

Town of Montgomery Zoning Board of Appeals Meeting  
Held at the  
Town of Montgomery Government Center  
110 Bracken Road  
Montgomery, New York 12549

October 21, 2019  
Monday

7:00 PM

Present: John Fallon, Chairman  
Georgianna Watson, Member  
Darlene Provino, Member  
John Cossa, Member  
Robert Falk, Member

Also Present: Stephanie Tunic, Blustein, Shapiro, Rich & Barone, LLP - Town Attorney  
Members of the Audience  
Suzanne Hadden, Clerk

Agenda

7:00 PM Baker - Bailey Road - Area Variance - Continuation of the Public Hearing

Approval of the September 16, 2019 ZBA Meeting Minutes

Chairman Fallon called the meeting to order. He said we are starting the meeting a couple of minutes early, so we will approve the September minutes.

Approval of the September 16, 2019 ZBA Meeting Minutes

Member Cossa motioned to accept the September 16, 2019 ZBA meeting minutes as corrected by Member Falk, seconded by Member Watson. All in favor, all ayes, motion carried.

Baker - Bailey Road - Area Variance - Continuation of the Public Hearing

Chairman Fallon opened the continuation of the Baker Public Hearing. He said when we were last here, we were waiting for a letter from the Orange County Department of Planning. We have received that letter and he read the letter into the record recommending local determination. He said we also received two letters (emails), one from the former Building Inspector for the Town of Montgomery and a rebuttal from the current Building Inspector. He read both letters into the record and asked Mr. Baker if he had anything he would like to add?

Jeffrey Baker, resident said nothing in addition to last meeting.

Chairman Fallon asked Mr. Baker why he is requesting the 22-foot variance, is it for your convenience?

Mr. Baker said he is trying to keep the building away from the back of his house and there was a question that was brought up as to whether it's location would have any impact on his leach field, although it didn't appear that it was going to. He would like to emphasize that having it as far setback from the house, in other words getting the variance so it can be closer to his back-property line helps him to keep it that much further away from the leach field. It has a dual purpose, an aesthetic purpose and eventually a practical purpose.

Chairman Fallon asked if anyone had any questions?

Member Falk asked what do you specifically plan on using this pole building for?

Mr. Baker said the business that I was formerly following in Middletown, I had some vehicles, and some equipment and tools that I don't have enough room for in my current garage.

Member Falk asked it's not just storage of household items, this is going to be a storage for a business?

Mr. Baker said no, I had personnel property at the business that I formerly co-owned, that now I have to remove, and I need storage for it and that is the sole purpose for this building.

Baker – Bailey Road – Area Variance - Public Hearing

Member Falk asked if these items were going to be used for a business at this location?

Mr. Baker said no.

Member Falk said he is trying to understand the reason for a building this big on a lot this small.

Mr. Baker said I had a motorcycle and vehicle collections that I had stored out there and as I said my current garage wouldn't allow me to store all of those indoors, so in order to keep them enclosed, that is the purpose for this building.

Member Cossa asked if it has to be this big? Can you make it smaller and not need such a variance?

Mr. Baker said not really. If I made it smaller, I would still want the variance in order to keep it back against my back-property line, to keep it as far away as I can from the rear of my house, so I can maintain some lawn between the two structures.

Attorney Tunic asked if he knew what percentage would the accessory use cover in addition to the square footage of his house? You are entitled to 25%. Do you meet that, do you know?

Mr. Baker said I couldn't tell you the calculation.

Attorney Tunic said we would need to know that.

Member Falk said that's the issue that the two letters brought up.

Chairman Fallon said if you brought in an engineer who could establish what the effect of having the new building, if it is too close to the septic system and whether it would be acceptable. I don't see any particular reason that you have given why we should give you a 22-foot variance and what I'm concerned about and what Mr. Falk was concerned about is by having it so close to the house, it may affect the septic system and it is up to you to establish that it won't. We are more than willing to keep it open for the purpose of you proving that, but if you aren't going to bring somebody in who can prove that, I'm not sure that the size of this variance is justified based on what you've said.

Mr. Baker said if I don't get the variance, it's going to move the building closer.

