

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, May 4, 2015 at the LaGrange Town Hall, 120 Stringham Road at 7:30 p.m. Chairman Paul Bisceglia called the meeting to order. Board members Nancy Swanson, Sandy Lane, Christian Rohrbach, Mark Christenson and alternate Leana Cropp were present. John Lyons Esq. of the firm of Grant & Lyons was also present.

Mr. Bisceglia made a motion to accept the minutes of April 6, 2015 as submitted. Mr. Rohrbach seconded and the motion carried unanimously.

OLD BUSINESS:

12-14-03 USE VARIANCE: DUTCHESS PROVISIONS (OWNER ALAN LEHIGH OF 3 DAUGHTERS HOLDING CO. LLC) 141 DALEY ROAD, POUGHKEEPSIE Grid No. 6259-02-897882

Seeking a use variance in order to permit warehousing and storage of six commercial vehicles in an RFD (residential flexible density) zoning district. Chapter 240-27 Schedule of Permitted Uses & Special Use Permits does not permit warehousing in an RFD zoning district.

Mr. Bisceglia asked Mr. Lyons to update the board.

Mr. Lyons said at the last meeting the public hearing was left open and a lot of testimony was heard from the applicant and the property owner and the counsel for the applicant. Some additional data was requested from the applicant having to do with expenses related to the property. The applicant has since submitted this information and the board was in receipt of it. Also, as a result of testimony at the last meeting some inquiries were made by the Building Inspector's office, and those inquiries were passed along to the applicant asking for clarification about Lehigh Landscaping, who is the property owner. The Building Inspector asked whether Lehigh Landscaping would be continuing to use the site after Dutchess Provisions started. There was a question about the salt shed and also the use of the neighboring property. Karen Hagstrom Esq. submitted answers to those questions which have been sent to the board members. In the interim also, as part of the correspondence with Ms. Hagstrom, Mr. Lyons notified the applicant that if a use variance is granted, this application will also require an application for a use permit under the zoning law because it is a change of nonresidential uses on the site. The applicant was notified that one of the options that the Building Inspector has is to refer the matter to the Planning Board for site plan approval as a condition of the use permit. The reason that is germane to the items the board was thinking about is that there were some discussions at the last meeting about what kind of controls might be reasonable to be placed by the ZBA on the operation of this site. The discussion covered a number of things like where trucks would be parked, how vehicles would move in and out, etc. A lot of those kinds of things are typical site plan issues so the only reason he raised that is because the board can impose its own controls on the site or the board could make a recommendation that site plan approval be sought by the applicant as a condition of the variance. Bearing in mind that this application has been around for a while, Mr. Lyons said they have been trying to look ahead and he did make an inquiry of the Building Inspector, Mr. McLaughlin, about the use permit and whether it was likely he would refer the matter to the Planning Board for site plan. The Building Inspector did send a

memo saying that he thought he would be referring this to the Planning Board for site plan approval.

Mr. Lyons said the board had also received a memo from the Building Inspector which made suggestions about conditions the he thought should be placed on any approvals. Copies of that letter and copies of the memo about site plan approval had been forwarded to Ms. Hagstrom, who is the attorney for the applicant.

Mr. Lyons said the last issue that is open is the issue of SEQRA. The applicant submitted a Long Form Environmental Assessment Form. There is one question on the form which should be answered either "yes" or "no". If "yes" is answered you skip to the end of the form and if you answer "no" then there are more details about the site. The applicant had answered "yes" to that question and had gone to the end in accordance with the instructions. Mr. Lyons let Ms. Hagstrom know that his feeling was that the question should have been answered "no". They did a little research in their office and there is a similar question in the Short Form EAF and in the workbook that is published by DEC it says that a "yes" answer is not an appropriate response for a use variance. His office also called the planner who wrote the EAF workbook for DEC and she also confirmed that the question is designed for changes that are made to the zoning law. So, the long form EAF as filled out is not correct. Mr. Lyons said this application has been classified as an unlisted action and a long form EAF is a required element for a Type 1 action but is an optional element for an unlisted action and DEC encourages lead agencies to utilize the short form for unlisted actions unless the action is really just under the threshold for a Type 1 action. The EAF Part 1 is shorter and its content is more streamlined and more appropriate for a smaller scale action. In his opinion, Mr. Lyons said he thought the short form EAF is the more appropriate assessment for this application. He had a brief discussion concerning this with Mark Day, P.E. and Ms. Hagstrom.

Mr. Lyons said they had talked about perhaps being in a position to conclude SEQR that night but he did not think that they are ready yet. He did not think the applicant would lose any time because they had not contemplated making a decision that night. The board needed to talk about conditions and having a chance to look over the additional data that Mr. Rohrbach asked the applicant to provide. If the applicant is willing to submit the short form EAF between now and the next meeting then the board can complete Part 2 as lead agency and issue their determination of significance.

