

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

November 18, 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 October 21, 2019 ZBA Meeting Minutes

Chairman Fallon called the meeting to order.

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

Chairman Fallon opened the continuation of the Baker Public Hearing. He said Mr. Baker, you've submitted a sketch drawing of where your leach field is. Is that correct?

Jeffrey Baker, applicant said yes.

Chairman Fallon asked do you have anything else that you would like to add?

Mr. Baker said in order to try to better address the concerns that were brought up at the last meeting, I brought in Morris Cooper in order to locate my leach field and septic system. He dug up an outlet line with his machine to a distribution box and from there he used a camera and he sited where the leach field went into and the direction of them. He sketched that out for me, and he measured the dimensions to the junction box and then the leach fields. He measured the approximate proximity of the junction box from the side property line. It gives me an idea where it was and where the leach field would be, and it would not impact where I have proposed to put the pole building. That is what I wanted to do to address your specific concerns about the leach field and the other main concern was the square footage of structures compared to the actual total square footage of the property and what that was about to be. That was calculated out, with the proposed size of the pole building that it would be 18.6% of the proposed square footage.

Member Falk said Mr. Baker, I took Mr. Cooper's sketch and his dimensions, because it didn't show where the proposed building was going to be, and I plotted those on your original survey, and you can look at it. It shows the building encroaching into the septic field. This is based on his numbers and based on your sketch of where you originally showed the proposed pole barn to go. I used his numbers and the pole barn encroaches into the septic system. There are two different sketches that you don't show the pole barn on...

Mr. Baker said on his sketch.

Member Falk said I took his dimensions and I plotted them on the original site plan. I understand it says it is not to scale, so I left the building where you originally proposed it.

Mr. Baker said I have in my sketch the site of the pole building, the 20-feet from the side property lines and the junction box is 15-feet from the area.

Member Falk said no, I am hoping that doesn't mean 15-feet from the junction box, I'm hoping it means 15-feet from the edge of the leach field; that dimension wasn't that detailed. I took that as 15-feet, which is what it should be. The edge of the septic field is 15-feet from the edge of the property line.

Mr. Baker said okay, I understand where you are seeing that. In order to address that concern, what if the placement of the proposed pole building in my backyard is moved to the right of the leach field and we give it more breathing area? We shift it to the other side.

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

Member Falk said that's your decision, I just wanted to show that based on where you proposed to put that pole barn, it encroaches into the septic field.

Mr. Baker said in order to address that, so that that won't be a concern and an impact, my proposal would then be in order to satisfy that, is to move the building toward the other side of the property line, in order to give the clearance to the leach field.

Member Falk said you brought this tree up at an earlier meeting, the sketch doesn't jive with the photos. You're showing the leach field in line with the edge of your house and then he shows just hand written in this tree, it looks like the center of your house, to the left of the chimney. If you look at the picture, that tree is not there, that tree is over in the area where it looks like the septic system is. See what I mean?

Mr. Baker said yes, he is showing the tree somewhat in line with the chimney, but that isn't accurate from my memory, but also looking at the photo at the back of the house, you can see it is somewhat centered between the chimney and the edge of the house.

Member Falk asked when he was doing his work, that tree was not located within the whole area of the septic tank, the distribution box, the lines?

Mr. Baker said no, if we are looking at the photo, the tree is on this side, but the junction box is still to the left of the tree, between the tree and the property line.

Member Falk asked there's room between that tree and the property line for that whole system to be? The picture may be a bad angle, but that tree looks like it's within that area of where either the septic tank or that distribution box would lie.

Mr. Baker said Mr. Cooper did his excavating and then found where the junction box is and again it is to the left of that tree. It would be between, a line drawn from the tree and the property line.

Chairman Fallon said one thing that has been established is the fact that if you attempted to put the pole building 30 feet from the backyard, there is no way it wouldn't cover the septic.

Mr. Baker said correct, that was my concern and now with the establishment of knowing dimensionally where the septic and leach field are located in the backyard, it rules that out.

Chairman Fallon asked why again do you need a building the size that you are seeking?

Mr. Baker said I have a number of personal property including some unregistered vehicles at my business that I held out in Middletown that were in storage there and since I'm no longer involved with the business, I need to relocate them. I want to put them in storage and out of sight and with weather protection at my property.

Chairman Fallon asked, your backyard will ultimately be abutting against a service station?

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Mr. Baker said as I understand my back-property line is going up against where they have begun to clear for where I understand Quality is and I believe it's a repair station. They had proposed a natural fence up against my back-property line.

