

TOWN OF GROTON ZONING BOARD OF APPEALS
Meeting Minutes – Thursday, 14 July 2016 – 7:30 PM
Groton Town Hall Court Room – 101 Conger Boulevard – Groton, NY

Board Members

Ted Schiele, Chairman
*Paul Fouts
Patricia Gaines
Carolann Darling
Daniel Cerretani

(*Absent)

Others Present

Rick Fritz, Code Enforcement Officer
Kelly Smith, Town Councilwoman
Victoria Monty, Town Attorney
Sheldon Clark, Town Councilman

Applicants & Public in Attendance

Joan & Peter King, Darcy Sawyer, Robert & Sharon Fouts, Appellants; Attorney John A. DelVecchio, Erich Haesche – via conference call.

Erich & Mary Sue Haesche, Appellants/Reputed Owners – 93 & 97 Ogden Road – TM #s 28.-1-34.304 – Use Variance – Warehouse Facility in M2 District

The meeting was opened at 7:34 p.m. by Chairman Ted Schiele who had Board Members, Attorney for the Town and recording Secretary introduce themselves. The Chair reminded those in attendance that this was not a public hearing but a discussion and decision by the board.

APPROVAL OF MINUTES – 22 JUNE 2016

No minutes had been received for this meeting. No action taken.

Chairman Schiele noted the second item on the agenda was discussion and action on an application for owner/ applicant Erich & Mary Sue Haesche 93 & 97 Ogden Rd. The purpose was seeking a variance a section 301 & the Land use table to continue operation of a warehouse facility located in a M2 district. We have had 2 meetings. A Public hearing which was initially on June 1st that was recessed until June 22 and at that point, after that meeting the public hearing was closed and we recessed again to deliberate. We are here now holding this meeting for the purpose of deliberations of the information we have received. We are going to go by Sections 429 of the Town of Groton Land Use and Development Code of 2011. Which is the requirements for granting use variances. The first paragraph reads, No Use Variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such necessary hardship, the applicant shall demonstrate that (in accordance with Section 267 of New York State Town Law): We have 4 questions or standards, every one of them must be met in order for us to consider granting the variance. So we are going to start the four points with;

a. Under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence,

b. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood,

c. The requested Use Variance, if granted, will not alter the essential character of the neighborhood, and

d. The alleged hardship has not been self-created.

So we are working this out among ourselves. A. Under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.

Mrs. Gaines: We have the account statement in the packet.

Mr. Schiele: We have a packet of information we have received June 7, 2016 from the Heasche's stamped as such. A letter from John O. Reagan CPA the letter signed by Heather L. Weeks CPA dated June 7, 2016. So I think this is what you are referring to, is that correct?

Mrs. Gaines: Yes

Mr. Schiele: Would you like to read it? Do you have it?

Mrs. Gaines: No go ahead, your voice is much louder.

Mr. Schiele: Under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question. The letter said that there is no other usage for this warehouse other than for this business to which it was designed. A permit was obtained and a warehouse was built...in addition please consider these financial facts relating to the financial hardship on the Haesche family. 1) I estimate the greater than \$500,000 dollars of business would be lost without the ability to store goods in the warehouse. Currently LFS, Lubricant Fuel Solutions would have to close down permanently. 2) This is Erich's only source of income; he is the sole income earner for this family of 5. This would leave the entire Heasche family without a viable source of income. 3) The business nor Erich have the additional funds to rebuild a warehouse. 4) Speaks of the employment of 4 individuals. 5) Shipping back stock that is currently stored at the warehouse is not a real consideration because most companies do not receive returns unless damaged during shipping. Shipping costs would be approximately 1/3 of the product price. So, that is what you were referring to when you brought

that up?

Mrs. Gains: Yes

Mr. Schiele: Comments for the board members?

Mr. Cerretani: I agree that there is definitely an economic hardship involved in here. That there is no other use for the building, that it would close down the business as it is today.

Mr. Schiele: So in your mind, does that, economic hardship would apply to point A there?

Mrs. Darling: Yes most definitely.

Mr. Schiele: Carolann?

Mrs. Darling: Most definitely I agree.

Mr. Schiele: Ok so I think that I also agree that this demonstrates there would be an economic hardship established by the CPA for this company.

Ms. Monty: So for that factor you have to make a determination that the applicant cannot realize a reasonable return on the property.

Mr. Schiele: So we have been advised that what we need to do is make a determination the applicant cannot realize a reasonable return, a reasonable return cannot be derived under the current zoning for that property is that,

Mrs. Gaines: They couldn't sell it? They couldn't use it for anything else?