Mr. Lyons asked if the board was familiar with the DEC environmental mapper. The board indicated they were not. Mr. Lyons said it is a program that DEC generated in connection with the revision to the long and short environmental assessment forms. It allows people to input the identity of the property that is the subject of the site review and click the partially completed environmental assessment form which includes the known environmental data known to DEC about the area around the site.

Mr. Bisceglia asked the applicant to come forward. Mark Day P.E. of Day Engineering said he had submitted the EAF some time ago, however he had no problem with submitting a Short Form EAF.

Mr. Day said he had met with the Building Inspector before the project came to the ZBA and it had been indicated that a site plan presented to the Building Inspector would be adequate so Mr. McLaughlin's memo came as a surprise. Mr. Day said he was also concerned about the comment of having to go to East Fishkill and getting approval from there first. He said he had met with the consultants in the Town of East Fishkill the week before and they are amicable with what Mr. Lehigh proposes to do. The piece of property is directly across the street from where Mr. Lehigh is on Route 376. Mr. Lehigh will be moving the majority of what is on the Daley Road site to that site once he gets approval but that could take 3 months. That would stop the process now with Mr. Leonard. Mr. Bisceglia asked what "the majority" meant. Mr. Day said the only thing that would remain would be piles of firewood and composting that would remain in the back parcel. The balance of the sheds, the salt shed, all of the equipment would go to the new parcel in East Fishkill.

Ms. Karen Hagstrom of Corbally, Gartland and Rappleyea said Mr. Day aptly stated their client's position. Unfortunately this process has taken a long time so they are putting the application in jeopardy with these new conditions. To double the process and make him go to East Fishkill and do that process, it is unlikely that this can transpire.

Mr. Bisceglia asked Mr. Lyons why that is being requested. Mr. Lyons said his understanding of Mr. McLaughlin's concern is that of two businesses operating on the same parcel during the transition period.

Ms. Swanson said the memo refers to a "condition" being placed on a use variance. Ms. Hagstrom read from the memo that said Dutchess Provisions cannot take occupancy until he has obtained the necessary approvals. She said that is a major problem.

Mr. Bisceglia asked how long it would be before Dutchess Provisions could move in. Mr. Bisceglia said he felt there were certain things the board could decide and he felt it was not necessary to go to another board to waste more time. Everyone is familiar with the property, and he felt they could make a reasonable decision right there.

Ms. Hagstrom said the other issue she wanted to point out was that the Planning Board already made their comments, so to refer it back to the Planning Board would be going backwards.

Mr. Bisceglia asked how the board members felt about making the decisions at the ZBA level. Most of the board members agreed. Ms. Swanson said she had a concern about moving on when she felt they had not met all the four requirements for the granting of the variance.

Mr. Lyons said they could all decide that together. If they decide that the criteria for the variance is met they can decide that and if they decide that conditions need to be placed on the granting of the variance to place some controls on how the site would be used, they can do that altogether.

Ms. Swanson said that, without the information that is being asked, if there seems to be a gap in the proof of hardship, then why go through all the work? Mr. Lyons said that is up to the board to decide. He said that the sequence is for them to decide whether the standard is met, and if it is, then the next discussion would be the conditions, if any, and what should they be.

Mr. Bisceglia said for them to move on they have all the information, the hardship, the financials, and the EAF Short Form should be coming shortly. The issue is the site approval. Mr. Lyons said if they agree that the standard is met the issue is simply what conditions do they want to place, if any, on the granting of the use variance.

Mr. Rohrbach said what was brought up was that the applicant would have to go back to Mr. McLaughlin to get a use permit. Mr. McLaughlin then could refer it for site plan approval. Ms. Hagstrom thought he would not send it to the Planning Board, based on preliminary discussion he had with Mr. Day. She thought that maybe there was a communication lapse. The ZBA had already referred it to the Planning Board who agreed that the ZBA should be lead agency and made their observations and comments.

Mr. Rohrbach said that, in his opinion, they did not need to place the site plan approval as one of their conditions because that is part of the use permit process.

Mr. Bisceglia asked if, once a use variance is granted, does the applicant have to go back to the building inspector and get a use permit? Mr. Lyons said, yes. Anyone who changes a commercial use in LaGrange has to get a use permit.

Ms. Hagstrom said, to answer their other question, Mr. Leonard said they could occupy the premises pretty much immediately but it depends on the utility companies as to how fast he can get service. He would like 3 phase although he does not require it. He has single phase in Fishkill.

