

**Mexico Zoning Board of Appeals  
Minutes of the Regular Meeting  
Held May 20, 2024 at the Town Hall  
Commencing at 7:00 P.M.**

**Present:** Ned Waterbury, Chairman  
Lori Behling, Counselor  
Marty Trey, Counselor  
Dan Yawman, Counselor  
Ron Marsden, Code Enforcement Officer  
Graham Seiter, Town Attorney  
**Absent:** Mathew Bryant, Counselor

And 5 in the audience.

Chairman Waterbury called the meeting to order with the Pledge of Allegiance at 7:00 pm.

**Old Business-**

Waterbury introduced Nicole Wild, Town Clerk, returning as the Clerk to the Zoning and Planning Boards.

**New Business**

**Special Use Permit Application- Accessory Use, Pole Barn, 2911 ST RT 104, Paciga**

Waterbury introduced the application and applicant. Mr. Paciga said his purpose is to build a pole barn for storage during winter months, and the property is purchased. Waterbury said the board's purpose is to determine if application is correct and complete before passing it to the Planning Board. Waterbury said accessory use is proposed with no primary dwelling/residence/home; local law does not support secondary use without primary use; asks Graham his opinion on application type. Seiter said accessory use is only allowed with residence on the property and a special use permit is not the correct application; should be use variance because what he's proposing is not allowed. Marsden said accessory use was put under "other" uses in a special use permit based on past meetings. Waterbury said it would be on a case-by-case basis and may have been under the discussion on an updated plan. Marsden said the only thing in zoning law is a definition of accessory use that addresses this issue. Marsden said there's nothing specific saying you cannot have accessory use without a primary use structure. Trey said you can't accessorize something without a primary use and that special use under "other" is catchall. Yawman said accessory is allowed on the chart in an A1 zone but the only thing he can find in the law is the definition, right above is "shall" and "must" as being mandatory but don't use those in the definition. Yawman said the definition uses "customarily" instead. Trey said he believes the context to be, customarily accessorizing a primary dwelling. Yawman said customarily means most of the time it's secondary. Yawman asked if it has to be

subordinate to a principle building. Waterbury said he searched our definition and several towns use the same definition including parts of NYC.

Waterbury said this lot comes in just below the required minimum dimensions. Waterbury asks the history of the parcel. Marsden said the county should be called. Seiter said the definition has to be determined by the board. Seiter said Yawman raises a good point in determining what's customary. Trey said the definition is under "accessory" which is a use secondary to primary use and there is no primary use here; by definition accessory is not even on the table; what could be considered is "other" for something that does not fit in any other listed uses in section 420 and we have in the past put it under "other." Waterbury said no two applications are exactly alike; Trey agreed. Behling said if it's not fitting the lot requirements, it will need an area variance and we need to look at more than one type of application. Trey said the law needs to be updated once the comprehensive plan is complete. Seiter asked if anyone feels it does not fall under a special use application. Behling says she thinks it's not allowable and should be a use variance application.

Yawman asks if the "other" category is used, then is a special use permit necessary. Trey says it's not "accessory," it's "other." Trey said a use variance is a very high standard. Marsden read "camp" definition. Yawman thinks we should proceed through the "other" category. Waterbury said the Planning Board will take a look at the application and looks forward to their examination. Trey said there are several places in the law that are contradictory.

A motion was made by Yawman to proceed with the application for a special use permit under the "other" category. Trey said an area variance will also be needed. Yawman withdrew the motion.

Trey said the standard procedure is that the ZBA looks at permit applications for completeness and passes them to the Planning Board but there's nothing in the law requiring it. Trey said these are required components but nothing says that applicants have to appear before ZBA then back to Planning Board. Seiter said the lot is the lot and buyers beware. Trey said then area variance is still required. Trey suggested letting it go to Planning Board but if it comes back to ZBA incomplete, then it needs to be tabled. Trey said to make the application complete with the addition of an area variance.

