

A regular meeting of the Town of LaGrange Zoning Board of Appeals was held on Monday, March 2, 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, Sandra Lane and Christian Rohrbach were present. Alternate Leana Cropp arrived at 8:20 p.m. Mark Christenson was absent. Janis Gomez Anderson Esq. of the firm of Van DeWater & Van DeWater and John Lyons Esq. of the firm of Grant & Lyons were also present.

Mr. Rohrbach made a motion to accept the minutes of January 6, 2015 as submitted. Ms. Swanson 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.

Mark Day P.E., of the firm of M.A. Day Engineering was present to represent the application. Mr. Day said they had been waiting to hear back from the attorney.

Mr. Lyons said his understanding was that the board wanted him to take a look at the file and be prepared to discuss it that night.

Mr. Bisceglia said at the last meeting they had received a letter from Dutchess County Department of Planning & Development which stated that there was something on the property that needed to be removed. Mr. Day said there is a license agreement now that has been established between the owner, Lehigh Landscaping and the County. Mr. Day said that after the board had received the letter, the surveyors had met at the site and they had flagged what was on the encroachment and they had filed license paperwork with the County and the County is agreeing to give them a license.

Mr. Lyons asked if the County would be changing their recommendation as a result of that. He said it would be helpful if Brian Kehoe from County Planning would send an updated letter to the board explaining what had happened and indicating any changes. The recommendation that County Planning had made required a super majority vote of the board in the event that the board decided to do something at variance with what had been recommended. It could potentially be important if they are making a change in the license agreement as it might remove the requirement for that condition to be part of the ZBA's decision. Mr. Day said the license agreement came from Engineering and he said he would ask them to talk to Planning. Mr. Lyons said his second question was that it was his understanding that the objection from the County had more to do with aesthetics of that material being there rather than the right to have the material there. Mr. Day said it was his understanding that this was all worked out with Engineering.

Mr. Bisceglia said the board cannot move forward without getting something in writing from County Planning stating whether what Mr. Day has described has any impact on the letter which was provided. Mr. Lyons said County Planning needs to clarify what the impact of the development is on their opinion.

Mr. Lyons said he looked through the application and he saw that the area variance criteria was filled out but he did not see an attachment that addressed the use variance criteria. In order for the board to make a decision when the time comes to apply the use variance criteria to the application, Mr. Day will need to get information from his client about how the client meets that criteria. In the variance application those four criteria have to be addressed. Mr. Day said he believed he had submitted that information. They had given explanations for each of those points. Mr. Lyons asked if they had addressed that there was no self created hardship and the lack of return. He asked if the lack of return was for each and every other permitted use in that zone. Mr. Day said they only dealt with this application.

It was discovered that Mr. Lyons did not have a copy of the letter from Thomas M. Cervone of Properties Group, LLC or D'Arcangelo & Co., Certified Public Accountants, and copies of these documents were provided to him.

Mr. Lyons asked the board if they had deemed the application complete. Mr. Bisceglia said no. Mr. Lyons asked if they had taken any steps with regard to SEQR. The board has not, and they have not yet circulated for lead agency. Mr. Lyons said they could probably do an uncoordinated review for this action. He asked though, if the board was able to declare the application complete based on the information that has been submitted so far from the applicant.

Mr. Bisceglia asked if Mr. Lyons could review the two documents that had now been provided and then determine if the application was acceptable to him. Ms. Swanson and Ms. Lane did not feel it was adequate. Ms. Lane said she did not feel the standards had been met. Mr. Lyons asked if Ms. Swanson and Ms. Lane were seeking more depth of discussion with regard to the particular bounds of the tests. Yes, they said. Mr. Lyons said in his opinion the application could stand to be strengthened on those issues.