Ms. Swanson asked about moving the compost. Did that mean the large compost pile on the other lot? Mr. Day said that would remain. Mr. Day said they would like to keep two processes on the site, one is the firewood and the other was the compost. He would not have room at either of the East Fishkill sites. He said this is a pretty inert process so he would like to leave it at the Daley Road site if he could.

Mr. Bisceglia asked the board for their comments on this. Mr. Christenson said they know what the pros of moving into the property are, but what are the cons? What would be detrimental to the Town? Mr. Bisceglia said he The property would probably end up going into foreclosure and it would go into disrepair. Mr. Christenson said could the property be used for anything other than this? It is a tough piece or property. Mr. Bisceglia said the property is in very good condition right now, the applicant has the idea to maintain it as such, he has nice trucks, he has an operation which is commendable and is neatly presented. He thought it would enhance the character of the area. Mr. Christenson agreed.

Mr. Lyons reminded the board that a use variance goes with the land, so it won't just be this applicant.

Mr. Rohrbach said he is naturally reluctant to move too quickly on a use variance and his natural inclination would be to err on the side of denial, however from what he has heard he has started to change his mind about that. This property cannot be used for anything else. The property is set up in such a way that it does not lend itself to any of the alternative uses they have discussed. Right now he is inclined to state that if they could be comfortable with the

expenses, coupled with the other things they have received, on a balanced perspective he is inclined to give this a chance.

Ms. Swanson said their job is not to look at every lot in LaGrange to see that it is developed somehow. Mr. Christenson said it is not their job to provide a use for every lot but an individual has come in and proposed a use for a parcel. He is sure that other uses can be used but nobody else has come forward to propose a use and he did not think anything was detrimental right now. He thought that they should be able to help an individual who wanted to put a positive use to a parcel.

Mr. Lyons said the process of acquiring a use variance is to be able to provide a safety valve. If a property can't be used for allowed uses it can be put to some kind of productive use, and what the courts say is that if it looks like the application is going to accomplish a harsh result then, as long as the criteria are met, a use variance is a way to allow someone to put their property to a different use than is permitted in the zone. The standard is not easy to meet and that is deliberate, but the mechanism is there to provide a safety valve.

Mr. Bisceglia said he is not developing the property, he is taking it over, and it has been maintained well over the years. It has a good standard to continue as such.

Mr. Rohrbach said this proposed operation is much less of an impact on the neighborhood than the current use.

Ms. Swanson said she did not think the board had proof of that, for example what kind of noise is made by Mr. Lehigh's trucks versus the noise that will come from a truck that is running all night long for refrigeration, plus the loading noise at 5 o'clock in the morning, and the backing up beeping. Mr. Rohrbach said that is an area that the board could entertain putting on restrictions. The board had already talked about the fact that there was already an existing noise statute in Town code, also other statutes concerning light, etc. He did not know whether that referred to a residential area. As Mr. Rohrbach looked at the code he noticed that it mentioned a commercial operation that is making noise within 300 feet of a district boundary. This would be within the boundary so what is that distance limitation, if any? What are the decibel limitations? That would be where they would get into the noise that the trucks make.

Mr. Bisceglia said there is already a commercial business operating there with the trucks that make the beeping backup sounds, twenty four hours a day. Dutchess Provisions would be running 5 days a week. Also there is a construction company right next door with 14-wheelers.

Ms. Swanson said there had been no testimony about 24 hour trucks going in and out. Mr. Bisceglia said Mr. Lehigh had mentioned that at the last meeting. As a landscaper he also takes care of snow removal.

Mr. Rohrbach said the construction business next door is a nonconforming, pre-existing use, so they do not have any restrictions. The board's responsibility would be to make sure that as the property changes hands that the board can start to mitigate the problems that the

neighborhood would be having. Reasonable noise restrictions and possible restrictions on the number of hours for the trucks could be considered.

Mr. Bisceglia said they had not heard any complaints in that regard. Ms. Swanson said they had received written complaints. Mr. Rohrbach said one of the letters suggested that they were worried about the noise.

Another concern that Ms. Swanson had was the self-created difficulty part of the test. In the minutes from the Planning Board and Zoning Board in 1996 Mr. Lehigh was in the process of purchasing the property and he knew at that time that it was zoned residential and he went ahead with the purchase. In the writings the board had received on use variances, it said that if someone knows what the zoning district was at the time, then they are charged with that knowledge. Mr. Lehigh has had use of the property for 19 years.

Mr. Bisceglia said it is a commercial operation, not a residential operation. Ms. Swanson said when the Town Board changed the zoning to residential there were some commercial and industrial uses on Daley Road, and that is the direction that the Town Board wants the use of the land to go. She thought they should be moving in the opposite direction and getting away from having trucks and noise. In the zoning code on use variances, it says if the board is granting a use variance it shall *at the same time preserve and protect the character of the neighborhood and health, safety and welfare of the community*. In Ms. Swanson's opinion this application flies in the face of that. Having gone to the site and having seen everyone using the rail trail and having trouble parking there, she thought the property in question might be a good parking area for people to get on the trail from Maloney Road.

