

PLEASANT VALLEY ZONING BOARD OF APPEALS
August 26, 2004

The regularly scheduled meeting of the Pleasant Valley Zoning Board of Appeals took place on August 26, 2004, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:42 p.m.

Members present: John Dunn
 Edward Feldweg
 Laura Zylberberg
 Ronald Vogt
 Robert Maucher
 Lisa Rubenstein

Members absent: Eric Czech

1. Approval of the Minutes

Board clarified confusion in the minutes of the ZBA meeting of June 24, 2004, regarding motions made at that meeting, and agreed to approve the minutes with handwritten corrections.

MOTION BY E. FELDWEG TO APPROVE THE MINUTES OF THE JUNE 24, 2004 ZONING BOARD OF APPEALS AS CORRECTED, SECONDED BY R. VOGT.

VOTE TAKEN AND PASSED 6-0-0

THE MINUTES AS CORRECTED ARE APPROVED.

(Corrected minutes signed by J. Dunn and given to D. Friedrichson.)

2. Fraleigh – Variance – Appeal #822

This application has been postponed to the September 23, 2004, ZBA meeting because Mr. Fraleigh is out of the country.

3. Hinsch – Variance – Appeal #820

Mr. Hinsh is requesting a 31-foot variance from minimum center-of-road setback for the placement of a shed on the property. Mr. Hinsch reports that the topography of the property prohibits convenient location of the shed. Adjacent property owners have been notified. Board has an affidavit of publication in the Poughkeepsie Journal on July 14, 2004. Pleasant Valley Planning Board referred this application to the ZBA with a negative recommendation and stated that the variance is too great and the applicant has alternative locations on his property for this shed. The Pleasant Valley Fire Advisory

Board takes no position in regard to this application as it is strictly within the purview of the ZBA.

Kenneth R. Hinsch, Jr., came forward and was sworn in.

Mr. Hinsch stated that he requested this variance for convenience. He has two sheds on this property: one is at the bottom of the hill on his property, the other is placed adjacent to the house on the black top. He has a permit for the shed at the bottom of the hill and is seeking a permit for the shed on the blacktop, which he uses for garbage cans, hand tools, etc. The shed is placed on the black top on the only level spot and cannot be moved back because the shed would not be level and the doors won't open. J. Dunn asked about blocking the shed to make it level; applicant states that steps would then be required. Applicant states that the shed has been there for more than a year and that he did not know he needed a permit. R. Maucher asked if could be placed on other side of the house; applicant states that that side of the house is also not level and has a drainage easement. Applicant states that the only alternate site is at the bottom of the hill with the other shed. Shed is 10' x 12', no riding lawn mowers are stored inside, contains shelving and 2-3 garbage cans.

PUBLIC PORTION OF THE HEARING IS OPEN

Hearing no comments,

MOTION BY J. DUNN TO CLOSE THE PUBLIC PORTION OF THE HEARING, SECONDED BY E. FELDWEG

VOTE TAKEN AND PASSED 6-0-0

THE PUBLIC PORTION OF THE HEARING IS CLOSED

MOTION BY J. DUNN TO CLOSE HEARING, SECONDED BY R. VOGT

VOTE TAKEN AND PASSED 6-0-0

THE HEARING IS CLOSED

4. Rothstein/Frankel – Special Use Permit – Appeal #818

This is an appeal for a Bed & Breakfast, the details of which have already been read into the minutes at a previous meeting of the ZBA.

D. Friedrichson, Zoning Administrator, reports that the violation (2 primary buildings on property) has been remedied. The person moved out of the building, and the kitchen has been removed. There is now 1 primary building and 1 accessory building. The violation has been eliminated.

Applicants (Howard Rothstein and Anna Frankel) have been sworn in and testified at the June 2004 ZBA meeting. Applicants decline the invitation to speak further on this application.

THE PUBLIC PORTION OF THE HEARING IS OPEN

Maureen Olfati is sworn in and states that she is present tonight to reiterate her objection (previously made at the June 2004 ZBA meeting) to the granting of a designation that does not exist in this town and her objection to a business in a residential area. Ms. Olfati states that she has nothing new to add.

L. Rubenstein asks where Ms. Olfati lives in relation to this property. Ms. Olfati replies that she lives next door. Ms. Rubenstein inquires whether Ms. Olfati concurs with the Zoning Administrator that the accessory building has been converted back to an accessory building. Ms. Olfati replies that she does not know.

E. Feldweg states that there is a B&B in Pleasant Valley, that the zoning ordinance permits B&B under home occupation, that the Board does have the mechanics to approve a B&B. Ms. Olfati states that Nancy said that this would be designated as a boarding house. Mr. Feldweg states that this is inaccurate.

L. Zylberberg asks if Ms. Olfati can see the house. Ms. Olfati replies yes.

A. Frankel states that she thinks there is another business on the road – a quite large and active horse-boarding facility and stable. Ms. Olfati states that it retains the rural character.

MOTION BY E. FELDWEG TO CLOSE THE PUBLIC PORTION OF THE HEARING AND THE HEARING, SECONDED BY L. ZYLBERGBERG

VOTE TAKEN AND PASSED 6-0-0

THE PUBLIC PORTION OF THE HEARING AND THE HEARING IS CLOSED

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Hinsch – Variance – Appeal #820

FINDINGS OF FACT

The applicant’s name is Kenneth R. Hinsch, Jr. The location of the property is 168 Gretna Woods Road. The type variance sought is from Code 98-12A. The applicant is requesting a 31-foot front variance.

The variance will be detrimental to nearby properties.

An undesirable change will occur in the character of the neighborhood.

The applicant could relocate the shed on the property in conformity with the ordinance.

The requested variance is substantial.

The shed is now in violation, is much closer to the property line than it should be, and is not in conformity with the other properties.

The variance requested is as a result of a "self-created" hardship.

The Zoning Board determines that the detriment to the health, safety, and welfare of the neighborhood and community is greater because it is too close to the road and it is not in keeping with the character of the neighborhood.

Therefore, the above factors, when considered together, balance in favor of denying the variance.

ORAL RESOLUTION

WHEREAS the Applicant Kenneth R. Hinsch, Jr., is requesting a variance to Code 98-12A for a shed at 168 Gretna Woods Road, and

WHEREAS the setback requested is a variance of 31 feet on the front, and

WHEREAS the shed is existing, and

WHEREAS the Zoning Board of Appeals has considered the applicant's request at a Public Hearing on August 26, 2004, and

WHEREAS the Zoning Board of Appeals has visually observed that there is sufficient area on the property to relocate the shed in conformity with the ordinance, and

WHEREAS the shed is much closer to the road than any other structure on the road,

NOW THEREFORE, taking into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant, the Zoning Board determines that the detriment to the health, safety, and welfare of the neighborhood and community is greater because it is too close to the road and it is not in keeping with the character of the neighborhood.

THEREFORE, the Zoning Board of Appeals denies the variance.

MOTION BY L. RUBENSTEIN TO DENY THE VARIANCE, SECONDED BY R. VOGT.

ROLL CALL:	John Dunn	In favor
	Edward Feldweg	In favor
	Laura Zylberberg	In favor
	Ronald Vogt	In favor
	Robert Maucher	In favor
	Lisa Rubenstein	In favor

VOTE TAKEN AND PASSED 6-0-0

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Rothstein/Frankel – Special Use Permit – Appeal #818

DISCUSSION

Application for Bed & Breakfast:

- Two rooms
- Maximum 4 guests
- Breakfast only
- Weekend stays only
- No alterations
- Maximum 5 cars
- Advertising through Dutchess County Tourism Board, Internet, Brochures
- 6 square foot sign permitted for home occupation
- No employees

E. Feldweg notes that ordinance permits home occupation and that this application falls under this permission. B&B will result in less traffic than a doctor’s office and is only a weekend endeavor. Mr. Feldweg notices very little activity around the two other B&B’s in town. Further, he states that he has read all the submitted material and listened to all the testimony and cannot find any facts but has found some hype and some fear and cannot put any weight into the testimony. Comments about water problems did not impress, neither do the comments about Megan’s law.

L. Zylberberg states that water problems are state-wide and that issues about water or about additional cars would be no different if it were family visiting or guests.

J. Dunn concurs. Impact from additional cars is not an issue. Pleasant Valley has two B&B’s that were previously approved and there have been no issues. Water problems will be no different from those commonly encountered by local homeowners.

L. Rubenstein states that she had a home office with a secretary and normal volume of deliveries. She thinks the code permits this home occupation. Further, the ZBA has no

control over who one's neighbors invite over to their homes. Therefore, the ZBA cannot control who patronizes a B&B.

Discussion regarding insignificant impact on traffic given that only breakfast is provided and guests at B&B usually leave in the morning and return after dinner in the evening.

E. Feldweg completed EAF, which was signed by E. Feldweg and J. Dunn.

ORAL RESOLUTION

WHEREAS the applicants Howard Rothstein and Anna Frankel have submitted proof in support of their application for a Bed & Breakfast at 359 Masten Road, which under the Code of the Town of Pleasant Valley is a home occupation (Section 98.24) requires the issuance of a special use permit pursuant to Section 98.49(B), and

WHEREAS such proof has been duly considered by the Board at a public hearing on June 24, 2004, and on August 26, 2004, at which the applicants and members of the public spoke, and

WHEREAS the Zoning Board has considered the comments of the public and the applicant, and

WHEREAS the applicant proposes that two rooms only will be used and that a maximum of 4 guests per night will be using the facility, and

WHEREAS the applicant proposes no alteration to the property, and

WHEREAS the Bed and Breakfast will serve only breakfast, and

WHEREAS the applicant plans to have no employees, and

WHEREAS there will be no more than five cars parking on the property, and

WHEREAS the Pleasant Valley Planning Board and Fire Advisory Board have recommended in favor of the approval,

NOW THEREFORE BE IT RESOLVED that the Board finds that the use for which such permit is sought, to wit a Bed & Breakfast, and under the conditions hereinafter set forth, will not be injurious to the neighborhood or otherwise detrimental to the public welfare and

BE IT FURTHER RESOLVED that the Board determines that in its judgment, the special use is reasonable and in the general interest of the public, is reasonable and for the general welfare of the public, is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar facilities, that the neighborhood character and surrounding property values are reasonably

safeguarded, will not cause undue traffic congestion or create a traffic hazard, complies with all other conditions and standards specified in the Zoning Code of the Town of Pleasant Valley, and

BE IT FURTHER RESOLVED, that the Board determines that the following appropriate conditions and safeguards are included with the issuance of this special use permit:

1. two rooms only to be devoted to Bed & Breakfast use
2. a maximum of 4 guests
3. weekends only
4. no alteration
5. breakfast only, no other meals
6. 5 cars parking on a normal basis
7. no employees
8. site plan approval by Pleasant Valley Planning Board
9. submission of floor plan to Fire Advisory Board
10. compliance with all conditions of Section 98-24

These conditions are found to be appropriate so as to guarantee that the use of the premises shall not be incompatible with other permitted uses in the vicinity and area where the property is located.

