

**TOWN OF STERLING  
ZONING BOARD OF APPEALS  
Minutes of Meeting**

DATE: April 8<sup>th</sup>, 2008  
TIME: 6:30 pm  
LOCATION: Butterick Municipal Building

**Board Members Present:**

Richard Hautaniemi, Joseph Curtin, Deanna Batstone, Renee Perry

**Alternates Present:**

Jeffrey Donaldson

**Agenda:**

- 6:30 pm ZBA Business Discussion of Minutes
- 6:35pm Continuation Case # 573 Julie Persson Trustee of the Camire Family Irrevocable Trust-*Special Permit*
- 7:05pm Case #574 Metro PCS-*Special Permit*
- 7:35pm Case # 575 Metro PCS-*Special Permit*
- 8:05 pm Case # 576 Philip & Elizabeth Philbin-*Variance*
- 8:35pm Case # 577 David Favreau-*Variance*
- 9:00pm ZBA Business

**Proceedings:**

- Mr. Richard Hautaniemi opened the hearing for the continuation of case #573 Trustee for the Camire Family.
- Ms. Christine Tree representing the applicant talked about their submitted memo with their reply to questions from the ZBA. They sent a letter explaining that it was a mistake in the application “change in use from an in law to accessory apartment” although there was no change in structure. The septic tank system is an issue of the Board of health and they are going to meet with them. Ms. Tree added that the ZBA can put a condition in their decision regarding the septic.
- Mr. Le Blanc attorney presented to the Board members copies of cases that relate to this case- and gave the ZBA copies of a letter by attorney Stan Weinberg regarding his legal opinion on accessory apartments. Mr. Le Blanc also cited some cases and noted that they cannot separate use and structure. In addition, they cannot have this use in a single family area.
- Mr. Jeffrey Donaldson noted to Mr. Le Blanc that this use is allowed with a special permit.
- Mr. Le Blanc said that it is not a preexisting use.
- Mr. Donaldson added that just because the lot is smaller than what should be, does not this allow them to apply for a special permit.
- Mr. Le Blanc replied that he thought they should apply, however, by citing examples of similar cases he thought that this case was not a preexisting condition.
- Mr. Hautaniemi asked Mr. Le Blanc about his definition of a non-conforming lot.
- Mr. Le Blanc noted that it could be in the size and for example this lot is in 2 zones.
- Mr. Donaldson argued that if somebody bought the house as a single family property, they could come before the Board and apply for a special permit.

- Mr. Le Blanc replied negatively because of the lot size requirements- the history of the property follows the new owner.
- Mr. Donaldson asked Mr. Le Blanc if he thought that the lots size is too small for the ZBA to even consider allowing a special permit.
- Mr. Le Blanc replied that Mr. Weinberg has stated his opinion in this regards.
- Mr. Donaldson rebutted that he cannot understand the reasoning that if a lot is small in size why would not it be eligible for a special permit.
- Mr. Le Blanc said that if someone came with a bigger lot than they could be reasonably considered.
- Mr. Donaldson asked Mr. Le Blanc that if someone came to the Board with a hidden accessory apartment but a bigger lot size than they could be granted a special permit.
- Mr. Le Blanc replied that he was not saying this but the by laws were.
- Mrs. Deanna Batstone noted that Mr. Le Blanc does not distinguish between a multi-family property and an accessory apartment situation.
- Mr. Le Blanc said that the current by laws do not really give a distinguishing definition between both but makes them really close.
- Mr. Donaldson noted that the ZBA is not considering whether or not it is a non conforming lot but they are trying to separate the enforcement side and the application side.
- Ms. Tree argued that Mr. Le Blanc talked a lot about the issue that the granting will create a whole community of accessory apartments.
- ZBA members discussed that this might need to be postponed to the next meeting.
- Ms. Tree agreed on continuing the case to May 20<sup>th</sup> meeting and she will submit her approval to continue in writing.
- 7:20pm *Mr. Jeffrey Donaldson* moved to continue the hearing to May 20<sup>th</sup> at 6:35pm. Motion seconded by *Mrs. Deanna Batstone*. Motion carried. All in favor, Yeas: 4 (*Richard Hautaniemi, Joseph Curtin, Deanna Batstone*) Nays: 0.
- 7:25pm Mr. Hautaniemi opened the hearing for case # 574 Metro PCS for a special permit and read the published legal advertisement.
- Mr. Andy Candiello representing the applicant explained that it is a different kind of wireless provider and they have 4 million customers. They will install 6 antennas in on the tower in 3 Redemption Rock Trail.
- Mr. Donaldson asked if it is an existing tower and they are just adding to it.
- Mrs. Batstone also asked if this project would affect anybody else in the area.
- Mr. Rakesh Goel replied that it does not at all. It is a simple plan that costs customers about \$30 per month and they are FCC compliant.
- Mrs. Batstone asked about their marketing strategy.
- They noted that it is based on word of mouth.
- Mr. Ken Williams, Planning Board, noted that the project does not seem to require a site plan review.
- Mr. Andy Candiello also added that they are FCC approved and compliant.
- 7:31pm *Mrs. Renee Perry* moved to grant the requested special permit. Motion seconded by *Mrs. Deanna Batstone*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Deanna Batstone, Renee Perry, Jeffrey Donaldson*) Nays: 0.
- 7:35pm Mr. Hautaniemi opened the hearing for case #575 for Metro PCS for a special permit for 7 Chocksett Road and read the legal advertisement.
- Mr. Andy Candiello explained that they will install antennas on the tower at 7 Chocksett Road.