Chairman Fallon asked if anyone else had any questions? Hearing from no one, he asked if anyone in the audience had any questions? Hearing from no one he asked for a motion to close the public hearing?

Member Cossa motioned to close the Baker Public Hearing, seconded by Member Watson. All in favor, all ayes, Member Provino abstained, motion carried.

Chairman Fallon said Mr. Baker, we will discuss this later this evening.

Bluewater Industrial Partners – Project Sailfish - NYS Route 747 and 17K and I84
Area Variance – Decision

Chairman Fallon said the next matter on the agenda is the Bluewater Industrial Partners, Project Sailfish. At the last meeting of the zoning board, which was in January of this year, the public hearing was closed, and the matter was adjourned for the planning board and the Town of Montgomery town board to do what they needed to do. The planning board finished their public hearing and the town board last week changed the zone for part of this property. Therefore, the matter before us right now is to make a decision concerning the application, which is to cut down the size of the individual parking spaces on the property. At the time of the public hearings, it was shown that in most other towns nearby that what the applicant is seeking, is consistent with what the other towns currently have in their zoning. There has been a Resolution drafted and I would ask our Attorney to read that.

Attorney Tunic asked the board if they had any questions, or changes to the document?

The board didn't have any questions or changes to the draft Resolution.

Attorney Tunic read the Town of Montgomery Zoning Board of Appeals Resolution Approving the SEQRA Findings and Granting an Area Variance Related to Project Sailfish into the record. The filed Resolution is available in the file. After reading the approving Resolution document she said SEQRA would be the first vote, Mr. Chairman.

Chairman Fallon said you have all heard the SEQRA Findings. Is there a motion to approve the SEQRA Findings?

Member Watson motioned to approve the Bluewater Industrial Partners, Project Sailfish SEQRA Findings as presented, seconded by Member Cossa. All in favor, all ayes, motion carried.

Chairman Fallon asked is there a motion to approve the Area Variance Findings as presented?

Member Cossa motioned to approve the Area Variance Findings for the Bluewater Industrial Partners, Project Sailfish application as presented, granting relief from Zoning Law 11-70-60 to allow off-street car parking spaces to be constructed with 9' X 18' dimensions (9' X 20" is required per the Town Zoning Code), seconded by Member Watson. All in favor, all ayes, motion carried.

Chairman Fallon asked is there a motion to accept the Resolution as read?

Member Provino motioned to accept the Town of Montgomery Zoning Board of Appeals Resolution, approving the SEQRA Findings and Granting an Area Variance, related to Project Sailfish as read, seconded by Member Cossa. All in favor, all ayes, motion carried.

Mary Ellen Matise, audience said nobody is going to argue with the disturbance and nobody is going to argue with run-off, but if I had a Toyota Tundra, I wouldn't be able to work there because they are over 20 feet in length.

Baker – Bailey Road – Area Variance – Decision

Chairman Fallon said with regard to Mr. Baker's application. There is no provision against him having a pole barn of that size in his backyard?

Attorney Tunic said if the calculations provided were correct. I asked for a breakdown, but I didn't receive one.

Chairman Fallon said if it meets the zoning requirements, he could have a 20 by 45?

Attorney Tunic said it doesn't because it's not within the 30 feet. If the calculations are correct, then the size is not why he is here before us.

Chairman Fallon said based on the size, it would also seem with regard to the approximate location of the septic, that if he had to follow the 30 feet, he could never build anything on it. It doesn't look like the septic, leach field and everything looks more than 30 feet.

Member Falk said he could slide the building to the side. I wanted to note where he originally called for the building to be was encroaching on the septic. It could be slid, if you look at the back of the building, to the left.

Chairman Fallon asked if it was moved that way, would he still need a variance?

A brief discussion was held on the side yard requirements and the chain link fence that is on the side property line.

Attorney Tunic said yes, it looks like it would be encroaching, meaning he would need a side yard variance as well.

Member Falk said if he is going to slide it that much to get it away from his septic and leach field, and if 20 feet is needed for the side yard requirement, then yes, he would need a side yard variance.

Chairman Fallon asked if the building inspector goes to the property and measures where everything is?

Clerk Hadden said no.

Chairman Fallon said he takes the applicants word of where things are located.

Clerk Hadden said yes.

Attorney Tunic said Mr. Baker, I am looking at this drawing and I'm trying to clarify so that my board can be clear, the drawing by Mr. Cooper has the back as 10 feet, versus the 8 feet that you are asking for, meaning that your variance would be for 20 feet, versus 22.

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Mr. Baker said Mr. Cooper is indicating that's where the end of the leach field is.