Mr. Lyons said he did not know what the board's normal practices were with regard to use variances but the test is designed that they are not easy to get. From a land use policy stand point what they are being asked to do is to allow a property to have a use which is not allowed in the zoning. The board does provide relief from harsh applications of the zoning law but they have to meet the criteria and the criteria that is set forth on the zoning law mimics the criteria that is set forth in state law which is 267B in the Town Law and it sets forth the four criteria that are listed in the zoning application. The first one is that the applicant can't realize a reasonable return, provided that the return is substantial and demonstrated by competent financial evidence. According to the courts one of the keys for this test is to be able to show that as applicant you cannot get a reasonable return on your property utilizing any of the other uses that are allowed in the zone. Typically what would have to be done is go to the use table for the RFD zone which is where this property is located. As a board their task is to determine whether or not the applicant can realize a reasonable return using any of the other permitted uses. A mere reduction in property value or not being able to maximize the value of the property is not considered in the courts to be

sufficient showing of hardship. You have to be able to show something more than that. It's a difficult test and that is on purpose because the courts don't want zoning laws to be undermined by having lots of different changes within a particular district.

The second prong is that the alleged hardship has to be unique to the property in question. Unique is not interpreted by the courts to mean singular. The applicant does not need to show that his is the only property that has the circumstance but he does need to show that if other properties that would be eligible for a use variance for the same reasons that are being asserted in this application, if they were all to be granted would it end up with a change to the district.

The next prong on the test is whether if granted whether the variance would alter the character of the neighborhood, which is self explanatory. The board would have to look at this property and look at the surrounding properties. There are already comments in the file from some of the people who own nearby properties and those comments would have to be taken into consideration.

The last prong of the test is whether the hardship has been self-created. That is, did the person who is applying come to the property with the knowledge that restrictions that apply to the property are in place. An example that gets used by the courts is that if you purchase a piece of property and the zoning restrictions are already in place, you are deemed to have known about it or have implied knowledge because when you buy property you have a responsibility to check out what the uses are. In that particular example the hardship was self-created because you decided to buy the property even though the zoning restriction was in place and you wanted to do something else with the property.

Mr. Lyons said the overall test is unnecessary hardship, and these are the four factors that the courts say that need to be part of the board's decision.

Mr. Lyons said that, getting back to Ms. Swanson's and Ms. Lane's concern is that what they are looking for is as much information as they can get from the applicant to help them make the decisions on those particular points. It might be that they will need to ask Mr. Day for deeper information going to the four prongs of the test.

Mr. Bisceglia asked Ms. Swanson and Ms. Lane to let the applicant know if there was something specifically that they wanted the applicant to provide so that the board could have a clearer or stronger position. Mr. Lyons said that, knowing what the prongs of the test are, were Ms. Lane and Ms. Swanson thinking that they did not understand how they meet the test, and if that is the case that would be an indicator that they might need a fuller explanation or some more information.

Ms. Swanson said the first one that Mr. Lyons described, meaning not being able to get a reasonable return with the uses that are allowed in the district. He asked if they had any concerns with any other prongs of the test. Ms. Swanson said she would have to go back and review the application again to be sure about the self-created hardship. Ms. Lane said obviously there are neighbor concerns. If this was to be granted, she wanted to make sure their findings are tight. Mr. Lyons said impact on the neighborhood is one of their criteria. Ms. Lane also said the first prong of the test is of concern to her.

Mr. Bisceglia asked what kind of information are they seeking. Mr. Lyons said they need the applicant to sit down with the table of allowed uses in the RFD and have them explain why they cannot get a reasonable return with the other uses that are allowed.

Mr. Day said that, prior to Mr. Lyons involvement they did speak about this. The property is zoned residential but it is next to Ben Ciccone's shop. Heavy equipment goes in and out of there while Lehigh Landscaping owned their property. He said he had a hard time thinking that parking 5 vehicles on the property is any worse than what was there and what can be there by right. They also talked about the possibility of putting a residence there. It's not a very appealing piece of property because of the contractor's yard being next door. Right now the property cannot be used for anything because it is only zoned for a landscape use.