Mr. Day said he wanted to make it clear that the rail trail came to Lehigh. Lehigh did not come to the rail trail. The rail trail came to Ben Ciccone. His own office is near the rail trail and he is often affected by people who complain about his place or pull into his parking lot and empty their cars of refuse.

Ms. Lane said she thinks the proposal is a good use for the property, but they are asking for a use variance and she wants to make sure that if they grant it, they really go through the weigh tests because she does not want the board to get sued.

Ms. Swanson said as she understood it, this would be a warehousing and wholesale use under the code. The applicant wanted to make it clear that it would not be wholesale. Mr. Rohrbach said the applicant's response to the Planning Board was that it would be warehousing but not wholesale or retail.

Ms. Swanson asked if the conditions they would set would apply in perpetuity to any business after Boars Head leaves the property. Mr. Lyons said yes. She thought that would make it even harder to sell unless someone went back to residential. Mr. Lyons said the use would be for whatever use was allowed under the use variance subject to the conditions. The underlying uses that are allowed by zoning don't get extinguished by a use variance so the property could always be sold in the future to someone who wanted to go back to one of the uses that is permitted in the zone. Or, if the zone changes in the future, and other uses are allowed in the area, the owner would be able to utilize those. The use variance is an extra use that is allowed.

Mr. Lyons suggested that the board might want to go through the criteria to give Mr. Lyons enough reasoning with regard to the elements of the test so that he could write a resolution for the board.

Mr. Bisceglia made a motion to re-open the public hearing. Mr. Rohrbach seconded and the motion carried unanimously. There being no comments from the public, Mr. Rohrbach made a motion to continue the public hearing at the next meeting. Ms. Swanson seconded and the motion carried unanimously. PUBLIC HEARING ADJOURNED TO JUNE 1, 2015

Mr. Bisceglia asked the board if they felt the financial documentation that had been provided was adequate. Ms. Swanson said she did not. She did not think they had any information about when the property was advertized, they don't see any documents in front of them listing the property, they don't know how much was requested for rent or sale price. They don't have any comparison for rent or sale prices for similar properties in the county. Ms. Swanson said most zoning boards, when they are looking at reasonable returns, would hire a financial consultant to look into the matter but she did not know if they wanted to spend Mr. Lehigh's escrow money that way.

Mr. Bisceglia said, besides the financials, are there any other issues with what the board has been provided?

Ms. Lane said the Planning Board said there should not be any multi-uses on the property. From what Ms. Lane understood there would only be mulch and firewood on the property, but the landscaping use would be gone. The applicant said that was correct. If the use variance is granted it would not be able to start until the landscaping use was moved. It was established that right now Mr. Lehigh is operating from both sites. Ms. Hagstrom said it would be multi-use until East Fishkill gives their approval. Mr. Day said he had met with the consultants in East Fishkill the week before. There are some things on the property across the street that they want them to move to the new parcel so they don't anticipate any trouble. Unfortunately, it takes a little longer to go through the process, but they don't need any variances.

Mr. Day said they would like to keep the composting and the firewood at the existing site. Mr. Lyons asked if they were allowed to have two uses on the site under the zoning law. Mr. Day said he did not know. Mr. Lyons asked if the firewood and composting would stay on forever or just until they get approval. Mr. Day said it is the intent to keep it there because they don't have room on either one of the other sites. Mr. Lyons said, so the firewood and compost would remain in perpetuity. Mr. Day said that was correct.

Ms. Swanson asked if it was on the adjoining site. Mr. Lyons asked if the stockpiling of the firewood and the compost would be on the neighboring property which is not the subject of this application. Mr. Day said that was correct. Mr. Lyons said he assumed that there would be no Lehigh Landscaping activity on the site of the subject application. Mr. Day said that was correct.

Mr. Rohrbach said he wanted to make a comment about the expenses. He has looked at what has been presented and he is pretty comfortable with what they have been provided so far,

and he did not think it was necessary to have a financial consultant or to demonstrate some things that Ms. Swanson was requesting. At some point they have to believe that the parties that are involved in this action are acting in good faith and he believed that the information that the board had received from the accountants and the information they have indicate that they have a lot of expenses - \$30,000 a year that he is spending on a piece of property when he is moving somewhere else is going to become a burden. Maybe he might to decide to give up the property which would lead to LaGrange eating those taxes.

Mr. Bisceglia asked that the financial information that had been provided be placed on letter head and be signed. Once it has been presented like that and signed by the owner, he would not have a problem with it.