Mrs. Monty: Those are examples and you have to support that with facts.

- Mrs. Gaines: So they can't sell it, I mean because no one else would use it for, it's so specific even without the use variance it can't be used for that purpose anyways. They would not have an income because the difference would be gone. They would actually end up owing money on the things that they return.
- Mr. Schiele: So basically what we are trying to establish is that the property under the current zoning there is no reasonable return for the use under the current use. Which doesn't really include selling it because that is, not the use. Basically what we are saying is, under the current use as its zoned there is not opportunity for a reasonable return on that property.
- Mr. Cerretani: I would agree with that.
- Mrs. Darling: Agree.
- Mrs. Gaines: Yes
- Mr. Schiele: So I should look at this and so the applicant cannot realize a reasonable return shown by financial evidence, the lack of return must be substantial and I think that we are saying yes. The next factor we need to consider is section 429 b., is the alleged hardship unique or does not apply to a substantial portion of the neighborhood.
- Mr. Cerretani: I would feel that is it unique in that Mr. Haesche did in all good faith everything that he was supposed to do in permitting and that sort of thing to build the structure, however, along the line he received information that wasn't correct from the zoning board officer at the time as to what was allowed in that particularly zoned district. So that I would say is unique and is to the best of my knowledge does not apply to others in the area. So it was something that is definitely unusually and different and that's how I feel.
- Mrs. Gaines: I agree.
- Mr. Schiele: Carloann, do you have anything other?
- Mrs. Darling: Poor advice and lack of advice from the previous code enforcement officer.
- Mrs. Gaines: He should have been told a lot of things that he wasn't told. When you go to the person who is in charge of this kind of thing you should be told the correct information.
- Mrs. Darling: There was one document, I don't know if this applies to this kind of thing, a hand written note that as long as there were not complaints. I don't know this applies to this particular.
- Mr. Schiele: You're referring to a hand written note by Gary Coats that said there was no retail and as long as there were no complaints that he wouldn't do anything. I have that right here, dated 9/17/12 from inspection report Gary Coats; they were not running any retail business. Any retail business is only drop shipped, only running a business at home; I will do nothing until I get a complaint.
- Mr. Schiele: That seems to support that was a unique hardship, based on the information he received directly, regardless of what he may or may not have, so rather than proving the negative, my view is to look at what he received and what he received directly was that this was ok, this was ok to do according to the code enforcement officer.
- Mrs. Cargian: The note in particular was for a building permit application for 93, not for 97.

- Mr. Cerretani: Well, regardless he was still given misinformation throughout the process, of building on 97 that was out of line with the rules regulations and the proto-calls, everything else.
- Mr. Schiele: He was in fact, ultimately granted a building permit for the property at 97.
- Mr. Cerretani: Correct
- Mr. Schiele: And when he was granted a building permit for the property at 97, the construction went forward but then we make an assumption, even without written documentation that throughout the building process that there is an ongoing inspection process? So that the, as the building is going up there should have been ongoing visits by the Code Enforcement Officer?
- Ms. Monty: I think we can get clarification from Rick that that would be typical. He is a lot more involved it that.
- Mr. Fritz: We can't hear you all back here. The motors are running from the fan.
- Mr. Schiele: So I think we better not open this back up or?
- Ms. Monty: No, you can ask Rick for clarification from someone who would know the specific process. So I think what Ted was asking is it a fair assumption that during the building process there would be some continuing conversations and inspections.
- Mr. Fritz: Yes there is, there are different steps at different phases of construction.
- Mr. Schiele: So it wasn't a send out the permit and then we never see it again, there should have been inspections all the way long.
- Mr. Fritz: And I got the final one.
- Mr. Schiele: Right, you got the final one but you didn't do the inspections all the way along.
- Ms. Monty: I think you would need to make a determination whether the business which I guess you can agree with was running at 93, was then moved to 97 and then continued. Right? So this note, even though it was in respect to 93 the business was moved to 97.
- Mr. Schiele: I have a copy of the building permit here for 97. When we were speaking before about the first section we were speaking about 97. Correct?
- Mr. Cerretani & Mrs. Darling: Confirmed
- Mr. Schiele: When we were speaking about the \$500,000 lost income, I think we can agree that was in reference to 97 as it referenced the building.
- Mr. Cerretani: It also referenced the business. The business is what we are talking about.
- Mrs. Gaines: The business is in the building.
- Mr. Schiele: So for 97 then the
- Ms. Monty: The application is for 93 & for 97 Ogden Rd.
- Mr. Schiele: So we are speaking of 97 Ogden, we are not looking at the note from 2012, we are looking at the building permit for 2015, that was issued on 5/21/2015 and the certificate of completion on that permit was granted 1/14/2016, and we have been advised by the current code officer that there would have been

inspections throughout the construction period. So are we still in agreement that the hardship is unique and may not apply to other portions or substantial portions of the zoning district because of the misinformation that was presented by virtue of ongoing inspections.

