



**Board of Zoning Appeals
Zoom Hybrid Meeting
Meeting Minutes
February 21, 2024
Approved: May 15, 2024**

Board Members Present: Chair Stephen Morreale, Cheryl Thompson, David Tyler, Karen Meador
Board Members Absent: Andrew Hillman, Robert Howarth
Quorum Present

Applicants Present: Andrew Sciarabba, Corey Elmore, Hilary Elmore
Town Board Members Present: Rich Goldman
Town Staff Present: Niels Tygesen, Mollie Duell

Proceedings

Chair Morreale called the meeting to order at 7:03 PM at Town Hall.

Motion: Tyler motioned to appoint Meador as a voting member for the duration of the meeting; Thompson seconded.

Vote: Thompson, aye; Tyler, aye; Chair Morreale, aye.

Motion Carried.

Approval of Past Meeting Minutes

Motion: Tyler motioned to approve the February 15, 2023 meeting minutes; Thompson seconded.

Vote: Thompson, aye; Tyler, aye; Chair Morreale, aye, Meador, abstain.

Motion Carried.

Motion: Tyler motioned to approve the September 6, 2023 meeting minutes; Thompson seconded.

Vote: Thompson, aye; Tyler, aye; Chair Morreale, aye; Meador, abstain.

Motion Carried.

Motion: Tyler motioned to approve the December 20, 2023 meeting minutes; Thompson seconded.

Vote: Thompson, aye; Tyler, aye; Chair Morreale, aye; Meador, abstain.

Motion Carried.

Privilege of the Floor

No members of the public addressed the Board pertaining to items not on the agenda.

New Business Items

A. VAR2401-01, Forevergreen Housing LLC Area Variance

The applicant and property owner, Forevergreen Housing LLC, has requested an area variance upon appeal to fill a portion of a locally designated wetland. Under the Code of the Town of Ulysses ([CTU 212-124.B.5](#)), soil disturbance by grading, stripping, mining or removal of soil, sand and gravel, and filling or dumping is prohibited in wetland setback areas. Per [CTU 212-29.N](#), wetlands in the A/R zone are

required to have a protective setback as defined in CTU 212- 124, and per [CTU 212-124.B.3](#), the buffer for locally designated wetlands in the A/R zone is 50 feet.

Chair Morreale confirmed that Tompkins County has verified that the locally designated wetland in question was originally constructed as a stormwater pond. There is still a pond liner in place. To be a wetland, this area should have characteristic wetland soils, wetland vegetation, and most of the vegetation living in water. Due to the presence of the liner, the soils are not really wetland soils, although there are cattails growing around the edge. Because the three criteria for a wetland are not met, Chair Morreale expressed doubt that the wetland classification is correct.

Tygesen noted that the local wetland classification was made using aerial imagery only and offered to share county emails regarding the stormwater features with the BZA. Tygesen explained that the local wetland map should be a living document with adjustments made as new information is discovered. The 239 comment letter from Tompkins County Department of Planning and Sustainability stated that they determined the action will have no significant county-wide or inter-community impact. In contrast, the County's 239 comment letter for the recent Jacksonville Park variance application strongly recommended preservation of a buffer setback.

Tygesen also spoke about the US Army Corps of Engineers manual for wetland delineations, which recommends that if hydrophytic vegetation were to no longer exist in human-made wetlands should human-induced hydrology no longer exist, the area shouldn't be considered a wetland. The existing swale remains from the closed mini golf center, which was required to create a stormwater prevention plan during site plan development. The locally designated wetland in question is not a state or federally designated wetland.

Chair Morreale asked if the BZA should go by the county's recommendation, noting that the BZA has the authority to be more stringent if they believe that this is necessary.

Tyler asked what would happen in the case that the BZA decides the area is a wetland and the driveway needs to be deconstructed. Chair Morreale explained that in scenarios when a variance was denied for an existing construction, applicants were required to remove what was constructed.

Tygesen suggested tying consequences into a variance decision in such a scenario, adding that if a variance is not approved for something that has already been constructed, an enforcement letter with timelines would be sent to the property owner, followed by a remediation proposal sent to the Town Board, who would decide the next steps.

Andy Sciarabba reviewed the history of the development of the stormwater pond and explained that he worked on the development district proposal while he was previously working with TG Miller. The site plan included the construction of the stormwater pond, mini golf course, and house. Sciarabba stated that he still conducts annual inspections that are required to maintain the pond; maintenance includes removing sediment and making repairs as needed. Sciarabba was unsure of what the guidelines were for designating the area a local wetland.

