

Town Pompey Zoning Board of Appeals
May 20, 2013

David Tessier, Chairman, called the meeting to order at 5:00 PM. Board members present: Pat Frazee, Don Neugebauer, and Kevin Sharpe. Jeff Brown, lawyer, and Rick Penhall, Code Enforcement Officer were also present.

This is a continuation of the hearing from April 29, 2013, regarding the Strickland application, 4088 Gibbs, Rd. No determination was made at that time.

David Tessier made introductions of everyone.

David Tessier received a letter from Mr. James Stokes of a synopsis of the earlier meeting.

On April 29th we listened to the applicant and to the audience and we did not make a decision at that time. The Board decided they needed more time to look over the documents and consider the issues. Since that time we have received a letter from James Stokes, attorney. It is a synopsis of the April 29th meeting. Pat Frazee asked the board – “What are we seeking here”. David Tessier stated that we could make interpretations of the code enforcement officer’s decision on this. As to what would be voting on as to the variance, there were no numbers on the application.

Karen Strickland stated they were asked to fill out the application and they did. David Tessier said that on a variance application requires numbers. If this is a private stable you could ask for a reduction from 100’ to the existing 29’ side set back for the building. Karen Strickland agrees with this.

Karen Strickland said at the last meeting she was dealing with a passive aggressive situation. The only conversation with Mr. Colone was when he visited with his daughter to see the barn and horses. He saw the structure being built and never questioned the placement of it. Karen brought pictures of the barn.

Her house has an estimated value of \$379,700 an increase of \$5500 in 2013. The barn has increased my property value. All the other properties have dropped \$1,000 to \$2500. My property value is about \$100,000 more than the other homes. Karen stated that Mr. Colone has been screaming at the people coming to see my property, per my realtor, saying it is an illegal barn, it can’t have horses and it’s ruining his septic system. Mr. Colone sent someone over to see the house to see how the barn was being represented. Karen has dropped the price by \$50,000 and if she keeps dropping the price it will also affect the values of the other homes.

Karen stated that Mr. Colone said the barn was causing a problem with the septic system. Karen showed pictures of the drainage problem showing the water coming across the lower front of my yard into a grate and drainage pipe, put in by previous owner, and on to Mr. Colone’s property and into a ditch that Mr. Colone put in.

Karen found out that the flies were worse last summer because of the mild winter. There were other pictures submitted showing the other horses in close proximity to his property that also contribute to the fly infestation. Karen stated that the picture from last month showing the standing manure in Mr. Colone’s was a misrepresentation. She spoke to the person who takes care of the septic system. It is a raised bed system because of the water problems he has always had, and last

summer it backed up and there was sewage in the back yard that is what the picture showed. Karen had a French drain put in the paddock by the barn which goes from left to right and is angled toward the trench so the horses didn't have to stand in water. Mr. Hale spoke previously about the flies but he never spoke directly to me regarding this.

Mr. Hale put in a 3 car garage on my property with a drive but we came up with an agreement that if it needed to be moved, we would give him 90 days notice. I have done that now because the property is for sale.

Karen Strickland state that manure is used to grow fruits and vegetables and we end up eating those. It is spread all the time on the fields. It contains nitrogen, large amounts of undigested straw,-which breaks down to compost. Manure contains fiber which is a good soil conditioner, and composting this helps to reduce parasites, flies and it reduces volume to pile up. It is an excellent manure management technique. This is a benefit, not a hindrance. This information was obtained from the internet.

Mr. Stokes – Everything Karen stated is irrelevant. The use is the problem. The property is above the elevation of the Colone property, therefore the water runoff goes down hill. Nothing has been addressed to town law 267B. This is stated in my letter. This is a suburban residential style neighborhood.

Mr. Hale stated that he did not build a 3 car garage – it is a shed and it is on my property now. The survey showed the building on the Strickland property. Mrs. Strickland did put manure 30' – 40' on his property. Most has been moved. Mr. Hale will remove the driveway that went to the shed on Strickland's property.

Pat Frazee asked if the neighbors realize they were in a building in a farm district. Mr. Colone said yes.

Karen Strickland said she talked to people in the surrounding area, she finds it insulting because she moved out to the country with horses around and tried to attempt to make this in keeping with the neighborhood and they find it offensive. In talking with other people, not one mentioned a concern or an issue of flies or odor. They were more concerned that people moving to Pompey and trying to create a "the suburban bubble". In hindsight, I could have put up a shed in the back yard with horses and I wouldn't have had this problem, but I tried to make it more esthetic.

Don Neugebauer asked about the in the front of the property. Karen stated that this is coming from above her property and it runs in front of her property. Mr. Colone said that after the gravel driveway was put in the water went directly to his property. Karen stated that this run off goes to his property before it gets to his barn.

David Tessier stated that there is a lot of detail regarding drainage, and the environmental issues are ones that we take under consideration. At some point we will close the hearing and will deliberate on this. The audience is welcome to stay.

Kevin Sharpe asked that if the manure was placed beyond the 100' setback, will that runoff more than a 100'? Pat Frazee said yes but hopefully the grass will catch some of the nutrients.