Mr. Lyons asked Mr. Day to explain that because the property should be able to be used for any of the allowable uses in the RFD zone. Mr. Day said the owner has been trying to market the property for all those uses and he has never been able to get anyone who is interested. Mr. Lyons said the board members would like to have that as additional narrative to the application. Mr. Day said they have done that and he does not know if he will ever be able to meet a threshold that will make the board happy. Mr. Day said the applicant wants to come in and park 5 vehicles behind the existing structure. He said they did not think they were going to meet with this much resistance. Mr. Lyons said this is not resistance. The criteria is set forth in the law and it is even on the application. Mr. Day said he did not mean it that way but it is very difficult to prove financial hardship. He said they appeared before the board that night in hopes of finding out what Mr. Lyons thoughts were on this. Mr. Lyons said his role is to advise the board on the law and he said in this case there is not a lot in the way of interpretation. It is pretty clear in the LaGrange law and the Town Law. Because of his experience he does know how the courts interpret the prongs of the test and he is able to tell the board how the tests are interpreted. If the applicant is not interested in providing more information to the board, then the board may be in a position of having to make a decision about whether they want to accept the application as complete and then go ahead with it and make a decision based on the criteria with the information that has been submitted to them or to reject the application as complete and not move forward with it at all.

Ms. Swanson said they do not receive many applications for use variances but it was her understanding from the courses that they take that documentation as to the attempts to sell the property to other permitted uses would come to the board and they would see the paperwork that would show all the dealings with real estate people. Mr. Lyons said yes, the applicant is under a burden to provide dollars and cents proof of the fact that there is a lack of return.

Ms. Swanson said another concern that she had was that a number of years ago there was a very generous variance given so that the landscaping business could be put in on a much smaller lot than required and she wondered whether that could be considered as part of the self-created hardship. Mr. Lyons said he did not think so. The area variance was granted and a decision was made at that time with the space that was there that it was OK for the landscaping business to be operating. What is before the board in this case is the wholesale and warehousing use for Dutchess Provisions.

Mr. Day said there would be no sales. Mr. Lyons said that was understood.

Mr. Bisceglia said if two of the board members were not satisfied then how could they proceed. Mr. Lyons said they could reject the application as being incomplete as it does not have enough information to move forward and the applicant would be free to add additional information and return to the board or, even though they are not satisfied, they could accept the application as it is and use the materials provided and process the rest of the application. If it is sufficient and meets the test then the variance can be granted and if it is not sufficient then application can be denied.

Mr. Bisceglia said the public hearing has already been opened and they have heard some of the concerns that the neighbors have had. He said he realizes that a use variance is more difficult to obtain but he knows the property and sees what the use of the adjoining property is. Even though he is in favor of the application, what happens in the future after this is a concern. The people who live nearby have shown a concern that warehousing is not allowed at this location but if someone comes in at a later date with some pretty bad looking use, that would be a major concern. This applicant seems very appealing and the impact on the surrounding area would probably be significantly less than what was there in the past. Currently the property is inactive and probably the neighbors like that concept. Mr. Lyons said the board would have to hold neighbors to the standard also. To have nothing there is not an effective comment either. The members of the public have to address the prongs of the test also.

Mr. Lyons said when he spoke before he did not realize that the public hearing has already been opened. Given the fact that they are this far along, it would not make sense to reject the application but if they want more information they should make it clear that additional information would help the board to make a decision and it would be up to the applicant as to whether they wanted to submit that information. If they don't then the board could complete the processing of the application and make a decision on what they have in front of them.

Mr. Bisceglia said they know what they have in front of them. Whether they approve this or not he thought it only fair to give the applicant the go ahead for closure in a reasonable amount of time. He just doesn't want to extend this for months and months and then the applicant gets denied later on. Mr. Lyons said talking about meeting the test can appear, perhaps from the applicant's standpoint, that it is a harsh approach to this but the fact of the matter is, it doesn't help the applicant if the variance is granted on grounds where the test cannot be shown to have been met because decisions end up getting overturned if someone ends up suing. A decision that has a good record and the prongs of the test are met is not only good for the board but is also good for the applicant because it gives the applicant a decision they can rely on and it has a good chance of standing up if it were to be challenged. Mr. Bisceglia asked if "challenged" meant by a law suit from an adjoining land owner. Mr. Lyons said yes. He said that what happens in these cases is that if there is a challenge by someone who is aggrieved by the decision the whole question in front of the court is what the prongs of the test are and did it get met by evidence in the record.

Mr. Bisceglia asked the applicant if he had anything else he wanted to add to the application to satisfy these four areas. Mr. Day said the board had asked for paperwork from people wanting to buy the property. If no one is interested, what paperwork can they provide? Mr.