Hillary Elmore stated that she was not involved with the planning of the site and had purchased the property after completion; the site includes the mini golf course and remaining 15 acres where there is now a nursery school. An additional 4.86 acres were also purchased and subdivided from the previous

owners. The field behind the site and the newly constructed pole barn, which the driveway in question leads to, are also Elmore's property.

Sciarabba stated that the whole site drains to the highway after discharging from the swale.

Chair Morreale asked why there is increased runoff. Sciarabba explained that the addition of buildings and gravel areas have increased the runoff, but the main reason is the general slope of the parcel, which brings water toward Trumansburg Road.

Meador suggested that it sounds like there is more information supporting the area not being a wetland and asked what the highest authority would be for this case. Chair Morreale explained that the BZA and town may be more stringent than the county, but they cannot be less stringent.

Meador suggested that it would be unfairly punitive to designate the area as a wetland when it wasn't originally one, and the county saying it's not a wetland after being the entity to originally make the designation supports the removal of the local wetland classification.

Chair Morreale stated that he was familiar with the methodology used for the county wetland map, which solely used aerial imagery.

Sciarabba noted that the stormwater area was a requirement in 2008 when the mini golf center was built, and these regulations have become stricter over time.

Corey Elmore explained the layout of the site and why the location of the driveway is the only feasible route. There is a septic system below the golf course. The field behind the pole barn will be farmed, but this is the only way to access the field. Elmore noted that the field is being farmed to provide relief from rising property taxes.

The BZA confirmed that they have reviewed the property during a previous subdivision proposal.

Thompson stated that she is leaning toward the area not being a wetland but has concerns about the drainage system being compromised.

Sciarabba stated that he would have someone from TG Miller survey how much volume has been filled and decide if the area should be expanded to accommodate increased rainfall.

Chair Morreale noted that it is beyond the jurisdiction of the BZA to verify if the stormwater retention pond is still adequate.

Thompson asked if this would need to go to the Planning Board. Tygesen explained that the modification would not be a site plan amendment, so Planning Board review would not be required.

Sciarabba stated that he believes the impact to the stormwater pond is not major, and corrective adjustments can be made easily if needed. In an annual inspection a modification such as this might take place.

Thompson asked who notified the Elmores of the issue. Tygesen stated that he had reached out to the Elmores, who confirmed that they had been notified in an email. Chair Morreale explained that any locally designated wetland requires a 50-foot buffer as stated by [212-124.B](#). If the BZA determines that the area is not a wetland, no variance would be required and there would not be a code violation.

Tyler stated that he is comfortable with agreeing that this area is not a wetland.

Chair Morreale agreed that the area does not meet the criteria for being a wetland but stressed that if he did disagree with the statement from the county, he would be stringent in upholding the

classification. Even though the original intent may not reflect that the area is a wetland, it could function differently in the future.

The BZA unanimously agreed that they do not feel that the stormwater pond should be classified as a wetland.

Motion: Thompson motioned to state that given that the area in question does not meet the federal criteria for a wetland, primarily in that it does not have hydric soils, and furthermore that the County DPS acknowledges that the area is not a wetland but rather a stormwater pond, the BZA concludes that the area in question does not qualify as a wetland, therefore an area variance is not required; Meador seconded.

Vote: Chair Morreale, aye; Thompson, aye; Meador, aye; Tyler, aye.

Motion Carried.

B. 2024 Board Appointments

Chair Morreale thanked Meador for joining the BZA. Meador noted that her experience includes serving on homeowner association boards in cities out of state.

Motion: Morreale motioned for Howarth to be reappointed as Vice Chair; Tyler seconded.

Vote: Chair Morreale, aye; Thompson, aye; Meador, aye; Tyler, aye.

Motion Carried

Town Board Liaison Report

Chair Morreale discussed organizing training courses specific to the duties of the BZA with the town's legal counsel.

Goldman noted that this training session would be about two hours. Tyler suggested scheduling something in April if there are no applications.

Chair Morreale noted that in-person training is preferable to online courses.

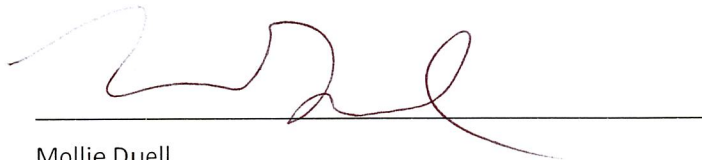
Goldman clarified that training hours specific to the BZA will carry over annually, while the town conducts mandatory training annually for all employees.

Motion: Tyler motioned to adjourn the meeting; Thompson seconded.

Vote: Meador, aye; Thompson, aye; Tyler, aye; Chair Morreale, aye.

Motion Carried.

ADJOURNED 8:24 PM



Mollie Duell

Board of Zoning Appeals Secretary