Chairman Fallon said right, but that would help you. If you can establish that by putting the building 30-feet, like the Zoning Law requires that it affects your septic system, that would help you justify wanting to have a variance to have the building further back than the law requires.

Baker – Bailey Road – Area Variance – Continuation of the Public Hearing

Mr. Baker said even if that were the case, that it was or was not going to be impacted, I would still be requesting the variance because it's a dual purpose for aesthetics. I would like to have this structure.

Chairman Fallon said I don't think that for aesthetics, that is a basis for us to grant you a variance at 22 feet.

Mr. Baker said I don't know what the normal requirements are for seeking a variance.

Attorney Tunic said I can go through them with you, if you want. It's a balancing test and the board would balance the benefit of the applicant with the detriment to the health safety and the welfare of the community. It would consider whether the benefit can be achieved by other means feasible to the applicant, which is exactly what we are talking about. For us you haven't established any credible evidence that would show that you can't do this by other feasible means. Meaning that we don't see any reason, or the board has expressed that they don't see any reason why you can't, other than aesthetics why you can't have it less than the 30-foot or at the 30-foot mark that's required. Undesirable change in neighborhood, character or detriment to nearby properties. Whether the request is substantial, whether the request will have adverse physical environmental effects. The board has raised issues regarding your septic system and that would fall under that category. Whether the alleged difficulty is self-created, which is relevant but not determinative. Self-created meaning that your creating the issue, which would be the case with the new building.

Mr. Baker asked I am not sure what you mean, what am I self-creating?

Chairman Fallon said you want to put the building in the location, namely 8 feet away from the property line and the Zoning Law says it's supposed to be 30 feet. You are the one who is creating the desire to have it 22 feet closer to the property, no one else is asking for it.

Mr. Baker said right, previously the back-property line that it is up against was undeveloped property and now there is going to be development to the lot that's Quality and considering that it is that type of usage that I'm going to be up against, I'm not impacting a residence, as if it were a neighbor's property and to the best of my knowledge when I sent out all the letters, I didn't have any objections from any of the border properties to make sure that none of those owners had any objections. Thinking that I'm not impacting the neighbors, bothering them, upsetting their cards so to speak, it's just a request on my part that would make my backyard more appealing and I haven't brought in an engineer to address whether having the full 30 feet would impact the septic, but with the size of the backyard as it is, this meets two of my goals. One as I said and aesthetic which apparently isn't considered to be as important, but the other one being that from a practical nature it does keep it away from any potential leach field encroachment. I'm thinking it has a benefit and if the variance is granted it doesn't seem that it would have any impact upon any of the surrounding properties especially the back-property line, which as I said, it borders Quality.

Baker – Bailey Road – Area Variance – Continuation of the Public Hearing

Mr. Baker continued and said with the way it's zoned and what I'm going to have as a backyard neighbor, another business, my building against what their usage is going to be is kind of going to be compatible, may not be the word, but it won't be conflicting and that is what I would describe it as.

Chairman Fallon asked would you like the opportunity to be able to bring in an engineer concerning the effect of putting the building where you want to put it, with regard to the septic system and the leach fields?

Mr. Baker said no, because I conferred with a contractor. Dalene's husband, Tony has done work with me in the past, when he was looking at the site and we were discussing it in detail. He's not an engineer, but from his practical experience he didn't see where there was going to be any impact that I would have to go that far as to where my septic is currently located and where this building is. I do have a small backyard, but it's not like they are going to be on top of one another. Again, if I had to bring the 30-foot distance from the back-property line then I would say maybe I would have to.

Chairman Fallon said that is what we're saying, if you can have someone come in and say that if I have to put this building 30-feet from the property line it will adversely affect my septic system, that might be a reason to grant you a variance, but until we have something like that, the amount of variance requested is excessive.

Attorney Tunic said I would need the figures for the percentage of the lot coverage, that concerns me, because you are saying it's a small lot. I would recommend that the board have those figures to make sure that the variance is the only one that you are asking for, because now that the issue has been brought up by the building inspector and a member of the public, I would ask that you rectify their concerns.

Mr. Baker said I'm not understanding because I thought Walter had addressed the issue that was stated.