Mr. Bisceglia said this is all being done in preparation with the law. Mr. Lyons said that should not be the case. They should be trying to apply the test and make the decision they think is right given the parameters of the test. In the memo that Mr. Lyons had provided to the board there are four elements of the test and the board would need to talk about those four elements and give Mr. Lyons enough information in terms of reasons for him to write a resolution.

Mr. Bisceglia said they should then go through the test, one by one to allow Mr. Lyons to draft a resolution for the next meeting. The board should have the Short Form EAF by the next meeting also. Mr. Lyons said they would have to read the EAF and then go through Part 2. He asked the board to look at a blank form, starting at page 3. At the next meeting the applicant will fill in pages 1, 2 and part of 3. Then the board will answer the questions in part 2. The board will then make their determination of significance as set forth in part 3, on page 4. Mr. Lyons said if they find there are no significant adverse environmental impacts imposed by this application they will issue a negative declaration, and then the review process ends. If they find that there may be one or more significant impacts then they would issue a positive declaration and that kicks off the need for the applicant to prepare an environmental impact statement to be completed by a professional. If the applicant was to prepare an environmental impact statement, as the lead agency the board would get together and conduct a scoping session where the board would identify what issues will be potential adverse impacts and as a result require further study from the applicant. With an environmental impact statement the applicant takes those issues defined in the scope and those issues are studied and under SEQR they are required to minimize the effects of those to the maximum extent practicable. It is up to the applicant to propose mitigating measures to alleviate those potential adverse environmental impacts and also to provide alternatives, and as the lead agency, the board would review those and then issue a findings statement.

Mr. Bisceglia asked what would be the sequence if they make a negative declaration. Mr. Lyons said if they make a negative declaration, then the environmental review ends and they move on to whether they vote on the use variance.

Mr. Bisceglia suggested that they go through each of the questions and comment on them so that Mr. Lyons could draft the resolution for the next meeting.

Mr. Lyons said the first element of the test is that under the applicable regulations imposed by the code the applicant is deprived of all economic use and benefit from the property in

question, which deprivation must be established by competent financial evidence. The board has received some financial data that the applicant has submitted and they also have narrative information that was submitted by the applicant that discussed all of the uses that are permitted in the RFD zone and why the applicant could not get a reasonable return for those uses.

Mr. Bisceglia felt that what the applicant had provided has met everything that he would require of this application. He knows the property and this has an aspect that is very important in making this determination. He said there are other issues that have to be raised in order to grant this use variance in a fair way.

Mr. Christenson agreed.

Mr. Rohrbach said he had already stated that they have demonstrated that there are no other options for achieving a reasonable return, and that they could be required to let the property go or operate on two separate locations which he did not think would be a commercially viable choice. In his perspective they have met this.

Ms. Swanson said her thought was that they do not know what kind of rent or sale price they were asking or whether it was way out of line with the rest of what other properties would go for. She did not think there was a fair basis of knowledge.

Ms. Lane said she did not have a problem with the reasonable return.

Mr. Lyons said the next prong of the test is that alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

Mr. Bisceglia said the property is 1.33 acres. It is a very unique piece of property with a stream going right through it. He found it hard to compare with any other properties that are in the commercial zone that would compare in any way with this.

Ms. Swanson said she thought it met this test.

Mr. Lyons said the next test is that the requested use variance, if granted, will not alter the essential character of the district or neighborhood.

Mr. Bisceglia said the present use of the property is commercial, frequently operating for 24 hours, seven days a week. Ms. Lane said they had heavy equipment at the construction company next door. Mr. Bisceglia said before Dutchess Provisions attempts to take occupancy, these are conditions that already exist.

Ms. Swanson said they are supposed to look at the neighborhood or the district. This is all of south west LaGrange which is zoned residential. They have to look at that and all of the people who live there and not just this one applicant and this one piece of property. There are houses up and down Daley Road, Maloney Road, Maloney Drive, Bray Farm Lane. The Ciccone property is a nonconforming use and the idea is that eventually that will be phased out. The whole area has been directed by the Town Board to become residential. Ms. Swanson thought that this application was contrary to that.

Mr. Bisceglia said it had already been established that this property would not be usable as a residential use. The landscaping business has been there for 19 years and there have been no complaints. Ms. Swanson said maybe it could be used as a rental property for a residence. Mr. Bisceglia said the septic system was not large enough for a house.

Mr. Rohrbach said he moved to the area in 1967 and his first apartment was on Daley Road. To the best of his recollection there has always been some kind of commercial activity there. It is the character of the neighborhood as it exists now. With the current approved uses that are on the site the board is seeing that it will remain that way. Mr. Rohrbach said to improve the character of the neighborhood, that is where they may want to consider some restrictions which would prevent it from being used in this kind of wholesale, tractor trailer mode.