Mr. Cerretani: Oh, I agree

Mrs. Darling: Agree

Mrs. Schiele: So we are saying that the alleged hardship is unique

Mrs. Gains: Yes

Mr. Schiele: The next question, which were are then applying to 97. The potential use granted would not alter the character of the neighborhood. Would anyone care to speak to that? Carolann?

Mrs. Darling: It does not alter the essential character of the neighborhood; this is an M2 district within a Rural Ag district. As a matter of fact I think it adds to the neighborhood. It is a well built building, aesthetically pleasing, not obtrusive, doesn't deter from land value. I do not think it alters the character of the neighborhood at all.

Mrs. Gains: There are also letters from neighbors who said that they liked the business and the building.

Mr. Schiele: There were letters of support from neighbors who were in support of the variance; there are also some people who spoke at the hearing at the first of June who were not in support of the variance. So there is a balance there, people who spoke against it and people who spoke for it. I reviewed the minutes and from that June 1st meeting, I think there were 2 people who I saw, specifically people who lived on Ogden Rd., who were not supportive. There was also somebody who was concerned about the potential hazards and felt that according to the minutes and the transcripts that if there was an environmental review on the property to be sure there was no hazards, that if that was done then that individual would not oppose granting the variance. There were also letters from people who were not on Ogden Rd, who were in support of maintaining the business but that is not what we are referencing with regarding the neighborhood. So it is important to recognize that. My view was that it was a balance of people who were supportive and people who were not and the part about the environmental review. So with that in mind, can we go around and see what your thoughts are? Carolann, you brought up the building is being new and another thing is that the building is not right on the road. So it's not really visible. Dan do you have anything else to add?

Mrs. Darling: It is hardly visible from the road.

Mr. Cerretani: I guess I would agree with what Carolann stated. I don't think it will alter the character. It's well placed, it's well thought out. There are deliveries that was another concern. That there would be deliveries and that sort of thing, it doesn't seem that that is something that occurs frequently or causes great distress among the neighbors. We didn't hear that, there was not a ground swell of that. There is other large farm equipment that goes up that road as well and is accommodated. I don't think it really does anything to spoil or alter the character of the neighborhood.

Mrs. Gains: I agree. With all the things about the building.

Mr. Schiele: Ok, so I think we are in agreement that the requested variance will not alter the potential character of the neighborhood. Correct?

Mrs. Gaines: Yes

Mr. Schiele: Ok, the final question is the alleged hardship has been self-created.

Mr. Cerretani: I think that kind of goes back to "B" a little bit where we said that it's unique. I don't believe that the hardship was self-created. I think that Mr. Haesche tried to follow the rules and do the right things at constructing this. Had the zoning been different, there would have been a different outcome. But it was the wrong kind of building in that zoning but I do not think it was self-created.

Mrs. Gaines: I think it would have been self-created if he had gone ahead and built the building without going through the zoning with the code enforcement officer and getting the correct forms and permissions and all. Then I think it would have been self-created but he did all the things he thought he was supposed to do to get the permission to build the building.

Mrs. Darling: In good faith, it strikes me in his report, that he stated he worked with Gary, the code enforcement officer along the way so in faith he did everything necessary. Even to secure the building, his research about the building and how to properly store these elements.

Mr. Schiele: But was he talking with that in conversation with Gary?

Mrs. Darling: I don't know if he was in conversation with Gary, but I think he was contacting,

Mrs. Gains: Experts in building this kind of building.

Mr. Schiele: Well but that's irrelevant if the building was not supposed to be there. It doesn't make any difference with who you talk to as far as that goes. The question is what we are looking at whether or not he, I don't know if you would call it deliberate or whether we can say or reasonably believe that building this kind of a building within this zone where it was not permitted, whether or not that was something that was self-created or if there were some other aspects that caused that. My sense of what you are saying is if we go back to number 2 talking about the uniqueness of this in the neighborhood. The fact that the permit was issued and the inspections we can assume were ongoing. I think that there is demonstration from prior contact with the code enforcement officer, even that the code enforcement officer was aware of what the business was. Even the fact that it was moved from 93 to 97, I think we can reasonable assume based on the 2012 memo that the code enforcement officer was aware of what was going on there. That it would be reasonable that he did not provide all the information necessary as he was granting the permit and following through with inspections during the construction of the building.