Attorney Tunic said I'm looking at the Zoning Code now, the percentage of your lot coverage, which includes your main building and your accessory building, it cannot exceed 25% of the total lot area and you can't answer whether it does or not.

Chairman Fallon said he is saying it is 40%.

Attorney Tunic said yes, can be covered by 40% of the lot and there under 20%.

Chairman Fallon said there is also another garage on the property that you got a variance for. The existing garage, you got a variance for that one.

Mr. Baker said for the setback for the side property line, I had gotten a variance approved.

Baker – Bailey Road – Area Variance – Continuation of the Public Hearing

Chairman Fallon said for 5-feet. We want to give you the opportunity to be able to establish something that we can justify giving you such a variance and we can adjourn it to next month. If you don't want to bring somebody in, that's fine. Even if you bring somebody in, it's not necessarily a guarantee we are going to grant you a full 22-foot variance, but at least we would feel more comfortable knowing that there's a somewhat justifiable reason for doing what you want to do.

Mr. Baker asked why wasn't this brought to my attention last month so that I could have worked on it to address it tonight?

Member Falk said we did, I assumed you were going to come tonight with a plot plan where your septic system was.

Mr. Baker said I know it was brought up, but in discussion with the contactor, if there were any impacts on the septic system, it would be something that would impact me, and it would be something that I would have to address. In other words, it's not impacting anyone else.

Member Falk said it would be a health situation, if you start building this building and you run into your septic system, you can't build over it, you can't pave over it, you're not even supposed to drive over it. You're going to need access to this building, I would imagine, whatever you are going to store back there. If it's a onetime deal that's one thing, but if this is going to be something that you continually need access in and out of, you can't do that over a septic system. This stuff is going to be brought in here, it's going to be put in the garage.

Mr. Baker said exactly, it's not going to be used like a regular garage, it's going to be used as a storage facility and access infrequently. There's going to be vehicles in the back and the rest of it is equipment. Like I said it's a motorcycle, vehicles, tools, things of that nature that I have stored in the same capacity in a structure at my business out in Middletown. The thing that I am going for is if I had some sense of this, specifically I had a whole month to work on this to bring this tonight and now I'm being delayed another month.

Chairman Fallon said it's not necessarily a question of being delayed, you could have brought somebody in, this was brought up last month. You come in with no additional information, we can very simply, if you like, so there would be no further delay, close the meeting and vote whether we give you a variance; tonight, we can do that.

Mr. Baker said I obviously want to go in a direction that's going to give me the best opportunity to gain the variance and I think that's evident. I didn't interpret your concerns last month as being something that you definitely needed addressing, because I spoke to Tony Provino, the contractor, who has been advising me on this post that meeting and we discussed it and he said he couldn't see it being impacted and it would be something that wouldn't impact neighbors. If there were any negative impact it would be something that I would need to address and assume the responsibility by myself.

Baker – Bailey Road – Area Variance – Continuation of the Public Hearing

Member Falk asked for your own benefit, you wouldn't want to know that ahead a time and address that and be prepared? Before you have to go out and hire somebody, don't you have a plot plan or survey, from when the house was originally built showing where the septic system is? That's a requirement, before you get a building permit, you have to show the limits of the septic system. You don't have any of that paperwork on hand to save you time from going out and having the expense of an engineer layout that system for you?

Attorney Tunic said that would also fulfill him answering the land coverage issue, because I don't have any knowledge of the square footage.

Member Falk said somewhere in time, you had to get a permit for that septic system, and I have to believe there's paperwork, there's a plot plan, site plan, something showing where that septic system is.

Mr. Baker said I'm the 3<sup>rd</sup> owner of that property, I'm the longest owner of it, but I believe it was built in '57 or '58 and I don't know that I have anything that definitely shows the specific location of the septic system on the property relative to the lot dimensions.

Member Falk said then I'd have a hard time with your statement that the building is not going to have any effect on a septic system, if you don't even know where the septic system is or the size.

Mr. Baker said no, I do know where it is.

Member Falk said the size of it, the limits of it.

