

VILLAGE OF SPRINGVILLE  
ZONING BOARD OF APPEALS MINUTES

December 17, 2014

7:00 P.M.

A meeting of the Zoning Board of the Village of Springville was held at the Municipal Building, 65 Franklin Street, Springville, New York at the above date and time. Present were:

Chairwoman:	Sue Owen
Members:	Christine Greene Joe Wolniewicz Tim O'Neal (absent) Dave Guadagna
Also Present:	Mike Kaleta, CEO/Building Inspector Attorney Paul Weiss Trustee Alan Chamberlin Sean Fitzpatrick Tim Black Matt Janiga Gordon Belscher Keith Ploetz Dave Batterson Sandy Forshee Dave Hebden Sandy Corbar Cindy Bramer Melissa Frank Dorothy Hebdon Helen Brogan Dr. Tim Siepel Pamela Bartkowski
Clerk:	Kellie Grube

Chairwoman Owen called the meeting to order at 7:04 p.m. to hear the petition of Z & M Ag and Turf, 336 Vaughn St.(AKA Bus Barn), Springville, New York, **File #7281** for a request for a Use Variance for sales, service and outdoor storage. It is prohibited in a R8.5 zoning district where the property is located.

Applicable section for File #7281 of the Village Code is Section 200 Attachment 1.

Chairwoman Sue Owen asked the applicant to explain why they were seeking a Use Variance.

After Market Manager, Mr. Tim Black stated that Z & M wishes to purchase the old bus barn at 336 Vaughn St. for their new sales and service lot for the tractor agriculture business currently located on W. Main St. The current parcel is not large enough to handle the quantity of business and equipment. If a Variance is granted for the Bus Barn to be their sales lot, additional property will need to be purchased. B & B owns the property directly behind and has agreed to sell a portion approximately 128' x 340'. This will need approval as well.

At this time, Chairwoman Sue Owen closed the Public Hearing to go into Board discussion.

Zoning Board Member Joe Wolniewicz stated that at this time the Zoning Board does not have documentation to be able to prove hardship.

The first test for the issuance of a use variance requires the applicant demonstrate to the board of appeals that "the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence." As to proof of "no reasonable return," the NY Court of Appeals held that the issue of "reasonable return" cannot be satisfied except by a showing of dollars and cents proof.

It is noted that if the subject premises are the subject of a contract of purchase contingent upon the grant of a use variance, then the applicant must establish the fair market value of the property independent of the purchase price, because in the absence of such proof, it will be presumed that the purchase price included a premium over fair market price at the time of purchase in expectation of favorable zoning relief.

Proof of present market value and annual income can be best established through the testimony of an expert witness. The school business administrator and representative of the current land owner would be in a position to supply that testimony. The property in question is currently zoned R8.5 (Residential). The Board is seeking a summary statement from the School. In lieu of a strict "dollars and cents" determination, a qualitative analysis will suffice.

A motion was made and approved to table Public Hearing application #7281 until 7pm on 12/22/2014, pending that a statement from the School District can be obtained.

Next, on the agenda is the petition of Sean Fitzpatrick, 352 N. Central Ave.(AKA Belscher Farm), Springville, New York, **File #7280** for a possible Use Variance for Animal Husbandry in a R8.5 zoning district. Before the ZBA reviews the application for the Use Variance they have to reverse or affirm that CEO Mike Kaleta's interpretation of the nonconforming use regarding abandonment found in Section 200-47. If Mr. Kaleta's interpretation is reversed, the process of the Use Variance application would not have to take place.

At 7:45 pm Chairwoman Owen opened the Public Hearing.

Mr. Fitzpatrick stated that he was in the process of purchasing the 60 acre farm and would like to make it his residence. He plans on renovating the property, starting with the house to make it both livable and presentable. In addition to the house repair, he would like to refurbish the barn. Mr. Fitzpatrick feels that the location of this property is suitable due to the amount of acres and its location on the border of the Village. The majority of the property is located in the Town of Concord and was formerly a working farm.

The ZBA discussed Building Inspector Mike Kaleta's interpretation that the Belscher Farm was considered a legal nonconforming use and that it was abandoned after the removal of animals for one year from the property. They determined that the property was NOT abandoned, even if there were no animals there for quite some time, and Mr. Fitzpatrick may keep animals at this property without a Use Variance.

Page 3  
Zoning Board Meeting  
December 17, 2014

Motion was made by Dave Guadagna, seconded by Joe Wolniewicz, all in favor, none opposed, to overrule CEO Kaleta's determination. No further action from the applicant is required.

Lastly, Chairwoman Owen asked for a motion to approve the minutes as presented from the July 23, 2014 meeting. Joe Wolniewicz made the motion. Four voting yes, none opposed.

At this time Chairwoman Owen made a motion to adjourn the meeting at 8:45 p.m.

Respectfully Submitted,

Kellie R. Grube