- Mr. Ken Williams, Planning Board noted that this case does not seem to require a site plan review.
- Mr. Curtis Plante, Trustee of EBAN Realty Trust and abutter, noted that he has no problem with the case but hoped that the water issue he has been concerned with gets a solution. The water overflows and goes to his land and that is why he is asking the ZBA to mitigate.
- Mr. Candiello said that he would not be in a position to do anything because they are just leasing from AT&T who is the owner.
- Mr. Plante said that he has been in contact with Mrs. Ann Desmaris who is acting on behalf of the owner. He only has this problem at spring time.
- Mrs. Ann Desmaris came to the meeting and noted that she missed the beginning of the case and wanted to be updated.
- Mr. Donaldson explained to her what occurred so far in the hearing.
- Mrs. Desmaris explained that the access road is not owned by the trust and she had been working hard and making contacts with the different parties.
- Mr. Donaldson asked about how much is a ZBA's concern and how much is an abutters' issue.
- Mrs. Desmaris replied that she was trying to resolve the issue among the different parties.
- Mr. Williams observed that there might be something in the initial special permit regarding maintenance issues.
- Mr. Hautaniemi asked if there were any more questions from the audience.
- Mr. Plante said the he was concerned if the ZBA has no jurisdiction over the issue.
- Mr. Hautaniemi replied that the ZBA has no jurisdiction unless it was mentioned in the special permit.
- Mr. Donaldson said that they were looking into the submitted case and they cannot look at the other nuisances among private parties.
- Mr. Curtin asked about what kind of work they have to do up on the tower.
- Mr. Candiello replied that they have to add a concrete pad.
- Mr. Plante noted that he has no objection to the proposed application and maybe the ZBA can put a condition requiring some sort of improvement to the drainage.
- Mr. Tim Goss suggested that the Board makes sure that AT&T abide by the special permit stipulations if there were any.
- Mr. Donaldson explained that the ZBA can hear issues relating to a permit they have granted rather than a private matter among abutters.
- Mr. Ken Sanderson, A & E Distributors asked if there was going to be any increase in height of the tower.
- Mr. Rakesh and Mr. Candiello both replied negatively.
- Mr. Sanderson noted that there is a no build zone around the tower and they need to make sure that there is no increase in the height.
- 8:14pm *Mrs. Deanna Batstone* moved to grant the special permit. Motion seconded by *Mrs. Renee Perry*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Deanna Batstone, Renee Perry, Jeffrey Donaldson*) Nays: 0.
- 8:15pm Mr. Hautaniemi opened the hearing for case #576 for Philip and Elizabeth Philbin for a variance and read the published legal advertisement.
- Mr. Jim French representing the applicants said that they are requesting a variance. The Philbins rent that house and they use it for Jamaican farm labor.
- Mr. Brian Favreau, 109 Chace Hill Road noted that he was not aware that the 10 month law applies if the people living in the house could live there if they worked the land. Mr.

