

**Town of Phelps  
Zoning Board Meeting  
Minutes**

September 15, 2011

MEMBERS PRESENT

Scott Fremouw, Chairman, Steve Westfall, Alternate, Jeff Caves, Ed Clark, Zoning Officer, Joyce Mitchell, Brooks McKinney, Glen Wilkes

CALL TO ORDER

Chairman Scott Fremouw called the Zoning Board Meeting To order at 7:02 p.m. at the Phelps Town Courthouse.

The Pledge of Allegiance was said by all.

Introductions were made.

Mr. Westfall was appointed for the meeting as Mr. Wilkes had not yet arrived.

MINUTES

The minutes of the August 18, 2011 meeting were considered. Three corrections were noted.

A motion was made by Mr. Wilkes to accept the minutes with corrections. Mr. Caves seconded the motion. The motion carried. Ms. Mitchell and Mr. McKinney abstained.

PUBLIC HEARINGS

Application #SPR080511  
Steve's Electronics Co. LLC  
Replace existing overhang on front of building

Due to the Zoning Officer change the past month, this notification for public hearing was never sent for publication.

With Mr. McCarrick's approval, this was postponed until a public hearing could be held (October 20, 2011).

Application #SUP081011  
Jerry Fronczak  
Build an apartment using an existing structure for medical purposes/family hardship

Public hearing opened 7:28 p.m.  
Public hearing closed 7:29 p.m.  
There were no comments.

Mr. Fremouw asked if the board had the working session notes. Everyone did.

Mr. McKinney made a motion to declare application # SUP 081011 a Type 2 action per SEQR 617.5 (10) and (15), which reads as follows:

- (10) Construction, expansion or placement of a minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or

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density; and

(15) minor temporary uses of land having a negligible or no permanent impact on the environment.

Mr. Caves seconded the motion. The motion carried. Ms. Mitchell abstained.

Mr. Fremouw reviewed the environmental assessment form provided with the application. The form was filled out and signed by Mr. Fremouw.

Ms. Mitchell questioned some information in the notes from the working session. It referenced the adding of details into the code book for this type of application. This will need to be assigned to someone for follow up. Mr. Fremouw wanted to make sure this was handled outside of this particular application.

It was clarified that this board is looking at a special use permit for this type of application.

Findings:

- 1) This special use will not change the character of the the neighborhood nor cause significant injury to the value of adjacent properties. The proposed special use is compatible with the adjoining development.
- 2) The site already provides adequate screening, landscaping and parking.
- 3) The proposed use does not jeopardize the public health, safety, welfare and convenience.
- 4) The Zoning Code Enforcement Officer does not foresee any concerns/issues.
- 5) There is adequate medical documentation provided and on file with the Zoning Code Enforcement office which demonstrates a significant family hardship. This hardship can be mitigated by granting this special use as per Zoning Code 145-13, which allows for mobile homes. Since there is a pre-existing building which can be used for the same purpose with no impact on the neighborhood, the board accepts this in place of a mobile home.
- 6) The Planning Board has reviewed the application and recommends approval.
- 7) A site plan has been provided.
- 8) Applicant is aware that all state and local codes with respect to modifications to the structure must be followed.
- 9) The proposal makes an appropriate use of an existing structure encouraging appropriate land use as recommended and described in Zoning Code 145-3.
- 10) No public comment.

Ms. Mitchell asked if section 145-13 was pertinent to this action as this code relates to mobile homes. The reason why this was used was explained. Mr. Fremouw agreed to add something to reflect this explanation within the findings. #5 above was adjusted.

Mr. McKinney made a motion to accept application #SUP081011

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for a special use permit to allow use of an existing structure as a residence to address a family hardship as described in the application. The following stipulations will apply:

- 1) This special use is granted to address a documented family hardship. This special use cannot be the basis for a continuing use should the hardship end.
- 2) The hardship shall be taken to have ended should the family member improve such that they do not require daily intervention, the family member passes away, or the family member no longer resides in the structure.
- 3) The property owner is responsible for notifying the Code Enforcement Officer of any change in status that would affect this special use. Should the special use end, the property will return to its pre-existing use within 60 days.
- 4) The special use is conditional on an engineering survey of the septic system survey which is acceptable to the Code Enforcement Officer.

Mr. Wilkes seconded the motion. The motion carried unanimously. Ms. Mitchell abstained.

REVIEWS

Application #97-11 Glenn Watts, 2112 Melvin Hill Rd, Phelps. Install 5-foot deck at east wall of new enclosure with stairs east of 5-foot deck. Deck with have railing.