Cervone stated that in his letter. Mr. Day said this is a standard he did not hear until tonight. He will not be able to produce paperwork that there were people looking at the property so he is not sure what standard he would have to reach to get to the threshold the board would be comfortable with. He asked if the board could tell him what they are looking for. Ms. Swanson said, not specifically.

Mr. Bisceglia asked Mr. Lyons if this equated to the cost of the land to maintain the property, the taxes, the mortgage? Mr. Lyons added, and whether or not you can get a return on the property with the uses that are allowed. Mr. Bisceglia asked if it could be stated for the record what are the uses allowed for this property. Mr. Lyons read from the Table of Uses: single family dwelling. Mr. Day said there is an existing commercial building there so single family could be ruled out. Ms. Swanson said the structure could be torn down. Mr. Day said he thought that would be a hardship. Mr. Lyons continued: accessory apartments allowed by special permit; detached accessory apartment by special permit; second kitchen by special permit; bed & breakfast by special permit; residential health care facility, permitted use; essential services by special permit; farming, permitted use.

Mr. Bisceglia asked the size of the property. Mr. Day said it is 1.3 acres and there is a stream running through the property.

Mr. Lyons continued: solar panel arrays, special permit; outdoor fuel burning device, special permit; wireless communications facility, special permit; retail sale of products of horticulture, special permit; civic buildings and place of public assembly, special permit.

Mr. Lyons said the board's analysis, if the applicant does not submit anything further, is to go through the uses that are allowed and look at the characteristics of the site, for instance farming which does not lend itself to a property of that size that is already built upon. The analysis that needs to be done is to go through every one of those uses, either permitted by special permit and figure out whether they make sense or not and whether a return can be gained using what the board knows or by the materials that have been provided by the applicant. If, after having gone through all of those criteria the board reaches a conclusion that there can't be a reasonable return under the allowed uses, then that test can be met by the applicant.

Mr. Bisceglia asked if Mr. Lyons meant that the applicant has to present this, step by step. Mr. Lyons said that typically that is how it is done.

Mr. Day said that, going through the list, if he gets to "church" and there is no interest and no one has come to the applicant and asked to have a church there, does that qualify or does he have to explain that no one has approached him. Mr. Lyons suggested that he might ask Mr. Cervone to go through the list because he is the person marketing the property for the client. Mr. Day said if he has never been approached by anyone who wants to have a church, would that answer the question. Mr. Lyons said the question is whether he tried to market the property for that. He said the board has to have a record. Mr. Day said if he documents that he has offered the property for sale, knowing that a church is allowed and no one has approached them, does that satisfy the question. Mr. Lyons said he thought that went quite a distance towards satisfying the question. The board makes the decision about that.

Mr. Bisceglia asked if there is a septic system on the property and if so, how large is it. Mr. Day said there is a septic system but he does not know how large it is. He said it was sized for the specific use. Mr. Bisceglia said the building probably has one bathroom and wondered if there is a kitchen. Mr. Day said he did not know.

Mr. Lyons said the answers to those questions would give the board information on what the limitations are. If there is only one bathroom they would not be able to have a use with a lot of people there. Mr. Lyons said the board is asking the applicant to bring the board closer to what their needs are with respect to all the limitations. Mr. Day said that does not answer the reasonable rate of return question. The constraints on the property are one thing but it does not address what was brought up originally. Mr. Lyons used the example of "farm". It can't be used as a farm and the applicant would be able to make a reasonable case why farming can't be done there. The expectation is not for the applicant to do the impossible but they do need to provide enough of an explanation that is based on as much fact as they can get together. Mr. Cervone has probably given a lot of thought as to how he could market the property and there may have been a lot of things that he has done to try to get a tenant or sell the property. The applicant needs to return and share what Mr. Cervone has done.

Mr. Rohrbach asked about comps. When a real estate agent goes out and looks at comparable properties and tries to determine possible uses and possible returns on investments. Could this factor into some of this? Taking the church example, if the applicant requires a return on investment of, say \$5,000 a month and the comps say for a building that size a church is never going to give more than a \$1,000 a month, that says to the board that that will not work for the applicant.

