was present to speak in opposition of the applicant. Attorney Britt provided each of the board members with a copy of a survey map and requested that it be noted that Mr. Morgan operates Dependable Disposal at this location and that Mr. Morgan's intention is not to expand the non conforming use but rather a request to put an addition to an existing structure that is located on a parcel that was previously granted a non conforming use. Attorney Britt continued to say that when the parcel was granted the non conforming status back in March of 2004, the board made several findings which he feels still exist today such as:

- 1) The existing acreage is too small for farm use
- 2) Due to agricultural uses of surrounding parcels that the residential use is extremely improbable.

- 3) The variance did not alter the characteristics of the neighborhood; the usage is to remain the same. Their intention is not to alter the characteristics of the neighborhood but rather to enhance it by added storage to house the equipment inside a garage facility that will be attractive to the eye rather than the installation of the shrubs so that the containers would not be visible from the road. The structure will also extend the life of the trucks and equipment.

Attorney Britt then referred to the new survey map to address the board's concerns of the nearby stream which runs adjacent to and actually runs on a piece of the parcel. From the south east corner of the property the proposed structure would be two hundred five feet from the stream and from the northeast corner of the proposed shop addition, there is 108 feet to the stream. There should be no additional adverse effects from the proposed structure. The added structure will not be any closer to the stream than the existing structure.

Chairman John Moorehead, Robert Decker and other board members requested that it be noted that they are customers of Dependable Disposal and they feel that they can look at this case objectively.

Dan Leary stated that the new survey does not show the shrubs, wetland or base elevation of the flood plain. Dan Leary also asked what the minimum flood elevation was and what the existing soil elevation is. Mr. Britt said he had no knowledge of wetlands on the property.

Robert Decker asked if there was any other property that the equipment could be stored on without causing any more hardship. Mr. Morgan stated that there is not another property that he could use that would not require costly modifications. Bruce Foote stated that the parcel could still be used as agricultural because a farmer can use that property to store farm equipment.

ZBA Attorney Scott Chatfield summarized the history of the non conforming use with attorney Britt and Mr. Morgan. After reviewing the previous file on the parcel, ZBA Attorney Scott Chatfield stated that the variance granted in March of 2004 was an extension of an existing non conforming use variance. The use variance was requested by Mr. Welch to facilitate the sale of the property to Mr. Morgan. The original resolution passed states that the property is "Limited to the storage of empty recycle and trash containers." Nothing was stated for the use of the premises as an office or storage of vehicles, just containers. It also states "There shall be no retail business." Through discussions it was also determined that significant changes have been made to the property which the ZBA had no knowledge of such as :

- 1) Residential structure has been converted to commercial - without a permit.
- 2) A fuel storage tank was installed - without a permit
- 3) A mobile home trailer was placed on the property - without a special permit.

ZBA Attorney Scott Chatfield reviewed the four criteria of the use variance.

- 1) Cannot realize a reasonable return – substantial as shown by competent financial evidence:
- 2) Alleged hardship is unique and does not apply to substantial portion of district or neighborhood:
- 3) Requested variance will not alter essential character of the neighborhood
- 4) Alleged hardship has not been self created

Due to these changes, the parcel now has a different value than it did when the property was purchased therefore the alleged hardship which has not been self created may be an issue as well as the use variance criteria of lack of reasonable return will have to be proved. Mr. Morgan will need to establish a baseline and prove what his investment is in the property and what the fair market value is now as well as what the property is worth for permissible uses. Robert Decker stated that Mr. Morgan may want to get a real estate agent's statement

Chairman John Moorehead stated that the ZBA is concerned about the intent on the property due to all the changes and usage on the property that were made without the Town of Elbridge's knowledge. Lorraine Morris stated that she was on the board in 2004 and she viewed the property before the resolution was granted and when the resolution stated to have shrubs, she expected to see a line of shrubs rather than small bushes which didn't buffer much. Lorraine Morris felt that the property does not look very appealing. It also appeared that there was activity going on with the trucks that she felt was not a permissible use.

It was determined at this time that the Town of Elbridge Zoning Board of Appeals does not have enough information to make a decision on the Morgan hearing. A motion was made by Robert Decker and seconded by Bruce Foote to adjourn the hearing until the next month's ZBA meeting to allow Mr. Steve Morgan to provide the following requested information:

- 1) The flood plain to be defined. The base flood elevation and limits, and the flood plain to be established as well as the boundary of adjoining wetlands on or near the property.
- 2) Substantial financial evidence as to not being able to realize a reasonable return of the property.

Next month's ZBA meeting will be held on September 9th, 2010 at 7:00 p.m.
It passed with all in favor at 8:25 p.m.

JM - Aye RD -Aye LM – Aye BF - Aye DL - Aye

NEW BUSINESS: None

OLD BUSINESS: The creation of the new Zoning application still in the works

ADJOURNMENT: With no further business, on a motion made by Robert Decker and seconded by Lorraine Morris the meeting was adjourned with all in favor at 8:40 p.m.

Respectfully Submitted
Paige Boratko, Secretary

