

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

PUBLIC HEARING DATE: January 21, 2021

BOARD MEMBERS PRESENT: Kristin Kent, Chair  
Drew Riedel  
Curtis Neureuter  
Doug Scheu  
Candice Pineau  
Joe Winiacki

CODE ENFORCEMENT OFFICER: Dave Rice

APPLICANTS: Brian & Shannon Milligan

RE: **Appeal No. 2021-1**  
**Brian & Shannon Milligan**  
**7611 East Eden Road**

All participants attended by GoToMeeting or telephone call-in.

Ms. Kent called the hearing to order at 7:00 p.m. and asked for comments on the December minutes. **Mr. Winiacki made a motion to approve the minutes from the December 17, 2020 meeting; seconded by Ms. Kent. Minutes approved unanimously.**

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

**Milligan:** Application for a use variance at 7611 East Eden Road to allow construction of a commercial storage building, in violation of the uses allowed in the Suburban Residential zone under Code sections 225-14 A and B.

Ms. Kent confirmed with Ms. Crowe that the property notice list was in substantial compliance with the requirements.

The Milligans were then asked to explain the reasons they applied for the variance.

The Milligans stated that they would like to construct a commercial building on their property and use the building to store equipment for their paving business. Their business has grown, they need to expand and they would like to stay in Eden. Their property is located in the Suburban Residential district, therefore they are required to apply for a use variance. The driveway to their property is adjacent to a cemetery and a water tower. The property to the south is National Fuel pipelines and Tennessee Gas is directly across the street. The Milligans purchased their home in 2017. Shortly after they moved in, National Fuel cut down the trees that

separated the two properties and added more pipes and a building. After these additions, the Milligans began smelling fumes. On windy days, the smell was much stronger and would cause their carbon monoxide detectors to go off. The Milligans have contacted National Fuel on several occasions. National Fuel stated that the previous owner had been notified of the changes and if they are noticing heavy fumes, they should evacuate and contact National Fuel.

In response to questions from the board, Mr. & Mrs. Milligan gave these answers to the standards to be met for a use variance (*their answers in italics*):

1. The applicant can't realize a reasonable return on the property from uses allowed in the zoning district; is the lack of return substantial, as shown by competent financial evidence? *The property could never be split and sold as a building lot for a residential home, therefore we feel that the south side of the property is financially useless. The price for the property had been reduced before they bought it, and they assumed that was because of the utility issues.*

Mr. Riedel asked if they had considered replacing the tree line, Mr. Milligan responded that they would like to use the proposed building as a buffer. With added landscaping, they feel it would look just as nice as a tree line and would separate them from the pipelines.

Ms. Kent and Mr. Neureuter suggested that other uses allowed by the Code, for example a hobby farm or a greenhouse, could work on the property.

2. Is the hardship for the property unique, not applying to a substantial portion of the neighborhood? *We feel that the view, the noise and the fumes make this location a unique hardship. Our property was on the market for seven months and the asking price was lowered by \$40,000 before we bought it. (See the page from Zillow.) The neighboring homes on Mary Drive and Tennessee Circle are at a higher elevation and don't have the same view and fumes.*

Ms. Kent questioned whether other parcels in Eden would also expect to be allowed commercial uses if a home is near a utility substation or a telecommunications tower.

3. Would the variance alter the essential character of the neighborhood? *The character of the neighborhood would not change if we were granted the use variance. Our neighbors are National Fuel, Tennessee Gas, a water tower and a cemetery. There won't be extra traffic, and because our property is below a high berm built by a prior owner along East Eden Road, people won't even see the new building.*

Mr. Scheu shared an aerial photo of the immediate neighborhood. The board and the applicants reviewed the location of property lines, natural features and existing structures, and the proposed storage building.

Mr. Neureuter stated that it seems a commercial building would fit right in. Mr. Riedel and Mr. Scheu agreed that this variance would not alter the character of the neighborhood.

4. Was the alleged hardship self-created?

*We feel that this hardship was not self-created. We purchased our home because we love Eden and want to raise our family here. We made the decision to purchase this property knowing some of its shortcomings, but were not aware of the changes that would later take place when National Fuel expanded the pipelines.*

Ms. Pineau asked about storage of equipment, and materials such as millings. Mr. Milligan stated that all vehicles, equipment and millings would be stored in or behind the new building.

Ms. Kent expressed concern about granting a variance where she believes the applicant hasn't met the first standard, financial proof of no reasonable return from uses that are allowed in the zoning district. If approved, it could set a precedent for other use variance applications. It also would deviate from the town's Master Plan goal of encouraging residential development in that area of East Eden Road. Mr. Neureuter opined that a variance for this property would be based on its unique characteristics, which would distinguish it from future cases. Mr. Schue agreed. Mr. Neureuter suggested that if the variance is to be approved, the board could add a condition that it would not be transferable to subsequent owners. The board discussed its understanding that such a condition would require a subsequent owner to apply for its own use variance to operate a commercial business.

The board members indicated they had adequately discussed the variance standards and the Milligan's issues.

**Mr. Winiacki made a motion to approve a use variance to allow construction of a commercial storage building at 7611 East Eden Road; provided, however, that this variance is not transferable to subsequent owners of the property. Motion seconded by Mr. Neureuter. Five members voted in favor; Ms. Kent voted against. Motion approved.**

Meeting was adjourned at 8:20 pm.

Respectfully submitted,  
Jen Crowe

Secretary Eden Zoning Board of Appeals  
February 2, 2021