MOTION BY L. RUBENSTEIN TO APPROVE, SECONDED BY E. FELDWEG

ROLE CALL TAKEN AND PASSED 6-0-0

5. Beckwith – Appeal #812

Board did not know that this appeal for an area variance was on tonight's agenda. Mr. Beckwith's letter states that he has no objection to time extension of variance appeal. E. Feldweg and L. Rubenstein to work on resolution for September 2004 ZBA meeting.

6. Frankel – Clark Heights - Appeal #797

D. Friedrichson reports that this appeal is for 2 setback variances: (1) distance from center of the road and (2) on the right side of the property. Previous approval of 1 foot setback is inadequate. Approval was granted and the permit was issued without the benefit of plan of the actual house itself. D. Friedrichson reports that when he reviewed the plan he discovered that the house is 18 feet high and that the applicant needs a 4 foot variance. As of now, the applicant only has a 1 foot variance, and now needs an additional 3 foot variance.

Discussion: it was the applicant's mistake, the board does not have the authority to waive the \$75 application fee, that applicant must return to the ZBA for correction of this error, that applicant cannot get a CO without this correction.

MOTION BY E. FELDWEG TO ADJOURN THE MEETING, SECONDED BY L. ZYLBERGBERG

VOTE TAKEN AND PASSED 6-0-0

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:25 P.M.

Respectfully submitted,

Helen D. Millar
Secretary

The foregoing represent unofficial minutes of the August 26, 2004, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS
October 7, 2004

This meeting of the Pleasant Valley Zoning Board of Appeals took place on October 7, 2004, (rescheduled from September 23, 2004) at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:37 p.m.

Members present: John Dunn
 Laura Zylberberg
 Ronald Vogt
 Lisa Rubenstein
 Eric Czech

Members absent: Ed Feldweg
 Robert Maucher

1. APPEAL #823 DEMAKOS – VARIANCE

ZBA declined to hear this appeal because the appropriate sign was not in place. Applicant was instructed three times by the Town secretary to have that sign put up. Applicant was not present this evening.

A neighbor of this property was present and stated that he will be out of the country for the next six months. Board advised him to submit his comments in a letter to the Town secretary and that these comments will be reviewed by the Board when this application is again on the agenda. Board also advised him that he may review the file in the Town office.

2. APPEAL #822 FRALEIGH – VARIANCE

This application dated 7/16/04 is for a variance from minimum center of road setback requirement for construction of additions to pre-existing residence at 748 Traver Road.

J. Dunn: Affidavit of Publication in The Poughkeepsie Journal dated August 19, 2004, is on file. The adjacent property owners have been notified. The Town of Pleasant Valley Planning Board has submitted a positive recommendation to the ZBA. The Town of Pleasant Valley Fire Advisory Board takes no position in regard to this application as it is strictly within the purview of the ZBA.

J. Dunn: Applicant was denied a construction permit. Applicant states that strict application of the zoning ordinance would produce undue hardship because the house is a pre-existing structure that is already too close to the road. Applicant states that the hardship is unique and is not shared by all properties alike in the immediate vicinity of this property and in this use district because the house is already under minimum setback regulation. The variance would observe the spirit of the ordinance and would not change

the character of the district because the proposed construction will increase the appeal and safety of the residence as well as enhance the character of the district rather than detract from it. The applicant reports that the residence is a pre-existing non-conforming structure, which is already approximately 4 feet closer to the road than is allowed by current ordinances. Applicant wishes to extend the right side of the house to meet the left side set back and also wishes to add a small front porch, which will extend 4 feet beyond that. A drawing was submitted along with the application.

Timothy Fraleigh was present and was sworn in by Chairman Dunn.

T. Fraleigh: The house does not have a straight front – the left side of the house extends 2 feet farther out than the right side. Mr. Fraleigh plans to raise the roof on the right side and extend that side out the same 2 feet to be parallel with the left side. In addition, he plans to add a front porch that will overlap the middle section, which is set back, and the left side section. The dimensions of the porch, if it were squared off, would be 6' x 8'.

L. Zylberberg asks where the steps to the porch will be and points out that steps would add to the set back measurement. Mr. Fraleigh reviews the plans and reports that there will be no steps.

L. Zylberberg points out that the measurements in the drawing are reported as “approximate” and that the Board must have exact measurements and cannot give a variance on an “approximate” measurement. Mr. Fraleigh states that he listed the measurements as “approximate” because he took a tape measure and did the measurements himself.

L. Zylberberg points out that the applicant must stake out the addition – any structures must be staked at least in the four corners so that the Board may see what they look like.

J. Dunn states that the Board needs to know measurements of any square footage to be added to the house. L. Zylberberg points out that the Board also needs square footage of all additions, including the deck, because the code limits the size of additions to non-conforming structures to 50% of current square footage of the structure.

Mr. Fraleigh states that the ridge line will not be higher than the existing highest point.

L. Rubenstein asks if this application requires one variance or two. L. Rubenstein points out that the only variance that is in front of the Board this evening is for a set back variance, and that the applicant has not applied for an area variance under Section 98-30. She suggests that the applicant speak with Dieter to confirm whether he needs an area variance for additional square footage.

Fraleigh states that the planned addition is 482 square feet and that the current house is 1800 square feet. J. Dunn questions whether the current square footage is actually 1800 square feet or less. This clarification is critical because of the code limitations on additions to existing non-conforming structures. J. Dunn says that his calculation (38' x

24.5') says that the current square footage is only 932 square feet. The code would then allow for a 466 square foot addition, which is smaller than the applicant's proposed addition. Mr. Fraleigh points out that the majority of this addition is in the deck.

E. Czech is not sure whether the deck is included in the definition of "floor area" in the code.

Next steps for Mr. Fraleigh:

1. stake property and R. Vogt will measure the property.
2. talk with Dieter Friedrichson, Zoning Officer, to look at the size of the proposed addition compared to the current existing square footage of the house to see if there is any issue with regard to Section 98-30. If Dieter sees a problem in that Section, then the applicant must amend his application to ask for an area variance with respect to the size.

3. MINUTES

J. Dunn reports that only the minutes for two months have been approved. All other months must be reviewed, corrected, and approved. The Board will read the minutes and review them at the next meeting.

4. BECKWITH VARIANCE

Mr. Beckwith was present.

L. Rubenstein submits a draft Resolution regarding the Beckwith variance requested on property at 1380 Route 44 and states that this application is very confusing.

Extensive discussion by Board results in specific revisions to this draft Resolution.

R. Vogt points out that the Board has previously discussed reducing the amount of variance that the applicant is requesting – this is in keeping with the Board's mandate to grant the least possible variance so as to minimize the project's impact. Also, he states that he wants a time frame for phasing out the mobile homes and replacing them with multi-family residences.

L. Rubenstein outlines that the applicant's goal is to remove the mobile homes, replace them with apartments, and retain his office. As long as the ZBA ties these variances to this plan, the ZBA would take no position on timing.

E. Czech points out that the applicant could accomplish more with fewer variances if the mobile homes were already removed. Mr. Beckwith states that two of the three mobile homes are still occupied and that he is reluctant to evict these long-term tenants.

L. Rubenstein points out that everything on the property is non-conforming – nothing fits. Applicant's plan will improve the situation, but will still be non-conforming. She asks

whether the applicant can build any new multiple dwellings until the mobile homes use is released through their removal. Board discussed the applicant's plan to phase in construction of multi-family dwellings as the mobile homes are removed.

Discussion regarding which Section of the code applies: multiple dwellings 98-21 or mobile home park 98-25. Board clarifies that the applicant does have a mobile home park as defined under the code.

E. Czech clarifies that the applicant will have 3 uses on one piece of property:

- 3 acres for multiple dwelling
- 2 acres for his office
- 2 acres for his mobile home park

for a total of 7 acres. He does not have 7 acres. So, if the Board grants the following variances:

- reduce the 2-acre office to .5 acre
- reduced 2-acre mobile home to .5 acre

that leaves the applicant 3.3 acres for his multiple dwellings.

L. Rubenstein states that that is not what the applicant has requested. E. Czech points out that the applicant can revise his application accordingly.

E. Czech does not think this application requires a variance to 98-21(C). If you get the other two variances, then you don't need the 98-21 variance.

Board clarifies that this application is for variances to Sections 98-6(F) (1) – minimum lot size in H-2 zone - and 98-25(K) – mobile home park.

L. Rubenstein reads the revisions to the draft Resolution.

R. Vogt states that he wants a time limit within which this property must be conforming. He points out that circumstances change. It may evolve that these mobile homes could remain forever even though the applicant intends to replace them with multi-family dwellings. It is possible that the applicant could sell the property after receiving these variances. R. Vogt wants a reasonable time frame for the removal of the mobile homes but states that he knows the Board cannot impose such a condition.

