

MINUTES OF A HEARING AS HELD BY THE
ZONING BOARD OF APPEALS OF THE
TOWN OF AURORA

March 16, 2023

CASE #1429-Callahan, Sean and Kristin
1749 Mill Rd., (PO West Falls), Town of Aurora, NY

The hearing was called to order by the Chairman Paul Ernst with the following Board members present:

Nancy Burkhardt
Mandy Carl
Rod Simeone
Ray Wrazen, Alternate

Recused: Davis Heussler

Others Present: Elizabeth Cassidy, Code Enforcement Officer (CEO)
Rich Miga, Assistant Code Enforcement Officer (ACEO)

Also Present: Brigid Maloney, Town Attorney
Joe McCann, Town Board Member
Tim Stroth, Planning Board Member

The notice of public hearing was read by the Deputy Town Clerk. The notice was duly published in the East Aurora Advertiser as evidenced by the Affidavit of Publication, marked as exhibit 1. The Affidavit of Posting was marked as exhibit 2. The ZBA Application was marked as exhibit 3. The Petitioner's Letter of Intent was marked as exhibit 4. The Building Departments letter of determination was marked as exhibit 5. ECDP Form and Response was marked as exhibit 6. The Short Environmental Assessment Form was marked as exhibit 7. The Copy of the Plotted Survey was marked as exhibit 8. The Construction Detail was marked as exhibit 9. The List of abutting Property Owners was marked as exhibit 10. A Letter of Concern RE: 1700/1701 Mill Road was marked as exhibit 11. Letters of Support RE: McClory, Parker, Stuhr & LaValley were marked as exhibit 12.

The Chairman opened the hearing with the Pledge of Allegiance to the Flag and stated the purpose and procedure of the hearing. Following the hearing a meeting would be held to render decision for a front yard variance and a building height variance for an accessory building at 1749 Mill Road, (PO West Falls), Town of Aurora, NY.

Callahan Sean Callahan, 1749 Mill Road. Just looking for more storage, just trying to put up a building up for storage of personal items, snow mobiles, 4 wheelers, dirt bikes. I have three boys, so we have a lot of things, skid steers, lawn mowers and all those kind of things. We have the power lines directly behind our house so it

restricts us of any opportunity to put it directly behind our house so that is why we asked for a variance to put it up front.

Ernst Is there a septic also?

Callahan Yes.

Carl Where behind your house is the septic?

Callahan It is behind and to the west.

Carl Heading towards your pond?

Callahan Correct.

Ernst The size of the building?

Callahan 60' by 80'.

Ernst You have a lot of stuff?

Callahan Yes.

Ernst How is it you placed it up front there and why you chose that location?

Callahan I looked at it both ways on both sides of my driveway and the driveway goes down the middle of the property and to the left going in there is only one house off to the side there and to the right there are four houses that abut up to the property. We are going to build a berm in front with trees on top to block the house on that one side.

Ernst What about utilities?

Callahan We are going to bring electric, water and possibly gas.

Ernst You are doing separate utilities, is there a reason for that?

Callahan The distance from the house. It is closer. When we built the property there is a separate meter for the electric halfway point down the driveway and there is a transformer there so that electric will come from there and the water and gas will come from the road.

Ernst So your existing utilities are coming down the right-hand side of the road?

Callahan The right-hand side of the existing driveway.

Ernst The ones that you are proposing you want to come down the left?

- Callahan Yes
- Simeone So you are not going to tie into the existing transformer?
- Callahan We are going to tie into the electrical transformer.
- Simeone So you will go underneath the driveway?
- Callahan Correct. The electric already has a second panel off that transformer. The gas and water I am going to have to dig from the road back to the new addition.
- Carl Did you install that second panel?
- Callahan Yes when I built the property. It was recommended to me from the electrician that if I ever wanted to put another building up to do it this way because it would be a big undertaking to go back that far and to run that much power. The way we did is we ran the transformer to the center of the property. It has enough power for another panel.
- Wrazen You elected not to place the building behind that row of trees that is on that side of the utilities?
- Callahan It is really wet over there and there isn't as much room there the neighbor has an old horse field that goes up there.
- Simeone The new utilities going back to the proposed building is water and gas? You can't tie into your existing.
- Callahan To be honest I haven't explored that option. If I can it may be easier to do that. I would certainly explore that. I would have to talk to National Fuel and Erie County Water to see if I would be able to do that.
- Simeone Are those utilities on the right-hand side of the driveway?
- Callahan Correct
- Burkhardt Were you able to get any letters from neighbors?
- Callahan Yes, I got 4 or 5 of them and dropped them off at the clerks' office. I was unable to get one of them that directly abuts up my property and I stopped at their residence, but we are on different schedules, so I missed them.
- Ernst 1771 Mill, 1743 Mill, 1725 Mill and 1717 Mill and we do have a mysterious letter asking us to question about Celtic Industry Services. It is not signed but it has a return address 1700/01 Mill. Wish we had a name associated with it. It is hard to take is serious without one. They are questioning many violations, heavy equipment. It is not a good way to do this, but it does question if you are doing commercial work out of there which you cannot do.
- Callahan I am a business owner, and we do industrial services, building erection, structural steel modifications and demolitions things like that. We work in the industrial

