

**TOWN OF DURHAM
ZONING BOARD OF APPEALS**

Special Meeting Minutes
Thursday, January 14, 2010
Town Hall, Third Floor Meeting Room

Call to Order: The meeting was called to order at 7:30 PM by Chairman John Hogarth at the Durham Public Library. The meeting was scheduled to take place at Town Hall but the building was locked. The Chairman placed a note on the door directing people to the library once the decision was made to move the meeting there.

Roll Call: Members present: Chris DiPentima, David Heer, John Hogarth, Bill LaFlamme and David Slight. Alternates Present: Mark Jungels and Pam Lucashu. Staff: Trish Dynia

Chairman Hogarth welcomed new members Chris DiPentima, David Slight and Pam Lucashu.

Seating of Alternates: No alternates were seated at the start of the meeting.

Approval of Agenda: *A motion was made by Bill LaFlamme, seconded by David Heer, to approve the agenda with the following correction: Applicant is seeking a twelve foot variance to front yard setback, not maximum height. The motion passed unanimously.*

Payment of Bills: *A motion was made by David Heer, seconded by Bill LaFlamme, to approve the following bill: Patricia Dynia, Secretarial Services, 8/18/09 to 12/31/09, \$105.00, plus \$165.00 unpaid invoice, total, \$\$270.00. The motion passed unanimously.*

Approval of Minutes: *A motion was made by David Heer, seconded by Bill LaFlamme, to approve the August 18, 2009 minutes as written. The motion passed unanimously.*

Public Session: None.

David Heer recused himself prior to the start of the public hearing and Pam Lucashu was seated in his place.

A motion was made by Bill LaFlamme, seconded by David Slight, to open the public hearing at 7:40 PM. The motion passed unanimously.

(Note: The public hearing was not recorded because the secretary did not bring the tape recorder.)

PUBLIC HEARING

Silenex Associates, LLC, Request for a 12' minimum front yard variance from Section 05.02.01 (A) of the Durham Zoning Regulations to construct a barn on an existing foundation, Hellgate Road: Professional Engineer Pat Benjamin spoke

for the applicant, Nick Xenelis. Mr. Benjamin noted that a search of the town land records indicate that the foundation was built in the early 1960's. He then read into the record the following statement:

“The existing barn and silo foundations were constructed in the early 1960's. At that time they conformed to the front setback distance of 50 feet from the front property line. The Hellgate Road right of way width in 1960 was approximately 30 feet. In 1996 Hellgate Road was improved and the town right of way was increased to 50 feet. The increased road right of way, or front property line, was moved approximately 13 feet closer to the existing foundations making them non-conforming to the front setback line.

Although the foundations are a pre-existing non-conforming structure, the proposed barn must receive a variance due to the shift in the front property line. This hardship is peculiar to this property and did not occur elsewhere when the right of way line was shifted.”

Mr. Benjamin noted the location of abutting homes, with the closest being 180 feet from the property. He further noted that in a 1996 topographical map on file, the foundation had been mistaken for a fence.

COMMISSION QUESTIONS AND COMMENTS

Chris DiPentima asked what percentage of the foundation is within the setback. Mr. Benjamin's reply: 15% to 20%.

Bill LaFlamme asked about the condition of the foundation. Mr. Benjamin replied that some portions may have to be rebuilt but the majority of it is in good shape. If approved, the structure will have to meet existing building codes. Mr. Xenelis added that although the existing foundation is approximately 105' long, he will likely downsize the length to 60 or 80 feet. However, the smaller dimensions will not bring the entire building out of the setback area.

John Hogarth stated that the Commission generally asks that the applicant approach the abutting land owners, by mail or in person, to ask for their written approval of the proposed variance. Mr. Benjamin stated that other than the required legal notice, abutting landowners had not been notified of the public hearing. The applicant agreed to comply with this request.

Bill LaFlamme asked why this particular location was chosen and whether or not there were any wetlands in the area. Mr. Xenelis replied that it is in an area which is not hayed, the foundation is already in place, and there is an existing access drive. Mr. Benjamin stated that the location was approved by the Inland Wetlands and Watercourses Agency at their December 14, 2009 meeting.

QUESTIONS AND COMMENTES FROM THE PUBLIC

David Heer, who had earlier recused himself, is an abutting landowner at 55 Hellgate Road. Mr. Heer stated that he is concerned about the 105 foot length of the foundation.

Mr. Xenelis replied that he intends to build a smaller version of approximately 60 to 80 feet in length.

Mr. Heer requested that the applicant stake out the exact location of the barn. Mr. Benjamin stated that once the exact dimensions have been determined, stakes will be placed at the four corners.

The commission will conduct a site walk of the property on Saturday, January 30, 2010. Members will meet on site at 9:00 AM.

A motion was made by Bill LaFlamme, seconded by David Slight, to continue the public hearing to the February 11, 2010 meeting. The motion passed unanimously.

At this time, regular member David Heer was re-seated in place of alternate Pam Lucashu.

Approval of 2010 Meeting Dates: *A motion was made by David Slight, seconded Chris DiPentima, to approve the following 2010 meeting dates: January 14, February 11, March 11, April 8, May 13, June 10, July 8, September 9, October 14, November 18 and December 9. The motion passed unanimously.*

Election of Officers: *A motion was made by David Heer, seconded by Chris DiPentima, to elect Bill LaFlamme as Chairman. The motion passed unanimously.*

A motion was made by David Heer, seconded by Chris DiPentima, to elect John Hogarth as Vice-Chairman. The motion passed unanimously.

A motion was made by Bill LaFlamme, seconded by Chris Dipentima, to elect David Heer as Secretary. The motion passed unanimously.

Adjournment: *A motion was made by David Slight, seconded by Chris DiPentima, to adjourn the meeting at 8:05 PM. The motion passed unanimously.*

Respectfully submitted,

Patricia Dynia
Recording Secretary

Cc: Town Clerk, Midstate Regional Planning Agency