L. Rubenstein states that these variances permit the applicant to build some multiple dwellings but he cannot build all of them until the mobile homes are removed. She also points out that the Planning Board may not allow the applicant to build anything until the mobile homes are removed. R. Vogt states, however, that these variances would permit the applicant to never remove the mobile homes.

Mr. Beckwith states that he plans to build fewer than 30 bedrooms. J. Dunn reports that he spoke with J. Labriola, Chairman of the Planning Board, who said that the Planning Board will address the issue of removing the mobile homes.

**MOTION BY L. RUBENSTEIN TO ADOPT THE RESOLUTION AS REVISED,
SECONDED BY R. VOGT**

VOTE TAKEN AND PASSED 5-0-0 (L. Rubenstein will prepare the final Resolution document as it is on her computer.)

5. NOVEMBER 2004 MEETING

The November meeting is rescheduled to November 18, 2004.

6. ERIC CZECH RESIGNATION

E. Czech announces that he is being transferred to Singapore and is, therefore, resigning from the ZBA. He states that this move may be temporary and that he would like to serve on the Board again when/if he returns.

MEETING ADJOURNED BY CHAIRMAN DUNN AT 9:50 P.M.

Respectfully submitted,

Helen D. Millar
Secretary

The foregoing represent unofficial minutes of the October 7, 2004, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS
October 28, 2004

This meeting of the Pleasant Valley Zoning Board of Appeals took place on October 28, 2004, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:32 p.m.

Members present: John Dunn
 Laura Zylberberg
 Ronald Vogt
 Lisa Rubenstein
 Robert Maucher

Members absent: Ed Feldweg

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #825 FRANKEL – VARIANCE

This application is for a 6' variance from minimum side setback requirement for height of addition to home on property.

J. Dunn: adjacent property owners have been notified; Fire Advisory Board takes no position on this application as it is strictly within the purview of the ZBA; affidavit of publication in The Poughkeepsie Journal dated 10/21/04 is on file.

J. Dunn reads from the application:

- 6' variance from side lot setback;
- reason is "I would have to demolish the addition already 75%-80% completed; hardship created is unique and is not shared by all properties because "the variance was already granted and now I have to appeal again";
- the variance would not change the character of the district because "I am only extending the existing line of the house. I originally requested a one foot variance to the side of the property. I am told that I need to request a six foot variance from the side of the property because of the height of the new construction."

Applicant Paul Frankel, 47 Gleason Blvd., Pleasant Valley, NY 12569 was sworn in.

P. Frankel: architect told him that he needed a 1 foot variance for the extension of the line of the house. Frankel reported that, when he first appeared before the ZBA, he was told that he did not need a variance at all because the construction did not get any closer to the side of the property. He did not know that the height of the construction would require a variance. At the previous ZBA appearance, he was granted the variance for the front of the house. Frankel states that he was granted a building permit for the 2nd story addition to the house.

Discussion of whether original application included a side setback: L. Zylbergger reviews the original application (Appeal #797) and minutes of the ZBA meeting and determines that the applicant only applied for a variance on the front of the house, that there never was an application for the side variance. The minutes document that the ZBA granted a 9' variance from the center of the road. L. Zylbergger points out that the side setback was never discussed or applied for. D. Friedrichson believes that there was a 1' side setback granted. Board reviews the original application – 1' variance was discussed in regard to the porch. Board did not receive nor did it discuss an application for a 2nd story to the house. R. Vogt points out that a 2nd story addition always requires a variance. L. Zylbergger points out that this is now a new application for a variance from side setback.

PUBLIC HEARING OPEN

No comment from the Public

PUBLIC HEARING CLOSED

Discussion of side setback: L. Zylbergger points out that applicant needs an 8' variance on side setback on right and may also need a setback on the left. D. Friedrichson confirms that the applicant does not need a side variance on the left.

Application is amended to an 8' variance on side setback on right.

HEARING OF APPEAL #825 CLOSED

2. APPEAL #826 SHARP VARIANCE

J. Dunn reads from the application:

- Applicant is Donna Sharp
- Application is for variance for side lot setback from right side lot line for a pre-existing above-ground swimming pool
- Property is located at 1660 Main Street in an R-O zone
- Variance under Code section 98-12
- “Moving an already existing pool to within the 15' setback requirement would be cost prohibitive and physically difficult”
- hardship is unique and not shared by all properties
- pool was constructed on the property by the former owner
- pool is in character with other residential improvements

J. Dunn reads from the file:

- adjacent property owners have been notified
- affidavit of publication in The Poughkeepsie Journal dated 10/21/04
- letter from Fire Advisory Board that it takes no position on the application as it is strictly within the purview of the ZBA

- the Town of Pleasant Valley Planning Board refers the appeal to the ZBA with no recommendation
- Dutchess County Department of Planning and Development makes no comment because it is a matter of local concern

Applicant Donna Sharp, 1660 Main Street, Pleasant Valley, NY 12569, is sworn in.

D. Sharp says that the pool has been in place since 1998 or 1999 and that she bought the house around that time.

D. Friedrichson states that he started court proceedings against this applicant for a Certificate of Occupancy. The court date is 11/4/04, and the applicant needs a decision from the ZBA prior to the court date in order to get a C.O.

PUBLIC HEARING OPEN

No comment from the Public

PUBLIC HEARING IS CLOSED

L. Zylbergberg checks with D. Friedrichson that a 6 ½ foot variance on the right is sufficient and that no variance on the left is needed.

HEARING OF APPEAL #826 IS CLOSED

3. APPEAL #827 WOGALTER – SPECIAL USE PERMIT

J. Dunn reads from the application:

- David Wogalter of 37 Patricia Drive, Pleasant Valley, NY 12569, is appealing for Special Use Permit under 98-11 to establish a professional office on residential property located at 1373 Route 44

J. Dunn reads from the file:

- Short Environmental Assessment Form
- Notification of adjacent property owners is on file
- Letter from William J. Esche, owner of the property, saying “I have reviewed the proposed changes to the property as drawn and permit David Wogalter, M.D., to present this illustration to the Pleasant Valley Planning and/or Zoning Boards
- Planning Board refers this appeal to the ZBA with a negative recommendation as there are concerns about the shared driveway, the sewage disposal system, and impact on neighborhood and site
- Affidavit of publication in The Poughkeepsie Journal dated 10/21/04
- Letter from the Fire Advisory Board that they take no position on the application as it is strictly within the purview of the ZBA
- Letter from the Dutchess County Department of Planning and Development: “has reviewed the subject referral within the framework of General Municipal Law

Article 12B Sections 239 (i) and 239 (m). After considering the proposed action in context of county-wide and inter-municipal factors, the Department finds the Board's decision involves a matter of some concern and offers the following comments We have no objection to allowing a professional office within a residential district as long as it is determined by the Board of Appeals that the proposed use will not be incompatible with other permitted uses in the vicinity and the district in which the property is located as specified in Section 98-49 (b) (2) of the Zoning Code. Recommendation: The Department recommends that the Board rely on its own study of the facts in the case with due consideration of the above comments.

- NYS Department of Transportation: gives conceptual approval to the continued use of the shared driveway to access Route 44.
- Fax from Dutchess County Department of Health (difficult to read)

Applicant David Wogalter, (address inaudible), was sworn in.

D. Wogalter's comments are inaudible on tape. The following is from secretary's handwritten notes during the meeting: Applicant intends to redo the septic system. This will be an internal medicine office with one doctor and 3 nurses and approximately 15 patients per day. Patient hours will be 9 a.m. to 3 p.m. on 4 days per week with no night or weekend hours. No lab and no retail on premises.

R. Vogt asks for the dimensions of the addition and if the garage is being used or lived in. (Wogalter's comments are inaudible). Addition will be 20' x 30' on right side of house. Septic will be moved.

Board's and applicant's comments regarding common driveway are inaudible.

L. Zylbergerg asks about signage – response inaudible.

R. Vogt asks how far the handicapped ramp is from the property line – response inaudible. L. Rubenstein reminds the applicant that the Code requires 15' off side of property and that he may have to file another variance.

R. Maucher asks if this property will only be used as an office. Applicant replies yes.

R. Vogt confirms that there will be no rental property. Applicant replies yes.

PUBLIC HEARING OPEN

John Lomoriello, 1371 Route 44, Pleasant Valley, NY 12569, was sworn in.

J. Lomoriello states that he is in support of the doctor, that he would make an awesome addition to the neighborhood. Our only concern is the driveway, which J. Lomoriello states is not technically a shared driveway. L. Rubenstein inquires how it is that this is not a common driveway. J. Lomoriello states that it is two driveways next to each other.

Further, he states that they have experience with the property on his other side – a music business – where the customers drive and park on his lawn and throw trash on his property. J. Lomoriello suggests that some screening – a fence or landscaping – be put in place to separate his drive from the doctor's. He states that people constantly pull into his driveway, turn around in his yard and go into the music place. This creates a safety issue. J. Lomoriello wants something to separate the two properties; he has children, and is concerned about safety. L. Rubenstein notes that if the ZBA approves this Special Use Permit, it can be done with a recommendation that the Planning Board require screening between the driveways.

PUBLIC HEARING CLOSED

Photos submitted by the applicant as added to the file.

HEARING OF APPEAL #827 IS CLOSED.

4. APPEAL #828 CEDAR HOLLOW MOBILE HOME PARK VARIANCE

J. Dunn reads from the application:

- Applicant, J. Pretak, doing business at Cedar Hollow Park, requests a variance from 98-25 (h)
- Previous appeal (#697) was made in April 2000
- Layout of existing mobile home park is such that present zoning code can't be reasonably met
- The site in question is internal to an existing mobile home park
- The number of units will remain the same – any change will be internal to the mobile home park and will have little or no effect on surrounding properties
- Applicant wishes to replace an existing mobile home with a new, safer mobile home

J. Dunn reads from the file:

- Planning Board refers to the ZBA with no recommendation
- Affidavit of publication in The Poughkeepsie Journal dated 10/21/04
- Fire Advisory Board takes no position as it is strictly within the purview of the ZBA

David Pretak, 641 Traver Road, Pleasant Valley, NY 12569, representing Cedar Hollow, was sworn in.