Member Falk said that's not the structure, that's where he is estimating the end of the line.

Chairman Fallon asked how far is the leach field from the end of the property?

Member Falk said I interpreted his sketch as being that the last line is 15 feet from the property line. If it's a junction box, there would be a problem. I assumed that 15-foot dimension was for the last line.

Mr. Baker said that's what his numbers do indicate. I could call him and clarify that; but based on the way that he has his arrows indicated, and dimensions, I would agree with that.

Member Falk said you can't tell from here how far he would have to move the building.

Chairman Fallon said I'm not sure as to what we can do.

Member Falk said there is not enough information. I tried to combine the two sketches, but you can't tell from here how far he would have to move the building to be clear of the septic field.

Mr. Baker asked is there uncertainty as far as the dimensions of the leach field, is that what I'm understanding?

Member Falk said he didn't show the individual lines, he just shows the perimeter and the only dimension he shows is the first dimension from the fence or the property line to the last line. You don't know how far it extends away from that. There is no indication whether there are two or three lines, he shows an approximate area of the field, he doesn't show individual lines. You can come out of a junction box, I don't know what that box looks like, but it can have as many as 10 holes in it. You can come out any number of directions. The only dimension he has is from...

Mr. Baker said the side property line.

Member Falk said we talked before, could we move the building, and based on the information here, you can't say that with certainty.

Mr. Baker said as I understood him saying it, that the leach field didn't and I would need to have him clarify that, but when he was running his camera from the junction box, the leach field did not extend to the right of the junction box. It was kind of fanning out towards that left rear corner of the property, that is what my recollection is of how he described the leach field, extending out beyond that. In other words, if that indeed is accurate, then the straight line from the junction box to the back fence would delineate the farthest reaching of the leach field, to the right of the property, but I would want him to pen ship that.

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Mr. Baker continued and said what is apparent here is that the size of the lot for both sides of the building to the location of the leach fields, I'm dealing with tight confines. Where can this be placed if I'm granted the variance in order to not encroach on the leach field and then also keep the corner on the side of the property at 20 feet without requesting needing a variance there? I would like to substantiate and get some dimensions for the leach field and that it doesn't extend to the right beyond the junction box, but taking into consideration the take and time of doing that of the placing of the building, I could also consider because of that is, reducing the length of the building from the 45 feet, in order to get some more breathing room here. It wouldn't be from the back of the property, but considering the space between whatever would be the border of the leach field and the border of the right side property line, trying to fit it in between there so that it's not going to be a concern on that right side of the property, located just by my measurement, approximately 43 feet from the rear property line is also my well and I believe if I had understood the location of any edge of the building has to be 10 feet away from the well.

Chairman Fallon said I would think that the best thing for you do to is to start all over again and come back with everything all set out. One of the things is that you may be entitled to get a variance, but it is our obligation to give you the minimum variance that we can, and we have no way of knowing based on what is presently before us what would be proper to give you or whether it is proper to give you anything. I realize it is going to cost you money to get these details, but if you want to hopefully get some building up there, it would be in your best interest to have all this information provided to us so that we can make an intelligent decision. We are not trying to turn you down, we are not trying to approve of you, we feel that we can't do anything based on what we presently have before us.

Mr. Baker asked you want more information?

Chairman Fallon said yes.

Mr. Baker said if you could summarize the additional information. Was it what I said? As far as what I am understanding it is where it would be placed from a right most border of the leach field and the right-side property line. Where it would be placed within there in relation to the right-side property line, given 20 feet and that it's clear of the leach field and that it would be clear of the well, but still with my request of having the variance to be 8 feet from the back-property line. Is that accurate?

Chairman Fallon said when you air everything out, maybe you won't need as big of an area variance. Currently you're seeking a 22-foot variance and based on what we have before us you may be entitled to 22 feet or maybe there is a way you can do it with a 10 foot variance, that is why what you have to do is, Number One concerning the septic, because that is the most important thing and then once you have that established, then both the size of the building and the location of the building would be your choice and then see what variance you think you would then need, rather than saying right now that you definitely need a 22 foot variance. Okay?

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Mr. Baker said right.

Chairman Fallon asked is there a motion to turn down the application at this time without prejudice for renewal?

Member Cossa motioned to turn down the Baker application without prejudice for renewal, seconded by Member Falk. All in favor, all ayes, Member Provino as recused, motion carried.

Approval of the October 21, 2019 ZBA Meeting Minutes

Member Provino motioned to accept the October 21, 2019 ZBA meeting minutes as presented, seconded by Member Watson. All in favor, all ayes, motion carried.

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