

TOWN OF YORK
ZONING BOARD OF APPEALS MINUTES
JANUARY 6, 2015

Present: Dick Ellis, Jerry Ayers, Jerry Sturm, Mark Connolly, Charity Donnan

Others: Jim Campbell, Carl Peter, Jackie Brown (Animal Hospital Rep), Matthew Vanderbrook (Sustainable Energy Developments Inc.)

Informal Discussion regarding Mr. Russo's apartments. Mr. Campbell said generally it is very difficult to demonstrate the legally required burden to obtain a use variance. Each and every legal criteria must be fully satisfied before a ZBA can properly grant a use variance. He suggested that in the instant matter, the applicant may find easier success by petitioning the town board to amend the text in the Code for Commercially Zoned properties to permit single and multi-family residential use which would validate the use going forward.

Dick Ellis wanted to step down from chairman and asked Jerry Ayers to take over. Jerry agreed and board approved.

Mr. Ayers called the meeting to order at 7:23

Mr. Sturm moved to approve the October 29 minutes, Mr. Connolly seconded, 5 yes, carried.

Mr. Ayers called the York Animal Hospital wind turbine hearing to order at 7:30 p.m.

Mr. Vanderbrook stated that the hospital would like to erect a small residential wind turbine with a 20-25 year lifetime, or longer with proper care, to help offset electrical expenses.

Mr. Ayers said there were two issues: height and closeness to the property line.

Mr. Vanderbrook said the setback issue had been corrected by moving 15 feet to the south.

Mr. Ayers stated that our zoning has a maximum permissible height of 120 ft.

Mr. Vanderbrook said they wanted to put up a 140 ft tower with the blades reaching up to 153 ft – that the taller tower was better to get above the tree and wind turbulence.

Mr. Ayers asked if the height of the buildings and trees weighed into the calculations and Mr. Vanderbrook said yes.

Mr. Sturm asked if there were any objections. No one else attended the hearing.

Mrs. Donnan asked what would happen if you do it according to zoning?

Mr. Vanderbrook said the applicant would lose 10-15% efficiency and lifetime savings would drop approximately \$5000. With the taller turbine you're avoiding some of the problems of turbulence. There is also lifetime maintenance.

Mr. Ayers asked if there would be lights on the top.

Mr. Vanderbrook said that it was a non-issue when tower was 200 ft or less and 2 miles from a public airport.

Mr. Ayers said we have crop dusters who fly pretty low around here.

Mr. Campbell said it could be suggested to the planning board to inquire about lighting as part of its site plan review.

Mr. Ellis asked what speed they reach.

Mr. Vanderbrook said that when they hit a top speed (50 m/h) it pushes fan to side.

Mr. Peter stated that the town zoning requires that a wind overlay zone be created for that particular property.

Mr. Campbell said approval would be subject to the Town Board creating a wind overlay for the property. Done without a timeline on it. Overlay district stays with the property if the owner leaves. It runs with the land but legislatively it could be undone.

Mr. Peter asked if 20 years from now if the tower comes down, does the wind overlay disappear.

Mr. Campbell said probably not.

At 7:50 p.m. Mr. Ellis moved to close the public hearing, Mr. Connolly seconded, 5 yes, carried. A letter/email will be sent with the board's decision.

8 p.m. – Mr. Ayers called to order the Public Hearing for Mr. David Russo's apartments at the corner of Rt. 63 and 36.

Mr. Russo stated that the corner is zoned commercial which doesn't allow apartments. Previously the building on the corner had 3 stores and two apartments. He had switched one store to an apartment and was making another one in the second store. It is a multi-use corner with businesses and apartments. There is not enough parking for a store.

Mr. Ayers sees two issues: the zoning and lack of square footage. One is an area variance, the other is a use variance. The town only has about 7 commercial sites and your corner is one of the busiest corners.

Mr. Campbell

1. Use variance doesn't change zoning within the zoning district, it only applies to the property to which it is granted. It essentially expands the permitted uses available on the property and it runs with the land. There is a very specific set of legal criteria necessary to grant a use variance and the burden of proving the criteria is quite high, making them hard to obtain.
2. Could petition the Town Board to amend the zoning code as to what is permitted in a particular district, ie permitting residential in a commercial.
3. Could possibly seek to rezone the property to a "hamlet commercial" classification which permits residential, but then it is spot zoning and should be avoided.

He recommends that the applicant go to the Town Board first to see if they would entertain a request to amend the zoning code to allow residential use in a commercially zoned district, because granting a use variance may be very difficult for the ZBA to do. It is quite common to have residential uses be permitted in a commercially zoned area, especially in more rural communities.

Mr. Connolly – We can't move forward on an area variance without the use issue being resolved first.
Mr. Campbell agreed.

Mr. Ayers asked about the area variance issue.

Mr. Peter said our zoning says minimum requirement for a single apartment is 860 sq. ft. The apartment in question is 610 sq. ft.

Mr. Russo said the state requirements are less and he needs a variance to keep working.

8:15 p.m. – Mark Connolly moved to close the hearing and Dick Ellis seconded, 5 yes, carried.

Mark Connolly moved to pass the height variance for the wind turbine at the York Animal Hospital subject to getting approval of the wind overlay zone from the Town Board and site plan approval from the Planning Board, Jerry Sturm seconded, 5 yes, carried.

Further discussion regarding the Russo apartments. Mr. Connolly doesn't feel we can approve an area variance without a use variance or having the residential use otherwise permitted. It was further decided that without addressing the actions of a use variance and because it was not included in the publication of this hearing, the board could not act on either variance. The recommendation is that Mr. Russo get on the town board's agenda and formerly make a proposal to that board asking them to amend the current zoning to allow residential use in a commercially zoned area.

Mark Connolly moved to table the area variance application pending the applicants determination on how to proceed with the use issue, Jerry Sturm seconded, 5 yes, carried.

8:30 p.m. – Mr. Ellis moved to adjourn, Mr. Connolly seconded, 5 yes, carried.

Respectfully submitted,
Donna Falkner, Clerk