D. Pretak states that the previous appeal 697 was approved on 4/27/00, that the change was never made, and the permit was cancelled. Now the opportunity comes up again to get rid of the home. He is proposing to remove the old single-wide unit with a shorter double-wide. Wappingers Creek is behind the units, so they plan to put the new unit in pretty much the same place so that the tenants can enjoy the view of the creek in the back. He also states that they will make a specific stipulation that there will be no decks or patios allowed on the side or front yard. Application includes a storage shed – 10' x 10' – to be placed in the back left corner of properties. Applicant put out the markers this

morning. He states that they may have to make the parking a little wider to accommodate two cars. The stairs are recessed and will not go closer to the road.

L. Rubenstein clarifies that this is two variances: one for the mobile home, one for the shed.

PUBLIC HEARING OPEN

No comment from the Public

PUBLIC HEARING CLOSED

HEARING OF APPEAL #828 CLOSED

5. APPEAL #829 SMYTHE VARIANCE

J. Dunn reads from application:

- Property located at 501 Pine Hill Road, R-2 zone
- Variance from minimum acreage requirement for new residential building lot to be created by proposed subdivision – parcel as it exists has road frontage on Pine Hill Road and backs onto Creek Road. Proposed lot would have frontage on Creek Road.
- Variance sought from 98-60 and 98-12
- Applicant wants to build a new house on the property because his parents want to move from Florida to New York

L. Rubenstein comments that the ZBA can approve this proposal with 4 acres.

J. Dunn reads from application:

- Planning Board refers with a negative recommendation as there is a question as to the actual acreage of the property and there are concerns regarding the viability of developing the proposed lot due to steep slopes
- Affidavit of publication in The Poughkeepsie Journal dated 10/21/04
- Adjacent property owners were notified
- Fire Advisory Board takes no position on this application as it is strictly within the purview of the ZBA

Salvatore Smythe, applicant, 501 Pine Hill Road, was sworn in.

J. Dunn reports that he did a site visit. Smythe states that he has to dedicate to the Town of Pleasant Valley offsets for Pine Hill Road and for Creek Road, which brings the total acreage down from 4.04 acres to 3.93 acres. Further, Smythe states that only one lot would be non-conforming at 1.93 acres. The other lot would be 2 acres.

L. Zylberberg states that right-of-way is not dedicated. Smythe states that the lot was originally two lots, which was adjoined some time back. L. Zylberberg states that the

“easement” does not reduce the acreage because it is still a part of your property. An “easement” is just permission for the Town to enter your property to cut that property; you still own that property and you have 4.04 acres.

R. Vogt wants to see the deed. Applicant states that the property was surveyed twice; the date of the map in the Board’s file is 5/24/00. L. Zylberberg states that the only thing that would affect the acreage is if the Town were moving/widening either road; which L. Rubenstein states is not happening.

R. Vogt reads minutes: “P. Setaro says the property line goes to Pine Hill Road and down Creek. Going by the actual lines, the property is 4.04 acres. You have to take into account the ‘assumed road line.’ The property is 3.62 acres.” L. Zylberberg states that she doesn’t know what P. Setaro is talking about. R. Vogt agrees that it doesn’t make sense. L. Zylberberg states that the Board needs to know exactly what he’s talking about because the ZBA cannot grant a subdivision with an illegal lot. She thinks they are wrong.

L. Rubenstein states that the Planning Board’s reasoning regarding the acreage doesn’t make sense and that their reservation about the steep slopes is a separate issue. J. Dunn states that, if it’s less than 2 and 2, the ZBA cannot grant the variance. L. Rubenstein states that how the deed documents the property lines determines the acreage; that the Town can lay their blacktop wherever it wants, but it does not reduce the acreage of the property. L. Rubenstein states that P. Setaro states that the property is 4.04 acres. Applicant has the original deed that shows 2 and 2.

Board agrees that the applicant must return to the Planning Board to clarify acreage; that the ZBA cannot grant less than 2 acreage lots – cannot grant a sub-standard lot.

PUBLIC HEARING OPEN

Ed Laxgang, 480 Pine Hill Road, was sworn in. E. Laxgang wants to know if this property is less than 4 acres because he’s in the same situation. Ed wants to subdivide his own property and questions his own acreage.

R. Maucher: can divide down to 2 acres only.

J. Dunn: ZBA cannot grant variance for sub-standard lot.

John Mackey, 366 Pine Hill Road, was sworn in. J. Mackey asks what “dedicating” means.

Board responds that “we don’t know.” J. Dunn notes that it’s his understanding that the Town cannot take the property. L. Zylberberg states that the ZBA does not know what “dedicating” means.

R. Vogt reviews the old deed in the file, dated 1979, which identifies two lots, one 2 acres and the other 2.06 acres. Applicant repeats that these lots were joined.

PUBLIC HEARING CLOSED

L. Zylberberg: **MOTION TO ADJOURN FOR ONE MONTH TO FIND OUT WHAT THE PLANNING BOARD WAS TALKING ABOUT; SECONDED BY R. MAUCHER**

VOTE TAKEN AND APPROVED 5-0-0

6. APPEAL #830 BITTNER VARIANCE

L. Rubenstein: has never seen a variance for parking spaces. Why did the Planning Board refer this appeal to the ZBA? The Planning Board has the power to waive this. Most of D. Friedrichson's comments are inaudible: variance is needed in order to grant the building permit. L. Rubenstein states that she doesn't know why these applicants are in front of the ZBA or what is being appealed.

Ty Bittner, 3906 Route 44, Millbrook, NY, and Fred Volino, 56 Spook Hollow Road, Salt Point, NY, were sworn in.

(Volino's comments are inaudible. These notes come from secretary's written notes during the meeting.) This was referred to the ZBA because the restaurant requires more parking spaces than exist. There are 123 spaces, and 161 spaces are required under the Code. The request is for a variance of 38 spaces.

J. Dunn reads from the file:

- Fire Advisory Board takes no position as it is entirely within the purview of the ZBA
- Planning Board refers to ZBA with a positive recommendation as the proposed restaurant parking usage will be primarily at night when the other tenants of the square will not be conducting business. If the variance is granted, the applicants will be required to submit a site plan application for complete review by the Planning Board.
- Affidavit of publication in The Poughkeepsie Journal as of 10/21/04
- Adjacent property owners were notified
- Dutchess County Department of Planning and Development: no comments

J. Dunn reads from the application:

- Location of property is 2510 Route 44, Salt Point, NY 12578
- Variance requested is under 98-13 of the zoning law
- Use of parking spaces will be different from other tenants' usage
- Restaurant will be located in Sycamore Square, will be 4266 square feet of which customer accessibility will be 3243 square feet, which requires 65 parking spaces. The total spaces needed for all tenants will be 161; 123 spaces now exist.

Application is for variance of 38 spaces since other tenants will be day use and the restaurant use will be in the evening.

R. Vogt visited the property. Board agrees that the Planning Board should have waived this variance. D. Friedrichson's comments are not audible.

R. Vogt: what will your hours be? Applicant states hours will be 11 a.m. to 11 p.m. approximately.

PUBLIC HEARING OPEN

No comment from the Public.

PUBLIC HEARING CLOSED

7. APPEAL #822 FRALEIGH VARIANCE

Timothy Fraleigh was present for this appeal.

L. Zylberberg asks T. Fraleigh what was revised. Applicant states that nothing was revised, that the additional requested information was provided.

R. Vogt measured the setback from center of the road to the stake as 53.5'. Ron further clarifies that the 7.5' x 10' slab is existing as a portion of the slab but not existing as part of the structure.

Applicant states that the house is 889 square feet.

J. Dunn points out that the addition will not be above 50% of existing square footage.

Variance required is 6.5' setback needed on the front – section 98-12 of Code.

PUBLIC HEARING OPEN

No comment from Public.

PUBLIC HEARING CLOSED

HEARING OF APPEAL #822 CLOSED

8. APPEAL #823 DEMAKOS VARIANCE

L. Zylberberg: **MOTION TO DISMISS FOR FAILURE OF APPLICANT TO APPEAR AND ABSENCE OF PLACARD ON PROPERTY; SECONDED J. DUNN**

VOTE TAKEN AND APPROVED 5-0-0

APPEAL #823 DEMAKOS – DENIED

DISCUSSION OF APPEALS

FRALEIGH – APPEAL #822

L. Rubenstein reads worksheet and recommends granting of variance.

L. Rubenstein: **RESOLUTION**

WHEREAS, Timothy Fraleigh has requested a front variance of 6.5 feet from Section 98-12 for this property at 748 Traver Road, and

WHEREAS, a public hearing was held on 10/7/04 and 10/28/04, and

WHEREAS, no members of the public spoke against the application, and

WHEREAS, the Zoning Board has reviewed the property and the application and makes the following findings:

1. the requested variance will not be detrimental to nearby properties;
2. the requested variance will not create an undesirable change in the character of the neighborhood;
3. the applicant has no alternative feasible methods available;
4. although the requested variance is substantial, the Zoning Board concludes that there is no adverse impact on the neighborhood or any other conditions in the locality;

NOW THEREFORE BE IT RESOLVED, that taking into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the community by such grant, the Zoning Board determines that the benefit to the applicant is greater and determines that the variance should be granted.

SECONDED BY J. DUNN

VOTE TAKEN AND APPROVED 5-0-0

FRANKEL – APPEAL #825

L. Zylberberg reads the worksheet and recommends granting variance.

L. Zylberberg: **MOTION TO GRANT 8’ VARIANCE ON RIGHT SIDE;
SECONDED BY L. RUBENSTEIN**

DISCUSSION: R. Vogt asks if the property was viewed? Board responds “yes.”