Mr. Day said there are two prongs, one is financial, one is the uses. He wanted to make sure that what he gives the board are what they need. Mr. Lyons said he has to marry the two.

Ms. Swanson asked about the return that Lehigh Landscaping was getting while they were there. Mr. Lyons said the landscaper had to move out so there is already a case that it was not suitable for a landscaping business.

Mr. Bisceglia said they are limited by the laws of the land. Mr. Day said he is clear on what the board wants. Mr. Bisceglia asked if Mr. Day can get the information to the Town before the meeting, then it can be forwarded to the board for their review. Mr. Day said he will provide it in a timely manner. Mr. Lyons reminded Mr. Day to also get something from D.C. Planning.

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. Bisceglia made a motion to continue the public hearing at the next meeting. Ms. Swanson seconded and the motion carried unanimously. PUBLIC HEARING ADJOURNED

At the next meeting Mr. Day will make a presentation of the project and the public hearing will be re-opened.

Mr. Bisceglia made a motion to adjourn the meeting to Monday, April 6, 2015. Ms. Lane seconded and the motion carried unanimously.

3-12-01 AREA VARIANCE: MYLES LANDSTEIN, 16 VELIE ROAD,  
LAGRANGEVILLE, NEW YORK Grid No. 6560-01-138549

Seeking relief from Chapter 240-28 Schedule B that states that the maximum height of a building or structure in an R-120 zoning district is 35' and seeking relief from Chapter 240-31 F.(4)(f) Ridgeline Protection Overlay Zone which states that the proposed yard setbacks from the property line must be no less than 1.5 times the height of the proposed structure or the setback requirements in the existing zoning regulations, whichever are greater in order to construct a ham radio tower with boom antenna with a proposed height of 70' and a boom width of 23 feet and proposed setbacks of 40' and 70' from the side and rear yards.

Ms. Gomez Anderson stated that alternate Leana Cropp should be appointed as a full member as Mark Christenson was absent. Mr. Bisceglia designated her as a full voting member for the March 2, 2015 meeting.

Ms. Gomez Anderson said the board had a resolution before them to adjourn the Landstein matter until Mr. Landstein responds to conditions that the Town Board has laid forth. She recommended that the board make a resolution for the secretary to send a copy of the resolution to the applicant's attorney so that he has notice and opportunity to be heard. If he disagrees with the proposed action he would have an opportunity to come before the board at the next meeting before the board votes on the resolution.

Mr. Bisceglia made a motion to circulate the resolution to the attorney representing Mr. Landstein for him to review and comment so that the board will be prepared to vote on the resolution at the April 6, 2015 meeting. Ms. Lane seconded and the motion carried unanimously.

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*)

Mr. Bisceglia said the board had received a letter from Mr. Beck stating that his client is working with the accountant to update her taxes to show the loss to the property to help with the use variance. He said the accountant has stated that they should include the 2014 taxes as well. They are asking for an adjournment until the October 2015 meeting to allow them to complete this task.

Mr. Bisceglia said that is a significant amount of time. He asked if that was a reasonable amount of time. Ms. Gomez Anderson said she did not think it was hurting the board in any way.

Mr. Bisceglia made a motion to adjourn the application to October 2015. Mr. Rohrbach seconded and the motion carried unanimously. EMANS ROAD APPLICATION  
ADJOURNED TO OCTOBER 2015

12-14-02 USE VARIANCE: JOSEPH BRIANTE/EXPRESS REALTY SERVICES  
(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.

Mr. Bisceglia said that Mr. Briante had come in earlier this evening and requested an adjournment to the April 6, 2015 meeting.

NEW BUSINESS:

02-15-01 AREA VARIANCE: BRIAN LANE, 8 WILDROSE LANE,  
LAGRANGEVILLE, NEW YORK Grid No. 6561-02-609515

Seeking relief of 19 feet from the side property line in order to construct a 3-car garage with a proposed setback of 6 feet. Chapter 240-29 G.(1) requires a minimum setback of 25 feet.

Sandra Lane advised the chairman that she had to recuse herself from this application because she owns the property.