- Favreau added that he has no objection to the application and to what the applicant is proposing to do, but to just correct the statement.
- Mr. Hautaniemi added that if the ZBA granted the set the back then it could be rented to anybody.
  - Mr. Hautaniemi asked if there were any questions from the audience.
  - Mr. Curtin observed that this seems to be the only economical way to do that project.
  - 8:28pm *Mr. Joseph Curtin* moved to grant the variance on the application with stipulation. Motion seconded by *Mrs. Renee Perry*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Deanna Batstone, Renee Perry, Jeffrey Donaldson*) Nays: 0.
  - Stipulation was: Granted variance is contingent upon an approved Agricultural Preservation Restriction (APR) on the remaining property. Failure to obtain APR will rule variance null and void.
- 
- 8:30pm Mr. Hautaniemi opened the hearing for case #577 Mr. David Favreau and read the published legal advertisement.
  - Mr. David Favreau said that he is having a hardship with the topography of the land and the set back requirements. He added that the garage will be used to store small equipment.
  - Mr. Curtin asked about why he could not move the garage forward.
  - Mr. Favreau replied that the slope would make it unsafe to access the garage. He would maintain 20 feet for safety reasons.
  - Mr. Curtin asked if he owned the land behind him.
  - Mr. Favreau replied that it is owned by his father.
  - Mr. Donaldson asked if his father sold him a piece of land behind him would this help his project.
  - Mr. Favreau replied that it would still infringe on the neighboring house and that is why he is requesting a relief from the 20 ft offset.
  - Mr. Hautaniemi thought that because the ZBA does not have a structural plan, it is hard to understand the project.
  - Mr. Hautaniemi observed that the hardship in this case is the elevation and the slope, even if the applicant bought the land behind it. They could build a smaller garage but that still would make it a hardship to move the equipment.
  - Mr. Donaldson noted that he was struggling with the size and that the applicant cannot build a smaller garage.
  - Mr. Favreau said that the ultimate function is to build a garage that suits his needs to store equipment and that he is faced with a hardship in the topography of the land. He is trying to make it fit as much as possible.
  - ZBA members discussed the case.
  - Mrs. Batstone noted that the ZBA has heard cases before in which the topography constituted a hardship.
  - Mr. Brian Favreau, 109 Chace Hill Road, stated that granting that relief would not have an impact on the land or the neighborhood.
  - Mr. Donaldson noted that there were no complaints from abutters.
  - Mrs. Renee Perry agreed that topography can really be a hardship.
  - Mr. Donaldson stated that his problem is with the size of the garage.
  - Mr. Curtin also observed that there were objections from abutters but the only issue was the size of the garage.
  - Mr. Hautaniemi thought that there would not be an impact on the area at all.
  - Mr. Williams stated that he was not in a Neighborhood zoned area but a Rural Residential.

- Mr. Donaldson asked about the building style.
- Mr. David Favreau replied that it is a steel finished garage.
- 9:05pm *Mr. Joseph Curtin* moved to grant the variance with a stipulation. Motion seconded by *Mrs. Renee Perry*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Deanna Batstone, Renee Perry, Jeffrey Donaldson*) Nays: 0.
- Stipulation was: To construct a 40 x 30 ft proposed garage with a 30 ft side set back and 20 ft rear set back as shown in the submitted Mortgage Inspection Plan.

### **ZBA Business**

- Members discussed the issue of the Building Inspector and that they would like to have someone probably represent the Board on the reviewing panel.
- Mr. Ken Williams said that he talked with Mrs. Terry Ackerman about creating a full time position and give it the title of the Zoning Enforcement Officer.
- ZBA members discussed the presented minutes of March.
- 9:15pm *Mrs. Renee Perry* moved to approve the minutes with changes. Motion seconded by *Mrs. Deanna Batstone*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Deanna Batstone, Renee Perry, Jeffrey Donaldson*) Nays: 0.
- 9:30pm *Mrs. Deanna Batstone* moved to adjourn. Motion seconded by *Mrs. Renee Perry*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Deanna Batstone, Renee Perry, Jeffrey Donaldson*) Nays: 0.