Mrs. Gains: I agree.

Mrs. Darling: Agree.

Mr. Cerretani: Yes, I don't believe that it was self-created.

Mr. Schiele: The determination of the ZBA based on the above facts. We have gone through our 4 proofs, we have determined that the applicant meets each of the 4 proofs and we need to make a motion to grant the variance at 97 Ogden.

Mr. Cerretani: I make a motion that we grant the variance at 97 with reasonable condition of a Site plan approval is completed.

Ms. Monty: Are you saying that you are making a motion to approve the use variance with a special condition the applicant must obtain site plan approval from the planning board.

Mr. Cerretani: Yes.

Mrs. Gaines: I Second.

Mrs. Cargian: Dan made a motion to approve the application for a use variance with the condition that the applicant must obtain site plan approval from the planning board. Pat, second it.

Mr. Schiele: There was a second, so is there any further discussion?

Mrs. Gaines: We also want the Town Board to look at the.

Mr. Schiele: We are talking about the motion as strictly for this variance and what conditions there are just for this variance. So again the motion is to grant the variance and that along with granting the variance a Site Plan must be approved by the Planning Board. So is there additional discussion about that?

Mr. Cerretani: No

Mrs. Gaines: No

Mrs. Darling No

With no further discussion, **a motion was made by Member Dan Cerretani to approve the Use Variance to maintain a warehouse facility in an M2 District at 97 Ogden Rd., with the condition that the applicant must first obtain Site Plan approval from the Planning Board. The motion was seconded by Member Pat Gaines, with the vote recorded as follows:**

Ayes:	Chairman Schiele Member Cerretani Member Darling Member Gaines	Nays:	None
		Absent:	Member Fouts

Motion carried.

This becomes Action #8 of 2016.

Mr. Schiele: Alright that motion carries. Now we go through the process with 93. So now we will look at 93.

Mrs. Gaines: What is it that they wanted on 93?

Mr. Schiele: That is the way the application read correct? So we need to look then and go through the same four points. So number one, can the applicant realize a reasonable return as shown by competent financial evidence, we don't have any financial evidence related to that property. Our view was that the financial evidence was only referring to the building that was erected on 97.

Mr. Cerretani: Correct

Mr. Schiele: So we have no evidence for that. Alleged hardship is unique. It doesn't apply to a substantial portion of the zoning district.

Mrs. Gaines: Is the business in there?

Mr. Schiele: In my mind that questions fits the same

- Mr. Cerretani: There was no building at 93, right, there was no new construction? They were using the garage.
- Mrs. Darling: There was no new construction.
- Mr. Schiele: So we really don't have anything, we have that one hand written note although it is unclear of exactly what it is in reference to.
- Mr. Cerretani: Well if you need to have, if all four conditions need to be met and we determine the first is not met do we need to go through all four?
- Mr. Schiele: Not if we think,
- Mr. Cerretani: I don't think the first one has been met, so if we are agreeing with that is it ok to end this discussion
- Mr. Schiele: Ok, do you want to make this motion?
- Mr. Cerretani: I will make that motion.
- Mr. Schiele: Would you like to spell that out?
- Mr. Cerretani: I move that we deny the variance on 93.
- Mr. Schiele: Ok, is there a second?
- Mrs. Darling: I second.
- Mr. Schiele: So is there any further discussion on that? We have already looked at the one proof and have determined that it has not been met.
- Mrs. Darling: I have a feeling they were looking at 93 & 97 as one lot and should explore a boundary line change.
- Mr. Schiele: I understand that but there's still a building there.
- Mrs. Gaines: It has been there for a long time.
- Mr. Schiele: It has been there for a long time. It's been there prior to a change in zoning.
- Mr. Cerretani: So did we vote on that or are we still discussing?
- Mr. Schiele: Yes there was a second, we are still going back to the fact that we feel the denial of the first proof is adequate to cast our vote? So we are voting on to not grant the variance on 93. All in favor?

With no further discussion, **a motion was made by Member Dan Cerretani to deny the Use Variance to maintain a warehouse facility in an M2 District at 93 Ogden Rd. The motion was seconded by Member Carolann Darling, with the vote recorded as follows:**

Ayes:	Chairman Schiele Member Cerretani Member Darling Member Gaines	Nays:	None
		Absent:	Member Fouts

Motion carried.

This becomes Action #9 of 2016.