VOTE TAKEN AND APPROVED 5-0-0

SHARP - #826 APPEAL

L. Zylberberg reminds that Board that, since L. Rubenstein is recusing herself from this vote, the vote of the remaining Board members must be unanimous and that the Board did not tell the applicant that she had the option of returning to the Board next month.

R. Vogt points out that he questions whether the pool was, in fact, pre-existing when the applicant purchased the property.

L. Zylberberg reads the worksheet and recommends granting the variance.

L. Zylberberg: **MOTION TO GRANT THE VARIANCE; SECONDED R. MAUCHER**

NO FURTHER DISCUSSION

VOTE TAKEN AND APPROVED 4-0-1 (Rubenstein)

CEDAR HOLLOW – APPEAL #828

L. Rubenstein reads worksheet and recommends granting two variances: one for the mobile home of a 20 foot variance on the front, a 2 foot variance on the left, and a 3’10” variance on the right, and for the shed of a 12 foot variance on the left and the shed will be a maximum of 10’ x 10’. This is a redo of a previously approved, but expired, application.

L. Rubenstein: **MOTION TO GRANT VARIANCES; SECONDED BY L. ZYLBERBERG**

DISCUSSION:

R. Maucher: this is not a mobile home, is actually a manufactured house, and the code does not apply.

L. Zylberberg states that there is no such thing as a mobile home any more.

J. Dunn: there’s a plat on file, with lots laid out, we have to grant the variances based on the documents on file.

L. Rubenstein: all these changes improves the overall property.

R. Vogt: applicant should reduce the # of lots if he is going to replace all of the single-wides with double-wides. There are safety and fire issues.

VOTE TAKEN AND APPROVED 4-1 (Maucher) – 0

BITTNER – APPEAL #830

L. Rubenstein reads worksheet and recommends granting variance.

L. Rubenstein: **MOTION TO GRANT VARIANCE; SECONDED BY L. ZYLBERBERG**

DISCUSSION:

R. Maucher: restaurant could have been made smaller – there are alternatives.

R. Vogt: not practical to make it smaller because of the way it's designed.

VOTE TAKEN AND APPROVED 5-0-0

BECKWITH VARIANCE

Discussion of variance to 98-25(K) – question of 20,000 square feet or 30,000 square feet: Secretary, Helen Dickerson, to review the audio tape of the ZBA meeting dated 10/7/04, to clarify resolution. Approval of the resolution is adjourned until this point is clarified.

WOGALTER – APPEAL #827

Discussion of this appeal is adjourned to next month. J. Dunn to call Planning Board Chairman Labriola.

MINUTES OF 10/7/04 MEETING - approval adjourned till next meeting.

MEETING ADJOURNED BY CHAIRMAN DUNN AT 10:23 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the October 28, 2004, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS
November 18, 2004

This meeting of the Pleasant Valley Zoning Board of Appeals took place on November 18, 2004, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:38 p.m.

Members present: John Dunn
 Laura Zylberberg
 Ronald Vogt
 Lisa Rubenstein
 Robert Maucher

Members absent: Ed Feldweg

Also present: Dieter Friedrichson, Zoning Administrator

1. BUTLER VARIANCE – APPEAL #831

This is an application for a 4' variance from minimum side setback requirement for location of a shed on property at 39 Clark Heights.

Applicant spoke with L. Zylberberg prior to the start of tonight's meeting and has decided to reconsider the location of the shed on her property. This appeal is adjourned till the December meeting, and the applicant may withdraw her application entirely.

2. BURRIS VARIANCE – APPEAL #832

J. Dunn reviewed the file. This is an application for a variance from the 100' minimum side setback requirement for location of 2 stall barn on property at 47 Netherwood Hill Road. Adjacent property owners have been notified.

Donald Burris, applicant, and Sandy Mulhern, adjacent property owner, were present for this application.

Discussion with D. Burris and S. Mulhern about location of the property and whether there is a sign on the property. S. Mulhern clarified that access to the property is from Netherwood Drive. L. Zylberberg informed the applicant that no member of the ZBA was able to locate the property and clarified for S. Mulhern that the person who visited the property, Joe Labriola, represents the Planning Board. Applicant and S. Mulhern were informed that, since no member of the ZBA has viewed the property, a decision on the application will not be made tonight.

Discussion by Board regarding the fact that publication in The Poughkeepsie Journal did not happen for any of the appeals on the agenda tonight. Therefore, the Board cannot take testimony tonight or hold a Public Hearing. Board members decided that since the

applicants are here, they will hear what they have to say about their appeals. Board does not want to turn anyone away who has shown up tonight.

D. Burris reports that S. Mulhern, Burris' neighbor, is leasing "an acre give or take" of his property in order to install a two stall barn on the property line. S. Mulhern has a written lease for this transaction. The area is completely surrounded by woods; the barn is a temporary 10' x 32' structure that has no floor. S. Mulhern states that she is installing the barn on the property line for convenience.

L. Rubenstein pointed out that it is not a joint application; it is D. Burris' application because the barn will be on his property.

Board points out that this request is for a 100% variance, which is very unusual. L. Zylberberg and L. Rubenstein emphasized to D. Burris and S. Mulhern that the variance, when granted, stays with the property forever and, therefore, S. Mulhern may wish to locate the barn off the property line. The variance goes with the land when sold.

J. Dunn pointed out that the Board would be very hard pressed to grant a 100% variance. L. Zylberberg advised the applicant that, should they decide to change the location of the barn, they can amend their application.

Application is adjourned to the December 2004 meeting.

3. HUGHES VARIANCE – APPEAL #833

Judy and William Hughes were present for this application.

This application is for an 11' variance from minimum side setback requirement for construction of a screened-in porch on mobile home in a mobile home park located at 87 Elm Lane.

Publication in The Poughkeepsie Journal was not done for this application. Therefore, the Board cannot hold a legal hearing or decide on this application tonight. Board decided to talk with the applicants and hear about their project.

J. Dunn clarified with the applicants the location of the property line. The applicants stated that the porch will extend to within 4' of the property line.

R. Vogt asked if there would be a floor on this porch. J. Hughes stated that this will be a deck that is screened in.

Board apologized to the applicants and informed them that they must return to the December 2004 ZBA meeting.

4. STUART, VINCENT, PHILLIP ASSOCIATES – APPEAL #834

Again, there was no publication in The Poughkeepsie Journal for this appeal. Therefore, the application is adjourned to the December 2004 meeting. Nonetheless, the Board had informal discussions with the applicants, Pete Cantline and Bob Paterson.

This application is for a Special Use Permit to change from one non-conforming use (agriculture) to another non-conforming use (residential) on property located at 850 Van Wagner Road, which is zoned light industrial.

Board reviewed the map and clarified that the property is entirely in Pleasant Valley and ends on the Hyde Park and Poughkeepsie town lines. J. Dunn read from the file that Hyde Park and Poughkeepsie towns were notified.

R. Vogt noted that there are wetlands and a flood zone on the property as well as a Central Hudson easement that transits the entire property. Further, R. Vogt pointed out that the map, as submitted, has lots (#6 - #9 and #12 - #20) that are not buildable because they are located within the flood zone, have ponds, and/or are within the CH easement.

L. Rubenstein read from the Code 98.39 – to change from one non-conforming use to another: “the new non-conforming use shall be no more detrimental than original non-conforming use.” Further, she stated that it is not possible to address the issues with a short form EAF and that it may be necessary to do a coordinated review because ZBA does not have subdivision approval authority.

L. Zylberberg asked whether the applicants had considered an appeal to rezone.

L. Rubenstein enumerates the potential impacts of the proposed new use, a 31 lot subdivision - visual, traffic, habitat loss, ACA, water - and points out that the ZBA must decide that these impacts will be no more detrimental to the neighborhood and its surroundings than its current agricultural use. L. Rubenstein suggested that it may be better to go to the Town Board with a proposal for rezoning, that the ZBA would be very hard pressed to find that the proposed new use is no more detrimental than its current use. The Code only requires the ZBA to decide based on its use, not on its zoning. L. Rubenstein read from the Code the permitted uses under light industrial zoning.

R. Vogt pointed out that the Code prohibits dwellings in a flood zone and that they would need a full environmental impact study and a coordinated review.

Cantline stated that, since the property has been on the market, potential buyers have only been interested in it as residential.

Board notified the applicants that they can postpone their reappearance at the ZBA to January 2005 if they wish.

5. SMYTHE VARIANCE – APPEAL #829

Salvatore Smythe was present for this application, which was adjourned from the October ZBA meeting.

L. Rubenstein recuses herself from this discussion and decision.

This application is before the ZBA again because of a question of actual acreage. The survey in the file is dated May 24, 2000. S. Smythe states that the property was surveyed twice. Letter from County dated 1/28/03 in the file: "As per unfiled survey and subtracting for the road, I have adjusted the acreage ... to 3.9 acres" The County is adjusting the tax map to 3.9.

Although the ZBA's attorney was consulted, there is no official letter from ZBA attorney in the file.

L. Zylberberg clarified for the applicant the difference between a user road and dedicated road. The property owner retains ownership of a user road; the property owner automatically conveys to the Town ownership of a dedicated road. Pine Hill Road is a dedicated road. L. Zylberberg stated that ZBA cannot grant this application because the Board cannot approve an illegal subdivision. Further, she advises the applicant to retain an attorney who can do the necessary research and return to the Planning Board.

L. Zylberberg: **RESOLUTION TO DENY**

This is Appeal #829, dated September 27, 2004. Salvatore Smythe, 501 Pine Hill Road, Pleasant Valley, NY is seeking a variance of 98.6 (d) and 98.12. He would like to build a new home on the property. According to the applicant's survey, he has 4.04 acres; and according to the records of the real property tax he has 3.9 acres. Based on the fact that the applicant's property is located in 2-acre zoning, the ZBA cannot grant a subdivision in two lots because one of the lots would be non-conforming and this Board does not have the authority to create a non-conforming lot. Therefore, based on the evidence and testimony that we received, this Board denies the applicant's request for a variance.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 4-0-1 (Rubenstein)

6. BECKWITH RESOLUTION

L. Rubenstein reported that Helen listened to the tape of the meeting and that the resolution was incorrect. Handwritten corrections made.