All set backs are appropriate per Zoning Officer.

Mr. Caves confirmed it is a 5-foot variance. It will be more with stairs. Mr. Clark thought 10 foot would be safe. Ms. Mitchell asked when handrails are required. Mr. Clark confirmed it was anything over 4 stairs.

Zoning office had no issues with this application.

Mr. Caves declared application #97-11 a Type 2 action per SEQR 617.5 (10) and (15), which read as follows:

- (10) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other building not changing land use or density; and
- (15) minor temporary uses of land having a negligible or no permanent impact on the environment.

The motion was seconded by Ms. Mitchell. The motion carried unanimously.

OLD BUSINESS

None.

NEW BUSINESS

Mr. Clark brought up adding verbiage to code in 145-13 under family hardship to include allowing for an existing structure on site. Mr. Wilkes confirmed that suggestions go to the Planning Board, which then goes to the Town Board. Mr. Clark felt it should be verbiage from the Zoning

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Board. Ms Mitchell felt it was important to use intent not specific verbiage for the codebook.

Mr. McKinney offered to write a letter to the planning requesting this change/addition. Mr. Wilkes felt we handled this situation very well and expressed to the board his feelings that the board will never be able to cover every request that comes in front of the board in the codebook specifically.

ZONING OFFICER  
BRIEFS

None.

BOARD CONCERNS

None.

PUBLIC COMMENT

Dennis Baker, County Road 13, Clifton Springs. Mr. Baker explained where the property was located. He has a 20 X 40 storage building on the property. He wants to expand it or add another building behind the current building. He originally wanted to build a house, but the cost associated with septic/well and electric was astronomical.

Mr. Fremouw asked Mr. Clark if all the set backs continue to be ok if he were to expand. Mr. Clark said yes.

The question involves expanding an accessory structure. Mr. Fremouw read from the codebook. This is presented before the board because there is no primary residence on this property. It is an R1 lot which requires a primary residence. This is a storage building, which is allowed until a residence is built. Ms Mitchell doesn't see any issue if he is expanding the building within his boundaries. This only becomes an issue when he is building a house. Will there be room for house, septic/well etcetera? The homeowner felt there is plenty of space on property for house. He would like to add 24 more feet. Ms Mitchell doesn't believe the Zoning Board of Appeals needs to be involved. Both Mr. Fremouw and Ms. Mitchell agreed that our job is to approve or deny application based on location and type of request. The home- owner is just questioning interpretation of the code. Mr. Fremouw doesn't believe the owner needs an application to move forward. Ms Mitchell recommended understanding what he would need in the future to move forward in building a home; setbacks, septic, and well.

25% of property can be covered by ALL structures on property. That would be ¼ of this owner's lot. The board figured he has 10,000 square feet to use.

Owner will just need a building permit to move forward. Mr. McKinney suggested a site plan with the permit to show where a house might go in the future.

Steve McCarrick would like to understand why anyone needs to get a variance on the front of building (decks, overhangs, porches) as long as appropriate set backs are maintained. Mr. McCarrick couldn't find anything in the codebook that requires such a variance. The answer was that the Zoning Board has always done it. This has been in place for at least for 12 years. Mr. Wilkes re-stated that not everything can be

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written law. This board has been consistent with handling these issues. He feels there are some situations that the board wouldn't approve or want moving forward.

Ms. Mitchell stated she believed if it impacted setbacks, then board would need to approve a variance. However if it was within setbacks there would be no variance required. Mr. Wilkes says the front setback is the front of your house so the variance would be needed for going in front of that setback. Mr. Fremouw says the board has done this faithfully in the past. This should be added in the codebook. This way there is no confusion going forward. Mr. Fremouw asked what should be exempt. If anything should be exempt it should be added as well to the codebook.

The specific request from Mr. McCarrick was to work to shorten the timeframe. His feelings were present to Zoning Board, Planning Board and then no Public Hearing unless an exception was sited.

The Zoning Board will make a formal request to planning board to have something added to the codebook about this variance issue. The question was raised what would be the right criteria to list in the codebook. The board has intent and spirit of the law, not the word of the law currently to substantiate how the board has acted over the past years as it relates to variance.

Mr. Fremouw is asking Mr. McCarrick, being a representative of the Planning Board, if can move the recommendation forward to the Planning Board. Mr. McCarrick agreed.

ADJOURN

A motion was made by Mr. Caves to adjourn. Ms. Mitchell seconded. The motion carried and the meeting was adjourned at 9:03 p.m.

Respectfully submitted,

Stephanie Kelly  
Secretary

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