- Mr. Schiele: Aye. Opposed? Ok 4-0, so we denied the application for a variance on 93.
- Mr. Schiele: The work that we did here on June 1, and June 22, I want to return to one of them is we were talking about the zoning change in 2011 from what appeared to be a long standing. There was some discussion as to whether or not we felt that change may have been necessarily in the best interest of the land owners. Would you like to discuss it?
- Mrs. Gaines: Yes I would like to discuss that.
- Mr. Schiele: Would you like to make a motion?
- Mrs. Gaines: Yes I will make a motion that we ask the Town Board to change it back to an agricultural district.
- Mrs. Darling: I second that.
- Mr. Schiele: So we can recommend that they do that, so it's a recommendation that the Town Board change the zoning back to RA. Did you second that?
- Mrs. Darling: Yes I did.
- Mr. Schiele: So is there any further discussion on that?
- Mrs. Cargian: On what M2 district are you referring too?
- Mrs. Darling/ Mr. Cerretani: The Eden Dr. and Ogden Dr. area.
- Mr. Schiele: Can we amend that, should we recommend they review the zoning there or should we flat our recommend that they change it back.
- Mrs. Darling: Well they are currently reviewing it anyways right now.
- Ms. Monty: You can recommend that they restore it to agriculture instead of M2.
- Mr. Schiele: So Robin, can you read that back?
- Mrs. Cargian: We recommend that the Town Board change the zoning map on Ogden Rd. and Eden Dr. from the M2 to the RA.
- Mr. Schiele: So should we say restore it to the RA or change it?
- Mr. Cerretani: Change it.
- Mr. Schiele: Change it, sometime.
- Ms. Monty: I am not sure the RA definitions completely line up from the new code. So they may want to look at that as well.
- Mr. Schiele: Yes they are different, so are we clear on what the resolution is? Are there any more discussion? We seconded it so all in favor.

With no further discussion, a motion was made by Member Pat Gaines to recommend to the Town Board that the M2 district on Ogden Rd. and Eden Dr. be changed to an RA District on the Land Use Map. The motion was seconded by Member Carolann Darling, with the vote recorded as follows:

Ayes:	Chairman Schiele	Nays:	None
	Member Cerretani		
	Member Darling		
	Member Gaines	Absent:	Member Fouts

Motion carried.

This becomes Action #10 of 2016.

Mr. Schiele: Aye, Opposed? So we approve that resolution 4 to 0. There was one other thing that we discussed which is unclear to me how necessary it is. But we did, also we were discussing what was a warehouse. Although in the chart it does say warehousing for storage of goods, but we were looking in the definitions of section 120 and we did not find anything that refers to "warehouse." There are all kinds of things that were defined there. I would like to make motion that the ZBA recommends that "warehouse facility" be added to the definitions in section 120.

Mrs. Gaines: Page 15.

Mr. Schiele: Section 120 starts on page 5, page 15 is alphabetical where it would go. From pages 5 to 15 there was no definition of a warehouse. Since it is identified in the land use table I would like to make a motion that we recommend that "warehouse facility," which is how it is described in the Land Use table. At the bottom of page 62 it does say warehouse facility for storage and distribution of goods. I would like to make a motion that we recommend to the town board that "warehouse facilities" be added to section 120 which is the definitions of terms used in the zoning code.

Mrs. Darling: I second it.

Mr. Schiele: There is a second. So is there any discussion on that? No, all in favor?

With no further discussion, a motion was made by Member Ted Schiele to approve the recommend to the Town Board that a definition for "warehouse" be added to Section 120 if the Town of Groton Land Use and Development Code. The motion was seconded by Member Carolann Darling, with the vote recorded as follows:

Ayes:	Chairman Schiele	Nays:	None
	Member Cerretani		
	Member Darling		
	Member Gaines	Absent:	Member Fouts

Motion carried.

This becomes Action #11 of 2016.

Mr. Schiele: Aye. Opposed? No, so that carries 4-0. Are there any other business which anybody wants to bring up here?

Mr. Cerrentani: I have no other business.

Mrs. Darling: No business.

Mr. Schiele: Can we move to adjourn?

Mr. Cerrentani: I move to adjourn.

Mrs. Gaines: Second

Mr. Schiele: Ok, meeting is adjourned.

ADJOURNMENT

At 8:30 p.m., a motion was made by Member Cerrentani to adjourn the meeting. The motion was seconded by Member Gaines, with all members present voting in favor.

Robin Cargian, Deputy Town Clerk

Emailed to Supv., Town/ Clerk, CEO Fritz,
Attorney Monty & Board Members on 7/22/16.