L. Rubenstein: **MOTION TO APPROVE THE MINUTES OF THE 9/23/04 (WHICH WAS RESCHEDULED TO 10/7/04) ZBA MEETING INCLUDING THE BECKWITH RESOLUTION AS CORRECTED; SECONDED BY L. ZYLBERBERG**

VOTE TAKEN AND APPROVED 5-0-0

7. MINUTES

L. Zylberberg: **MOTION TO APPROVE ALL OUTSTANDING MINUTES;
SECONDED BY J. DUNN
VOTE TAKEN AND APPROVED 5-0-0**

L. Rubenstein: **MOTION TO APPROVE MINUTES OF ZBA MEETING HELD
ON 10/28/04; SECONDED BY L. ZYLBERBERG
VOTE TAKEN AND APPROVED 5-0-0**

Board: **MOTION TO ADJOURN THE MEETING; SECONDED BY EVERYONE
VOTE TAKEN AND APPROVED BY EVERYONE!**

MEETING ADJOURNED BY CHAIRMAN DUNN AT 8:45 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the November 18, 2004, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions

PLEASANT VALLEY ZONING BOARD OF APPEALS
December 16, 2004

This meeting of the Pleasant Valley Zoning Board of Appeals took place on December 16, 2004, at the Pleasant Valley Town Hall, Route 44, Pleasant Valley, New York. Chairman John Dunn called the meeting to order at 7:35 p.m.

Members present: John Dunn
 Laura Zylberberg
 Ronald Vogt
 Lisa Rubenstein
 Robert Maucher

Members absent: Ed Feldweg

Also present: Dieter Friedrichson, Zoning Administrator

1. APPEAL #832 – BURRIS – VARIANCE

This application is for a variance of Article 4 Section 98.14 (g) 100' minimum side setback requirement for location of 2-stall barn on property at 47 Netherwood Hill Road.

J. Dunn reported that the file contains an affidavit of Notice of Public Hearing published in The Poughkeepsie Journal dated 12/9/04. The file also contains a positive recommendation from the Pleasant Valley Planning Board and a comment form from the Fire Advisory Board that it takes no position with regard to this application as it is strictly within the purview of the ZBA.

Don Burris, 54 Terwilliger Road, Hyde Park, NY 12538, was sworn in. Mr. Burris reported that they moved the barn back 20' from the property line and submitted an amended application to reflect this change. J. Dunn read the amended application into the record. Two horses are to be housed in the wooded area, 150' x 200', and the barn is for their shelter. D. Burris reported that he has 1.58 acres on this property and that there is an unoccupied mobile home on the property.

Sandra Mulhern, 10 Netherwood Road, Salt Point, NY, was sworn in. She reported that the barn is for her two horses, is not a permanent structure, and does not have a floor. The horses are for her personal use, for pleasure and not for commercial use. She reported that she and D. Burris have an agreement to house these horses and the barn on Mr. Burris' property. She also reported that she owns .5 acre, and that the horses are currently boarded elsewhere.

R. Vogt asked if Ms. Mulhern was planning on clearing out any of the property. Ms. Mulhern responded that she plans to clear out the underbrush, that no trees will be cut, and it will be graded. L. Zylberberg asked where she plans to exercise the horses. Ms. Mulhern responded that they don't need to be exercised and will be ridden locally.

Board discussed the fact that the code does not require a specific acreage for horses. D. Friedrichson stated that the rule of thumb is 2 acres per horse, although this is not a code requirement. J. Dunn stated that an alternate is 1 acre per horse.

PUBLIC HEARING OPEN

No comment from the Public.

PUBLIC HEARING CLOSED

S. Mulhern clarified that she will own the barn and will lease the acreage for 3 years. Board discussed the implications of the fact that the variance is permanent and goes with the property.

HEARING OF APPEAL #832 CLOSED

2. APPEAL #833 – HUGHES – VARIANCE

This application is for an 11' variance from Ordinance 98.25 (h) (2) minimum side setback requirement for construction of a screened porch on a mobile home in mobile home park at 87 Elm Lane, Hickory Hills Mobile Home Park.

J. Dunn reported that the file contains an affidavit of publication in The Poughkeepsie Journal dated 12/9/04 and a positive recommendation from the Town of Pleasant Valley Planning Board. Also in the file is a request from the Fire Advisory Board that the ZBA to take into consideration their concern they were unable to determine the distance from the nearest structure in regard to the proposed addition. J. Dunn read into the record the details of this application, which is signed and notarized.

Judy and William Hughes, 87 Elm Lane, Pleasant Valley, NY, were sworn in. Ms. Hughes reported that they plan to add a 14' x 26' screened porch to their mobile home. The porch goes with the character of the park, as other neighbors have similar sunrooms and/or screened porches. She reported that she has spoken with her neighbors and the park owners and no one has any objections to their planned addition.

Board discussed the location of the property line, the size of the mobile home (14' x 70'), the size of the lot (50' wide), the correct measurements for this application, and approved the applicants' request to amend their application to reflect the corrected measurements. Mr. Hughes reported that there is 36' between mobile homes. In an effort to address the Fire Advisory Board's concern, the Board determined that the distance from the nearest structure (the adjacent mobile home) to the edge of the proposed porch would be 22'.

Board advised the applicants that it is the Board's job to grant the smallest variance possible and discussed with the applicants a reduction in the width of the proposed porch

from 14' to 12'. The applicants agreed with this reduction, and the Board approved their request to amend their application to reflect a 12' x 26' porch and a 9' variance.

PUBLIC HEARING OPEN

No comment from Public Hearing.

PUBLIC HEARING CLOSED

HEARING OF APPEAL #833 CLOSED

3. APPEAL #834 STUART, VINCENT, PHILLIP ASSOCIATES – SPECIAL USE PERMIT

This application is for a Special Use Permit for change of non-conforming use (agriculture) to another non-conforming use (residential). Applicant is proposing subdivision of parcel creating 31 residential building lots.

J. Dunn reported that the file contains an affidavit of publication in The Poughkeepsie Journal dated 12/9/04.

The applicants were not present at this meeting. This application is postponed to the January 2005 ZBA meeting.

4. APPEAL #835 ARNOFF – VARIANCE

This application is for a variance to allow living quarters in existing barn on property with separate existing single family residence at 685 Netherwood Road.

J. Dunn reported that the file contains an affidavit of publication in The Poughkeepsie Journal dated 12/9/04, that the adjacent property owners have been notified, that the Town of Pleasant Valley Planning Board referred this application to the ZBA with a negative recommendation, and that the Fire Advisory Board takes no position on this application as it is strictly within the purview of the ZBA.

J. Dunn read into the record the application, which is signed and notarized and is in an R-2 zone. The property is 29.40 acres. The applicant is requesting a relief from 98-5, Definition of Building Principle. Applicant is requesting a variance to allow living quarters for elderly parents in a portion of an existing barn on the property with an existing single family residence. Applicant wishes to house their parents on the property so that they can care for them.

Board discussed whether it can entertain an appeal from the section of the Code that is a Definition.

Michael Arnoff, 685 Netherwood Road, Pleasant Valley, NY, was sworn in. He presented before and after pictures of the barn as it originally was and as it has now been restored. He stated that his parents would reside here two to three months of the year and also presented a letter from the closest neighbor endorsing this application. Further, he reported that a new well and a new septic have been approved by the Dutchess County Board of Health.

Board identified two issues:

1. whether this is an appealable issue – does the Board have authority to appeal a Definition; and
2. two primary residences on property creates a non-conforming lot.

M. Arnoff reported that there are many properties in the area that have additional residences, some for rental and some for farm help. Board clarified that he is asking for a change in the Definition of the Zoning Code, and that the Board does not have authority to make that decision. L. Rubenstein stated that she is willing to refer this application to the Town attorney for an opinion on whether the ZBA can appeal a Definition. Further, she states that it may be a Town Board issue regarding secondary apartments for rental, which create a two-family residence in a single-family zone. Board agreed that the applicant would have less of an issue if he were to apply to subdivide the property and that he has more than enough acreage for that action. D. Friedrichson confirmed that the building permit was denied.

Board discussed the shared driveway, which M. Arnoff stated services about 75 acres.

PUBLIC HEARING OPEN

No comment from the public.

PUBLIC HEARING CLOSED

L. Rubenstein: MOTION TO SOLICIT AN OPINION FROM THE TOWN OF PLEASANT VALLEY ATTORNEY ON THE APPLICATION AS TO WHETHER THIS IS AN APPEALABLE ZONING BOARD ISSUE AND TO ADJOURN THE HEARING OF THIS APPEAL TO A SUBSEQUENT ZBA MEETING;

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 5-0-0

5. APPEAL #836 LUKAITIS – VARIANCE

J. Dunn read this application, which is signed and notarized, into the record. Applicants are Joseph and Marlena Lukaitis at 64 Whiteford Drive, Pleasant Valley, NY. The applicants wish to house two goats (as a source of milk for their family) on their property, which is 1.05 acres in an R-O zone. However, the size of the lot and location of existing

structures would not permit location of a shed for goats within the setbacks required by the Section 98.14 (G) of the Code. Therefore, they are requesting a variance from minimum 100' setback requirement for placement of an existing metal shed (8'x 10') for the goats on the property.

J. Dunn reported that the file contains an affidavit of publication in The Poughkeepsie Journal dated 12/9/04, that adjacent property owners have been notified, that the Town of Pleasant Valley Planning Board referred this application to the ZBA with a negative recommendation, and that the Fire Advisory Board takes no position on this application as it is strictly within the purview of the ZBA.

Marlena Lukaitis, 64 Whiteford Drive, Pleasant Valley, NY, was sworn in. She reported that her family has allergies to cow's milk and, therefore, they rely on goat milk for their nutritional needs. She stated that they plan to house two goats, both female – one for milking and the other for company – for three months during the winter.