Mr. Bisceglia said with the additional provisions that the board could come up with, it will be less of an impact than what exists today. The hours will be reduced, it will be much more organized as far as time in and time out are concerned and the board will be able to put restrictions on the property that were not able to be put on before.

Ms. Swanson said she did not know how the neighbors were going to deal with 5 o'clock to 6 o'clock loading. Mr. Bisceglia said they have that now.

Mr. Rohrbach said Mr. Leonard had told the board that they are going to use the existing lighting in the loading area and there was not any specific loading equipment. They would be using electric lifts so they are not talking about an industrial operation.

Mr. Christenson said he agreed that this is the character of the neighborhood and it is not being changed.

Ms. Swanson said at the time Mr. Rohrbach lived there, there was an industrial strip along Daley Road and now it is all residential. Mr. Rohrbach said the zoning has changed and therein lies the problem. The Town Board has chosen to implement codes and zoning in that area which is in contradiction with some of the properties that are there. Simply imposing that zoning on an area is not going to make it possible to change everything to that new zoning.

Mr. Bisceglia said this is not a self-created hardship. This has been created partly because the zoning has changed and now they are put in a position to ask for an additional variance to operate outside of what is allowed.

Mr. Rohrbach said he thought that Ms. Swanson was correct when she stated that when this property was bought, it was with full knowledge that this was a residential area. He did not think, however, that this could have been foreseen 20 years ago.

Mr. Bisceglia said Ms. Swanson brings up some very good points but he still stands firm on his position.

Ms. Swanson said a lot of those points are made in the zoning handbook. All kinds of case law are in the handbook and she thought the board members should take another look at it before moving ahead on this.

Mr. Bisceglia said he understood that the board cannot be responsible for Mr. Lehigh's decision to go ahead with a commercial operation in a residential area. He has been paying taxes on this property, and that counts for something.

Mr. Rohrbach wanted to discuss the potential for restrictions. Noise and light had been mentioned and he agreed that these items are in the existing code but he was not sure whether they were directly applicable to the property. He thought they should take a look at the code for certain things like decibel ratings within some distance of a residential area. For example, maybe they could put a restriction that at the property line closest to any other residences the decibel level is within acceptable limits. Mr. Lyons said if it is already in the Noise Ordinance, they could say that they must operate in accordance with the Town Code.

Mr. Bisceglia said the Planning Board brought up questions about where there would be wholesale/retail on the site or is there just administration, how many vehicles would be parked on the site, would they be running the engines all night, or what times, would a chain link fence in front have slats? The landscaping stockpiles and sheds should be removed. There should not be multi-uses on the site. What are the hours of operation of the administration? Will there be a designated loading area? Will there be any curing of meats, storing of meat, packaging of meat or cutting of meat or other products distributed by this company?

Mr. Day said there is no processing on site, it is strictly storage. Mr. Day did say that one truck runs on diesel to keep its refrigerator going. Right now it operates right next to the Village Hall of Fishkill and you wouldn't know it.

Mr. Leonard said once the walk-in box is installed the only time they would need refrigeration would be once the trucks are loaded in the mornings. That won't happen right away. The trucks that have product on them will run overnight, some on electric, some on diesel. Mr. Leonard said there are five trucks, four that operate, one is a spare, and there are 2 cars.

Mr. Rohrbach said perhaps they could put a restriction of some reasonable increase as his business would normally be expected to increase. Maybe a restriction could be placed on the box truck. He said Mr. Leonard had indicated that his intention was to move to smaller, more efficient vehicles so Mr. Rohrbach said he would like the restriction just to be on the box truck. He added that they might want to state that the only trucks that are larger than that are the ones that are expected to make deliveries and are just on and off the site when that happens. With regard to the number of box trucks, Ms. Hagstrom said that Mr. Leonard had testified earlier that the maximum he could see, based on the square footage of the building, would be 10 trucks.

Mr. Christenson said that the box trucks would be for overnight parking and storage but not for daily use. Mr. Leonard said that was correct.

Mr. Bisceglia asked about the slats in the fence. Mr. Christenson said it is a privacy thing but it does help reduce noise.

The board discussed putting a restriction on hours of operation. Mr. Leonard said it depends on the day. Mr. Rohrbach said the operation between certain hours should be extremely limited. Mr. Bisceglia the business will operate within a certain time frame but every once in a while it will go beyond that time frame. This will not be a condition, just a statement.

Mr. Lyons asked if the board wanted anything added about not stockpiling landscaping material on the property. Mr. Bisceglia said multi uses are not allowed on the property.

