

TOWN OF GAINES ZONING BOARD OF APPEALS
PUBLIC HEARING
October 31, 2011 4:00 P.M

Present: Chairman Raymond Burke; Vice-Chairman Douglas Syck;
 Members Carol Culhane and Curtis Strickland

Absent: Member Philip McKenna

Guests: Town Attorney Douglas Heath, David Allchin, Jennifer Allchin, Valerie Beam,
 Frank Conrad, John R. Telovsky, Marilynn Miller

Chairman Burke called the meeting to order at 4:00 p.m. with the Pledge of Allegiance to the Flag.

Approval of October 17th Minutes

On a motion of Member Strickland, seconded by Member Culhane, the following was

Carried Ayes 4 Burke, Culhane, Strickland, Syck
Nays 0

The October 17th 2011 minutes are approved as is.

Opening of Public Hearing

On a motion of Member Culhane, seconded by Vice Chairman Syck, the following was

Carried Ayes 4 Burke, Culhane, Strickland, Syck
Nays 0

The public hearing was opened by Chairman Burke at 4:02pm.

Marilynn Miller spoke in favor of allowing the use variance

Attorney Heath asked the public who was in favor or and who was against granting the variance, everyone responded in favor of allowing the use variance.

With no more comments Attorney Heath recommended the public hearing be closed.

Closing of Public Hearing

On a motion of Vice-Chairman Syck, seconded by Member Strickland, the following was

Carried Ayes 4 Burke, Culhane, Strickland, Syck
Nays 0

The public hearing was closed by Chairman Burke at 4:05pm.

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The title for the property that the use variance is for (14877 Ridge Road, Kent) is in David Allchin's name while Jennifer Allchin, his wife, is the one applying for the variance; therefore, David gave his consent for the use of the property by Jennifer and Valerie Beam.

It was confirmed by the Zoning Board Secretary that notes were being taken and the meeting was being recorded.

The applicants did submit a SEQR, on part B of the second page the variance does not exceed a type 1 threshold action, there is not a coordinated review for SEQR purposes, on questions in subdivision C note that the answers there have been put forth by the Zoning Board and the Zoning Board has determined that this is not a critical environmental area and that the action will not have an adverse effect on the environment if otherwise granted. If the Zoning Board is in concourance with this Attorney Heath recommends they adopt a resolution accepting the short environmental assessment form and authorizing the chairman to execute part 2, finding no environmental significance.

**Accepting Short Environmental Assessment and Authorizing Execution of Part 2
On a motion of Member Culhane, seconded by Vice-Chairman Syck, the following was**

Carried	Ayes	4	Burke, Culhane, Strickland, Syck
	Nays	0	

When reviewing the application the board also reviewed the letter and recommendations from the County Planning Board from their October 28, 2011 meeting. They reccomeneded a disapproval of the use variance feeling it did not satisfy the requirements. (a copy of their recommendations are on page 5 and 6). In order for the Gaines Zoning Board to successful grant the use variance they must have a super majority vote of at least 4-0 or the use variance application has failed.

The board has the submission from the applicant and the board will need to make a finding in respect to the four criteria.

It was recommended by Attorney Heath that the applicant give some information to the board so that there can be complete agreement between the Zoning Board and the applicatns as to what uses will be of the property so that in the future there is not a question of what was intended or will happen.

The use variance is essentially a request to reopen what was formerly the berry barn and is centered around the fact that under the current Zoning Ordinance under Section 504 it requires a seasonal tourist business to be closed at least two months (the applicant wishes to be opened all year long), the applicant would like to operate a business that is similar to the existing seasonal tourist business lack of anything else. The property is in the RA district and the requested use of the property does not comply with permitted or special permitted use under 502 or 504 of the Towns Zoning Ordinance.

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The use variance is for the old berry barn site referring to the sketch attached to application and apply to the area sketched, not whole 25 acres of the property. The area includes the existing store, the greenhouse, and other outside buildings. The area is 1499 x 900 feet; 900 feet from the center line of the road and 1499 feet from the east side boundary. The area has approximately 600 feet road frontage by 532 feet deep on the east boundary. There is 600 feet along road with a depth of 300 feet measured from the center line of the road along the east bounds, parallel with the center of the road 300 feet to the north line of the road and 350 feet from the center line of the road.

