

**Town of Hamilton  
Zoning Board of Appeals  
Minutes of Meeting of August 4, 2011 – 7:00 p.m.  
Town Offices, 16 Broad Street, Hamilton, NY 13346**

**PRESENT:** ZBA Members Harmon Hoff, Erwin Lamb, Jeff Schindler, Patty Blocklin; Petitioners Brian and Heather Binelli; Zachary Wentworth, Petitioners' Attorney; Nicolas Riolo, Contractor with Citiscape Construction

**ISSUE:** Application for a use and/or area variance to place a 24' x 40' permanently attached mobile home on the Tax Map Parcel #199.-2-27.1 owned by Brian and Heather Binelli at 1140 Earlville Road, Poolville, NY.

**BACKGROUND:** Codes Enforcement Officer Geoff Warden issued a building permit on June 27, 2011. A Stop Work Order was subsequently issued on June 29, 2011, citing violations to Schedule A, Section 6 of the Zoning Ordinance. The Binellis are petitioning the ZBA for a variance.

Petitioners state that the homeowner (Sheila Schutte, Heather Binelli's mother) has sold her prior home, now has her possessions in storage, and has incurred significant out-of-pocket costs because of the Stop Work Order.

These costs include a \$7,000 deposit to Citiscape for site work already begun; a fee of \$245 to the CEO to inspect the lot; \$1100 in engineering fees for a perk test and prints; a \$4,700 deposit on the double wide paid to Better Homes and Transport. Schutte has also engaged the services of NYSEG and has signed an agreement with Bates & Sons to drill a well. Riolo also cites expenses incurred because of the Stop Work Order: fill has already been brought in and equipment is on hold.

Riolo states that the new double wide purchased for placement on this parcel is a HUD home and should be allowed anywhere in New York State. Additionally, the placement of the double wide on the 2.4-acre parcel was chosen to accommodate any future division should it become necessary.

After discussion, all ZBA members, as well as petitioners, petitioners' attorney, and Riolo were in agreement that CEO Warden had made a mistake in issuing the permit in the first place, having inadvertently misinterpreted the location of the intended placement as being outside the boundaries of the Hamlet of Poolville.

Petitioners claim that they should not be penalized or further inconvenienced for the CEO's mistake, as Warden should have confirmed boundaries before issuing the building permit.

**DISCUSSION:** Notices of the variance request were sent to 14 adjacent neighbors and landowners prior to the ZBA hearing. Five responses were received:

Joel Partridge (1221 Earlville Road) indicated he has no objections to placing the double wide on the lot.

Harry Wyman (7494 Willey Road) indicated he has no objections to placing the double wide on the lot.

Ken House (1177 Earlville Road) indicated he has no objections to placing the double wide on the lot.

Donald and Laura DuBois (981 Preston Hill Road) requested in writing that the use variance be denied based on the ZBA having denied a similar variance request several years ago to Dan Russell.

Nelson and Kathleen Brown (1171 Earlville Road) requested in writing that the variance should be denied for the following reasons: (1) Zoning regulations dating back to 1975 have prohibited the installation of mobile dwellings in residential areas; (2) A request for the installation of a mobile dwelling on the property currently under consideration was denied in 1989; (3) The current zoning laws for the Town of Hamilton state that the zoning district for the Hamlet of Poolville does not permit mobile dwellings on individual lots; and (4) The requested use variance will alter the essential character of the neighborhood.

Petitioners state that the new double wide will be permanently attached to a 6" pad with a new well and septic system. Petitioners claim that placement of a new doublewide will actually improve the neighborhood, which currently has "a number of abandoned and run-down homes."

Further discussion focused on the differences between a mobile home, a double wide, a trailer, and a modular home. Schindler stated that he would like to see the definitions of each refined and clearly articulated.

Hoff cited the Town of Hamilton's Zoning Law standards for issuing a use variance for a mobile home:

10.1-2 No use variance shall be granted without a showing by applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. To prove unnecessary hardship the applicant shall demonstrate that ...

1. The applicant cannot realize a reasonable return ... as demonstrated by competent financial evidence;
2. The alleged hardship ... is unique, and does not apply to a substantial portion of the land use area or neighborhood;

3. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. The alleged hardship has not been self-created.

Hoff stated that it was his opinion that a mistake by the CEO does not change the law.

Section 2.2 of the Zoning Law states: A zoning permit will be issued only when the Code Enforcement Officer has determined that all requirements of this local law and all other applicable laws and regulations have been satisfied.

Petitioners state that they relied on the CEO's expertise and subsequent permit that was issued as evidence that the intended placement of a doublewide was allowed at this location. Because the mistake was the CEO's, the hardship was not self-created and the Binellis have complied with all requirements.

Blocklin stated that it is clear that the CEO's mistake is what created the Binelli's hardship in this situation.

Riolo stated that denying the variance would generate even more expense to the Binellis.

Erwin asked the Binellis if they would agree to have the double wide blocked rather than skirted, if the ZBA approved the variance. They readily agreed to this.

Schindler made a motion to grant petitioners' request for a use variance as requested and allow the placement of a new doublewide at 1140 Earlville Road, Poolville. The motion was seconded by Blocklin.

The vote was 3 to 1 in favor of granting the variance, as requested by the Binellis. Blocklin, Lamb, and Erwin voted in favor. Hoff voted not to grant the variance, based on his interpretation that the law carries more weight than the fact that the CEO made a mistake in issuing the building permit.

The majority vote was based on interpretation of Section 10.1-2, Sections B(2) (the hardship is unique and does not apply to a substantial portion of the neighborhood) and B(4) (the hardship was not self-created).

#### **ADDITIONAL BUSINESS:**

The Minutes of the April 1, 2010, meeting were approved unanimously. It was noted that despite a 3:1 vote at that meeting, no building activity has taken place to date, and

that the decision of any appeal voted on by the ZBA shall expire within six months if the applicant fails to act.

Steve Lorraine has resigned from the ZBA because he has moved out of the Town of Hamilton. Recommendations to fill this vacancy are welcome.

**ADJOURNMENT:**

There being no further business to come before the Zoning Board of Appeals, the meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Christine E. Hoffman