Mr. Bisceglia then made a motion to adjourn the application to the June 1, 2015 meeting. Mr. Christenson seconded and the motion carried unanimously. APPLICATION ADJOURNED TO JUNE 1, 2015

9-14-03 USE VARIANCE: GARY E. BECK JR., Z3 CONSULTANTS (OWNER, JAMIE TURELL), 275 EMANS ROAD, LAGRANGEVILLE, NEW YORK Grid No. 6559-01-465994

Seeking a use variance in order to permit light industry in an R-120 zoning district. Chapter 240-27 Schedule of Permitted Uses & Special Use Permits does not permit light industry in an R-120 zoning district. (*Zoning District designation changed pursuant to Town Resolution on September 10, 2014 from R-120 to RLD*)

This application has been adjourned to October 5, 2015 at the request of the applicant

12-14-02 USE VARIANCE (AMENDED): CHRIS NEJAME (OWNER: STEVEN AMES ENTERPRISES LLC), 1820 ROUTE 82, LAGRANGEVILLE, NEW YORK Grid No. 6559-02-600783

Seeking a Use Variance in order to permit a fast food establishment in an RLD (residential low density) zoning district. Chapter 240-27 Schedule of Permitted Uses & Special Use Permits does not permit fast food establishments in an RLD zoning district.

Chris NeJame was present.

Mr. Bisceglia said that Mr. NeJame has heard the process that the previous applicant has been going through. He said the board had received a letter from Van DeWater & Van DeWater giving their observations and requirements for obtaining a use variance, and Mr. NeJame had been provided with a copy. He said the financials are a big issue. Mr. Bisceglia referred to the letter and specifically the items 1 through 10:

1. Amount current owner paid for the property.
2. Amount of principal remaining on the mortgage.
3. Current market value of the property (including value of just the land).
4. Concrete evidence of the cost to convert the commercial structure to a residential structure.
5. Concrete evidence of the cost to demolish the commercial structure and build a new residential structure.
6. Evidence of the return (if any) on a converted or new residential structure if sold.
7. Evidence of the return (if any) on a converted or new residential structure if rented.
8. Market value of other (comparable) residential properties in area.
9. Market value of other (comparable) rental properties in area.
10. Documentary evidence for the carrying charges outline in the undated memo from Steven Ames Enterprises to the ZBA.

Mr. Bisceglia said he knew the property has some certificates of compliance for the kitchen, etc. However, this has no bearing on this application. Financial information has to be received from the owner, not the applicant.

Mr. NeJame said he would be addressing to the best of his ability the ten items listed in the Van DeWater memo. Mr. Bisceglia said that he will have to provide information on comparable residential properties and comparable rental properties. Mr. NeJame asked how would he find a comparable residential property to a building that was built as a commercial building. Mr. Bisceglia said he would have to find a commercial building that is in a nonconforming area, which is not so easy to do. He said this property has a certain history that has to be examined and the property has been out of use for some time. Mr. Bisceglia told Mr. NeJame to review the document that has been drafted. If he has any questions he should list them and submit them and the board will respond to them.

Mr. Bisceglia explained that a use variance is regulated by state law which means that they have to meet certain criteria and once that criteria has been given to them, then they have to determine if it is complete. A Short Form EAF will also be required which the Town Attorney will have to review. Mr. Bisceglia said he could not say how long this process could take. Mr. NeJame said he is going to make the property better than it was before. He understands it is a residential property but he cannot see how it can ever be residential. Mr. NeJame asked the board if this was plausible. Ms. Swanson said she thought an office-type use is much better than the previous proposal. Ms. Lane reminded the applicant that they need the information from him and if he can provide the information before the next meeting then the board will have a chance to review it.

Mr. Bisceglia explained that the first step is to get the use variance. If he is successful and gets the use variance, then site plan approval would be required from the Planning Board.

Mr. Christenson said he understands that Mr. NeJame wants to improve a property in the Town and that is admirable. The board will do everything they can do to help him, within the law.

Mr. Rohrbach said he did want to point out that getting a use variance is supposed to be tough. It puts an obligation on the board to start off on a negative side, so it is an uphill battle.

Mr. Bisceglia said the letter from Van DeWater & Van DeWater dated May 4, 2015 would be entered into the minutes as Addendum 1.

Mr. Bisceglia then made a motion to adjourn the application to the June 1, 2015 meeting. Mr. Christenson seconded and the motion carried unanimously. APPLICATION ADJOURNED TO JUNE 1, 2015

Mr. Christenson had to leave the meeting at 9:10 p.m. Ms. Cropp became a full voting member at that point.

03-15-01 VARIANCE: GARY & KIM BARIGHT, MALONEY DRIVE, WAPPINGERS

FALLS, NEW YORK 12590 Grid No. 6359-01-020829

Seeking relief from Chapter 240-27 Schedule A1.1 Permitted Uses & Special Use Permits in order to construct an accessory shed on an unimproved lot.