Mr. Baker said that's why I was discussing it with Tony Provino about coming out the backside of my house where the access is to the actual tank and then saying okay the tank is going to be in this area and the leach fields.

Member Falk said they can go in any direction, they can go parallel to the back of your house, they could go straight back.

Mr. Baker said so if they were parallel to the...

Member Falk said you're guessing.

Mr. Baker said I don't know that and that's why I'm saying if they did go out to the side of the septic tank, then the building isn't going to...

Member Falk said you can't say that, you don't know how many lines you have. Do you know how many lines there are of the field?

Mr. Baker said no.

Baker – Bailey Road – Area Variance – Continuation of the Public Hearing

Member Falk said then you really can't say that the building is not going to have any impact.

Mr. Baker said but if it went out directly behind it, then there would be even more of an impact, instead of it being just going out from the sides of the tank, if it were going out towards the back of the property line, in either case.

Chairman Fallon said the basic thing is we are asking you if you want us to close the meeting now, or do you want us to give you the opportunity to come back in a month, with no guarantees that we're necessarily going to approve it, but there may be a greater chance that you will get it approved.

Mr. Baker said like I said, I wish this had been made clear to me last month so I could have addressed that tonight, this wasn't made very clear.

Attorney Tunic said respectfully Mr. Baker, the point of these meeting is for the board members to express their concerns to you and that's what we are here to do and that's what they did. So that was the time to rectify any concerns that they had. They can't advise you, they can only make suggestions and state their concerns, they can't advise you on how to proceed.

Chairman Fallon said the unfortunate thing is, I'm saying to you, we're willing to give you the time to prove your case, that you haven't proven it. Normally we don't tell people that we normally just vote on whatever they've submitted. We can vote right now on what you submitted and let the chips fall where they may.

Mr. Baker said I just wish I could have addressed them tonight.

Chairman Fallon said I wish you could have addressed it from the very beginning. It's an issue when you're coming in for a variance you should have all your ducks in a row for this.

Mr. Baker said I'm not experienced, I don't go for variances all the time, so I don't know what to expect or what would be asked of me until I attend the meeting.

Chairman Fallon said this is the second garage you are looking for a variance on, so you have had experience before; it was a little variance.

Mr. Baker said the leach field etc. and all that wasn't impacted by the first one.

Chairman Fallon asked do you want to adjourn it for a month, or you want it to end tonight?

Mr. Baker said we'll adjourn for a month.

Chairman Fallon said we will see you back on November 18<sup>th</sup>.

Mr. Baker asked could I ask some clarity as far as what you would like me to address for next month?

Baker – Bailey Road – Area Variance – Continuation of the Public Hearing

Chairman Fallon said the main clarity is the effect of putting where you want to put it, what effect it will have on the septic and leach fields and in addition based on the size of the 3 buildings that you want to have on the property, whether it meets the requirements as far as say percentage of area that you're allowed to have buildings on.

Mr. Baker asked how do I go about satisfying that? I think you said 3 buildings, this is only going to be the second building on the property.

Chairman Fallon asked isn't there a garage?

Mr. Baker said the garage is attached to the house.

Attorney Tunic said the square footage is still included in the lot coverage percentage.

Chairman Fallon said those are the two main things, the septic and the total percentage of your property that will be covered by buildings.

Attorney Tunic said if the public hearing is left open, then also any other comments that come in.

Mr. Baker said so I understand, this isn't my area of expertise, obviously to give you some idea of the dimensions where the septic is in relation to where the building is going to be constructed.

Attorney Tunic said I'm not going to allow the board to say exactly what they want because it's stepping over into advising you, as I had mentioned before. If you're unsure of the requirements...

Mr. Baker said I did want to be prepared to address your concerns.

Attorney Tunic said if you are unsure of the requirements that an area variance needs, then I would suggest speaking to an attorney and if you are unsure of your septic situation, then I would suggest speaking to an engineer. We can't and even then, they might bring up other issues and there might be other things for the board to consider. I'm not comfortable with giving you a punch list of what we need because it's really up to you as the applicant to bring it before us.

Mr. Baker said I'm just trying to understand being an inexperienced applicant to say okay, what are you're concerns and how I can come back to address them because obviously I wasn't able to tonight, so I don't want to delay it again.