The use variance would cover a seasonal tourist business opened twelve months of the year selling organic meats both fresh and frozen, the majority of which is local (main products will be beef, pork, and chicken, but may eventually include exotic meats), vegetables, fruits, and eggs. The applicants will grow/produce some of the goods but also purchase from other vendors. There may be sale of meat related products like rubs and BBQs as well as organic items like flour and beans. The business will also include a snack bar with breakfast and lunch items concentrating on take-out with limited sit-down and will serve ice cream. There may also be some clothing type items related to the store such as t-shirts and caps for sale, but it is not a clothing shop. Fresh baked goods may be incorporated into sales eventually. A petting zoo will also be utilized at some point. Hours of operation will be 6am to 9pm daily and expanded to 10pm during June/July/August. There may be wine tasting events, but no sale of alcohol.

The variance would be limited to the existing store, if enlargement of the structure is desired at some point, that would require a separate application, however, parking lot expansion is allowed. A desire to run hayrides in the future would also require the separate special use permit. The use variance will be limited to the Allchin's and Beams, the variance would be discontinued if the applicants choose to terminate the business/variance or if the property is vacated. If at some point the area became zoned as commercial, than the property would be classified as commercial.

The board then went through each of the criteria that need to be met to grant a use variance.

The board is also viewing approving the use variance as a local concern primarily affecting the local community and particularly looking at comments from the public hearing in respect to convenience and that this is a needed service within the community. Also the applicant is looking to provide part time employment to local teenagers.

The resolution before the board that has been reviewed is a draft version with findings that if approved will be finalized with conditions discussed added in. The Board can make a finding using the draft resolution before them with the understanding that it will be expanded. For the record, the board all had the draft in front of them.

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**Adoption of Resolution to Approve the Use Variance and Overrule County Recommendations
On a motion of Member Strickland, seconded by Vice Chairman Syck, the following was**

**Carried Culhane- Aye
 Burke- Aye
 Syck- Aye
 Strickland- Aye**

There is a super majority vote of four on a board of five. The resolution is passed and the use variance is granted with the understanding that conditions and other expansions will be added. (A copy of the final resolution will be done by Attorney Heath).

The applicants may still need to go before the Town Planning Board for the site plan under section Article 10 Section 1000.

With no further business on a motion from Member Strickland, seconded by Member Culhane the meeting was adjourned at 5:10 P.M.

Respectfully Submitted,

Mary Pettit
Secretary, Zoning Board of Appeals

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Orleans County Planning Board
Planning and Zoning Referrals

11-51 GAINES Request for Use Variance (11-51A) and Site Plan Review (11-S1B) for Farm Market at 14877 Ridge Rd. in Residential/Agricultural (RA) District.

Municipal development plans and policies:

An application for a use variance is a request for use of land for a purpose that is otherwise prohibited in the zoning district in which the property is located. There is arguably no greater threat to the integrity of a zoning ordinance than the granting of such relief where it is unwarranted, as subsequent applicants will expect the same waiver of standards. To prevent abuse of discretion, consequently, the tests for use variances as established in § 267-b.2.(b) of Town Law are as stringent as they are absolute:

1. *the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;*
2. *that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;*
3. *that the requested use variance, if granted, will not alter the essential character of the neighborhood; and*
4. *that the alleged hardship has not been self-created.*

Within the past month, the Orleans County Planning Board has made its latest concerted effort to impress upon municipalities and, indirectly, applicants, how the law dictates these tests shall be interpreted through a document that it prepared and distributed entitled "Reviewing Applications for Use Variances". To comply with the first test, the applicant must look exhaustively at every use allowed in that zoning district, including those that are permitted "by right" as well as with special use permits. "Competent financial evidence" must be detailed, quantified, dollars-and-cents proof.

It is the responsibility of the applicant to make the case for compliance with all four statutory tests for use variances. With all due respect, however, the written application provided to the County Planning Board falls short on compliance with both tests 1 and 4.

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RECOMMENDATION for 11-5 IA: **DENIAL.**

RECOMMENDATION for 11-51B: **DENIAL.**

Comments: The recommendation for 11-51B is virtually automatic following the recommendation for 11-S1A, as a site plan cannot be approved for a use that is not authorized, either as listed among the permitted uses of the relevant zoning district or through the appeals process.

It should be emphasized that decision-making boards are obligated to administer the tests as provided in the statute, even if their members personally see no harm resulting from granting a use variance. In this case, there is ample evidence that the applicants have improved the property's appearance. Unfair as it might seem, that is not a factor that improves their standing relative to the tests.

Should the Town of Gaines nevertheless consider year-round retail uses to be a desirable in some form in the RA District, one possible remedy would be an amendment by the Town Board of the text and/or map of the Zoning Ordinance. It so happens the Town is presently wrapping up some revisions to its Comprehensive Plan and Zoning Ordinance.