Board discussed alternate sources (4H) of goat milk.

Board discussed the location of the shed and the distance from the shed to the nearest neighbor's house. M. Lukaitis stated it's about 50' to 70' from nearest house. R. Vogt stated that he thought it was 25' to the nearest house. M. Lukaitis stated that approximately 32 square feet of the yard will be fenced for the goats and that the fence will be 10' to 12' from the property line. She also stated that a compost pile already exists to handle the goats' refuse.

PUBLIC HEARING OPEN

Dana Lamberti, 84 Whiteford Drive, Pleasant Valley, NY, was sworn in. Ms. Lamberti stated that she is the closest neighbor on the side of the hill where the compost pile will be located. She stated that she is opposed to this application; that there is not enough room for goats in this residential area; the entire community is beautiful. Further, she submitted a written objection from another neighbor from across the street which is stapled to the area guidelines ("Covenants and Restrictions). (The Board accepted this document for the file.) D. Lamberti also stated that a goat is not a household pet and that she is very concerned about attracting vermin and other animals. She stated that her yard adjoins their yard, so that if they have any problems with these goats, it will be her problem also.

Paul Guerci, 48 Whiteford Drive, Pleasant Valley, NY, was sworn in. Mr. Guerci also objects to this application. He stated that this is not farmland, that it is a subdivision, and that there is a difference between a pet and a farm animal. He is concerned about setting a precedent and that this would decrease the value of this property. He questioned how suitable the environment is for such animals.

Heather Blatz, 61 Whiteford Drive, Pleasant Valley, NY, was sworn in. Ms. Blatz stated that she lives right across the road. She stated that she sympathizes with the Lukaitis

family and their allergies. Her concerns are for: vermin, other animals, is a residential loop and is not farmland, not appropriate for farm animals on the property, and the potential decrease in property values.

PUBLIC HEARING CLOSED

HEARING ON APPEAL #836 CLOSED

6. APPEAL #837 - WFL CONSTRUCTION INC. – VARIANCE

J. Dunn read this application, which is signed and notarized, into the record. This application is for a variance from 98.6 (c) and 98.12 for minimum acreage requirement for two-family home (existing 8800 square foot barn to be converted) on property at 8 Ryan's Run, lot #1 Avalon Hills Subdivision, in R-1 zoning district. Property is 1.62 acres. Application states that the building is too large for conventional single family residence. Further, conversion of the barn into a two-family residence will preserve the barn and the rural character of the property.

J. Dunn reported that the file contains an affidavit of publication in The Poughkeepsie Journal dated 12/9/04, that the adjacent property owners have been notified, that the Town of Pleasant Valley Planning Board referred this application to the ZBA with a positive recommendation, and that the Fire Advisory Board takes no position on this application.

Peter Cantline, Spectra Engineering, was sworn in. P. Cantline reported that, during the subdivision approval process, the Planning Board wanted this barn to be preserved as a visual agricultural element in the community. Further, the applicant agreed to preserve the barn in the intent that it would be a 5-bedroom single-family house, and the lot was approved on that basis. Now, the applicant has found that it is not possible to market the lot as a single-family house because of its size and is now requesting permission to convert it to a two-family house. P. Cantline stated that this is permitted in a one acre zone but requires a 2 acre lot to support two families. Thus, is a request for a variance from 2 acres to the 1.62 acres.

Board reviewed the applicable Section of the Code – 98.12 Schedule of Area and Bulk Requirements. Applicant is appealing from the bulk regulations.

Board reviewed the drawings and discussed the marketability of this property as a two-family dwelling, the plan for two driveways to access the property, the height of the building, location of the septic field, distance from property lines, parking.

PUBLIC HEARING OPEN

Wayne Williams, 949 Freedom Road, Pleasant Valley, NY, was sworn in. Mr. Williams is the next door neighbor. He stated that his garage faces the barn. He is concerned that all the garaging will be on his side of the building. If two families with two teenagers

were to occupy the barn and all the parking is on his side, he could be looking at 8 cars. Mr. Williams stated that he would prefer that the parking for each unit were on opposite ends of the barn. He stated that garage is 30' from the property line and from the fence to his back door is probably 80". He estimates that the barn is 40' to 50' setback from the fence.

P. Cantline indicated that the plan is to put the garages on either end of the barn.

Board discussed screening landscaping between the two properties. P. Cantline stated that there appears to be room for landscaping and that the applicant would be willing to do that "within reason."

PUBLIC HEARING CLOSED

HEARING OF APPEAL #837 CLOSED

DISCUSSION OF APPEALS

1. APPEAL #833 – HUGHES VARIANCE

L. Rubenstein read into the record the worksheet for this application.

FINDINGS OF FACT

The decision date is 12/16/04. The appeal # is 833. The appeal is dated 10/21/04. The applicant's name is Williams Hughes. The location of the property is 87 Elm Lane and is the R-OA zone. The type of variance is 98-25(H)(2). It is a setback from the right of 9'. It is a proposed structure – a porch of 12' x 26'.

The requested variance will not be detrimental to nearby properties.

An undesirable change will not occur in the character of the neighborhood as a result of this variance.

There are no alternative (feasible) methods available to the applicant.

The requested variance is substantial.

There will be no effects and/or impacts to the physical and/or environmental conditions existing in the locality.

The variance requested is not a result of a "self-created" hardship.

CONCLUSION

Taking into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant, the ZBA determines that the benefit to the applicant is greater.

Therefore, the above factors when considered together, balance in favor of granting the variance.

L. Rubenstein:

RESOLUTION TO APPROVE THE VARIANCE:

WHEREAS, THE APPLICANT WILLIAM HUGHES OF 87 ELM LANE HAS SUBMITTED PROOF IN SUPPORT OF HIS APPLICATION FOR A VARIANCE TO SECTION 98-25 (H)(2) WHICH UNDER THE CODE OF THE TOWN OF PLEASANT VALLEY REQUIRES 15', AND

WHEREAS, THE APPLICANT IS REQUESTING A VARIANCE OF 9' ON THE RIGHT SIDE OF THE PROPERTY, AND

WHEREAS, SUCH PROOF HAS DULY BEEN CONSIDERED BY THE BOARD AT A PUBLIC MEETING, AND

WHEREAS, IN BALANCING THE BENEFIT TO THE APPLICANT VERSUS THE DETRIMENT TO THE HEALTH, SAFETY, AND WELFARE OF THE NEIGHBORHOOD OR COMMUNITY BY SUCH GRANT THE ZBA HAS CONSIDERED:

- 1. WHETHER THE REQUESTED VARIANCE IS DETRIMENTAL TO NEARBY PROPERTIES**
- 2. WHETHER AN UNDESIRABLE CHANGE WILL OCCUR IN THE CHARACTER OF THE NEIGHBORHOOD**
- 3. WHETHER THE VARIANCE WILL CAUSE A SUBSTANTIAL CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD**
- 4. WHETHER THE DIFFICULTY CAN BE FEASIBLY MITIGATED BY SOME OTHER METHOD**
- 5. WHAT EFFECTS AND/OR IMPACTS THE VARIANCE WILL CAUSE TO THE PHYSICAL AND/OR ENVIRONMENT CONDITIONS OF THE NEIGHBORHOOD**
- 6. WHETHER THE VARIANCE REQUESTED IS A RESULT OF A SELF-CREATED HARDSHIP**

HAVING CONSIDERED THE AFOREMENTIONED FACTORS, IT IS HEREBY RESOLVED THAT THE BOARD FINDS THAT THE BENEFIT TO THE APPLICANT IF THE VARIANCE IS GRANTED IS GREATER AS WEIGHED AGAINST THE DETRIMENT TO THE HEALTH, SAFETY, AND WELFARE OF THE NEIGHBORHOOD OR COMMUNITY BY SUCH GRANT

THEREFORE, THE BOARD GRANTS THE 9' VARIANCE ON THE RIGHT.

SECONDED BY L. ZYLBERBERG

VOTE TAKEN AND APPROVED 5-0-0

2. APPEAL #832 – BURRIS – VARIANCE

Discussion: R. Vogt reviewed facts: the neighbor S. Mulhern is only leasing one acre which is not level and has no open space. The property is wooded, and there is no meadow. This is a major variance which does not provide adequate flat land for the horses. He does not believe that the site is appropriate for the requested use – it does not have the topography to support what they want. The Code requires 100' setback for animals. The rule of thumb is 1 acre per horse, but is not in the Code. D. Friedrichson stated that the new code has not been adopted. L. Rubenstein stated that the Board cannot decide this on the 1 acre issue but can on the 100' requirement. The 100' requirement provides for a large piece of property for an animal. The lease is not an issue. Once the variance is permitted, it is permanent and changes the character of the property. The benefit to S. Mulhern is that she gets to house her horses adjacent to her property. There is financial benefit to Burris, the property owner, because he gets to make some money. The real detriment to the community is from the inevitable change to the property – they will have to cut down trees; they will have to fence the property. The land is currently all wooded, and this application will change the look of the land: housed animals, close to the lot line, encroaching on the neighborhood. Additionally, the detriment is that it sets a precedent. The substantial nature of the variance (80%) also creates a detriment. Issues also of odor, critters, manure. The land around that barn will deteriorate as a result of the animals.

L. Rubenstein read the worksheet into the record.

FINDINGS OF FACT

Appeal #832. Property is located at 47 Netherwood Hill Road. Applicant is Donald Burris. The type of variance sought from 98.14(G) is a right side setback of 80'. The structure addition is proposed.

The requested variance will be detrimental to nearby properties and will create an undesirable change in the character of the neighborhood because:

1. changes the residential character of the neighborhood
2. potential problems with erosion
3. the lot is not conducive to the intended use because of topography, density of tree growth
4. offensive odors
5. removal/storage of waste products

6. variance sets a precedent
The requested variance is substantial.

The requested variance is not a result of a “self-created” hardship.