Brian Lane, 8 Wildrose Lane was present. He explained that he is looking for an area variance in order to construct a 3-car garage. Mr. Lane said the area he wants to put the garage is directly at the bottom of his driveway. He wants to store snowmobiles and trailers, garden equipment, trucks, etc. in the garage. He showed a picture of what he is thinking of doing with the garage which will match the house and it will be the same color and style. He said the piece of property to the side closest to where the garage will be is 15 acres, 6 acres are a good way off the to the left hand side and 9 acres wrap around the back of his property. This would all be part of the federal wetland as well. He spoke to all his neighbors, including that neighbor and he said he did not have a problem with the proposal.

Mr. Lane said he is also seeking a Wetlands Permit. He has appeared before the Planning Board and they have circulated for lead agency. It did not appear that he was getting any opposition from the Planning Board.

Mr. Lane presented a copy of his survey showing the location of the garage being 6 feet off the property line. He said his property is 2.1 acres, 1 ½ acres of which is federal wetland and buffer area. The other half acre contains his home with all the property setbacks. The house is 2 feet off the federal wetland buffer and 42' from one side property line. From the other side there is a deck 20 feet from the septic.

Mr. Bisceglia asked if the garage was going to be 36' x 30'. Mr. Lane said yes. Mr. Bisceglia asked if all adjacent property owners had been notified. The secretary said yes.

Mr. Bisceglia asked the height of the garage to the ridge. The garage doors are 10' high and it was determined that the total height was 22 feet. Mr. Lane said he would be putting a set of stairs to the upper level which would be used for storage. It would be all attic, no dormer. There will be a false dormer in the front.

Ms. Cropp said it appeared the property goes down hill. Mr. Lane said yes. He said one picture he had presented showed the property. The house has a walkout basement. He said the garage will be lower than any portion of his house by more than 10 feet.

Ms. Swanson said she would like to recuse herself from this application. She feels uncomfortable determining a colleague's application. Ms. Gomez Anderson said they can't vote tonight because the Planning Board is doing a coordinated review. There is a quorum so they can open the public hearing. Ms. Gomez Anderson wanted to make clear for the record that Ms. Swanson is recusing herself because the application concerns one of the board members. She said there is nothing in the conflict of interest that would not allow her to vote as long as she was comfortable. Standards for conflict of interest are whether you have a personal stake in the application. The other board members did not have a problem with hearing this application.

Mr. Bisceglia made a motion to open the public hearing. Mr. Rohrbach seconded and Mr. Bisceglia, Mr. Rohrbach and Ms. Cropp voted to carry the motion.

There being no comments from the public, Mr. Bisceglia made a motion to adjourn the public hearing. Mr. Rohrbach seconded and Mr. Bisceglia, Mr. Rohrbach and Ms. Cropp voted to carry the motion. PUBLIC HEARING ADJOURNED

Mr. Bisceglia made a motion to have the secretary advise the Planning Board that they do not have any objection to the Planning Board being lead agency. Mr. Rohrbach seconded and Mr. Bisceglia, Mr. Rohrbach and Ms. Cropp voted to carry the motion.

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.

Kim Baright and her son Evan Baright of 7 Curtin Court were present. The applicants were sworn in by Mr. Rohrbach.

Mrs. Baright explained that she wanted to put an accessory shed on a 9 acre lot situated behind their house that she and her husband had purchased the previous November. The property has access closer to the rail trail. They would like to put a small shed on the property for bikes. For safety reasons the children are able to ride down the road to the rail trail instead of going around a very bad turn that is extremely dangerous.

Mr. Rohrbach asked Mrs. Baright to explain the county property that they would have to cross to get to the lot. Mrs. Baright said they have a letter from Marcus Molinaro, the Dutchess County Executive, and they are waiting for the attorney to draw up a letter. She said they are getting permission to cross over from their property to the new property. Mr.

Rohrbach said by looking at the map it looks like it is about a 25' strip that they will have to cross. Mrs. Baright thought it might be a little bit more.

Ms. Swanson said the application says shed or fort, it was hard to read. Mrs. Baright said her husband wants the shed to keep the bicycles and tools to fix the bicycles.