Mr. Bisceglia said that he understands the applicant is intending to withdraw his application but nothing has yet been received in writing. The application is therefore adjourned to the June 1, 2015 meeting.

NEW BUSINESS:

05-15-01 AREA VARIANCE: SUSAN KAVY & VICTORIA KLOSE, 28 S. CROSS ROAD, LAGRANGEVILLE, NEW YORK Grid No. 6560-04-938391

Seeking relief of 21 feet from the side property line in order to construct a 750 sq.ft. addition for an accessory apartment for a family member with a proposed side yard setback of 19'. §240-28 Schedule B requires a minimum setback from the r.o.w. of a town road of 55'.

Mr. Rohrbach stated that he is personal friends with the applicants and wished to recuse himself from this application.

Susan Kavy and Victoria Klose were present.

Mr. Bisceglia asked the size of the property. Ms. Kavy said it was 3.9 acres. Mr. Bisceglia asked if they had a topography map. Ms. Kavy said they did not.

Some of the board members had visited the property. Ms. Klose indicated on the map the location of the well and septic. She also showed on the map the way the grade sloped away from the house in two directions.

Ms. Kavy said they worked with the neighbors to come up with a location for the accessory apartment which would be satisfactory to them.

Mr. Bisceglia asked how close was the neighboring house. Ms. Klose said it was about 60 feet away.

Ms. Kavy said they had received a variance some years ago for relief of 35' from the same property line in order to construct a garage.

Mr. Bisceglia asked if they had a rendering of their proposal. He asked if the addition would have a basement. Ms. Klose said no, it will be slab on grade. She said the apartment would consist of a bedroom, bathroom, kitchen/living area. The total area of the apartment will be 750 sq.ft.

Mr. Bisceglia made a motion to open the public hearing. Ms. Lane seconded and the motion carried unanimously.

Vita DeSiena and her son Sal DeSiena of 32 S. Cross Road said their only objection had been that they wanted the addition to be further away from the property line. Originally the addition was going to be 5' away, and they are in agreement with the 19' setback.

Mr. Bisceglia made a motion to close the public hearing. Ms. Lane seconded and the motion carried with Mr. Bisceglia, Ms. Swanson, Ms. Lane and Ms. Cropp voting aye. PUBLIC HEARING CLOSED

Mr. Bisceglia then addressed the Findings:

Character of the Neighborhood and Detriment to Nearby Properties

The neighbor most closely affected is in agreement with a 19 foot setback. The house is already nonconforming as it is very close to the property line. A variance was granted in 2002 for relief of 35' for a garage addition. Therefore, the character of the neighborhood would not change.

Alternative Methods for Achieving Benefit Sought by Applicant

Based upon the way the house is located, the addition cannot go on the front and there is a hill in two directions. The well is on one side and the septic is on the east side. The addition is proposed for the mother. The layout offers the best option for both parties.

Substantiality of Variance Requested

This is a substantial variance, however, the house is already nonconforming and the applicants are proposing to reduce the level of nonconformity and the addition will be angled away from the property line. There are trees on the property line that provide some screening.

Effect or Impact on Physical or Environmental Conditions in the Neighborhood

There does not appear to be any impact on the physical or environmental conditions in the neighborhood. No large trees will be disturbed. The addition will be a slab on grade so there should be no stormwater issues. The addition will be in keeping with the house.

Self-Creation of Difficulty

This is partly self-created but the house is already nonconforming

Based on the Record of Findings, Mr. Bisceglia made a motion to grant Ms. Kavy and Ms. Klose relief of 28 feet in order to construct an addition with a setback of 19 feet. §240-28 Schedule B requires a side yard setback of 40'. Ms. Lane seconded and the motion carried with Mr. Bisceglia, Ms. Swanson, Ms. Lane and Ms. Cropp voting aye.

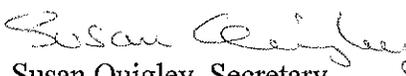
05-15-02 AREA VARIANCE: APPLICANT RALPH GASTIN (OWNER JOSEPH WILLIAMS), 14 VERVALEN DRIVE, POUGHKEEPSIE, NEW YORK Grid No. 6461-03-229095

Seeking relief of 9' from the right of way of Vervalen Drive in order to construct a 15' x 21'7" garage addition with a proposed setback of 46 feet. §240-28 Schedule B requires a minimum setback from the r.o.w. of a town road of 55'.

No one was present to represent this application. It was adjourned to the June 1, 2015.

Mr. Bisceglia made a motion to close the meeting at 9:27 p.m. Ms. Swanson seconded and the motion carried unanimously.

Respectfully submitted


Susan Quigley, Secretary