CONCLUSION

Taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant, the Zoning Board determines that the detriment to the health, safety, and welfare of the neighborhood or community is greater because the variance sets a precedent and is substantial in nature.

Therefore, the above factors, when considered together, balance in favor of denying the variance.

L. Rubenstein: **RESOLUTION TO DENY VARIANCE**

WHEREAS, THE APPLICANT DONALD BURRIS HAS REQUESTED A VARIANCE TO 98-14(G) WHICH REQUIRES BUILDINGS THAT HOUSE FARM ANIMALS TO BE AT LEAST 100’ FROM ANY LOT LINE, AND

WHEREAS, THE APPLICANT IS REQUESTING AN 80’ VARIANCE TO PUT UP A BARN 20’ FROM THE LOT LINE TO HOUSE TWO HORSES, AND

WHEREAS, THE ZBA HAS CONSIDERED THIS APPLICATION AT A PUBLIC MEETING, AND

WHEREAS, IN DETERMINING WHETHER TO GRANT AN AREA VARIANCE THE BOARD MUST BALANCE THE BENEFIT TO THE PROPERTY OWNER VERSUS THE DETRIMENT TO THE COMMUNITY, AND

WHEREAS, IN BALANCING THESE INTERESTS THE ZBA HAS CONSIDERED:

- 1. WHETHER THE REQUESTED VARIANCE IS DETRIMENTAL TO NEARBY PROPERTIES**
- 2. WHETHER AN UNDESIRABLE CHANGE WILL OCCUR IN THE CHARACTER OF THE NEIGHBORHOOD**
- 3. WHETHER THERE ARE ANY FEASIBLE ALTERNATE METHODS AVAILABLE TO THE APPLICANT TO USE THE PROPERTY**
- 4. WHETHER THE VARIANCE IS SUBSTANTIAL**
- 5. IF THERE ARE EFFECTS AND/OR IMPACTS THE VARIANCE WOULD CAUSE TO THE PHYSICAL OR ENVIRONMENTAL CONDITIONS EXISTING IN THE LOCALITY**
- 6. WHETHER THERE IS A SELF-CREATED HARDSHIP**

NOW HAVING CONSIDERED THE ABOVE FACTORS, THE ZBA DETERMINES:

- 1. THE VARIANCE WILL BE DETRIMENTAL TO NEARBY PROPERTIES BECAUSE HOUSING HORSES SO CLOSE TO THE PROPERTY LINE CAN CREATE ISSUES REGARDING ODOR, NOISE, AND DISPOSAL OF WASTE. ALTHOUGH THE PROPERTY NEIGHBOR IS THE PERSON WHO IS PROPOSING TO USE THE BARN, THE ZBA IS MINDFUL THAT THE VARIANCE RUNS WITH THE LAND. THE BOARD IS CONCERNED ABOUT FUTURE PROPERTY DEVELOPMENT IN THE NEIGHBORHOOD AND THE IMPACT OF THIS VARIANCE.**
- 2. THE NEIGHBORHOOD IS RESIDENTIAL IN NATURE AND THE ZBA IS CONCERNED ABOUT INTRODUCTION OF FARM ANIMALS INTO RESIDENTIAL NEIGHBORHOODS**
- 3. THE REQUESTED VARIANCE IS SUBSTANTIAL. THE BOARD IS CONCERNED ABOUT THE POSSIBLE PRECEDENTIAL EFFECTS OF A SUBSTANTIAL VARIANCE OF THE 100' SETBACK FOR A BUILDING HOUSING FARM ANIMALS**

THEREFORE TAKING INTO CONSIDERATION THE BENEFITS TO THE APPLICANT IF THE VARIANCE IS GRANTED AS WEIGHED AGAINST THE DETRIMENT TO THE HEALTH, SAFETY AND WELFARE OF THE NEIGHBORHOOD OR COMMUNITY BY THE GRANT, THE ZBA DETERMINES THAT THE DETRIMENT TO THE HEALTH, SAFETY AND WELFARE OF THE NEIGHBORHOOD OR COMMUNITY IS GREATER.

THEREFORE THE ABOVE FACTORS WHEN CONSIDERED TOGETHER BALANCE IN FAVOR OF DENYING THE VARIANCE.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 5-0-0

3. APPEAL #836 – LUKAITIS – VARIANCE

Board discussed issues surrounding impact on a densely populated residential development neighborhood from goats, their odor, and their waste.

L. Zylberberg read into the record the worksheet.

FINDINGS OF FACT

Appeal #836, dated 11/17/04, applicants are Joseph and Marlena Lukaitis. Location of property is 64 Whiteford Drive, in an R-O zone. Type of variance sought is from 98-

14G, a 90' setback on right for an existing shed to house goats. The structure is existing, and the applicant is requesting a change in use of the structure.

The requested variance will be detrimental to nearby properties.

An undesirable change will occur in the character of the neighborhood as a result of this variance. It is a well-established, densely populated area and having goats would cause hardship to the neighborhood. The neighborhood would be changed due to odor issues resulting from housing the farm animals (fecal waste). There would be increased noise from the animals. It is a highly populated residential subdivision that is not suitable for farm animals.

The applicant can use the property AS IS, but has requested permission to house goats due to dairy allergies within her family.

The requested variance is substantial.

There are no effects or impacts to the physical or environmental conditions existing in the locality from this variance.

This variance is not a result of a self-created hardship because she is not currently using the structure to house goats.

CONCLUSION

Taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, the ZBA determines that the detriment to the health, safety and welfare of the neighborhood or community is greater because this property is not conducive for housing of goats.

Therefore, the above factors, when considered together, balance in favor of denying the variance.

L. Zylberberg: **RESOLUTION TO DENY**

WHEREAS, THIS BOARD HAS HEARD TESTIMONY OF THE APPLICANT LUKAITIS RELATIVE TO HER HOUSING GOATS AT HER PROPERTY LOCATED AT 64 WHITEFORD DRIVE IN THE TOWN OF PLEASANT VALLEY IN R-O ZONE,

WHEREAS, THE APPLICANT HAS SOUGHT A VARIANCE UNDER 98-14(G) TO CONVERT HER EXISTING METAL STRUCTURE TO HOUSE THESE GOATS,

WHEREAS, UNDER 98-14(G) A 100' SETBACK IS REQUIRED TO HOUSE FARM ANIMALS AND THE APPLICANT ONLY HAS 10' AND IS REQUESTING A 90' VARIANCE,

BASED ON THE WORKSHEET THAT WAS JUST READ INTO THE RECORD, IT IS RESOLVED THAT TAKING INTO CONSIDERATION THE BENEFIT TO THE APPLICANT AS WEIGHED AGAINST THE DETRIMENT TO THE HEALTH, SAFETY AND WELFARE OF THE NEIGHBORHOOD OR COMMUNITY, THE ZBA DETERMINES THAT THE DETRIMENT TO THE HEALTH, SAFETY AND WELFARE OF THE NEIGHBORHOOD OR COMMUNITY IS GREATER,

AND THEREFORE THE ZBA DENIES THE VARIANCE.

SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 5-0-0

4. APPEAL #837, WFL CONSTRUCTION

Board discussion: This is a variance to put a two-family home on fewer than 2 acres, a variance from 98-12. Board discussed that they previously proposed an 8800 square foot, 5-bedroom single family home for this structure and applied for an easement, which was granted. Now they cannot market it because it is so large. R. Vogt stated that this variance does change the character because of the impact on the next door neighbor. L. Rubenstein agreed and raised the question of what is the highest priority: preserving the barn or having a single family house. L. Rubenstein stated that preserving the barn also preserves the look of a rural community. Further, an 8800 square foot house is enormous in that location and will not be sold. R. Vogt pointed out that two 4400 square foot residences are still huge and is concerned about the proximity to the neighbor, the number of cars, large families. Board is concerned for preservation of the barn as a rural structure and the likelihood that they will tear it down if they can't sell it. Board discussed the impact of a two-family home in that neighborhood.

R. Vogt read the Worksheet into the record.

FINDINGS OF FACT

Appeal #837 dated 11/30/04. Applicant is William Ligoori/WFL Construction, Inc. Property is located at 8 Ryan's Run in R1 zone. Variance sought is from 98-6(c) and 98-12, Schedule of Bulk Requirements. The structure is existing.

The requested variance will not be detrimental to the nearby properties.

No undesirable change will occur in the character of the neighborhood. There will be one additional driveway to the structure.

The applicant could use the building AS IS – as originally proposed for a single family residence.

This is not a substantial variance. This is approximately a 19% variance.

There would be no effect or impact from this variance on the physical or environmental conditions existing in the locality as this will still be a 5-bedroom structure – as originally proposed.

This variance is a result of a self-created hardship. The applicant testified that they have been unable to market the building due to the large size (8800 square feet) of the structure.

CONCLUSION

Taking into consideration the benefit to the applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, the ZBA determines that the benefit to the applicant is greater. Further, the Planning Board has recommended in favor of this variance to further the subdivision plan which called for preservation of the barn.

Therefore, the above factors, when considered together, balance in favor of granting the variance.

R. Vogt: MOTION TO GRANT THE VARIANCE; SECONDED BY R. MAUCHER

VOTE TAKEN AND APPROVED 5-0-0

5. MINUTES

L. Zylberberg: MOTION TO ACCEPT THE MINUTES OF THE 11/18/04 ZBA MEETING; SECONDED BY R. VOGT

VOTE TAKEN AND APPROVED 5-0-0

Board: MOTION TO ADJOURN THE MEETING; SECONDED BY EVERYONE

VOTE TAKEN AND APPROVED BY EVERYONE!

MEETING ADJOURNED BY CHAIRMAN DUNN AT 10:54 P.M.

Respectfully submitted,

Helen D. Dickerson
Secretary

The foregoing represent unofficial minutes of the December 16, 2004, Pleasant Valley Zoning Board of Appeals meeting. They are not official and should not be construed as the official minutes until approved.

_____ Approved as read

_____ Approved as corrected with deletions/additions