Ms. Gomez Anderson said the application was checked off for an appeal or interpretation. She said that would be one thing, However the application was filled out for an area variance. She said there is a two-fold question. Does the applicant want to question whether the Town prohibits an accessory structure on a lot without a principal structure. If that is the case then the board would go from there, if the board agreed with the Building Inspector or not. If they are applying for a variance, then she does not feel that is the appropriate variance. It is actually a use variance. The Building Inspector is saying it is not a permitted use unless there is a principal structure. Ms. Gomez Anderson said she had looked for cases on this and found one that suggests that you can't get a use variance for an accessory structure because it's accessory.

Mrs. Baright said they are hoping one day to put a house on the property, but not right now.

Mr. Bisceglia asked Ms. Gomez Anderson if they can put the shed on the property or not. Ms. Gomez Anderson said the Building Inspector said they cannot. On the application they checked that they were appealing the Building Inspector's decision and then they filled out the application differently.

Ms. Swanson said it seemed to her that it would take the Town to re-write the zoning law in order to grant this application. Ms. Gomez Anderson said they could grant a use variance if they thought it met the very difficult criteria.

Ms. Gomez Anderson said the applicant will need to clarify if they are disagreeing with the Building Inspector's decision and therefore they are appealing his interpretation of the code and then the board can decide whether they agree with Mr. McLaughlin's interpretation of the code. Ms. Gomez Anderson's position was that it should be a use variance, not an area variance, and it would be very unlikely that an accessory structure could get a use variance.

Mr. Rohrbach said part of the problem is that the application has been checked for an appeal of the administrative decision but the details that they put in are to do with appealing by asking for an area variance versus appealing by asking for an interpretation of the code. Mr. Rohrbach asked if there is another part of the application that would address what they want to do. He was advised that there is not another section specifically describing what they are appealing.

Ms. Swanson said they do not have the power to re-write the zoning code when the code says no accessory use on a vacant piece of land. Ms. Gomez Anderson said in her mind she has read the code to say that. If they had asked for an interpretation that is what she would have said. Ms. Gomez Anderson said they do have the authority to make that decision if it's appealed.

Mr. Rohrbach asked what would it take to make it a principal building. Ms. Gomez Anderson read the definition of a principal building: *A structure in which is conducted the principal use of the site on which it is situated. In any residential district any dwelling shall be deemed to be a principal building on the lot on which the same is located.*

Mr. Bisceglia asked the size of the shed. Mrs. Baright said she thought it was 20' x 20'. Mr. Bisceglia said they were not asking for relief from the property lines. Ms. Swanson asked how the bicycles would be secured from vandals. Mrs. Baright said she did not think anyone would go back there as there are houses in front. Mr. Bisceglia said as he understood it there would be no footings and the shed would sit on the land, it would be movable. Ms. Gomez Anderson said she understood that but the law has been interpreted by the Building Inspector that you can't have an accessory structure without a principal structure. The application has been presented to the board as an area variance and in her opinion it is not an area variance, which is from dimensional requirements.

Mr. Rohrbach suggested that the applicant should re-submit the application as an appeal or change it to be worded as a use variance. Ms. Gomez Anderson said an appeal would be asking the board to determine whether they believe that the code as written states that you can't have an accessory use without a principal use. Ms. Swanson said Town law says they can't and by law the Zoning Board of Appeals cannot change the law.

Mr. Rohrbach said if the two lots were contiguous would that still be the case. Ms. Gomez Anderson said if they kept them as separate lots it would still be an issue. They could combine the lots and then it would be a non-issue.

Ms. Swanson asked if there was anything they could do to protect the bikes that would not be considered a structure. Mrs. Baright said a tarp would not be a good idea because she would see it directly from her kitchen window. She said the rail trail is very important to them but getting access to it meant coming around that very bad turn.

Mr. Bisceglia said having the access is not an issue, it is putting the shed there. They are getting permission from the County to access the property. If the applicant words the application differently and it is treated as an appeal, then the board would be in a position to determine if it is correct or not.

Ms. Gomez Anderson said it is up to the applicant whether they want to amend the application. Mr. Bisceglia said they could try to go through the process but there are no guarantees that it would go in favor of the applicant.

Mr. Bisceglia made a motion to close the meeting at 9:10 p.m. Ms. Lane seconded and the motion carried unanimously.

Respectfully submitted



Susan Quigley, Secretary