

At 6:20 pm, October 12, 2010, the Farmington Town Board met in a Workshop Session with Code Enforcement Officer Floyd Kofahl and Director of Development and Planning Ron Brand to discuss the process in which variances will be granted in the case in approving accessory structures on patio lots and the process that will be used if there is any to be granted.

**PRESENT:** Theodore Fafinski – Supervisor  
Peter Ingalsbe – Councilman  
Timothy P. Mickelsen – Councilman  
Michael Casale – Councilman  
Steven M. Holtz - Councilman  
Michelle Finley – Town Clerk

Councilman Casale gave an overview of the meetings Government Operations has had with staff and the Town Attorney. He stated that it comes down to following the laws already set forth by Section 262 which requires our regulations to be uniformed for each class and kind of buildings throughout such a district, there is a question as to the character of the neighbor, the benefit to the community as a whole and all the other things that come into the initial zoning when it was previously worked on several years ago. Councilman Casale stated the he felt they should not amend anything at this time.

Councilman Holtz added that the board should remember how the handle past cases and keep consistency with how they handle appeals with incentive zoning throughout the whole process. He added that there will be a new resolution that they will need to decide if they are going to amend or introduce the new resolution all together. Councilman Casale added that in the past it has been up to the town to make the decision then it came down to turn it over to zoning because they had more experience with zoning, and he felt if the board open that up to zoning it would open up more things and he added that part of the duties of the board is to legislate. Councilman Casale added that they need to decide what's best for the overall picture of what they are trying to do.

Supervisor Fafinski stated that there was another resolution that was drafted that would replace the resolution that was laidover. Councilman Casale agreed. Councilman Casale added that there is a lot of difference between use variance and area variance. In certain situations an area variance may not necessarily change the character of the neighborhood. He suggested that maybe something they can defer to the zoning board on an individual basis.

Code Enforcement Officer Kofahl stated that looking at dimensional variances which are area variances such as the setback issue and the other one is the actual use of the property for different things such as accessory structures. He added that the proposed resolution addresses those two different issues whereas dimensional variances would not affect the character of the neighborhood or have any longer term impact or anything whereas the use variances by nature of what they are do affect the neighborhood.

Director of Development Ron Brand researched various resources and did not find any decisions in court cases regarding accessory uses in an Incentive Zoning District. He stated that the basic incentive zoning process is where the Town Board established at the outset for the developer the various site amenities and zoning in conditions mentioned. The process is for the developer and not the individual property owners. Where the developer of the site proposes certain incentives that he or she is asking for in exchange for donating amenities to the community that they would otherwise not have. In the case of Auburn Meadows the incentive was to increase the density that would otherwise have been allowed in the RR80 district. He added that the Town established certain parameters for what the town defined as conventional lots and patio lots. Within each of those two types of lots the town established setbacks criteria and required minimum size lots for patio homes and other lots were identified as conventional with certain dimensional requirements. He added that in addition the Town set an overall density for the 469 units of the approximately 330 acres of land and that was also followed by the town establishing the criteria that everyone of those units would be single family detached. Mr. Brand stated that the Town satisfied the system of incentives to developers when you created the district with those incentives were applied to the rezoning of the overall property and could not at that time be applied to lots on record that did not exist. He added that public concern is with the town's requirement that town law requires all regulations that divides the town into different districts that the regulations dividing the districts have to be uniformed, so if you grant one regulation for one it changes it for all lots. Mr. Brand stated that the Zoning Board of Appeals continued a Public Hearing the other night and is awaiting to see if the Town Board will be authorizing the ZBA to grant dimensional variances or area variances for lots in the subdivision. The benefit of doing that allows the ZBA to grant or deny each application on its own merit and makes a decision based on the application. Mr. Brand added that if the town board were to amend the conditions of approval for the patio lots to not have 8 foot side yard setbacks but instead have 7.9 feet then all the other patio lots that are not built yet can have 7.9 foot setbacks and then someone else could come along and have 7.6 feet and then the board would amend that and then it would snowball from there. Mr. Brand stated that the board would need to decide what amenity that could be offered that would allow a benefit to the community not necessarily the property but a different set of criteria to look at, what is the amenity being offered to allow the board to consider the incentive to change the accessory structures on patio lots, and it has to be applied to the property as a whole, for example the amenity the town received from Auburn Meadows was over sized water and sewer lines, realignment of New Michigan Road, regional detention facilities, approximately 29 acres of parkland, trails that will connect to the Auburn Trails eventually, sidewalks, street lighting, and trees. He added that all these amenities were all identified as conditions of the incentive zoning at the time to benefit the community as a whole not the individual property owners. Mr. Brand stating that after meeting with staff they came to the conclusion that there has to be some public amenity here that justifies what the board is changing what was originally their condition of approval. Councilman Mickelsen referred to the new resolution and asked for clarification on wording in resolution. Mr. Brand stated that the resolution basically clarifies that the Zoning Board of Appeals has certain powers that the board already delegated to them under the town code. Those include to hear appeals in all other zoning districts. Where there is not a resolution establishing the conditions for the district when created, the Town Board has granted the powers to hear use variances and area variances. However, here they are looking at a situation where accessory use (fence and pool) is not a permitted accessory use (not an allowed use) and if the board were to send this authority to the Zoning Board of Appeals it would force the applicant to go through a use variance procedure. A use variance procedure is almost impossible to justify and it would not serve a purpose other than setting up future applications for use variances. Mr. Brand stated that the Board needs to decide if they want to continue to enforce the Board's prohibition of accessory uses or structures on patio lots or does the board want to delegate it to the Zoning Board of Appeals.

Councilman Mickelsen stated that the way the resolution is worded it seems to him that the only reasons an applicant in this area would come before the ZBA is if there is an alleged error. Mr. Brand gave a better clarification. Councilman Casale stated that as they have discussed they could have someone boxed in by fences who didn't want fences.

Councilman Ingalsbe stated that a lot of time has been spent on this research and basically it sounds like everyone wants to stay where they are at and not entertain any of the accessory structures at this time. Supervisor Fafinski stated that at the time this project was proposed the developer wanted a certain number of lots on the property which were higher than what the current zoning called for so the Town Board said they would entertain a greater density with certain amenities that would allow future growth within the town. He added that he remembers that the board was not happy with the number of lots to begin with and through negotiations agreed with the 469 lots. It was decided that a certain number will be patio lots. Patio lots are smaller than what they had envisioned for conventional sites in this development. The developer got the density we needed with the smaller lots. Mr. Brand agreed. Supervisor Fafinski added that the trade off was the developer could have the smaller lots but they could not have the accessory structures. Mr. Brand agreed. Councilman Mickelsen added that if those incentives were not agreed to back then they might not be sitting there tonight. Supervisor Fafinski stated that these restrictions in the zoning were an agreement between the town and the developer and not the residents because there were no residents on the property at the time. He felt that the lots would have to be developed with the current criteria. Councilman Mickelsen added that this was the first time the Board had dealt with incentive zoning so it was a learning process. Supervisor Fafinski read the proposed resolution. Town Operations, Code Enforcement Officer Floyd Kofahl and Director of Development and Planning, Ron Brand are in agreement.

With no further business, the Workshop adjourned at 6:53 p.m.

Michelle Finley, Town Clerk\_\_\_\_\_