David Tessier – This board will make recommendations to the town board to take a look at this particular ordinance.

Pat Frazee – The property is large enough so the stable could have been located within the setbacks. The manure needs to be managed correctly. I feel it is not the fault of the Strickland's but that of the former code enforcement officer. I don't feel they were trying to deceive anyone with the application saying it was a person barn.

Mr. Stokes – the fault is with the Strickland's for not knowing the code of the town of Pompey.

Pat Frazee – with all due respect councilor, not every citizen is going to know all the laws.

Mr. Stokes - Karen Strickland should have taken the time to read the law. But this is a use problem not just the barn. The law is clear and she chose not to read it.

Kevin Sharpe – if the town is at fault then the town has to rectify this.

David Tessier, we have to make a decision on he application in front of us. We can't determine what the town might do.

Pat Frazee we can grant a variance of 71'. . The building could be on there legally and Strickland's would still have to have the manure managed.

Mr. Stokes – this is an illegal use.

Kevin Sharpe Should we consider this a use variance and is it self created.

David Tessier A use variance is hard to prove.

Pat Frazee They went to an expert(hired by the town) and were told they could build the barn there.

David Tessier asked Rick Penhall about the building permit file and he did a diligent review of the files. Nothing further was found.

Jim Stokes The notice of violation from Rick Penhall was never challenged. This is an unlawful use.

Karen Strickland – I have the letter sent in July. Her husband spoke to Jeff and would be at September's meeting. There is no set back for fencing.

Jim Stokes – for a private stable it has to be 100' setback for fencing.

Don Neugebauer The fencing is not around the whole property, it is only in the back for the paddocks.

Pat Frazee made a motion to close the public hearing at 5:55 PM and seconded by Kevin Sharpe.

Roll Call Vote:

	Aye	Nay	Other
David Tessier	X		
Kevin Sharpe	X		

Patrick Frazee X
Don Neugebauer X

All in favor – motion carried

David Tessier stated that the Board will continue to deliberate on this issue and the public can remain. The board may have further questions of the applicant.

David Tessier – any decision we make to night will require a majority of the board or 3 members. For clarity we will refer back to the permit forms from November 2012. The building permit listed it as a personal barn and the permit was issued for a horse building. I believe it is a private stable by our definition Rick Penhall agree that it is a private stable. This is not a commercial barn.

It was Lloyd Sutton’s interpretation to call it a personal barn and the builder treated it as a private stable

Jeff Brown stated the building permit was signed and stated it says personal barn.

Pat Frazee made a motion to agree with code officer, Rick Penhall, this is a private stable and seconded by Kevin Sharpe.

Roll Call Vote:

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		
Don Neugebauer	X		

Motion carried

David Tessier The applicant was asked if they were looking for an area variance from 100’ to 29’. Karen Strickland agreed to this.

Pat Frazee The manure storage could be kept 100’ from the side line and not require a variance. It is removed bi-weekly.

The Board of Appeals has to consider the following five items with each area variance application. They have to balance benefit to the applicant against the detriment to healthy, safety and welfare of the community.

1. Whether benefit can be achieved by other means feasible to applicant
Move barn – Pat Frazee argues – this is not feasible – high cost
Feasible to not have horses – that’s like someone asking you to get rid of your dogs.
2. Undesirable change in neighborhood character or to nearby properties
David Tessier says yes, Pat Frazee says no along with Don Neugebauer and Kevin Sharpe
3. Whether request is substantial
David says yes – 100’ to 29’ – 70% change – all agree

4. Whether request will have adverse physical or environmental effect Drainage is greater impact from barn and driveway closer to property line.
Pat Frazee says even if the barn was moved there will still be the drainage problem.
5. Whether alleged difficulty is self-created
David Tessier says the law did not change, it was in place at the time and the applicant did have time to find out. Pat Frazee said the need for a variance was not self created, because they sought expert advice and were told what was required for them to have horses and they built accordingly.

Jeff Brown stated the building permit says horse building. I would like to give some potential legal advice to the board members and this can be done outside of this meeting. It is not an executive session but I can give legal advice outside of the meeting.

Jim Stokes commented that nothing else be discussed but the legal advice.

Pat Frazee made a motion to adjourn this meeting for a short meeting with Jeff Brown and seconded by Kevin Sharpe.

Roll Call Vote:

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		
Don Neugebauer	X		

Motion carried to adjourn at 6:20

The Board and the Attorney, Jeff Brown, left the room for a brief discussion of legal advice. The meeting was called to order again at 6:30

The original application did not state the dimensions of the size variance requested and that is what we should be acting on. Therefore, we will need a new application with the dimensions requested stated and have another hearing duly advertised. Jeff Brown will clearly reference it as an area variance and not a use variance. The code officer will work with the applicant to come up with area variance from 100' – 29' for the purpose of having a private stable. Jeff Brown says the public did not know the full knowledge of the variance.

The board has debated he pros and cons of this item, but can't act on the application as it is now. No action was taken. The applicant was instructed fill out a new application and return for a new hearing.

The meeting adjourned at 6:30 PM

Respectfully submitted

Carol Crolick