field, so we do service Dupont and other clients like that. I do bring trailers home with me at night and have skid steers and things like that hooked up to my trailers all the time. I will occasionally try to service those things in the shop and work on a few machines when I bring them home that would be the ideal place for me to do that.

Ernst You are bringing them home because it was convenient, or you are bringing them home because you have to work on them?

Callahan Mostly because it is convenient.

Carl Where is your business located?

Callahan I have an office out of my house and I have a shop space in Buffalo, New York. I have nine people who work for me, and it is just me in the office.

Burkhardt The shop space is where you store most of your machinery?

Callahan Correct in the City of Buffalo.

Ernst I guess when you do it for convenience it tends to get more routine. We frown about that. Maybe bringing them home to fix them it's just a staging place to fix it not to keep it there. Is it a violation to bring equipment home to leave outside or put it inside?

Cassidy For a home occupation which the operation of the business office in the residence is not the issue it's the external evidence of such business. That would be equipment, materials, employees in and out of the property. The public coming to the property as well that would run a foul of Town code. In violation of that.

Ernst If approved then we would have to have some sort of guarantee that it wouldn't happen.

Simeone You said you have 8-9 employees?

Callahan Yes.

Simeone As a general rule when they report to work for the start of their shift do they go to the Downtown building, or do they come out to Mill Rd.?

Callahan They go to downtown or directly to the facility.

Carl Do you mean directly to the job.

Callahan Yes to the job site.

Carl Where is your equipment stored now?

Callahan Downtown Buffalo.

- Simeone The building will be primarily for personal equipment for maintaining the 30 some acres that you own?
- Callahan Correct.
- Simeone You said 60' by 80'?
- Callahan Correct.
- Simeone You could fill 4,800 square feet of personal items?
- Callahan Yes, if you looked at my shop now it is in bad shape. I have a camper, boat, and a bunch of other things that I would like to store in the off season and numerous trailers and things like.
- Simeone None of the vehicles there were a part of your business?
- Callahan I had a plow truck there that I plow my driveway with.
- Simeone So none of those vehicles were instrumental in your business operation.
- Callahan Correct.
- Burkhardt Would you feel comfortable stating for the record your business address? We can say yes you can fit all your vehicles in there or not.
- Callahan It is the Buffalo China building with the Buffalo Curling Club in it.
- Simeone Do you have the entire building or a portion of it?
- Callahan A portion of it.
- Simeone If it does come to pass that you are doing business out of there, what is the action to be taken?
- Cassidy We would have to verify it and then follow the violation process. If it is a verified violation that he is operating the business out of that property, that process could take a couple of months and he would have to cease operation there otherwise it would go to court.
- Simeone Do you understand that?
- Callahan Yes.
- Ernst Can we put a time frame on it?
- Cassidy You could do that. You can set a condition that you review it in a year after the building is up. If we have complaints we would address it sooner.
- Ernest Is there anyone else that would like to speak on this matter?

Gillmeister Bill Gillmeister, 1778 Mill Road. I don't want to take a position on area variances, but I am a little bit concerned about from a common sense prospective there is already very extensive work that has already begun on the project for which the applicant is seeking a variance. Has anyone been out there since Sunday? There is an extensive amount of grading that is substantially greater than the ¼ of an acre that the applicant indicated that would be disturbed in his application. There are some other issues with his conduct in the past of whether or not he has obtained permits that are required. There is a substantial pond near the back of the property that is not visible from the road. I estimate the disturbed area of that pond to be well over an acre. I think the surface area is less than that. He has an obligation to give notice to State agencies as well as the Town. I looked on google maps where I saw different aluminum roofs that have different color from the original building. I wonder if he has retained permits with respect of those. In light of that I would ask that an additional condition be imposed that when the variances are granted that no building begin until he has obtained every permit that is required by law and notified agency. He is in the construction business I presume he knows what he needs to do. That might save everybody from trouble down the road.

Ernst Just to summarize the project itself, you are not against it?