Waterbury read special use permit application requirements; Waterbury asked if a copy of the deed was available; Waterbury said section 345 should also be provided to the applicant. Waterbury suggested the applicant aim for a special use permit application plus area variance application. Trey said 340 and 345 should be provided to applicant. Trey would like to know how close the west neighbor is; in addition to adding that information to the application, Trey wants to know how close the home is from the side boundary. Behling said measurements are in the applicant's letter. Trey said Marsden can work with the applicant on section 340, let him go to Planning Board next month.

A motion was made by Trey and seconded by Yawman to deem the application complete in the sense that an area variance is applied for and also that the special use permit application will fall under the "other" category of local law and the applicant made aware that he risks tabling of the matter if items are not completed at the next meeting. The motion is carried by a vote of 4 ayes: Waterbury, Behling, Trey, Yawman, and 0 nays.

A motion was made by Waterbury and seconded by Yawman to schedule a public hearing on June 17<sup>th</sup> at 6:30pm at the Mexico Town Hall on 64 S Jefferson Street to hear the public regarding Mr. Paciga's special use and area variance applications for a Pole Barn at 2911 ST RT 104 in the Town of Mexico. The motion was carried by a vote of 4 ayes: Waterbury, Behling, Trey, Yawman, and 0 nays.

### **Interpretation- Manufactured Home, 3662 ST RT 104, Morrow**

Waterbury introduced the next application; noted the applicant is present. Waterbury said Marsden denied the potential permit. Seiter said the application is academic but thinks it is an allowed use; the aesthetic and architectural standards may provide lack of clarity but a more realistic example is a row of million-dollar houses with a manufactured home in the middle- this would not match the aesthetic and architectural standards but this is not the case locally. Seiter said he feels it is an allowed use. Trey said we just heard one of these and this law and its definitions can benefit from some clarification. Trey said our local law is confusing and conflicting with current state law and an interpretation is appropriate. Seiter said NYS law overrides our local law. Trey asks if we should pass a resolution to allow us to skip the process. Seiter said the danger would be removing Marsden's ability to interpret the aesthetic portion of the law; there is no caselaw where this has been argued. Behling said the prior application included an interpretation as well and feels Ron made the right call.

A motion was made by Waterbury and seconded by Yawman to reverse Marsden's decision to deny the application on the basis of NYS executive law outlining manufactured housing installations. Trey suggested giving Ron latitude that they do not need to come back for future interpretations on this matter. Seiter said to have Ron call him in the future to consult before sending to ZBA as interpretation or otherwise. The motion was carried by a vote of 4 ayes: Waterbury, Behling, Trey, Yawman, and 0 nays.

The applicant suggested providing this information on the town's website.

### **Other Business**

#### **Tug Hill Commission Training**

Waterbury asked for feedback from attendees. Trey would appreciate the commission making digital information available for classes he could not attend but would have liked to.

#### **CO RT 58 Solar Farm Informational Meeting**

Seiter said the meeting Wednesday night is strictly for helping people sign up for national grid energy bill credit and is not a public hearing.

#### **Monthly Meeting Time Change**

Waterbury asked if the board would like to change the time of their meeting, citing the Planning Board changing to a 6:30 start time. Trey suggested finding the balance but felt 6:00 or 6:30 was fine. Lori suggested 6:30 to stay consistent with Planning Board.

A motion was made by Waterbury and seconded by Yawman to move the monthly ZBA meeting start time to 6:30pm rather than 7:00pm. The motion was carried by a vote of 4 ayes: Waterbury, Behling, Trey, Yawman, and 0 nays.

Trey said the Tug Hill open meetings session was interesting and expressed concern that the town board might need to be put into a resolution allowance for board members to participate remotely since Trey will be wintering in Florida and unavailable unless he's allowed to video conference.

Wild said that, as long as you disclose your location in the public notice and allow the public to attend at said location in addition to the local physical meeting location, participation by a board member via video conference is allowed.

A motion was made by Waterbury and seconded by Yawman to adjourn at 8:18pm. The motion was carried by a vote of 4 ayes: Waterbury, Behling, Trey, Yawman, and 0 nays.

Respectfully submitted,

Nicole Wild  
Town Clerk