

TOWN OF EDEN
ZONING BOARD OF APPEALS
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: July 19, 2018

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Phil Muck
Curtis Neureuter
Drew Riedel
Doug Scheu

BOARD MEMBERS EXCUSED: Joseph Winiecki
Candice Pineau

APPLICANT PRESENT: Paul Zittel

OTHERS PRESENT: Jesse Baker – Code Enforcement
Officer

RE: **Appeal No. 2018-11 (Zittel)**
3065 Bley Road

Ms. Kent called the hearing to order at 7:35 p.m.

Mr. Zittle first gave the board background about the farming history of the property, including how various Zittle family members were involved in its ownership over many years. He would like to split the property into two lots – one to be kept intact for farming only, and one for the residence for himself and his wife. He referred to a large photo showing the close-in farm buildings surrounding the residence, and also to the survey map showing the new boundary lines that would separate the house and farm parcels.

He noted the property was purchased by father, Amos Zittel, in 1954. In the 1960's he and a brother returned from Cornell and became partners with their father; by 1968 Amos Zittle retired and transferred the property to Paul and his brother. They formed a corporation in 1975, and in subsequent years several grandsons of Amos Zittle took and then released various ownership interests in the property. When the applicant turned 60, he sold the house and the farm to his two sons, Mark and Kevin, retaining a life interest in the residence for himself and his wife. Ten years later his son Mark decided he wanted out of the Zittle business, and now works for W. D. Henry & Sons. So the applicant purchased Mark's interest, and described his ownership now as "half a house and half the

farm.” He wishes to separate the house from the farm for the obvious practical reasons, and to let Kevin have full ownership of the farmland. Once the parcels are separate, his attorney will prepare a driveway-sharing and building-access arrangement with Kevin.

Mr. Zittle noted that for the 50 years he’s been active in Eden, he’s always advocated for the preservation of farmland.

Ms. Kent then read the following Legal Notice for this matter published in the “The Sun”:

Zittel: Application for area variances at 3065 Bley Road, to allow a Minor Subdivision of the existing parcel into two lots, under the lot coverage rule and the rear and side lot line rules under Bulk Regulations in Code section 225-23, to allow: Lot 1 (house parcel): violation of the minimum lot size rule; violation of the minimum lot coverage rule; violation of the minimum rear yard rule (house and pool shed); Lot 2 (farm parcel): violation of the minimum side yard rule by two agricultural buildings.

Ms. Kent stated that our secretary, Ms. Diane Herzog, reviewed the proof of Notice given, and it is in substantial compliance with our Code requirements. Mr. Zittle noted that his neighbors who received the Legal Notice are all in favor of his proposal. Ms. Kent then explained the order of hearing and appeal process. The decision of this board will be filed with the Town Clerk.

Ms. Kent noted that the variances requested are many, and they are substantial variations from the Code, as stated in the Legal Notice. However, agriculture and its preservation have received strong support from the Town over the years. She read into the record two items that address this issue (even though they are not directly on point on the matters before us), which she believes can help inform the Board’s deliberations:

A. When the Town created the Agricultural Advisory Committee in 1994, it said one purpose of the Committee was to **“Provide for the most beneficial relationship between the use of land and buildings and the agricultural practices of the community and to further encourage the wise use and management of the town’s natural resources through modern farming practices.” Code section 5-2.**

B. In 2001, in its new “Right to Farm” law, the town noted that **“Farmers . . . may lawfully engage in agricultural practices within the Town of Eden . . . in all such locations as are reasonably necessary to conduct the business of agriculture. For any agriculture practice, in determining the reasonableness of the time, place and methodology of such practice, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge.” Code section 106-3.**

Mr. Zittel was then asked questions by the Board related to the requirements for an area variance (*his answers are in italics*):

- **When were the various farm buildings built?** *The block building was built in approximately 1974; the barn in the 1800's and the shop and storage building in the 1980's.*
- **Would there be any undesirable change to your neighborhood?** *No, there will be no changes at all except new property lines.*
- **Can you do this by any other method, for example by retaining 4 acres for the residence (the minimum lot size required in the Agriculture district) and then leasing the close-in farm buildings to the farm for a nominal amount?** *No, I would like to keep the intent and shape of the farm as it has been for so many years; I would like a clean break-up of the property. I don't want to create future problems for the farm.*
- **Are these variances substantial?** *Yes, but it is what it is.*
- **Is this a self-created hardship?** *Yes of course it is. If Mark hadn't left the business this would not be an issue, but I just want to separate the house from the farm.*
- **Will there be any environmental problems from the drawing of new lot lines?** *No, I can't see any environmental changes at all.*

Mr. Neureuter stated that he thinks this is an extraordinary situation; it's really an all or nothing proposition. There's nothing here that can be easily remedied - it's either we grant all of the variances or we don't grant any of them. He noted that we are talking about something that involves agriculture, we're all very sensitive to that. He proposed that all variances be considered as a group, and opined that it wouldn't be worthwhile to go through each item and try to change them; what Mr. Zittel has done is pretty simple in separating the house from agriculture, giving him enough space for a driveway and backyard. He noted he's willing to grant all variances.

The Board then discussed various matters related to agriculture, including its importance to the Town; the importance of preservation of farming as a way to earn a living, as well as retention of natural resources and open views; agriculture employs people and serves the public in other ways. They noted that the residence has been burdened with the close-in buildings for many decades, which were placed there for reasons of convenience and to devote as much land as possible to farming.

Mr. Zittel was asked if he's considered that when he eventually sells the house, given its undersized lot, this may affect price? *I could care less, he replied.*

Ms. Kent made a preliminary statement before offering a motion: This application requests a fairly large number of substantial variances, for an historic family farm. Preservation of farmland, as it has been conducted on this property, is the intended purpose. The sense of the Board is that if the variances are granted, they are being given in recognition of the Town's established, documented dedication to the preservation of agriculture. Board members referred to this as "heritage" agriculture. The Board doesn't support the use of these variances, if granted, as precedent for variances for dissimilar properties not having the physical characteristics and/or the agricultural history demonstrated in this application.

Ms. Kent then made a motion to approve the variances for Lot 1 (the house parcel) to permit: lot size of .66 acre; total lot coverage of 19%; rear set back line to be 31.6'; and for Lot 2 (the farm parcel) to permit: the minimum partial front yard setback of only 2'; and the minimum side yard setback for the shop and storage building of 40'. The motion was seconded by Mr. Neureuter; the vote was all "Ayes", and the motion was approved. Ms. Kent –Aye, Mr. Neureuter –Aye, Mr. Muck –Aye, Mr. Riedel – Aye, Mr. Scheu – Aye.

Respectfully submitted,
Diane Herzog, Secretary Eden Zoning Board of Appeals
July 29, 2018

The above minutes were reviewed and approved on _____, 2018 by