Attorney Tunic said the concerns were the lot coverage percentage, and lot coverage in general. I understand that there are two different sections of the code and your septic and leach system location and potential impacts.

Baker – Bailey Road – Area Variance - Public Hearing

Mr. Baker asked he's not sure he understands what potential impacts are?

Chairman Fallon said there are only so many times we can say the same thing and then you don't understand it, get somebody, an attorney, an engineer to explain it to you.

Member Cossa said it is going to be hard to get this variance, you've got a small lot, you've got your septic system and there is a good chance it could be impacted, that's something that the guidelines won't let us vary from. You've got a large building and the house and the other garage that is covering the property, that may be too much covering the property and it's something that is self-created. It's something that you want, it's not something that is needed, and I think it is going to be hard for you to get this variance. I don't want you to think that okay if I do this, this and this I'm going to get it. As of right now I really can't see granting this variance.

Mr. Baker said okay, based on going on experience from when I applied for the variance for the setback for my garage addition, several years ago, and I didn't have any obstacles.

Member Cossa said there are guidelines and our hands are kind of tied by the guidelines and you have to come up with some information that says, this is why I don't have to go by these guidelines and you haven't done that and I don't know if you are going to be able to do that.

Mr. Baker said this has been difficult and I'm not trying to be difficult here, it's difficult for me to understand the difference between me applying for a variance this time and the difficulties as opposed to last time.

Member Cossa said I don't know what you were asking for the last time.

Mr. Baker said the difference was I think there needed to be a 25-foot setback from where the building addition was going to be from the property line, and I was looking for something less than that.

Member Cossa said it depends on how much is that and that we don't know. Needing 30 feet and wanted to be granted 8 feet, that's pretty substantial.

Mr. Baker said I'm going by experience and technically I'm going by my experience from last time and having a variance granted, rather straight forward and that's my only experience with it, but overall inexperience with this. I'm trying to satisfy what your concerns may be and that is why I'm asking the questions so that I can bring in the right information, so that you folks can feel the most comfortable making a decision, but me not understanding the process. I'm trying to make it as less complicated as possible and just bring in some facts and figures. As it were, if I have the square footage of my lot and I have the square footage of my existing building, plus what I'm proposing, whether that answers one question and then if I have something that determines where my septic and my leach field is in relation to my current house location and where the storage building is planning to be constructed, I'm hoping then that gives you folks the information that you need.

Baker – Bailey Road – Area Variance - Public Hearing

Mr. Baker continued and said this is why I'm saying, I'm just trying to understand what it is that I can bring in, in order to help you best see what you need to see in order to make your decision.

Chairman Fallon said you have to actually openly prove that the only variance that we should give is the 22-foot variance, that's why it can't be less than 22, as far as the application that is currently before us. There may have to be a new notice, rightfully.

Attorney Tunic said yes, if the lot coverage issue is in fact an issue as what I'm seeing here, then there might be, that would be another variance application that would have to have another public hearing. To answer your question, if you bring the board that information, it may or may not help in answering, it may open a door to new questions. As I had previously alluded to, with the question that your asking us, is really for an attorney or for an engineer, it's not for us to answer for you. We're here to tell you what the board thinks is necessary or their concerns, it's up to you to ultimately furnish appropriate evidence for those concerns or not. Even if you do show evidence that proves against it, it doesn't necessarily mean that you meet the burden of a variance.

Mr. Baker said what I was totally not understanding was, after leaving the meeting last month, it seemed that the County's sign-off was the major obstacle and then along with Mr. Falk's question about whether the leach field was going to impact the septic and I had no idea to what that plea would need to be.

Chairman Fallon said now you do.

Mr. Baker said yes.

Chairman Fallon asked for a motion to adjourn the Baker Public Hearing to November 18, 2019 at 7:00 p.m.

Member Cossa motioned to adjourn the Baker Public Hearing to November 18, 2019 at 7:00 p.m., seconded by Member Watson. All in favor, all ayes, Member Provino as recused, motion carried.

Member Cossa motioned to adjourn the meeting, seconded by Member Watson. All in favor, all ayes, motion carried.