

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

PUBLIC HEARING DATE: March 21, 2024

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Curtis Neureuter
Drew Riedel
Joe Winiacki

EXCUSED: Doug Scheu
Patrick Riester
Herb Stocksclaeder
Gary Sam

OTHERS: Dave Rice, Code Enforcement Officer

APPLICANT: Martin & Barb Henry

RE: **Appeal No. 2024-004**
Martin & Barb Henry
7884 Sisson Highway

Ms. Kent called the hearing to order at 7:00 p.m. Ms. Kent asked for comments on the minutes for the Lunge hearing from February 15, 2024. **Mr. Winiacki made a motion to approve the minutes; seconded by Mr. Neureuter. Minutes approved unanimously.** Ms. Kent asked for comments on the minutes for the Five VL Farms, Inc. hearing from February 15, 2024. **Mr. Winiacki made a motion to approve the minutes; seconded by Mr. Neureuter. Minutes approved unanimously.** Ms. Kent asked for comments on the minutes for the Laing-Gro Fertilizer Inc. hearing from February 15, 2024. **Ms. Kent made a motion to approve the minutes; seconded by Mr. Neureuter. Minutes approved unanimously.**

Ms. Kent read the Legal Notice for this hearing as published in The Hamburg Sun:

Henry: application for variances at 7884 Sisson Highway, to allow a Minor Subdivision of an existing parcel in violation of the minimum lot size and minimum lot frontage rules under Code section 225-14A.

Ms. Kent confirmed with Ms. Griebel that the property notice list was completed.

Ms. Kent advised the applicants that four of five Zoning Board members were present. In this instance should there be a tie vote, the appeal would be denied. The applicants have the option to table the hearing and reschedule.

Mr. and Mrs. Henry were asked to explain why they requested the area variances. *Our son is interested in purchasing and renovating the house. We would like to split it off and sell it while taking minimal land away from the farm.*

Ms. Kent noted that, based on pictures provided, it appears as though farming comes right up to the house; that all the land is good soil. *All land is used. Some is rented out but it is all farmed.* The Henrys indicated the house is currently unoccupied and needs to be updated.

Mr. and Mrs. Henry were then asked questions by the board related to the requirements the board must consider in area variance requests. Answers by the applicant are in italics.

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**
Renovating the house will be an improvement.

Mr. Winiecki noted that the board should keep in mind that “heritage farms”, agriculture and its preservation have received strong support from the Town for many years and can help with the board’s consideration:

1. The Town created its **Agricultural Advisory Committee** in **1994**. One of its purposes was to “Provide for the most beneficial relationship between the use of land and buildings... and encourage wise use and management of the Town’s natural resources through modern farming practices. (Code section 5-2)
2. In **2001** in enacting the **Right to Farm** law, the Town said “Farmers...may lawfully engage in agricultural practices with the Town of Eden...in such locations as are reasonably necessary to conduct the business of agriculture”. (Code section 106-3)
3. And the updated, **2018 Eden Master Plan** lists support of local agriculture as a core value in Eden. The Town should “...maintain and protect working farmland to aid in the preservation of the Town’s rural and agrarian character...and preserve important soils.” Maintaining and protecting farmland is mentioned as a way to support active farms as well as Eden’s rural ag character. (2018 Master Plan page 28)

Mr. Neureuter and Mr. Winiecki discussed whether those references support denying or granting the variance. Mr. Winiecki noted that this request maintains as much farmland as possible. If a larger lot were required, it could reduce available farmland. Mr. Neureuter then questioned why the AG district was created with a minimum of 4 acres and 300 feet of frontage. Mr. Rice stated that, during rezoning, the Town wanted to achieve greater frontage in the AG district so that future splits/sales would avoid a “subdivision” feel in this district. In this case, the applicants aren’t creating new homes, just splitting off the small parcel. Mr. Neureuter asked what is to stop future sales of farmland to carve up for lots? Mr. Rice stated that zoning cannot restrict everything landowners do with their land; at 276’ feet, this parcel would not look out of place. Mr. Neureuter wondered if a 4-acre lot with a house could be considered a farm? Mr. Rice indicated that a commercial farm must be a minimum of 5 acres for crops and 20 acres for animals. Ms. Kent noted that the Zoning Board previously has said if there is an exception to the size dimensions, it has to be a “heritage” farm.

2. **Whether the benefit sought by the applicant can be achieved by a method feasible for the applicant to pursue, other than an area variance.** *No. To one side is a neighbor, the other side and behind would encroach on farmland and to the front is the road. Mr. Neureuter asked why it couldn't be moved over more? It's a ravine that is used for the farm. We also use this area to travel from the house to the farm and to the farmland on the other side of the ravine.*
3. **Whether the requested area variance is substantial.** Ms. Kent noted that the frontage request of 276 feet is 92% compliant and therefore not substantial. The 1.67 acres is 42% of the 4-acre minimum and therefore is mathematically substantial. The Town's interest in preserving the use of farm soils outweighs this in her view. Mr. Rice noted that the other side of Sisson Highway is zoned Rural Residential, which requires only 200' feet of frontage and 2 acre lots; this parcel would not look out of place.
4. **Whether the requested area variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.** *It will not have an adverse effect at all. We believe fixing the house up for our son to live in makes sense, as he will eventually run the business. We will start work this summer, addressing the drainage in the front yard first.*
5. **Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.** *No – this house was built in 1838 and was a part of the farm when we purchased it.*

The Board discussed the considerations it must review for variances and noted that while the requested lot size variance can be considered a mathematically significant departure from the 4-acre rule, (a) the frontage variance is not mathematically significant, (b) the variances won't change the character or physical condition of the neighborhood, (c) a larger lot would cause loss of valuable soil, and (d) granting the variances would support the Town's goal of preserving working farmlands.

The Board also discussed that the variance, if granted, should not be a variance precedent for properties without the "heritage farm" traits of this parcel.

Based on these factors, and in an effort to preserve heritage farming, Mr. Winiecki made a motion to approve the requested variances at 7884 Sisson Highway, to allow a Minor Subdivision of an existing parcel in violation of the minimum lot size and minimum lot frontage rules under Code section 225-14A. Seconded by Ms. Kent. All in favor. Motion approved.

Meeting was adjourned at 7:35 p.m.

Respectfully submitted,

Shelly Griebel, Secretary
Eden Zoning Board of Appeals