Simeone Frankly I don't know what is going on, I'm a little uneasy because of these past instances where things have occurred without the Town having a chance to look at it because no permit application has been made. Any variance that we grant would be mandated that a building permit be secured within 365 days of the date of passing. If passed the applicant would have that amount of time to request a building permit. Once the building permit is issued all the of the legal ramifications are verified by the building department.

Gillmeister The only reason I am taking your time coming up is because as I said there has been a significant amount of work done since Sunday.

Simeone That area is not in a wetlands designated area is it?

Cassidy No it is not but soil disturbance of over an acre on residential property can lead to SWPPP requirement.

Ernst Would you like to address those issues?

Callahan I saw Liz today about a couple of permits that one understandably I definitely should have, was a porch on the back of my house. The pond I was unaware that the Town needed a permit for that. The other was a chicken coop and again I did not and should have. I spoke to the building department today and I am aware of those things and will rectify. The disturbance we have been doing some clearing of trees of where I am hoping to put this building and as far as soil disturbance we are tracking around trying to do a little bit of grading. I have some employees that I was hoping not to lay off because we were slow at the time, so I had them come over to get a jump start on it. That is gods' honest truth that I was trying to

keep my guys working and trying to keep things going at the same time. Is there work going on there? Yes and the permits will be rectified as quickly as possible.

Ernst We would add those as contingency should we approve this.

Simeone Those actions were not pertaining to your questions tonight. They are separate items correct? The lack of getting permits does not pertain to tonight's issue.

Cassidy Correct.

Simeone You proposed the building on each of the 80' side that there would 15' extension. The purpose for that?

Callahan Just additional storage when I was building it to put certain things under there that doesn't necessarily have to be inside the building.

Ernst So it's not going to be for bonfires and parties?

Callahan No

Carl Giving this building is so humongous would you be amendable to not have the lean-to's on each side as to keep all of your equipment and toys inside this large structure? You are talking about 90'

Callahan I wouldn't want to alter it.

Simeone Are they on the 80' side or the 60' side?

Callahan They are on the 80' side.

Simeone That is what I thought so it's 110'.

Callahan The 60' side

Simeone It says lean-to overhangs on both 80' sides.

Callahan When I was explained to that meant on the 80' length.

Ernst That is on both side?

Callahan Correct. I think we are saying the same thing. I probably worded it wrong but it's on the length so it's only 60' wide.

Ernst Each lean-to is how much?

Callahan 15'

Carl Will the gable end face Mill Road?

Callahan Correct. I was planning on putting a berm up, so you won't be able to see it.

Ernst Is there anyone else that would like to speak?

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Wrazen Will the materials be similar to the house?

Callahan Yes it will be aesthetically pleasing. It will be a wood building with steel siding that will match the color scheme.

Ernst Is there anyone else that would like to speak on this matter? (No Response). The hearing is closed.

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Discussion:

- Simeone I had reservations about storing and utilizing that property for his business, but he seemed to address that. I do understand that with 30 plus acres that you would have a lot of personal equipment to store. The fact that he is going to put in a berm and some trees mitigates the vision towards Mill Road. The idea of possibly granting it with a condition of a one year look back does help.
- Ernst He seems to have a lot of support. The one negative was more concerned about going in and out by putting contingencies of the look back cured that support. We are still protecting the Town.
- Wrazen The building is rather huge but at the same time there is an effort so that it blends in with the rest of the buildings on this property so it's not this huge aluminum industrial building.
- Burkhardt As noted there are items currently stored outside so it would help the visual part of that would benefit.
- Carl That is 7,200sf, it's a big space.

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Decision:

After due deliberation by the members of the Zoning Board of Appeals of the Town of Aurora, County of Erie and State of New York, the following motion was made by Rod Simeone and seconded by Paul Ernst to grant a front yard variance and 1 foot building height variance for an accessory building at 1749 Mill Road (PO West Falls) in accordance with the testimony and exhibits presented. These variances are granted with the following conditions: Installation of a berm with trees planted on it and securing a building permit for the accessory building within 365 days of this decision. There will be a review in one year unless there are complaints then the review will be as soon as possible after the complaint is received. Permits must be obtained for previous projects (porch, pond & chicken coop).

Upon a vote being taken:

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|-----------|-----|
| Ernst | Aye |
| Simeone | Aye |
| Carl | Aye |
| Burkhardt | Aye |
| Wrazen | Aye |

Upon a vote being taken: Ayes-Five Noes-None Motion carried.

EXHIBITS

March 16, 2023

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- Exhibit 1 Affidavit of Publication
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